

The new Pan-African Parliament: Prospects and challenges in view of the experience of the European Parliament

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The decision to build society on the basis of reason and justice is the beginning of a never-ending process: it will never be completed because neither reason nor justice can ever be satisfied.

Jean Guéhenno (1939)¹

Summary

This article starts by tracing the history of the establishment of the Pan-African Parliament through the OAU/AU system. It proceeds to look at the main features of the Pan-African Parliament. It focuses on its functions and powers, appointment and composition of the Parliament. It also pays attention to the question of immunity, multilingualism and the not yet decided question of where the Pan-African Parliament will be situated.

While looking at the development of the Pan-African Parliament, the article also looks at the stages of development that the European Parliament has gone through, especially with regard to how the Pan-African Parliament could benefit from its experience.

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¹ Directorate General For Research and the Human Rights Unit *The European Parliament and human rights* (1994) 5.

1 Introduction

The inaugural session of the Pan-African Parliament took place at the United Nations Economic Commission for Africa Conference Centre in Addis Ababa, Ethiopia on 18 March 2004. The establishment of the Pan-African Parliament will enable all the peoples of Africa to get involved in discussions and decision-making on the problems and challenges which beset Africa.² It also represents a common continental vision that will strengthen the African Union (AU).³

The Pan-African Parliament dates back to the Abuja Treaty, which was signed by African leaders in Abuja, Nigeria, in June 1991, and which came into force in May 1994. Following this treaty, the 4th extraordinary session of the Assembly of Heads of State and Government of the Organisation of African Unity (OAU) held in Sirte, Libya in September 1999, adopted the Sirte Declaration, calling for the speedy establishment of the institutions provided for in the Treaty Establishing the African Economic Community signed earlier in Abuja, Nigeria. Later on, the 36th ordinary session of the Assembly the OAU held in Togo in July 2000 adopted the Constitutive Act of the AU with the Pan-African Parliament as one of the organs of the AU.

The process took a giant step forward when the 5th extraordinary session of the Assembly of Heads of State and Government of the AU, held from 1 to 2 March 2001 at Sirte, Libya, adopted the Protocol to the Treaty Establishing the African Economic Community relating to the Pan-African Parliament (Protocol). So far, 41 countries have accepted the Protocol relating to the Pan-African Parliament and deposited their instruments of ratification at the AU Commission. The Protocol entered into force on 14 November 2003, after having obtained the necessary 24 ratifications. Accordingly, the Pan-African Parliament has now become one of the eight main organs of the AU.⁴

In the wake of this important development, it would be appropriate to ask what the citizens of Africa should expect from the Pan-African Parliament and how this vital organ of the AU may in the future transform itself. This article attempts to consider some of the salient features of the Pan-African Parliament. It focuses, in particular, on its composition, functions and powers as they are enshrined in the

² <http://www.africa-union.org/news_Events/> (accessed 11 March 2004).

³ The African Union was launched in South Africa, Durban at the Summit Meeting of African Heads of State and Government, 8 to 10 July 2002.

⁴ The eight organs of the AU include the Assembly, the Executive Council, the Pan-African Parliament, the African Court of Justice, the Commission, the Permanent Representatives Committee, the Specialised Technical Committees to handle specialised sectoral issues and the African Central Bank (with the African Monetary Fund and the African Investment Bank).

provisions of the Protocol. In many respects, not only the current structure of the AU seems to resemble the European Union (EU), but also a few characteristics of the European Parliament⁵ in its early stage of formation are shared by the new Pan-African Parliament.

This article compares and contrasts the Pan-African Parliament with the European Parliament, which precedes the former by half a century, with the hope that it would give better insight on the prospects and challenges that lay ahead of the Pan-African Parliament before it becomes a fully-fledged regional institution. Questions regarding the determination of the permanent seat and languages of the Pan-African Parliament will also be raised and be compared to the experience of the European Parliament. Finally, concluding remarks will restate some of the findings of the study.

