

**RAPID OR INCREMENTAL CHANGE?**  
Assigning greater legislative powers to  
the Pan African Parliament

Ogochukwu Nzewi

**Research report 123**

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**ABBREVIATIONS**

AEC	African Economic Community
APRM	African Peer Review Mechanism
ASEAN	Association of South East Asian Nations
AU	African Union
AUA	African Union Authority
AUC	African Union Commission
EAC	East African Community
EALA	East African Legislative Assembly (EALA)
EC	Executive Council of the African Union
ECOSOCC	Economic, Social and Cultural Council
ECSC	European Coal and Steel Community
EP	European Parliament
EU	European Union
MP	Members of Parliament
NEPAD	New Economic Partnership for Africa's development
PAP	Pan African Parliament
PRC	Permanent Representatives Committee
REC	Regional Economic Community
RPA	Regional Parliamentary Assemblies
SADC	Southern African Development Committee
STC	Specialised Technical Committee
TNRO	Trans National Regional Organisations
USAN	Union of South American Nations

## 1. INTRODUCTION

The objective of a Speakers Conference<sup>1</sup> convened by the Pan African Parliament (PAP) in October 2009 was to acquire greater legislative powers and competencies in relevant policy areas; this was unequivocally articulated by many speakers. To underline the importance of achieving this objective, a time frame of 2011 was set by the PAP Bureau. These demands for greater legislative powers have been made since the PAP was introduced in 2004 - they are usually premised on the perception and expectation, not only of the PAP members, but also some commentators and observers, that parliamentary institutions by their nature must have legislative powers and competencies. Yet there are well documented political, institutional and other obstacles that have prevented the realisation of this objective, leading to PAP's legitimacy<sup>2</sup> being severely undermined. As a result, some critics consider it a 'toothless' body with no meaningful purpose in the lives of ordinary people on the continent. Thus there is an urgent need for policy and decision makers on the continent, including the PAP itself, to seriously rethink its role, functions and competencies and explore ways of strengthening it institutionally and politically in the absence of legislative powers and competencies.

To enhance its legitimacy, the PAP has called for its own transformation into a respected continental body with legislative powers usually reserved for traditional legislative institutions. There is a strong belief that such legislative competency is a necessary prerequisite for the PAP to make a positive impact on the lives of ordinary people. However given the political and other obstacles militating against PAP's acquiring greater legislative powers in the short to medium term, there is a need for the PAP to review its role, functions and responsibilities within the AU system. In particular, this might involve placing more emphasis on non-legislative<sup>3</sup> functions and responsibilities, such as oversight (ie monitoring and overseeing the work of the AU Executive) as well as serving as a deliberative body (ie a platform for stakeholders and organised interest groups and civil society) to participate in shaping continental policies, politics and governance.

This study sought to achieve three key goals: firstly, to review the institutional development and practical achievements of the PAP during its first term; secondly, to examine the prospects of the PAP acquiring greater legislative powers and competencies; and thirdly, to examine ways in which the PAP could enhance its institutional effectiveness and competence by strengthening its non-legislative role in the short to medium term while

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<sup>1</sup>African Parliamentary Speakers' Conference, held at the PAP offices in Midrand, Johannesburg, South Africa (8 -9 October 2009).

<sup>2</sup>Legitimacy denotes a state of general acceptability - when institutions, practices, norms and values are generally regarded as acceptable in a given society. This is crucial, especially where the authority of individuals, leaders and institutions to exercise power over others is potentially subject to disputes or questions. Authority is legitimate power, and legitimacy entails the authority to exercise power over others who in turn consent willingly to the exercise of that power in given social and political contexts.

<sup>3</sup>Non-legislative powers and functions are powers and functions that do not entail the process and activities of law making, including representation, public participation, consultations, advocacy, deliberations and executive oversight.

still working towards its long term goal of acquiring greater legislative powers. This research report will therefore take the view that current efforts to build and enhance the PAP's institutional legitimacy and influence<sup>4</sup> on the basis of acquiring expanded legislative powers and competencies is unlikely to succeed, at least in the short to medium term.

## 2. RESEARCH APPROACH AND METHODOLOGICAL ISSUES

This study was undertaken over a three-month period (October-December 2009). It is part of a broader three-year project on the African Governance Architecture funded by the Danish International Development Agency (DANIDA). The approach adopted here was mainly qualitative - the emphasis was on drawing on and gaining from the views and perspectives of those with experience and knowledge of the workings and challenges facing the PAP. We therefore base our analysis and draw our conclusions from relevant materials, knowledge and perspectives obtained from a variety of sources (both primary and secondary) as outlined in the paper.

### 2.1 Primary sources

A number of in-depth, one-on-one interviews were carried out with key informants within the PAP structures, including members (i.e. politicians) and administrative/support staff. Some of the staff and members of the PAP preferred their identities not be revealed. These will therefore be kept confidential, especially where statements are attributed to them. In addition, two independent commentators and observers, with knowledge of the activities and functioning of the PAP, were interviewed to provide perspectives and insights.

It needs to be noted that a number of respondents were interviewed for this study, because many PAP members (political representatives) and ordinary officials (bureaucrats) were either unwilling to be interviewed or agreed at first and then declined later. In a number of cases, informal and off-the-record conversations were held with individuals who were extremely reluctant to agree to formal or even informal interviews. Therefore, this study relies on a very limited number of formal on-the-record interviews. To supplement this material, the researcher utilised materials from the informal, off-the-record conversations which cannot be attributed or directly quoted, as well as relevant literature and other documentary sources.

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<sup>4</sup>Influence refers to the power to sway or affect others based on a number of attributes such as prestige, charisma, wealth, physical and mental abilities, legal power or position.

The researcher was allowed to attend as an observer at the 2009 PAP Speakers Conference on 'Linking the Pan African Parliament with National Parliaments'. This was the first conference of its kind, where parliamentary speakers from across Africa participated in a debate on the theme 'The transformation of the Pan African Parliament into a Legislative Body'. During this conference a number of speeches and presentations served as valuable sources of research material for this study. For its proceedings the PAP uses five official languages (Arabic, French, English, Portuguese, KiSwahili). Therefore the speeches, presentations and debates were in these languages. While translations are provided, other documents, such as the Hansard, do not make provisions for this. In addition, the researcher observed the 12th Ordinary Session of the PAP, which took place from 26 October -5 November 2009.

## **2.2 Secondary sources**

In order to complement the materials obtained by primary methods (in-depth, one-to-one interviews and direct observations of the PAP conference and proceedings), the author also utilised published secondary sources such as books, journal articles and information from the relevant websites. Also, the Hansard reports of the 11th and 12th Ordinary Sessions of the PAP were used for the debates that were conducted by the members on the transformation of the PAP into a fully fledged legislative body. The secondary sources were also important, providing background insights into the broader subject of transnational parliaments as well as in the gaps in current knowledge about the PAP. Importantly, the materials helped in designing appropriate questions for the in-depth interviews.

## **2.3 Thematic structure of the report**

This report is structured in five thematic clusters, each comprising a number of individual sections. The first cluster (Sections 1-2) introduces the report, its subject matter and research methods and approach. The second cluster (3-4) discusses the subject of transnational parliaments and prospects for their institutional development. The third cluster (5) reviews and examines the PAP's performance, institutional constraints and achievements. The fourth cluster (6-7) examines the debates regarding the assignment of greater legislative powers to the PAP. The fifth cluster (8) examines ways of strengthening the PAP as an institution, and Section 9 concludes the report

## **3. WHY TRANSNATIONAL PARLIAMENTS?**

During the past decades, transnational or supranational parliaments have increasingly been created in various regions of the world. The European Union Parliament (EP), Latin American Parliament, Central American Parliament, MERCUSOR Parliament and PAP are examples. These parliamentary bodies have generally resulted from efforts by member states seeking to create economic and/or political integration. The earliest example was in the EU. The

European Coal and Steel Community (ECSC) instituted the Assembly, which later became the European Parliament. Its creation is generally considered to have inspired other regional experiments, such as the AU and the USAN, which have instituted their own Parliamentary Assemblies.

Transnational parliamentary institutions are member-state-driven entities pursuing specifically defined goals commonly held by member states. For instance, these goals might include economic, political, development or security goals. These bodies exhibit varying characteristics and differ in terms of their goals, functions, resources, years of existence and political circumstances. Therefore understanding the nature of the operations and functional effectiveness of these entities and their ability to command respect among their members requires some understanding of the circumstances that led to their existence. Literature on these structures reveals that different models exist, mainly depending on the reasons for their formation. For instance, the models being followed by particular transnational entities may be inspired by a broader vision of integration and co-operation. The study of regionalism, a discipline in which these transitional parliamentary institutions are usually studied, tends to approach an analysis of these structures in terms of a number of conceptual perspectives such as supranational, institutional, intergovernmental and sovereignty perspectives. For instance, regional groups like the Asia Pacific Economic Cooperation (APEC) and the Association of South East Asian Nations (ASEAN) are intended to achieve economic and intergovernmental co-operation, with the ASEAN particularly designed to preserve the nationalism of its member states. However, the EU is modelled on the broad vision of social, political and economic integration, entailing substantial voluntary ceding of important aspects of national sovereignty (such as legislative authority) to its transnational parliamentary.

In practice, transnational parliamentary assemblies also operate within the context of institutional, often competitive, relations with parliaments of member states, where the former face a major political hurdle - the issue of national sovereignty - which not only underpins the authority of member state parliaments, but also the thinking and concerns of heads of states in public debates about giving greater legislative powers to these transnational parliamentary assemblies. It has been widely documented in numerous discussions and publications that the member states of the AU are not yet prepared to delegate greater legislative powers to the PAP. Understandably, such powers currently reside in the Executive Council and heads of states and governments. One of the key reasons for this reluctance is that the majority of AU member states do not want to lose and/or undermine their own political and territorial sovereignty, particularly because the legal and political implications of such legislative powers to an institution whose political and legal status is not yet fully determined, might be far-reaching. A respondent interviewed for this study raised this issue in this way: "There are sovereignty issues even for national

parliaments. Some national parliaments do not see how a parliament above them can make laws and have powers.”<sup>5</sup> In addition, the speaker of the SADC Parliamentary forum acknowledged the political challenge that transnational parliaments pose.<sup>6</sup> One of these is the extent to which national governments are prepared to cede sovereignty. Allocating greater legislative powers to the PAP might have potentially serious political, legal and constitutional consequences for many of these member states and therefore need to be fully understood before any action is taken.