2 Functions and powers

There are certain important characteristics that most parliaments, national or regional, share regarding their mandate. They exercise legislative, budgetary and supervisory powers that enable them to play a fundamental political role at the national or regional level. In light of this, the scope of the powers of the Pan-African Parliament shall be considered in comparison to that of the European Parliament, whose decision-making role has been growing steadily.

2.1 Legislative power

During the first term of its existence, the Pan-African Parliament shall have only consultative and advisory powers. Later it will be vested with legislative powers as may be defined by the Assembly.⁶ Hence, it does not possess important legislative and supervisory powers to participate in important decision-making processes in the AU pertaining to the budget of the organisation. It will merely advise and consult with other organs of the AU with a view to promoting the objectives of the AU, including the promotion of human rights and democracy, good governance, transparency and peace, security and stability in Africa.⁷

⁵ The European Coal and Steel Community Treaty (ECSC) of 1952 established the European Parliament (originally named the Assembly) and it was given few powers under the 1957 EEC and Euratom Treaty.

⁶ Arts 2(3)(i) & 11 Protocol.

⁷ Arts 2(3)(i) & 3(2) & (3) Protocol.

2.1.1 The European Parliament

In the same way, the European Parliament has come a long way from being a purely consultative assembly to being co-legislator with the Council of the European Union (Council). The development of the legislative powers of the European Parliament can be said to have passed through three stages, namely, *consultation*, *co-operation* and *co-decision*.

The original European Parliament (then named the Assembly), as its current African counterpart, was a classical consultative body intended to follow only *consultative* or *advisory* procedure. The opinions it gave were non-binding and were mostly ignored by the true decision makers in the Council.⁸ It neither had power of control over the budget of the European Communities (now the EU), nor an effective ability to influence legislative outcomes.⁹ It has, however, achieved more legislative and supervisory and even litigation powers, both in its own practice and through successive treaty amendments.¹⁰

The introduction of the *co-operation procedure* by the Single European Act in 1987, some 35 years after its creation, represented a major step forward in the development of the legislative power of the European Parliament, marking the beginning of a new 'triangular relationship' between the Council, the Commission and the European Parliament. According to the co-operation procedure, the European Parliament has the power to reject a legislative text. This can only be overruled through unanimous agreement of the Council and with the agreement of the Commission (which may decide to withdraw the proposal altogether). Besides, the European Parliament can propose amendments to a text, which the Council can only modify through unanimous vote, whereas a qualified majority is needed to adopt the amendment proposed by the European Parliament.¹¹ Neuhold noted that the introduction of the co-operation procedure by the Single European Act constituted the beginning of the 'flexing of the legislative muscles' of the European Parliament.¹² The European Parliament did not at this stage possess the right to veto proposed legislations.

The Maastricht Treaty, which came into force in 1993, introduced a *co-decision* procedure, in which the final legislative act requires

⁸ C Neuhold 'Into the new millennium: The evolution of the European Parliament from Consultative Assembly to co-legislator' (2000) <<http://eipa.nl>> 3; see also S Hix *et al* 'Fifty years on: Research on the European Parliament' (2003) 41 *Journal of Common Market Studies* 191.

⁹ A Maurer 'The legislative powers and impact of the European Union' (2003) 41 *Journal of Common Market Studies* 227; see also G de Búrca & P Graig *EU law: Text, cases and materials* (2003) 79.

¹⁰ E Andrew *A textbook on European Union law* (1998) 47.

¹¹ F Jacobs *et al The European Parliament* (1992) 185.

¹² Neuhold (n 8 above) 4; see also B Rittberger 'The creation and empowerment of the European Parliament' (2003) 41 *Journal of Common Market Studies* 217.

Parliament's explicit approval. Here, the European Parliament appeared to gain more control over the legislative process as its powers also included the power to veto in several policy areas.¹³ Another innovative element of the co-decision procedure lies in the option to convene a conciliation committee in cases where the Council and the European Parliament are unable to reach a compromise on a proposed legislative text.¹⁴ This change marked the point at which in the Community's development, Parliament became the first chamber of a real legislature; the Council is obliged to act like a second legislative chamber from time to time rather than a ministerial directorate.¹⁵ Corbett and others described the change as 'a classic two-chamber legislature: in which the Council represents the states and the European Parliament represents the citizens'.¹⁶ Subsequently, the Treaty of Amsterdam, signed in 1997 and which entered into force in May 1999, considerably altered the institutional balance between the Union's main actors and increased the European Parliament's powers in several ways. It extends the areas where the co-decision and assent procedure apply, simplifying the co-decision procedure, recognising Parliament's involvement within the field of home and judicial affairs, and changing the procedures for the nomination of the Commission President and the other commissioners.¹⁷

However, this does not mean that the European Parliament has been put on a completely equal footing with the Council. There are still some important policy areas in which the Council has the possibility, should conciliation with the European Parliament fail, to pursue with its common position by qualified majority.¹⁸ The European Parliament was then left with a 'take it or leave it' option of either rejecting the text by an absolute majority, which it should do within six weeks, or, otherwise, the decision of the Council is upheld.¹⁹ The powers of the European Parliament have not been extended to cover the whole of legislation and of the budget of the Community. There are still important policy areas, such as taxation and the annual farm price review,²⁰ in which the role of the European Parliament is limited to simply giving an opinion, and the Council is free to pursue its own decision, even if agreement is not reached with the European Parliament.²¹ In other words, the European

¹³ Neuhold (n 8 above) 4.

¹⁴ As above.

¹⁵ Maurer (n 9 above) 227.

¹⁶ R Corbett *et al* 'The European Parliament at fifty: A view from the inside' (2003) 41 *Journal of Common Market Studies* 353.

¹⁷ Maurer (n 9 above) 228.

¹⁸ Neuhold (n 8 above) 5.

¹⁹ As above.

²⁰ The European Parliament, <http://www.europarl.eu.int/abc/default_en.htm> (accessed 11 March 2004).

²¹ As above, 5.

Parliament has not fully assumed the powers of the 'federal house of the people'.²²

2.1.2 The Pan-African Parliament

Considering its current consultative mandate, one may be tempted to conclude that the Pan-African Parliament is not a powerful institution. It may, of course, also be argued that a schedule is made to transform the Pan-African Parliament into a legislative body by the year 2007. It remains to be seen whether this is a realistic timetable. Be that as it may, the Pan-African Parliament should be prepared to endure bottlenecks that may be unfolding in the future as it strives to acquire more decision-making power. Also, the members of the Pan-African Parliament should be prepared to continue to make a relentless effort to enable their institution to achieve an effective legislative authority.

2.2 Budgetary power

It has been stated in the Protocol that the annual budget of the Pan-African Parliament shall constitute an integral part of the regular budget of the AU. It shall be drawn up in accordance with the financial rules of the AU and approved by the Assembly until the Pan-African Parliament starts to exercise legislative powers.²³ In other words, the Pan-African Parliament prepares a draft budget proposal and takes part in its discussion only to give an opinion or a recommendation.²⁴ That means that the purse strings still remain under the control of the Assembly who will ultimately approve the budget. This arrangement does not allow much freedom to the Pan-African Parliament to prepare an independent work plan in keeping with the priorities it sets for itself.

On the contrary, the European Parliament has significantly wider budgetary powers. The European Parliament and the Council are two arms of the budgetary authority. In other words, they share the power of the purse, just as they share legislative power. By exercising its budgetary power, the European Parliament expresses its political priorities. It has the last word on most expenditure in the annual budget, such as spending on less prosperous regions and spending on training to help reduce unemployment. The European Parliament can also reject the budget if it believes that it does not meet the needs of the Union, and it has actually exercised this power on at least two occasions so far. Budgetary power is, therefore, one of the crucial instruments to any

²² J Pinder 'Steps towards a parliamentary democracy for Europe: The development of the European Parliament' in F Breuss *et al Vom Schuman-Plan zum Vertrag von Amsterdam Entstehung und Zukunft der EU* (2000) 218.

²³ Arts 15(1) & 15(2) Protocol.