Besides the potential political and legal issues, important institutional issues need to be raised. For instance, the extent to which the PAP is institutionally prepared to assume and handle greater legislative powers and responsibilities has not been fully assessed, although the PAP members seem convinced that the institution is ready for this responsibility. A practical example is the lack of technical skills in relevant policy sectors and the institutional capacity needed to ensure the harmonisation of policies and the implementation of PAP decisions by parliaments of RECs, national parliaments and their governments.<sup>7</sup> In essence, assuming such greater legislative responsibilities could have numerous institutional, systemic, procedural, organisational/managerial and resource consequences that need to be understood thoroughly by the political leaders of the individual member states and their citizens.

The broader political environment within which such transnational institutions operate is also crucial to explain and understand the controversies around the issue of ceding greater legislative powers to transnational parliamentary bodies such as the PAP. For instance, the AU is a relatively new entity compared to some of the transnational parliamentary entities in other parts of the world, and as such it still has to overcome huge capacity and competency constraints. The key constraints, however, are political and legal. Many PAP member states operate varying internal political, constitutional and governance systems, making co-ordination and alignment of these systems and practices potentially difficult - if not impossible - for a new institution such as the PAP. Nonetheless, proponents of greater legislative powers for the PAP still argue that the delegation of greater legislative powers will be crucial in that it would enhance the political and institutional power and influence of the PAP in terms of increasing its political capacity to promote good governance in Africa.

In theory, all parliamentary (national or transnational) institutions share broadly similar functional objectives, even if their ultimate goals vary - the key ones are making laws, engaging in public debates and deliberations of important policy issues, representing their constituents and ensuring the accountability of office bearers through a variety of oversight practices. However in practice there are major differences in the extent to which these key functions are carried out as functions of the institutions and the vigour with which they are

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<sup>5</sup>Interview with Patrick Mpedzisi Southern Africa Trust 22/10/2009.

<sup>6</sup>. Speech at the PAP Speakers Conference, Midrand, South Africa (8-9 October 2009).

<sup>7</sup>Ibid.

applied. In the case of transnational parliamentary bodies such as the PAP, balancing the socio, economic and political interests of the regional collective against those of the individual member states makes the effective application of these traditional functions (where these exist) extremely difficult. In other words the ability of transnational parliamentary assemblies such as the PAP to assert their legislative and other functional authority over members is often undermined by the fact that individual member states are still protective of their sovereign legal, territorial and political rights, and continue to wield enormous political and other authority over the transnational parliamentary authority.

#### 4. PROSPECTS FOR TRANSNATIONAL PARLIAMENTS

Studies undertaken on other transnational parliamentary bodies, particularly of the EU Parliament, provide valuable insights into their patterns of institutional development and efforts to empower them in different contexts. In particular, insights gained from studies of the establishment and functions of the EU Parliament have helped in the development of theoretical propositions about these types of transnational institutions. The development of European integration since the 1950s has been seen as leading towards a supranational state entity that entails the substantial dissolution of important aspects of member states' characteristics. This would mean that, logically and ultimately, the EU Parliament would perform the functions and assume the responsibilities that currently reside with the parliaments of the member states, and would be subject to similar requirements and expectations with regard to promoting accountability, good governance, oversight and representation of citizens, but at supranational level.<sup>8</sup>

A neo-functionalist theoretical perspective sees the evolution of regional integration proceeding towards a state-like entity with supranational characteristics. Clearly this perspective places less emphasis on the enduring nature of political power struggles, power relations and national state interests, including political sovereignty. While this perspective has been widely criticised,<sup>9</sup> both for this and in terms of the validity of its predictions,<sup>10</sup> some of its key aspects have been incorporated<sup>11</sup> into other alternative perspectives (eg neo-institutionalism<sup>12</sup> and constructivism<sup>13</sup>) where less emphasis is placed on power

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<sup>8</sup>Haas, E. B. 1970, The study of regional integration: reflections on the joy and anguish of pre-theorising, *International Organisation*, Vol 24 No. 4 (Autumn 1970), pp 607-646; Wallace, H. & Wallace, W. (eds) 1996. *Policy making in the European Union*. 3rd edition, Oxford University Press.

<sup>9</sup>Haas, E. B. (1970) Op. cit.

<sup>10</sup> Haas, E.B. 1975. *The Obsolescence of Regional Integration Theory*. Research Series, No. 25, 1975. University of California, Institute of International Studies Berkeley, CA.

<sup>11</sup>Schmitter, P.C. 2002, Neo-neo-functionalism: déjà vu, all over again? *European University Institute*, July 2002. Accessed November 2009.

[http://www.eui.eu/SPS/People/Faculty/CurrentProfessors/PDFFiles/SchmitterPDFfiles/NeoNeoFunction](http://www.eui.eu/SPS/People/Faculty/CurrentProfessors/PDFFiles/SchmitterPDFfiles/NeoNeoFunctionalismRev.pdf)

<sup>12</sup>Hall, P.A. & Taylor, R.C.R. 1996. Political science and the three new institutionalisms, *Political Studies*, 44(5), pp 936-957.

<sup>13</sup>Smith, M.E. 2004. Institutionalization, Policy Adaptation and European Foreign Policy co-operation. *European journal of international Relations*, 10(1):95-136.

structures and processes, and institutions are deemed to be critically important. Nonetheless, the neo-functional perspective continues to provide insights into the real possibilities of supra-national entities as the goal of integration.<sup>14</sup> The reason is that this perspective on the future of sovereign nation states in Europe seems to have interesting implications and practical prospects for global political restructuring.<sup>15</sup> In other words, if there is a real possibility that the EU would evolve into an alternative and viable supra-national entity, the implications (especially for replication) for similar experiments in other parts of the world are worth exploring seriously.

However, other scholars, who place greater emphasis on national sovereignty,<sup>16</sup> have contested the view that this would be the possible path of the evolution of the European polity. Such scholars argue that the empowering of institutions rather than the nation state's 'loss of control' is a lengthy and gradual process, in which nation states delegate powers to transnational institutions for effective management of the integration processes. In this view, the EU integration process is seen as the outcome of nation states articulating their interest, which, in turn, is fuelled by national political pressures. Therefore the nation state is still seen as the central locus of political and territorial power in the development of the EU Parliament. The point here is that, while some scholars view the gradual empowerment of transnational parliamentary institutions as resulting from an inexorable and inevitable loss of national political and territorial sovereignty, this perspective regards the development of these bodies as the outcome of rational and conscious choice by member states through negotiations and compromise.<sup>17</sup>

Despite these differences, there seems to be considerable convergence among scholars in terms of acknowledging the emergence of a supranational regional institution in the EU. The EU therefore provides a viable and practical example of the institutionalisation of regional integration. However, this does not mean that comparisons with other experiments, such as the AU or PAP, will be easy. Neither does it suggest a simple copying or transplanting of the EU model and experiences to other regions of the world for replication in terms of good practices. Experiments such as the PAP have already been discussed and compared to the EU parliamentary example<sup>18</sup> in terms of lessons and good practices. However, caution

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<sup>14</sup>Schmitter, P.C. 1969. Three neo functional hypotheses about international integration. *International Organisation*, 23(1) Winter, 1969:161-166; Schmitter, 2002 op cit ; McGowan, L. 2007, Theorising European Integration: revisiting neo-functionalism and testing its suitability for explaining the development of EC competition policy? *European Integration on line papers* Vol. 11, 25 May 2007 Accessed November 2009 <http://www.eiop.or.at/eiop/index.php/eiop/issue/view/12>

<sup>15</sup>New perspectives on this debate such as: Andrea Ribeiro Hoffman and Anna van der Vleuten (eds) *Closing or Widening the Gap? Legitimacy and democracy in Regional Integration organizations. Non-State Actors in International Law, Politics and Governance Series*. Ash gate Publishing limited England.

<sup>16</sup>Puchala, D.J. 1999. Institutionalism, intergovernmentalism and European Integration: A review article, *Journal of Common Market Studies*, 37(2):317-31; Hix, S. 2002, Constitutional agenda setting through discretion in rule interpretation: why the European Parliament won at Amsterdam, *British Journal of Political Science*, 32:2 pp 259-280.

<sup>17</sup>Pierson, P. 1996. The path to European integration: a historical institutionalist analysis, *Comparative Political Studies*, 29(2):123-63.

<sup>18</sup>Tieku, T.K. 2007. African Union Promotion of Human Security in Africa in Challenges and Prospects for Peace in the Great Lakes Region, *African Security Review*, 16(1); Maluwa, T 2003, The constitutive act

needs to be exercised, given that there are enormous differences in terms of historical, structural and political circumstances prevailing in these various entities. Nevertheless, insights can be gained from the experiences of the EU Parliament. In particular, there are unique conditions or factors that characterise the emergence of the different trans-national experiments; it is important to understand their nature and direction of development

Firstly, the goals of the emerging transnational experiments are crucial. For some transnational entities the goal of co-operation is important, while others are more concerned with integration. Co-operation usually entails loosely structured intergovernmental relations,<sup>19</sup> where the development of supranational or transnational institutions is not a priority, loyalty to member states is overriding, and thus entry and exit cost very little.<sup>20</sup> Where integration is the central goal, member states seek to construct a supranational collective entity with a separate and distinctive institutional existence and overriding powers to bring about common economic, social and/or political ends.<sup>21</sup> In that case transnational entities for which integration is the central goal tend to acquire the authority to make and implement policy that is binding to member states individually and collectively. Unlike the case of transnational entities, where co-operation is the goal, entry and exit become more costly, and conforming with the resulting regime is compulsory. Such an arrangement is usually underpinned by a politico-institutional framework, based on a broader strategic vision of a common future. Therefore the development of a supranational entity stands a better chance of thriving in integration-oriented transnational arrangements.

In the case of the PAP, since the 1950s the goal has always been Pan-African political and economic integration.<sup>22</sup> For instance, there have been allusions to a United States of Africa at different times in the history of Pan Africanism, inspired by Kwame Nkrumah's vision of a United States of Africa.<sup>23</sup> The latest debates about an AU government are testimony to this enduring historical sentiment in parts of the continent.<sup>24</sup> Nevertheless, there has always been reluctance among many states to accept this goal, as it entails the

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of the African Union and institution building in post colonial Africa., *Leiden Journal of International Law*. 16:1 pp 157-170, viewed 20 October 2007 <http://0-journals.cambridge.org.innopac.up.ac.za/action/displayAbstract?fromPage=online&aid=14767>

<sup>19</sup>Hurrell, A. 1995. Regionalism in theoretical perspective, in L. Fawcett & A. Hurrell (eds) *Regionalism in World Politics: Regional Organisations and international order*. Oxford University Press, New York, p 42.

<sup>20</sup>Schmitter, P.C. 2007 Ancient method, novel subject, ambiguous outcome in Andrea Ribeiro Hoffman and Anna van der Vleuten (eds) *Closing or Widening the Gap? Legitimacy and democracy in Regional Integration organizations. Non-State Actors*, International Law, Politics and Governance Series. Ashgate Publishing limited England.

<sup>21</sup>Schmitter 2007, *ibid*; Bourenane, N 1997. Theoretical and strategic approaches in R. Lavergne (ed) *Regional integration and co-operation in West Africa : a multidimensional perspective* Africa World Press, Trenton NJ.

<sup>22</sup>See the Abuja Treaty which has economic integration goals with a strong focus on distinctive governance institutions. The AU Constitutive Act also articulates similar integration ambitions.

<sup>23</sup>Mazrui, A.A. & Tidy, M. 1984. *Nationalism and new states in Africa from about 1935 to the present*. Heinemann. Nairobi:

<sup>24</sup>Mazrui & Tidy 1984: 344 *ibid*.

idea of independent states surrendering their national sovereignty<sup>25</sup> to a higher body. This explains why the Organisation of African Unity (OAU), which was formed in 1963, did not have supranational ambitions and instead placed important emphasis on the right to protect national sovereignty in the aftermath of colonialism.<sup>26</sup> This goal has never been abandoned, and often gets subsumed under new and different guises within the context of current global governance, security and other challenges, hence the transformation of the OAU into the AU, beginning in 1991 with the Abuja Treaty. The Treaty articulates an integrationist aspiration for the African continent and lays down the foundation for the creation of an African Economic Community (AEC) with trans-national governance organs like the Court of Justice and the Pan African Parliament.<sup>27</sup> The AU has 11 organs whose powers and functions, on paper at least, appear supranational in scope and content.

Secondly, the political importance of national sovereignty is both a crucial factor and hurdle in the establishment of transnational entities. As noted earlier, for African states and their political leaders, sovereignty has always been paramount, and therefore the prospect of integration based on the ceding of sovereignty powers to a supranational entity is dismal. For many political leaders on the continent, sovereignty is a defining characteristic of nationhood, particularly as many African states have only emerged from colonial rule and regained their nationhood and national sovereignty not too long ago. The loss of sovereignty is still politically frowned upon in much of the continent - which undermines the prospects for a viable integration-oriented transnational experiment in Africa. For Europe, the collective experiences of World War 2 were important in spurring efforts towards political integration, not only to rebuild war-battered Europe, but also to curb the potential for excessive 'nationalist' tendencies (eg German nationalist aggression that led to that war).<sup>28</sup> In contrast, early integration efforts in Africa were based on the preservation of national integrity<sup>29</sup> through co-operation, leading to fierce protection of the principle of non-interference and respect for national sovereignty through the OAU Charter.<sup>30</sup> Notwithstanding the amendments to the Constitutive Act of the AU to accommodate more AU intervention under certain prescribed conditions (ie internal conflict) national sovereignty

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<sup>25</sup>Walraven van, K. 1999, *Dreams of Power (the role of the Organisation of African Unity in the politics of Africa 1963-1993)*. Ashgate Publishing Limited, England.

<sup>26</sup> Organisation of African Unity, 1963a, OAU Charter 25th May, 1963, African Union, Addis Ababa, Ethiopia, accessed November 2009 , <http://www.africa-union.org> (articles 2 c, 3 1-3).

<sup>27</sup>Organization of African Unity, 1991, *Treaty establishing the African Economic Community*. OAU, African Union, Addis Ababa, Ethiopia, (Abuja Treaty).

<sup>28</sup> Goodman, S. F. 1996, *The European Union*. Third edition. Macmillan Press Ltd, London, p35.

<sup>29</sup> Sitter, N. 2005, European organisations: from negotiated design to overlapping competencies and quasi-membership. P M van der Hoek (ed) 2005 *Handbook of Public Administration and Policy in the European Union*. Taylor and Francis Group, Florida, P 53.

<sup>30</sup>Nzewi Ogochukwu, 2008, *The role of the Pan African Parliament in African regionalism (2004-2006): an institutional perspective*. A thesis submitted in partial fulfilment of the requirements for the degree of Doctor of Philosophy (PhD)

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remains the cornerstone of the politics of African political and economic continental integration, and therefore any efforts towards greater integration have to accept this reality. The same applies to the efforts to empower the PAP with greater legislative powers and competencies.

Thirdly, a general predisposition of member states to a democratic ethos is an important factor. In some regions of the world, one of the key principles behind political integration and the establishment of transnational entities is the promotion of democratic principles such as representation, popular participation and accountability. A transnational parliamentary assembly could serve as a platform for representation at the level of the continent, ensuring collective scrutiny of decisions taken at the level of transnational institutions. It is also important if all member states subscribe to democratic principles and ethos. For instance, all member states of the EU Parliament subscribe to democratic principles at the national level, which makes it easy to adopt such principles at transnational level. For instance, in their review of four Latin American transnational parliaments,<sup>31</sup> Malamud and Sousa<sup>32</sup> examine the typical challenges that these institutions face which undermine their ability to promote effective democratic governance at the level of regional integration. Apart from the PARLACEN, representation of people through direct elections has not been achieved in these parliaments. One of the reasons for this is a lack of consensus on appropriate electoral systems to create effective popular representation, as well as on the choice between selecting and electing representatives. In addition, Malamud and Sousa argue that the effectiveness of transnational institutions is strongly dependent on the effectiveness of the institutions and systems of individual member states. Thus weak national systems will not augur well for the development of a regional polity and its institutions. In other words, differences in terms of democratic and governance systems among member states are likely to hamper the development of an effective and functioning supranational institution.

On the African continent, while the number of countries that are considered democratic<sup>33</sup> has increased during the past two decades on one hand, on the other hand the results of the World Democracy Audit report for 2009<sup>34</sup> show that the quality of governance and leadership in the continent has deteriorated considerably, with many countries adopting

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<sup>31</sup> Latin American parliament (PARLATINO); Central American Parliament (PARLACEN); Andean Parliament (PARLANDINO) and The MERCOSUR Parliament.

<sup>32</sup> A. Malamud and L. de Sousa. 2007 Regional Parliaments in Europe and Latin America: between Empowerment and Irrelevance in A. R. Hoffman and A. van der Vleuten (eds) Closing or Widening the Gap? Legitimacy and democracy in Regional Integration organizations. Non-State Actors in International Law, Politics and Governance Series. Ashgate Publishing Ltd., UK.

<sup>33</sup>Based on narrow procedural considerations (ie existence of electoral processes, the holding of free competitive elections, multiple political parties, freedom of the press, freedom of movement/association, etc.)

<sup>34</sup>The World Audit looked at 210 countries using data from respected indices such as the CPI index. <http://www.worldaudit.org/democracy.htm>

autocratic leadership styles. A number of recent military coups<sup>35</sup> in countries such as Guinea Bissau (2009), Guinea Conakry (2008), Mauritania (2008) and Madagascar (2009) and most recently Niger (2010), have made things worse in terms of undermining the growth of democratic ethos in the continent. Therefore, the shrinkage of the democratic space at national level weakens prospects for the democracy at transnational level.

Finally, it is worth noting that having sufficient time is an important factor in the institutional development of transnational parliamentary bodies. For instance, the EU Parliament's experience is important, in that the development and consolidation of its institutions took place over a long period of time, which allowed for adequate opportunities for practice, trial and error. The AU is comparatively a recent entity, and institutionally needs time to develop and improve. The same applies to the PAP.

## 5. OVERVIEW OF PAP'S PERFORMANCE (2004-2009)

The idea of an African continental parliament was introduced in the Abuja Treaty. The Treaty was essentially a 34-year plan that articulates a six-stage development plan for the AEC. The sixth and final stage of the plan envisages the establishment of a Pan African Parliament whose members would be elected. However the creation of a continental parliament was never achieved under the Abuja Treaty. The notion of a Pan African Parliament was therefore re-introduced in terms of article 17 of the AU Constitutive Act of 2000, as one of the organs of the AU. In addition, the Protocol<sup>36</sup> to the Treaty establishing the AEC, in respect of the PAP, provides details of the objectives, functions, powers and privileges of the PAP as an institution.

Traditionally, parliaments have four typical functions: representation, legislation, deliberation and executive control or oversight.<sup>37</sup> In certain types of parliaments (ie the British/Westminster system) parliaments have the added function of selecting the executive (ie prime minister or president). Parliaments are not responsible for governing, administering or executing functions of government. While governments execute their responsibilities, parliaments oversee these activities on behalf of citizens. This means that the primary role of parliaments is not only to make laws, but also to take part in a variety of governance processes such as policy making, implementation, deliberation and holding government accountable on behalf of the people who elected them.<sup>38</sup> The process of actually formulating policy is usually the exclusive responsibility of executives and their administrative

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<sup>35</sup>See various news reports: Guinea Bissau <http://216.69.164.44/ipp/guardian/2009/04/23/135412.html> Guinea Conakry: <http://news.bbc.co.uk/2/hi/7802803.stm>; Mauritania: <http://news.bbc.co.uk/2/hi/7544834.stm>; Madagascar: <http://news.bbc.co.uk/2/hi/7954356.stm>

<sup>36</sup>The Protocol is the AU's instrument that defines the principal functions of the PAP.

<sup>37</sup> See both older and newer work of parliaments such as: John Stuart Mill 1961 narrative Considerations on Representative bodies can be accessed at <http://www.gutenberg.org/dirs/etext04/conrg10h.htm>

<sup>38</sup>Jacobs, F, Corbett, R, Shackleton M. 1990. *The European Parliament*. Longman Group UK limited, UK. Norton, P. 1993. Does Parliament matter? Contemporary Political Studies. Harvester Wheatsheaf : New York pp 50-55.

components, while many parliaments (especially those in the British tradition) serve merely peripheral roles and as ‘rubber stamps’ for decisions made by the executives.