²⁴ Art 11(2) Protocol.

parliamentary institution, national or regional, alike, which the Pan-African Parliament deserves to attain in the future.

2.3 Supervisory power

The Protocol provides that the Pan-African Parliament may on its own initiative examine, discuss or express an opinion on any matter, *inter alia*, matters pertaining to respect of human rights, the consolidation of democracy, the promotion of good governance and the rule of law.²⁵ Whether this important provision could be construed to include the power to establish committees of inquiry is not, however, evident in the text of the Protocol.

By contrast, the European Parliament exercises democratic oversight of all Community activities. This power, which was originally applied to the activities of the Commission only, has been extended to the Council and the bodies responsible for foreign and security policy. To facilitate this supervision, the European Parliament can set up temporary committees of inquiry. This important supervisory mandate has not only been a longstanding practice, but has also acquired a treaty base.

The European Parliament has set up committees of inquiries on several occasions.²⁶ In 1998, the European Parliament, concerned about mismanagement of expenditures by the Commission (the executive body of the EU), decided not to endorse the 1997 report of the Court of Auditors. Instead, it set up an independent *ad hoc* 'Committee of Experts' to investigate irregularities in the report. The Committee produced a devastating report, exposing mismanagement, corruption and fraud. Accordingly, the European Parliament made it clear that it would be using its power of dismissal against the Commission, which resulted in the resignation of the entire Commission, including its President, Jacques Santer, for the first time in the history of the EU, in March 1999, pre-empting the vote of censor by the European Parliament which could have otherwise brought about the same result.²⁷ The events of March 1999 showed that the European Parliament, securing the removal of its executive, was coming of age as the principal organ of democratic control over the other institutions of the EU.²⁸

By the same token, it may be argued that the Pan-African Parliament needs to be given a supervisory mandate that would enable it to effectively ensure proper checks and balances among the different institutions of the AU. This may be one of the most important issues

²⁵ Art 11(1) Protocol.

²⁶ n 20 above.

²⁷ Pinder (n 22 above) 218.

²⁸ As above, 219.

during the drafting of the rules of procedure of the Pan-African Parliament.

2.4 Litigation power

The progressive recognition of the right of the European Parliament to institute litigation against the other institutions of the EU and to respond to litigation that may be brought against it, is significant. The recognition of the *locus standi* of the European Parliament before the European Court of Justice, indeed, illustrates the speed at which the European Parliament is moving towards acquiring significant status and influence.²⁹

The Protocol on the Pan-African Parliament is silent on this matter. But, if one considers the problem of violations of human rights and the low level of development of democracy and good governance on the continent, it may be suggested that the Pan-African Parliament needs to be granted *locus standi* to bring a case against the other institutions of the AU before the two regional courts.

In fact, the Constitutive Act³⁰ of the AU has established the African Court of Justice as one of the eight main organs of the AU. Besides, the Protocol Establishing the African Court on Human and Peoples' Rights grants automatic access to African intergovernmental organisations to institute litigation before this regional Human Rights Court.³¹

It can therefore be argued that the Pan-African Parliament should have access to the African Court of Justice, as well as to the African Court on Human and Peoples' Rights. The Protocol on the Pan-African Parliament should have reflected clearly whether the Pan-African Parliament enjoys standing before these two regional courts. The fact that this is not mentioned seems to have been an oversight. Thus, ensuring the right to litigation of the Pan-African Parliament is one of the issues that need to be addressed explicitly during the drafting of the forthcoming Rules of Procedure for the Pan-African Parliament.

2.5 The right to petition

The functions and powers of the Pan-African Parliament do not include the right to receive complaints from citizens, whereas the right of citizens of member states to petition the European Parliament on issues of alleged human rights violations that directly and personally concern them is guaranteed.³²

²⁹ De Búrca & Graig (n 9 above) 84–85.

³⁰ Adopted by the 36th ordinary session of the Assembly of Heads of State and Government of the AU which convened in Togo from 10 to 12 July 2000.