Nonetheless parliaments are important in that they confer legitimacy on policy and other important decisions that are presented by governments to parliaments for authorisation through voting and other processes of oversight. This role of conferring legitimacy to policy decisions made by the executive is crucial, especially where such a function brings into decision-making processes other interests such as business, labour, civil society organisations and the general public. Thus while some of the literature on parliamentary institutions sees a diminishing role for parliaments, others see them as crucial deliberative and consultative institutions with the potential to set or shape the policy agenda and policy outcomes on behalf of those they represent.

### 5.1 Institutional and functional problems for the PAP

This sub-section will discuss the legal and institutional challenges that faced the PAP during its first five-year period of operation (2004-2009). The section will also discuss the general impact of the PAP in AU processes.

The AU Protocol envisages the PAP as evolving “into an institution with full legislative powers, whose members are elected by universal adult suffrage”.<sup>39</sup> Other objectives include facilitating implementation of the objectives of the AU; promoting human rights and democracy, peace and security; encouraging good governance and facilitating the integration process.<sup>40</sup> The functions and powers of the PAP are spelt out in the PAP Protocol, and the PAP Rules of Procedure.<sup>41</sup> However, the Protocol confers little authority on the PAP in terms of the legislative function, suggesting that the AU is still reluctant about turning it into a fully fledged law-making body for the continent, at least in the short to medium term. Therefore the PAP does not yet have powers to make laws for the continent, to regulate a range of activities, sectors and functions carried out by the other organs of the AU.

In terms of representation, one of the key functions of a parliamentary institution, this is done by selection, not by direct elections by ordinary voters in the different member states. In other words members are appointed by their respective national parliaments, thus ensuring that the representation of African people in the PAP is indirect. The powers of the PAP are mainly consultative in nature, and thus limited to merely offering recommendations to the AU. The Protocol also confers a complementary role for the PAP in relation to the African integration process - that is, advocacy and promoting harmonisation and domestication of AU policies.

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<sup>39</sup>Organisation of African Unity, 2001. Protocol to the treaty establishing the African Economic Community Relating to the Pan African Parliament. African Union, Addis Ababa, Ethiopia, pp 2-4.

<sup>40</sup>For the full objectives see PAP Protocol of 2001.

<sup>41</sup>The Rules of Procedure is the PAP’s instrument governing its internal systems and processes for carrying out its activities in fulfilment of the Protocol mandate.

Even in terms of oversight, the powers of the PAP are fairly constrained. The Protocol does not enable it to get involved in the appointment or confirmation of appointment of AU officials, and confines the function of overseeing the executive branch to merely attending its meeting sessions and producing documents.<sup>42</sup> However, using these provisions in the Protocol as a basis, the PAP has attempted to elaborate on its oversight functions in clearer terms in its Rules of Procedure. It refers to 'overseeing' the development and implementation of policies, and in having AU officials 'furnish explanations in plenary'.<sup>43</sup> However, this is a fairly restricted conception of oversight and confines this act to a mere passive role. Also, the notion of oversight is potentially broad and needs to be elaborated further in terms of specific activities, in addition to demanding that AU officials submit documents and furnish explanations to the plenary.

It is clear that as a legitimating instrument, the Protocol is fairly limited in its ability to confer a range of powers and authority on the PAP. Nonetheless, the importance of this instrument in allowing the PAP powers to determine and elaborate its own internal Rules of Procedure should not be underestimated. The PAP adopted its Rules of Procedure on 21 December 2004. This document details the PAP's functions in line with the provisions of the Protocol. In particular, it outlines in detail the powers of the PAP; the code of conduct, tenure and mandate of MPs; the composition and powers of the PAP Bureau<sup>44</sup> and parliamentary committees; the parliament's order of business; quorum and voting procedures; budget oversight and so on. The Rules of Procedure serve as both a control and a co-ordinating instrument. They could therefore be used as leverage to define and operationalise some of the limited powers and functions of the PAP as contained in the Protocol. However, this would depend on the political leadership within the PAP and its willingness to deal with the problem of the limited scope of the powers and functions of this institution as defined in the various legal and other instruments of the AU.

With regard to the institutional design, roles and functions, the PAP's relationship with other AU organs becomes crucial. It is important to understand the way the PAP defines its role in the AU system. The role and functions of the PAP are clearly shaped by the fact that the institution is still evolving. The AU itself is in its seventh year, and is thus still evolving and developing its 11 organs, which means that a clear understanding of its formal responsibilities and duties, as well as its relationships with the entire AU system, is also a work in progress. The formal elaborations of the roles, functions and relationships of these organs to each other as contained in the Protocols and statutes of the various AU organs have not cleared the confusion; for instance, the PAP, Economic, Social and Cultural Council (ECOSOCC) and the Court of Justice are seen by some as playing a direct role in AU decision-

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<sup>42</sup> See Article 11 of the PAP protocol of 2001.

<sup>43</sup> Pan African Parliament 2004a. Rules of Procedure adopted by the Pan African Parliament on 21<sup>st</sup> Sept 2004. *Basic Documents of the Pan African Parliament, Pan-African Parliament*, Midrand, South Africa.

<sup>44</sup> The PAP Bureau comprises the president (ie Speaker) of the PAP and four vice presidents. It has a secretariat, composed of an office manager and special assistants. It is responsible for co-ordinating the work and activities of the Permanent Representative Committee.

making processes through the Assembly.<sup>45</sup> However, relevant provisions relating to the powers and functions of these institutions appear not to allow for this. Also, in practice the Executive Council seems to be the only institution that has a direct relationship with Assembly decision-making processes. This implies that many of the AU organs, including the PAP, do not have direct access to the Assembly. Also, the crucial relationship between the AU Commission and the Executive Council is often presented in a manner that seems to misconstrue and misrepresent the power relations between the Executive Council and the other AU organs, going by the legal instruments of the AU and its organs.<sup>46</sup> The PAP tends to view the AU as an institutional ensemble with three different arms of governance - the legislature, the judiciary and the executive - all reporting to the Assembly of Head of States as shown in the following organogram. <sup>47</sup>

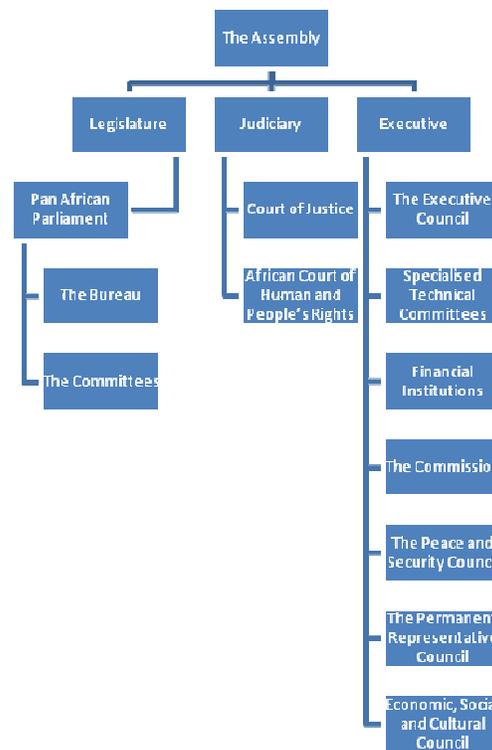


Fig 1: AU organogram as represented in the PAP strategic plan 2005

However the PAP’s representation of itself as an independent arm of the AU seems not to be borne out in current legal provisions or in practice. In fact the power of the AU system

<sup>45</sup> See Institute for Security Studies. 2005. *African Union Profile* Institute for Strategic Studies, accessed November 2009 [http://www.issafrica.org/AF/RegOrg/unity\\_to\\_union/pdfs/oau/OAUPprofile.pdf](http://www.issafrica.org/AF/RegOrg/unity_to_union/pdfs/oau/OAUPprofile.pdf).

<sup>46</sup> See Pretoria University Law Press (PULP) 2007. *Compendium of Key Human rights Documents of the African Union*. 3rd Edition Centre for Human Rights, UPeace , Pretoria, South Africa.

<sup>47</sup> See PAP organogram Pan African Parliament, 2005 *Strategic Plan 2006-2010*, “one African, one voice”, Nov. 2005. Pan-African Parliament, Midrand, South Africa.

is centralised in the Assembly and the Executive Council. This misunderstanding and lack of clarity on its own powers and role was one of the key challenges faced by the PAP during its first five years of operation and it was highlighted during interviews conducted for this study. The AU Commission chairperson, in an address to the first session of the 2nd Parliament, referred to this:<sup>48</sup>

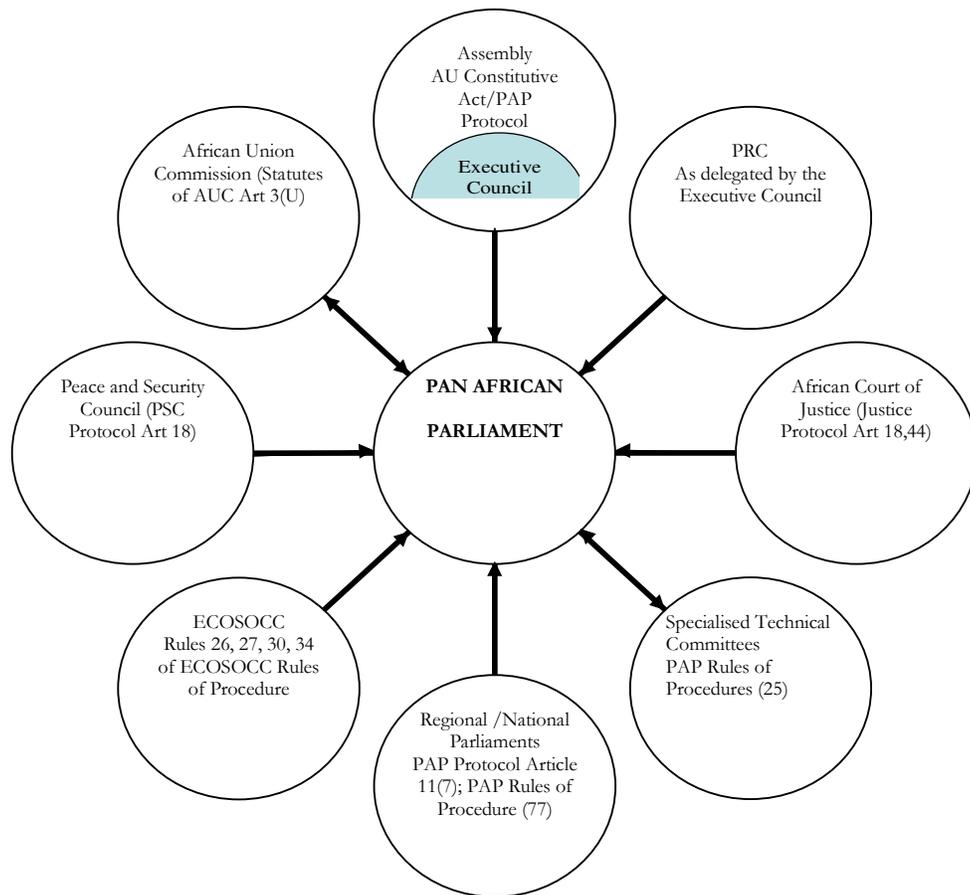
“The relationship that has to be established between the AU has not been clearly demarcated..., the PAP itself until now was taking itself as not being part of the AU institution. Now steps are being taken to make the PAP [part of the] family of the AU, so that all its activities will be understood by all AU organs.”

However, the diagram below attempts to represent the relationship between the PAP and other AU organs based on the relevant provisions of various treaties and protocols that govern these institutions.<sup>49</sup> The arrows represent the flow/direction of reporting relationships. The diagram seems to indicate that the PAP has oversight powers in relation to several of the organs of the AU (the Peace and Security Council, the Court and the ECOSOCC). It is interesting to note that these organs are, currently, not yet politically the most powerful institutions within the AU. The other organs (the Executive Council, Permanent Representative Council (PRC), African Union Commission (AUC) and the Specialised Technical Committee) appear to play a supervisory role in relation to the PAP. It is clear therefore that PAP's relationship (in terms of reporting and oversight) needs to be reviewed as a way to determine its proper and effective role in relation to other AU organs.

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<sup>48</sup> Interview with PAP MP Ethiopia 2/11/2009.

<sup>49</sup> Nzewi Ogochukwu 2008, op cit.



**Fig 2: Legal provisions on PAP’s oversight relations to AU organs**

In terms of fulfilling its broader mandate of promoting African political integration and harmonising AU policies and programmes during its first term, the PAP held only two meetings with the EAC and Southern African Development Commission (SADC) in 2006 and 2007 respectively. These were aimed at addressing issues relating to the harmonisation of Regional Economic Communities (RECs) and their Regional Parliamentary Assemblies (RPAs).<sup>50</sup> The meetings with RECs and RPAs were in line with PAP’s objective of promoting harmonisation of policies and programmes of the RECs and African states.<sup>51</sup>

It is obvious that there is an institutional distance between the PAP on the one hand and the AU executive and other AU organs on the other - a situation acknowledged by the PAP in

<sup>50</sup>Interview with PAP Legislative Business staff, 21/10/2009 ; also Report of the Pan African Parliament Seminar on the Harmonization of Regional Economic Communities and Regional parliamentary Bodies (Botswana 2007 & Tanzania 2006).

<sup>51</sup> PAP Report of PAP on harmonization or REC and RPAs, Arusha, Tanzania, 2007.

its 2009 evaluation report.<sup>52</sup> While the PAP's own organogram appears to give it a direct reporting relationship with the Assembly, in reality the AU frameworks such as the Constitutive Act and the PAP rotocol does not provide for such a direct relationship. Therefore an elaboration of the AU's institutional architecture and clarification of relationships, roles and responsibilities remains an area that needs attention in the process of defining a clearer and meaningful role for the PAP.

## 5.2 Achievements of the PAP

Sub-section 5.1 discussed the limited nature of the formal powers and functions of the PAP as well as the problems caused by a lack of clear understanding of its relationship with the other AU organs. These problems have had an impact on its ability to carry out its functions effectively and thus fulfil its mandate in the recent past. As noted earlier, there are provisions enabling the PAP to undertake a range of non-legislative (eg consultations, advisory functions, oversight and monitoring) functions in relation to several AU organs. This sub-section therefore reviews the PAP's performance during the first five years of its existence, and examines how it has fulfilled its non-legislative responsibilities under its current mandate during this period.

An examination of the PAP's activities reveals that it contributes significantly to debates on key issues before the AU. These include peace and security issues such as the Darfur case and a development of a mechanism to enforce promotion of peace and security, and political decisions such as the decolonisation of the Saharawi Arab Democratic Republic and internal governance issues such as its budget.<sup>53</sup> The PAP has also carried out numerous fact-finding missions in a number of countries, such as Liberia (to investigate issues of human rights) and Cote d'Ivoire (toxic waste dumping) and went on election observer missions to elections around Africa.<sup>54</sup> These missions invariably led to reports containing recommendations for action by relevant countries or organs of the AU. Yet very little evidence exists to show that these recommendations have either been taken on board or informed Assembly decisions. For instance, between 2004 and 2006, decisions taken by the Executive Council or the Assembly do not acknowledge or reflect any of the PAP's recommendations as contained in reports from its fact-finding missions.<sup>55</sup> A respondent from the PAP underscored this lack of PAP influence: "Some of the issues they act on, later when we receive the AU decisions, if the issue is there, that means that they already act on it but it is very rare."<sup>56</sup>

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<sup>52</sup> Report on the political, institutional, financial and administrative evaluation of the Pan African Parliament, 5 August 2009.

<sup>53</sup> Access to PAP recommendations from its 2<sup>nd</sup> Ordinary Session to present can be viewed at <http://www.pan-africanparliament.org/>

<sup>54</sup> See PAP website for reports. [http://www.pan-africanparliament.org/DocumentsResources\\_Publications.aspx](http://www.pan-africanparliament.org/DocumentsResources_Publications.aspx),

<sup>55</sup> See Nzewi (2008), op cit.; Also see AU decisions from AU website.

<sup>56</sup> Interview with PAP Legislative Business Official 21/10/2009.

Neither has the PAP been successful in obtaining responses to its calls for reports and presentations to its Plenary by other AU organs. For instance the PAP has in the past invited other AU organs, such as the African Union Authority (AUA), New Economic Partnership for Africa's Development (NEPAD) and the African Peer Review Mechanism (APRM) to present reports to its Plenary, without success, as this respondent indicates: "What happens is that an organ is invited to come and brief the PAP but most of the time that did not happen. This has been an ongoing problem here at the PAP." The respondent added: "We send a copy of the report to the concerned country... we cannot tell if any of them have been considered... there is no way to say that ... because [these countries] do not report back to us, we just give them and they will act on it."<sup>57</sup> Even the PAP's own evaluation report acknowledges that it has had no impact on the building of African Unity.<sup>58</sup>

With regard to these oversight activities during its first term, the PAP is generally seen as having been ineffective and a poor performer. For instance, in the key area of budgetary oversight, the PAP failed to achieve effective supervision of its own budget.<sup>59</sup> This was confirmed by an audit process that led to sanctions by the Executive Council through the Permanent Representatives Committee.<sup>60</sup> This and other shortcomings have undermined the PAP's influence and legitimacy in ensuring an accountable executive. This was reflected in an interview with one of the PAP members: <sup>61</sup>

"... If you are talking of oversight duties of the parliament in the proper sense of the word, PAP is not really doing its oversight ... as such ... except [by] sending fact finding missions and election observation and the likes ... the way I understand oversight [it is] is a mechanism of keeping the executive accountable."

For the PAP to fulfil its objectives of facilitating effective implementation of the AU policies and objectives as enumerated in the AU legislation, it will need not only to strengthen its systems and overhaul its oversight structures (particularly its internal committees and sub-committees), but also to review the way it exercises its oversight powers as currently enumerated. One of the respondents alluded to the problem of ineffective systems and structures for relating the decisions of the PAP to relevant bodies of the AU: <sup>62</sup>

"... There are no structures in place to relay the decisions of the PAP to the AU. Thus very pertinent decisions taken by the PAP will arrive at the AU only during the briefing of the PAP President to the Assembly at the AU Summit."

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<sup>57</sup> Interview with PAP Legislative Business official 21/10/2009.

<sup>58</sup> Report on the political, institutional, financial and administrative evaluation of the Pan African Parliament, 5 August, 2009.

<sup>59</sup> Its own budget is still vetted by AU officials who are signatories of the PAP account see *Draft Budget Proposal for 2006*, [http://www.pan-africanparliament.org/DocumentsResources\\_Publications.aspx](http://www.pan-africanparliament.org/DocumentsResources_Publications.aspx)

<sup>60</sup> Bame P, 2007 MPs relieved after finance Report, 24 October, *PAP newsroom* viewed 11 November 2009, <http://www.pan-africanparliament.org/News.aspx?ID=273>

<sup>61</sup> Interview with PAP MP Ethiopia, 2/11/2009.

<sup>62</sup> Interview with PAP Bureau official, 29/10/2009.

However these problems are not only due to the lack of effective systems and processes on the part of the PAP. It can be argued that the entire system of the AU is also contributing to these problems, especially the lack of effective systemic co-ordination and information exchange. Firstly, some critical AU organs, such as the Specialised Technical Committees (which ought to have a strong policy link with the PAP) have not yet been established, which exacerbates these problems. Secondly, the exclusionary nature of AU decision-making processes (involving only a limited number of AU organs, such as the AUC, PRC, Executive Council and Assembly) ensures that the role and influence of the PAP is severely limited.<sup>63</sup> Thirdly, there have been some institutional conflicts between the PAP and other crucial AU structures: for instance, the PAP Bureau appears initially to have misinterpreted its role within the AU, by assuming a superior status to organs like the PRC and the AUC (the latter oversees the implementation of all AU policies) which has created tense relations between these organs, in turn undermining the ability of the PAP to play a meaningful and influential role in the affairs of the AU. Fourthly, there is a lack of policy complementarity between the recommendations made by PAP and the decisions made by the Assembly. This was clearly highlighted by a PAP official during an interview:<sup>64</sup>

“The PAP has to look into how to harmonise ... all the key points they debate during [its] sessions [for] the next AU summit, so that whatever is analysed at the PAP level can feed [into] the AU Summits.”

This issue was also captured in the PAP’s own evaluation report which refers to “the poor synergy between PAP and the organs of the AU and particularly the fact that PAP and the African Union Commissions do not function in symbiosis.”<sup>65</sup> Finally, the PAP’s own internal administrative and financial systems were generally regarded as poor during its first term, and this was attested to by allegations as well as reports of financial misappropriation and mismanagement of funds, some of it based the PAP’s own internal investigations.