³¹ Art 5(1) Protocol Establishing the African Court on Human and Peoples' Rights <<http://www.africa-union.org>> (accessed 11 March 2004).

³² UK Office of the European Parliament 'The Right of petition to the European Parliament' <<http://www.europarl.org.uk/publications>> (accessed 10/05/04).

The European Parliament is not, however, a judicial authority and hence cannot pass judgment on, or annul legal decisions taken by member states. Instead, depending on the circumstances, the European Parliament may forward the petitions to the European Commission, the Council of Ministers or to the appropriate national authorities, requesting their further action or opinion. In addition, the European Parliament appoints the European Ombudsman to which citizens can appeal in respect of cases of misadministration by EU institutions. Accordingly, there are several instances in which the European Parliament has achieved results in influencing member states and the Community to alter their legislation to redress situations that caused the infringement leading to the petitions.³³

Thus, the Pan-African Parliament may also envisage guaranteeing the rights of citizens to petition before it as well as the power to establish an African Ombudsman, which would investigate complaints of misadministration by other institutions of the AU that may affect the rights of individual citizens.

2.6 Human rights

2.6.1 The European Parliament

The original intention behind the establishment of the EU (then the EEC) was essentially economic — the promotion of economic integration among the member states. Accordingly, the founding treaties — the Treaty of Paris (1952) and the Treaty of Rome (1957) — did not explicitly refer to human rights.³⁴ The European Parliament has, however, attached great importance to the protection of fundamental human rights, both inside and outside the EU, especially since the beginning of the 1980s. It has done so using the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms adopted by the Council of Europe as a valuable, and indeed unique, source of inspiration and as a reference point.³⁵

Basically, the human rights-related activities of the European Parliament can be said to be threefold. The first is *deliberation*, in which the European Parliament adopted several texts, mostly in the form of annual resolutions, on human rights. The second is *monitoring*, in which the European Parliament exercises vigilance on what its rules of procedures describe as 'topical and urgent subjects of major importance'. On several occasions, the European Parliament has adopted passionate and strongly worded resolutions that condemned specific cases of grave violations, which contributed towards the

³³ As above.

³⁴ n 1 above, 7.

³⁵ As above.

practical and effective implementation of individual and collective freedoms.³⁶ The third is *supervision*, in which the European Parliament is asked for its opinion on agreements between the Community and third countries. This empowers the European Parliament to exercise, if necessary, a genuine right of veto to reject the proposed agreement on human rights grounds. It has actually been able to ensure the release of political prisoners by refusing to subscribe to a series of financial protocols signed with third countries on the ground of human rights protection.³⁷

Similarly, the Cotonou (previously the Lomé) Convention signed between the EU and the 77 African, Caribbean and Pacific Group of States (ACP) countries contain provisions for the suspension of aid to states guilty of serious human rights violations, mainly as a result of unyielding effort of the European Parliament despite persistent and obvious lack of interest on the part of the Council and the Commission to take up the matter giving primacy to the political as well as strategic exigencies of the Cold War period.³⁸

Besides, in 1988, the European Parliament established the Sakharov Prize, awarded annually to one or more individuals or group who have distinguished themselves in the struggle for human rights. Nelson Mandela and Anatoi Marchenko were the first to win the prize in 1988.³⁹ The European Parliament also made a major contribution to the drafting of the Charter of Fundamental Rights of the European Union and it is now calling for its incorporation as an integral part of the treaty of the European Union, which originally contained no reference to human rights.⁴⁰ As mentioned above, the European Parliament promotes the protection of the rights of EU citizens through its complaints procedure, as well as using its power to appoint the European Ombudsman.

2.6.2 The Pan-African Parliament

Fortunately, at the outset, the Protocol gives an explicit mandate to the Pan-African Parliament, which the European Parliament lacked, to promote human rights. Accordingly, the Pan-African Parliament can play a significant role in the promotion and protection of human rights and democracy on the continent.

In this regard, the Pan-African Parliament may issue resolutions as well as annual reports on human rights and democracy on the continent that

³⁶ As above, 7–8.