## 6. GREATER LEGISLATIVE POWERS: ‘BIG BANG’ APPROACH

Like its predecessor, the PAP Bureau in the current term has identified legislative transformation as a priority. As discussed earlier, the PAP is the legislative arm of the AU. Thus, ideally it should function as a parliament and so enjoy a level of institutional autonomy from the other two arms of the AU (Executive and Judiciary). The PAP’s desire for greater legislative powers should therefore be viewed in this context. It is also clear, from the constant raising of this issue during its debates, that the PAP places a great deal of importance on acquiring greater legislative powers as an indicator of institutional influence and a mark of political legitimacy within the AU. Nevertheless, research has shown that the

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<sup>63</sup> Nzewi terms this the ‘decision making axis of the AU’, Nzewi, 2008 op cit.

<sup>64</sup> Interview with PAP Bureau Official, 29/10/2009

<sup>65</sup> Report on the political, institutional, financial and administrative evaluation of the Pan African Parliament, 5 August, 2009.

goal of creating a supranational polity within which a transnational parliamentary institution such as the PAP can enjoy institutional legitimacy and influence should not be the 'be all and end all' of its existence, at least in the short to medium term. For a start, the time it takes for these institutions to become effective supranational bodies is extensive and involves an arduous process. This implies that the journey towards the status of a fully fledged legislative institution might be even longer. Using materials obtained through interviews, speeches and observations of the 2009 Speakers Conference and the PAP's ordinary session, this sub-section examines some of the key issues in this debate.

The first ordinary session of the 2nd parliament and the Speakers Conference preceding it were dominated by deliberations on the transformation of the PAP into a fully fledged legislative institution. Although the PAP Protocol is currently under review by the AU,<sup>66</sup> the deliberations appeared to pre-empt the outcomes of this review by proposing amendments to the Protocol as well as the PAP's Rules of Procedure.<sup>67</sup> The PAP's proposed revisions to the Protocol clearly re-state the position that the PAP is the legislative organ of the AU. The proposed revisions also added a provision (Article 14) which gives the PAP "legislative initiative ... of supranational magnitude...binding in its entirety ... directly applicable in each state party". This is ambitious in its scope and clearly envisages a powerful legislative institution at continental level.

It would seem that one of the key underlying motives behind those who prefer a more rapid advancement in this direction is the belief that greater legislative powers would enhance the legitimacy of the PAP, and enable it to have greater impact on the AU decision-making processes. During the various informal and off-the-record conversations the researcher held with a number PAP officials and Members of Parliament, it also became clear that there are financial motives in the push for legislative powers as the PAP sees legislative clout as a 'fund puller' where before it has struggled to raise funding from the AU and other donor agencies. Furthermore, based on the views of some of the respondents interviewed for this study, it is clear that greater legislative powers for the PAP are seen as the panacea for a range of problems that continue to hamper its effectiveness and performance, particularly its political and legitimacy weaknesses.<sup>68</sup> There was consensus among the respondents that the consultative functions of PAP should be made obligatory, and that closer co-operation between the PAP and AU policy-making organs be mandated. However, respondents strongly believe that these objectives can only be realised if the PAP is given greater legislative powers. For instance, the vice president of the PAP Bureau identifies a number of factors to support the view that a more rapid advancement towards greater legislative powers for the PAP is preferable.

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<sup>66</sup> See AU decision Assembly/AU/Dec.223(XII), Jan 2009 <http://www.africaunion.org>

<sup>67</sup> PAP Evaluation Report 2009, op cit.

<sup>68</sup> Speech by Hon Bethel Amadi PAP first Vice President of the PAP Bureau "*transformation of the Pan African parliament into a Legislative Body* Conference on linking the PAP with National Parliaments and Opening Speech by Dr. Moussa Idriss Ndele the PAP President at the Speakers Conference, 8-9 October 2009, Midrand, South Africa.

Firstly, he calls for greater legislative powers over a limited number of areas. The PAP Bureau has identified 18 competency areas for consideration and adoption.<sup>69</sup> These include democracy, good governance and human rights; free circulation of persons and goods at continental level; education; public health; voting of the budget of the AU, and ratification of AU treaties and agreements. The PAP envisions limited legislative competency over six<sup>70</sup> of these areas by 2011.

Secondly, greater involvement by the PAP in AU budgetary processes is seen as one of the key ways to enhance PAP's power. Although the PAP Protocol gives it the mandate to advise on the AU budget, the centralisation and control of the AU budget has greatly hampered this role and served to limit the PAP's influence in terms of financial decision making at the AU. The assumption therefore is that through greater legislative powers granted to the PAP, consultations involving the PAP on the budget will be made mandatory by law, thus enhancing its ability to shape AU financial decisions.<sup>71</sup>

Thirdly, it is argued that greater legislative powers will be necessary to enhance the PAP's ability to monitor newly established AU authority. At its summit in July 2009<sup>72</sup> the AU African heads of state decided to set up an AUA to serve as an institutional underpinning for the goal of a United States of Africa. The assumption is that, with clearly defined legislative powers, the PAP will be able to exercise full oversight over the AUA in terms of good governance and democratic principles.

## 7. GREATER LEGISLATIVE POWERS: INCREMENTAL APPROACH

While this desire for greater legislative powers is understandable from PAP's perspective, it is not reciprocated by the AU. Also, some independent commentators and some members of the PAP itself do not support it; for example, the AUC seems more interested in locating the institutional development of the PAP within the overall process of strengthening all AU organs, its institutional and policy coherence in light of the decision on the creation of the AU government, and the shift from the AU Commission to the AU Authority. In this context, the issue of greater legislative powers is seen as a long-term goal, dependent on the political

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<sup>69</sup>. See PAP's Revised version of the Protocol to the treaty establishing the AECs relating to the Pan African Parliament ( September 2009) for full list.

<sup>70</sup>. These include democracy, human rights and gender equity; free movement of people of goods and services; scientific and technological research; health; agriculture and fisheries; and infrastructure and communications.

<sup>71</sup>. As seen in the Protocol revised version, the PAP proposes to vote directly on the AU budget.

<sup>72</sup> 13<sup>th</sup> Ordinary Session of the AU Assembly, decision to implement the EC decision on the modalities for the implementation on the transformation of the AUC into the AUA (Assembly AU/Dec/ 233(X111)).

resolution of the key issue of sovereignty. In a presentation by the AUC chairman, this was made clear:<sup>73</sup>

“I think we should not worry so much about it. It is an ultimate objective and we are moving towards this objective...We don't intend frightening people by imagining that it is for tomorrow.”

Clearly the AU prefers a more gradual approach, as opposed to some of the proponents of greater legislative powers for the PAP, who are eager for a more rapid movement towards this goal. Significantly, some representatives at the PAP also advocated a gradual approach. From the observation of the discussions at the Speakers Conference, the issue of a full legislative role for the PAP was generally seen as a long-term political objective, to be pursued with pragmatism and realism. One respondent attempted to capture this sentiment: “There is need for economic and political consistency, and respect for the reality of the moment in terms of the challenges and the advantages...we will need to exercise patience.”<sup>74</sup> Other problems, such as the quality of democratic representation in the PAP, access to resources, powers of the PAP versus those of national parliaments and the readiness of the PAP to take up the responsibilities of full legislative powers were raised by various PAP members.<sup>75</sup> According to a South African MP, given that advisory and consultative powers have not yet been utilised, full legislative powers will be very difficult to achieve.<sup>76</sup>

As can be deduced, then, those who seek a more gradual approach counsel caution and pragmatism in the face of the current political resistance from some member states, practical (lack of institutional readiness) and other functional challenges (confusion over roles and relationships with other AU bodies) that the PAP's institutional development continues to face. A number of points are discussed below to support a gradualist approach to increasing the legislative powers of the PAP.

Firstly, the issue of unresolved institutional relationships within the AU system is seen as a factor militating against the rapid allocation of greater legislative powers to the PAP. One fundamental problem in this regard is the fact that the 2008 Protocol on the Statute of the African Court of Justice and Human rights is still to be ratified,<sup>77</sup> which in turn means that the AU judiciary is not yet established and functional. There is therefore a vacuum, which

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<sup>73</sup> AUC chairman presentation on the state of the advancement of the revision of the Protocol during the transformation debate at the 12<sup>th</sup> Ordinary Session of the PAP (also referred to as the 1st Ordinary Session of the 2nd Parliament).

<sup>74</sup> MP from Algeria responding to the speech by Hon Bethel Amadi on the transformation of the PAP into a full legislative body, at the PAP Speakers conference 8-9 October 2009

<sup>75</sup> These were raised by MPs and speakers from different African states, including South Africa, Algeria and Sudan.

<sup>76</sup> South African MP during the debate at the 2009 Speakers conference. 8-9 October 2009

<sup>77</sup> Only 18 countries have signed and two countries (Libya and Mali) have ratified and acceded; there needs to be at least 15 members ratifying for the protocol to enter into force.

presents a dilemma for the PAP in terms of good governance principles, especially in terms of the separation of powers principle, as implied in the following response: <sup>78</sup>

“...they can legislate but if there is a [legal] dispute, who is going to resolve that legal dispute? So at this point we are having the PAP as legislature and judge. So until and unless we have the court, it is very difficult for us to argue for legislative powers because we are asking them to be the authority to be judge, accused and defender.”

The point here is that the legislative powers of the PAP would need a separate and independent judicial institution (ie the AU Court of Justice) to interpret and adjudicate as well as make legally binding pronouncements on the legislative and other functions, not only of the PAP but other AU bodies as well.<sup>79</sup> Therefore until the Protocol is ratified the judicial vacuum within the AU will be one of the key factors militating against assigning greater powers legislative powers to the PAP. One of the EU Parliament’s greatest institutional allies in its early years was the European Court of Justice which helped strengthen and support the EU Parliament through some of its rulings.<sup>80</sup>

Secondly, as pointed out earlier, the member states are still protective of their political and territorial sovereignty and the sovereign rights of their national parliaments to make laws that apply to their territories. As a result, there needs to be a clear understanding between national parliaments and other AU organs on the extent and limits of the legislative powers and competence to be assigned to the PAP, especially in relation to the parliaments of the member states. The Speakers Conference convened by the PAP in October 2009 helped to reveal a level of ignorance among the members and in the national parliaments regarding the role of the PAP.<sup>81</sup> Therefore, bringing about the necessary understanding of the PAP’s role among member state parliament will obviously take time, which implies the need for a gradual approach to greater legislative powers.

Thirdly, the issue of representation still needs to be resolved. Currently the membership of the PAP is not based on direct democratic representative elections on the basis of universal adult suffrage. The PAP still operates on the bases of an interim arrangement as stipulated in Article 4 of the Protocol, which provides for membership of five MPs selected from each member state’s parliament or any deliberative organ. This has led to the democratic credentials and legitimacy of the PAP being questioned by some observers; for instance, one respondent expressed this sentiment during an interview, stating “a good look at all the Parliamentarians and how they are selected will bring to bear the fact that there is

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<sup>78</sup> Interview with Dr Bheki Moyo Africa Trust, 29 October 2009.

<sup>79</sup> Article 20 of PAP protocol sets the Court of Justice as the interpreter of all matters emanating from the Protocol. Without the Court how can PAP’s present concerns in terms of legislative powers be pushed?

<sup>80</sup> In 1980, the Isoglucose case clarified the legal obligation of the Council to consult the European Parliament before adopting a legislation . Archer, C 2000, *The European Union: Structure and Process*. Third edition. Continuum, London and New York.

a whole variety of Parliamentarians, some do not even enjoy universal adult suffrage at the national level ...”<sup>82</sup> In the long term therefore the basis of membership would need to be more direct and reflect the democratic choices of the citizens of each member state.

Finally, the EU Parliament, long considered an ideal model for many transnational parliamentary institutions, has one key lesson for the PAP - that it takes time and incremental developments to overcome the myriad institutional, legal and political constraints before becoming an effective and functional supranational entity with all the necessary powers and competencies. A visiting EU parliamentary representative<sup>83</sup> at the Speakers Conference noted that transformation from a consultative to legislative institution took the EU Parliament 27 years.

From this discussion it is clear that proponents of the incremental approach, mainly the AU itself, are convinced that there are numerous practical, functional, legal and political obstacles that need to be overcome first before the PAP achieves greater legislative powers. It is also clear that the proponents of this view are not convinced that this could happen soon, implying that the PAP might have to consider alternative ways of enhancing its ability to influence decision-making processes within the AU, at least in the short to medium term.

## 8. STRENGTHENING THE PAP INSTITUTIONALLY AND POLITICALLY

As already noted, the PAP is strongly convinced that the allocation of greater legislative powers is a key element in enhancing its political legitimacy and influence within the AU system. The ability to make laws in a range of defined policy areas, including oversight powers such as involvement in AU budgetary processes and ratification of major AU decisions, are clearly seen as fundamental in advancing the PAP’s institutional legitimacy. There is no doubt that for the PAP, the allocation of greater legislative powers is a fundamental prerequisite to enhancing its political and institutional prestige, and the sooner this is accomplished the better. Yet it has been argued that there is general political reluctance within the AU, and scepticism among other political actors and experts about assigning more legislative powers to the PAP in the short term. Hence an important challenge to be addressed by the PAP and the AU in the short to medium term is how to strengthen the PAP as an institution in the eyes of the member states and general public. Clearly, this would have to be done while the PAP continues to work gradually towards achieving greater allocation of legislative powers in the long term.

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<sup>81</sup> Speakers from different parliaments (Central African Republic, Lesotho and Gambia) felt that national parliaments are not informed on the role of PAP and that the relationship between PAP and national parliaments ought to be strengthened.

<sup>82</sup> Interview with Patrick Mpedzisi Southern Africa Trust 22/10/2009

<sup>83</sup> Presentation given by the EP representative at the PAP 2009 Speakers conference 8-9 October 2009,

Based on the views and opinions of informants interviewed for this study, there is general acknowledgement that the PAP needs to explore other avenues, including strengthening its non-legislative responsibilities and functions, to enhance its institutional and political legitimacy and influence within the AU and in the continent. These ideas are discussed in the following section.

### **8.1. Strengthening relations with key role players**

Some of the respondents viewed three areas as critical in this regard.

Firstly, the inter-institutional rapport between the PAP and the AU needs to be rebuilt and strengthened. Such a strengthening will be essential if the PAP is to wield political clout and influence within AU processes. It needs to create close, co-operative and collaborative working relationships with key AU organs and make itself relevant to their work. Some of these key institutions are the AU Executive Council, the AUC, and the Permanent Representatives Committee - the latter are politically and institutionally influential and enjoy discretionary powers from the Executive Council. It is also crucial for the PAP to position itself strategically in relation to the Assembly, to ensure that effective communication between the two takes place and to enhance the PAP's ability to give input into the Assembly's deliberations. It needs to be noted though that the AU itself might need to initiate some of the necessary institutional changes to underpin the process of bringing the PAP closer to important AU decision-making processes. One of these systemic changes would entail enhancing inter-institutional consultative processes around the AU's policy co-ordination, and strengthening implementation capacity in a way that strengthens sectoral linkages involving all AU organs, including the PAP. Fast-tracking the institutionalisation of the AU Specialised Technical Committee (STC) can strengthen the links between the AU sectoral policies. STCs represent the central base for the initiation of sectoral projects and programmes of the AU and can play an important role in ensuring policy coherence between PAP and the AU.<sup>84</sup> This will contribute greatly towards a shared policy and programme vision among AU institutions.

Secondly, improving relations between the PAP as a continental parliament and the parliaments of the member states will be crucial. Transnational institutions such as the PAP can perform their functions effectively and fulfil their mandates only with the consent, co-operation and collaboration of the member state parliaments. It is important for the PAP to acknowledge and accept that the member state parliaments are its constituent entities in its quest for greater political legitimacy and ability to influence AU decision-making processes. The national parliaments are therefore potentially the PAP's very important strategic allies, and the PAP needs to cultivate good relations with these parliaments by making itself more

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<sup>84</sup> See Pan African Parliament 2004. Rules of Procedure adopted by the Pan African Parliament on 21 Sept 2004. *Basic Documents of the Pan African Parliament, Pan-African Parliament* Midrand South

relevant to their needs. For instance, the member state parliaments will play a crucial role not only in crafting a transnational polity within which the PAP will function, but also in giving their political consent and authority to a new and more enhanced role for the PAP as a continental legislative institution with legislative powers binding on all member states.<sup>85</sup>

Broadly speaking, national parliaments can contribute to bolstering the work of transnational parliaments in a number of ways:

- National parliaments play a crucial part, such as leading national debates on key continental issues with a bearing on their own jurisdiction (ratification of treaties in order to give negotiating and voting mandates to their governments).
- They are important players in terms of monitoring and overseeing their national government's implementation of transnational decisions and policies.<sup>86</sup>
- They have an important influence on the Council of Ministers. Through specialised committees (eg the committee on regional relations or multilateral relations) national parliaments can exercise considerable influence and even control over their ministers in terms of decisions to be taken within key AU structures.
- Many national parliaments have set up relevant internal committees whose functions include monitoring regional and continental policy developments in key social and economic sectors.

It is clear therefore that the PAP needs to cultivate closer and collaborative relations with national parliaments as a way of enhancing its position within key AU structures where national parliaments are influential. This point was underscored by the EU parliamentary representative at the PAP Speakers Conference, noting that the long road to the EU Parliament acquisition of legislative powers would have been shortened had it managed to develop good relations with the parliaments of the member states right from the beginning.<sup>87</sup> One of the informants interviewed for this study also reinforced the importance of good relations between the PAP and the parliaments of member states: "If national parliaments warm up [to the PAP] and become active in promoting the development of a strong regional parliament then I think it would have added an important dimension."<sup>88</sup>

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Africa and African Union 2000, *The Constitutive Act of the African Union*, African Union Addis Ababa, Ethiopia.

<sup>85</sup> For a discussion and analysis of similar issues in the case of the European Union parliament, see Vos Hendrik and Decock Jeroen 'Democratic legitimacy in the EU; the role of national parliaments', *Democracy in the European Union: about the role of (regional) parliaments* sourced from <http://aei.pitt.edu/473/01/parliaments.htm> accessed 7 October 2009.

<sup>86</sup> Interview with Dr. Moyo, Africa Trust, 29/10/2009.

<sup>87</sup> EP representative at the PAP Speakers Conference, 8-9 October 2009,

<sup>88</sup> Interview with Prof Ghutto, African Renaissance Studies, UNISA, 22/10/2009.

Some of the respondents and speakers at the PAP Speakers Conference alluded to the need for PAP to create more systematic relations with national parliaments - something that many believe has been a significant weakness in the past. In particular, speakers from Zimbabwe, Central African Republic, Lesotho and Gambia expressed this sentiment. In acknowledging the communication gap, the PAP has established links with the African Parliamentary Information Exchange (APEX).<sup>89</sup> The idea of creating PAP Parliamentary Liaison Offices in the parliaments of the member states was therefore mooted. Obviously, this assumes that member state parliaments are duly constituted and are able to participate in decision-making processes on behalf of their citizens at national level and at PAP level. It should be acknowledged, however, that there are many instances in Africa where national parliaments are either marginalised by undemocratic regimes or do not exist. Such cases do not provide an environment that is conducive to collaborative relations with the PAP. Some of the respondents reflected this sentiment, indicating that the PAP needs to collaborate with parliaments that subscribe to universally accepted democratic principles, in line with the goal of the PAP.<sup>90</sup>

Thirdly, building strong and collaborative relations with civil society organisations will be crucial for the PAP. Moreover, the Protocol makes provision for civil society to participate in its activities. This was an important strategy, utilised to good effect by the EU Parliament during its formative years as it sought to build its own public profile and political clout among European publics as the process of European integration progressed. The EU Parliament was eventually able to inspire confidence among voluntary organisations and other social groups across national boundaries, serving as a platform for organised social and advocacy groups seeking to influence EU decision-making processes. Africa has many highly organised interest groups, advocacy and lobbying organisations and social movements conducting valuable work in a variety of policy sectors (eg poverty, environment, education, regional security, food security, democracy and governance). While many of these groups are organised at national level, many are increasingly operating at regional and continental level. Also, many have developed expertise in a range of policy sectors and have accumulated a wealth of knowledge and information that might be of use to the PAP as it seeks to influence decision-making processes within the AU. These groups therefore present an untapped opportunity for the PAP to create collaborative working relations leading to an effective exchange of information and knowledge, as well as strengthening its own capacity for lobbying and advocacy on social policy, democracy and other continental challenges. Also, the potential benefits accruing from such information and knowledge exchange between the PAP and civil society organisations would be enormous and strategic in strengthening the PAP's oversight role.

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<sup>89</sup> Presentation by Dr. Ahmed Fathi Sorour from the African Parliamentary Knowledge Network (APKN) at

Collaboration with civil society organisations might also be useful as a learning tool in terms of development of skills, such as fund raising and dealing with institutional capacity weaknesses that have affected the PAP's performance in the past. Some civil society organisations have already been involved in creating collaborative relations with the PAP. One example is the Southern African Trust's Consultative Dialogue initiative with the PAP.<sup>91</sup> Also, civil society organisations are increasingly beginning to participate in PAP events, including during the recent Speakers Conference and the Women's Platform for action in Africa in 2009, mainly as observers.<sup>92</sup> However the PAP needs to guard against perpetuating elitism by developing collaborating relations only with highly organised and well resourced donor funded regional and continental civic organisations at the expense of other weaker and poorly resourced groups. There is already a tendency within the PAP to cultivate relations with these types of advantaged elite groups.

## 8.2. Enhancing institutional and popular legitimacy

Legitimacy is the basis of authority, and provides an impetus for action. Legitimacy also depends on consent and acceptability. The extent to which the PAP is accepted by the AU and its structures in particular, and by the general public in Africa, is an important indicator of its legitimacy. Based on the PAP's own assessment of its impact on AU decision making and relations with other AU structures, member state parliaments and civil society in the past, its level of legitimacy has recently become a question for debate. As already discussed, the desire to transform the PAP into a legislative institution is premised on, and at the same time is seen as the basis for claiming, its legitimacy. For the proponents of greater legislative powers for the PAP, building its legal, political and institutional legitimacy is an article of faith. Such institutional legitimacy will strengthen the case not only for enhancing and strengthening its position in AU decision-making processes, but also for increasing its profile among parliaments and the general public. Two essential elements were identified by the informants as critical for enhancing the political and institutional legitimacy of the PAP, as follows.

Effective institutional performance: As already discussed, the PAP's functions and responsibilities are clearly enumerated in a number of protocols - many of these functions are consultative and overseeing in nature. Yet the PAP's performance has generally been viewed as poor. As noted above a combination of institutional, political, functional and resource constraints were responsible for this poor performance. So in order for the PAP to improve its performance as an overseeing, deliberative and consultative institution, it would have to deal with and overcome many of these constraints, particularly the internal organisational and resource issues. The PAP will need to enhance its own internal corporate

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the PAP Speakers Conference 8-9 October 2009

<sup>90</sup> Interviews with MPs from Mauritius, 27/10/2009.

<sup>91</sup> Interview with Patrick Mpedzisi, Southern Africa Trust, 22/10/2009

governance and administrative efficiency, particularly the management of resources, as well as corporate accountability and transparency in its internal affairs. Serious problems in this regard were identified in the AU audit report in 2006<sup>93</sup> which revealed a severe breakdown in corporate governance and transparency.

Dealing effectively with these constraints will be crucial if the PAP is to build its profile and stake its institutional integrity on the role of oversight and promoting good governance, accountability and transparency among other AU organs as well as member states. These issues of concern were raised by some of the respondents:<sup>94</sup>

“Transparency and accountability are the central pillars of democracy and this is vital to the legitimacy of the PAP.”

Another respondent emphasised the importance of enhancing the PAP’s performance through improved performance on the ground:<sup>95</sup>

“Again, I go back to performance, that is what we recommend first, ultimately we judge people by how they perform, it increases legitimacy. It begins to excite public to begin to interact with it.”

Secondly, the issue of the election of the membership of the PAP is seen as important for enhancing its institutional legitimacy. Some of the respondents were convinced that direct elections of the PAP members would contribute considerably towards enhancing its popular/democratic legitimacy. Currently, the PAP members are appointed rather than elected directly by the citizens of the member states. This severely limits its democratic integrity as a representative institution, and therefore undermines its popular legitimacy. However, resolving this problem will not be as straightforward as it appears. There are serious political, financial and other factors that are likely to hamper any attempt to move from the current system of appointments to a system of direct elections. For instance, while the PAP is currently pushing for greater legislative powers, it has failed to focus political attention on the wider problems of democratisation in Africa in general, and the problems of universal adult suffrage in particular. Its revised Protocol retains national parliaments as the primary agencies in assigning members to the PAP, either by election or selection.

It needs to be acknowledged that the argument in favour of direct elections for PAP members poses unknown and potentially radical political consequences at member state level. For instance, while giving citizens at this level the right to elect PAP members directly would enhance the popular legitimacy of the PAP and the individual members, this might also lead to unwelcome popular/political pressures on member state governments, especially

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<sup>92</sup>Recently some civil society groups have also been given the opportunity to make presentations to the PAP as observed during the Speakers Conference.

<sup>93</sup>It seemed that MPs defrauded the Parliament by taking funding from the PAP coffers, going against an earlier Executive Council decision that MPs should be funded by their respective countries. See Hailu, T. 2007. PAP discusses report of Monetary and Financial Affairs Committee, 24 November 2009, PAP newsroom viewed 11 November 2007, <http://www.pan-africanparliament.org/News.aspx?ID=272>

<sup>94</sup>2nd PAP MP, Mauritius, 27/10/2009.

for undemocratic regimes, for greater democratisation and accountability. Also, this will obviously lessen the power of the national parliaments over the process of selecting and assigning members to the PAP. The political and practical implications and repercussions of this are as yet unknown and might serve as a disincentive for member states to adopt direct elections for PAP members - as well as the cost implications of this venture.

### 8.3. Strengthening oversight, advisory and consultative functions

For the PAP to fulfil its key objective of facilitating the effective implementation of the policies and objectives of the AU, and for promoting dialogue and participatory decision making at continental decision-making levels, it will need to strengthen its capacity for oversight and put in place effective mechanisms to promote consultative and participatory practices in its activities.

In terms of enhancing oversight, the PAP would need to ensure that it monitors the work and activities of the AU Executive and its administrative agencies, and holds it accountable on behalf of the parliaments of the member states and the people of the continent. However as noted in the following quote, the respondent raises an important issue of whether or not the PAP considers oversight as part of its functions: "PAP can do a lot with even an advisory and consultative role which includes in my view oversight role although PAP does not interpret its role to mean oversight properly."<sup>96</sup> The AU itself can show reciprocity by making the consultative role of the PAP obligatory on certain policy matters, an objective currently being pursued by the PAP as part of its push for full legislative powers and greater oversight competency.

It is essential though that the PAP sees oversight and monitoring as integral components of its oversight role. Even its Rules of Procedure anticipate and make provision for the PAP to carry out oversight work. To strengthen itself procedurally and structurally, the PAP would have to set up or strengthen existing internal mechanisms such as sectoral or ad hoc committees in line with the policy sectors under the jurisdiction of the AU Executive in order to streamline and enhance the effectiveness and quality of its oversight work. The PAP's own Rules of Procedure<sup>97</sup> do spell out certain mechanisms and procedures for the PAP to carry out its oversight or control functions. Among these are question and answer sessions, reports to parliament, investigations and budgetary oversight. All these are traditional instruments used by many, including national parliaments and similar institutions. To strengthen the quality and seriousness of its oversight work, the PAP will need to review and clarify its powers to summon officials and ministers to appear before its committees to present

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<sup>95</sup> Interview with Prof Ghutto African Renaissance Studies UNISA 22/10/2009.

<sup>96</sup> Interview with Pro Ghutto 22/10/2009.

<sup>97</sup> Pan African Parliament 2004 "Rules of Procedure adopted by the Pan African Parliament on 21 Sept 2004. *Basic Documents of the Pan African Parliament, Pan-African Parliament, Midrand, South Africa.*

information and/or account for their activities, and ensure it has the legal authority to issue and enforce such summonses.

## 9. CONCLUSION

Based on the findings of this study, it is clear that the PAP has a long way to go in terms of consolidating its position as a continental parliamentary institution, not only with the AU system, but also in the eyes of the member states of the AU and the general public across the continent. The challenge of transforming itself into a transnational legislative (law-making) body is even more daunting, given not only the institutional and resource constraints facing the institution, but also the intractable political obstacles. Primary among these obstacles are the problems of political and territorial sovereignty, which the member states of the AU are still highly protective of.

It is also clear that the PAP's goal of enhancing its political and institutional legitimacy through rapid assignment of greater legislative powers is misplaced, at least strategically, not only because the AU and the political leaders in the continent are extremely reluctant to assign such greater powers to the PAP. It is also because of two additional factors: firstly, it would appear that the PAP might not be fully ready, in terms of its institutional capacity and resources, to assume and exercise such enormous legislative power with as yet unknown implications and consequences on the member states and other AU organs. Secondly, the fact that the AU Court of Justice is not yet established means that no judicial institution exists to act as a legal arbiter on the exercise of such legislative powers over continental bodies. Broadly though, there is a strong consensus that seeking to enhance the institutional legitimacy and influence of the PAP might be best achieved by enhancing its institutional capacity to perform its non-legislative (oversight, consultations, deliberations, etc.) functions rather than by calling for rapid assignment of greater legislative powers. This paper therefore discussed the various ways in which the PAP needs to focus attention on strengthening its non-legislative functions, at least in the short to medium term, in order to enhance its political and institutional profile and legitimacy, and thus strengthen its case for greater legislative powers in the long term. This might help the PAP become an influential AU institution with greater ability to influence decision-making processes inside the AU and across the continent.

## APPENDIX

### List of interviewees:

- Dr. Bheki Moyo (Program Director, Trust Africa, 29.10.2009.
- Professor Shadrack Gutto, Director, Centre for Renaissance Studies (University of South Africa), 22.10.2009.
- Mr. Patrick Mpedzisi, (Project Coordinator: Civil Society Support Facility Southern Africa Trust, 22.10.2009.
- PAP Official, Bureau, 29.10.2009.
- Member of the Pan African Parliament from Mauritius, 27.10.2009.
- Member of the Pan African Parliament from Mauritius, 27.10.2009.
- Member of the Pan African Parliament from Ethiopia, 2.11.2009.
- Galal Nassir PAP staff , Legislative Business, 19.10.2009,

NB: In addition to the one-on-one interviews with respondents, numerous informal and off-the-record conversations were held with some of the PAP members and officials who expressed views on key issues raised by the researcher. These identities of these individuals and details of these informal discussions are not recorded in this report to avoid inadvertently revealing their identities.