³⁷ As above.

³⁸ D Frisch (1998) 'The political dimension of Lomé, The ACP-EU' Courier No 166, Nov–Dec 1997 78–82.

³⁹ n 1 above, 10.

⁴⁰ Europarl <http://www.europarl.eu.int/presentation/default_en.htm> (accessed 12 May 2004).

could bring serious human rights abuses on the continent to the attention of member states as well as the other institutions of the AU, in particular the Assembly, thereby influencing them to take appropriate action that would improve the situation. The Pan-African Parliament may also adopt a parliamentary questions procedure, which would enable it to undertake direct consultation with national parliaments of the concerned member states to verify the alleged violation in order to find an appropriate solution that would rectify the situation.

Finally, the Pan-African Parliament may also be empowered to introduce procedures that would guarantee citizens the right to petition the Pan-African Parliament, as well as to appoint the African Ombudsman. The last two procedures are particularly relevant, as they would bring the Pan-African Parliament closer to the public, whose interests it mainly aspires to defend and promote.

3 Appointment and composition

In the Pan-African Parliament, each country shall be presented by five parliamentarians from its national parliament (at least one of whom must be a woman).⁴¹ Members of the Pan-African Parliament shall be elected or designated by the respective national parliaments or any other deliberative organ of the member state, from among their members.⁴² During the nomination of representatives to the Pan-African Parliament, the national parliaments shall have due regard to the diversity of political opinions.⁴³

3.1 Gender representation

One of the strong points of the Protocol is the emphasis it gives to ensuring gender representation. The seats allocated to women members of the Pan-African Parliament now stand at 20% and it can be said to be a good beginning. It indicates significant recognition of the need of improving the situation of African women at the continental level. By contrast, the representation of women in the European Parliament grew in time. In 1979, 16,5% of members of the European Parliament were women, and this figure has risen steadily over successive parliamentary terms, reaching 27,5% on 1 January 1996 and 29,7% after the 1999 elections.⁴⁴

⁴¹ Art 4 Protocol.

⁴² Art 5(1) Protocol.

⁴³ Art 4(3) Protocol.

⁴⁴ The European Parliament, <http://www.europarl.eu.int/abc/default_en.htm> (accessed 11 March 2004).

Despite the positive gesture of the Protocol to tip the gender balance in the Pan-African Parliament, the lack of participation of African women seems to be a profound problem. For several reasons, in the majority of African states, the representation of women in national parliaments and other political bodies is very limited. Similarly, their representation at important regional intergovernmental political organs, such as the Assembly of the AU and the Executive Council, is, at best, not satisfactory or, at worst, non-existent. Hence, due emphasis should be given to enhancing the political involvement of women at the national parliament and other political bodies in order to ensure their effective participation in the Pan-African Parliament.

3.2 Fair and balanced representation

The composition of the Pan-African Parliament poses certain difficulties and dilemmas, one of which is the acceptability of the principle of representation by an equal number of delegates from each member state, irrespective of their population size. By contrast, the European Parliament gives some recognition to differences in the relative population sizes of the various members with a view to ensuring appropriate representation of the peoples of the member states. However, the division of seats in the European Parliament was not based on strict mathematical proportionality, as that would also have meant that smaller member states would have enjoyed negligible representation or would have been denied representation altogether.⁴⁵

Hence, ensuring fair and balanced representation that will take into account the population size of all the member states should be one of the issues that the Pan-African Parliament needs to address in the future.

3.3 Political groupings

Since its inception, the European Parliament has had political groupings rather than national groupings. When the Common Assembly (CA) first convened on 10 September 1952, there were no ideologically based groups and members sat in alphabetical order, as was the case in other international assemblies. The first draft of the Rules of Procedure of the CA made no mention of political or ideological affinity, while national identity was mentioned in a number of key rules.⁴⁶

Nevertheless, political groupings in the CA soon became both a factual and legal reality. During the discussion and debate over the definitive draft version of the new Assembly's Rules of Procedure it was suggested that the nomination of committee members attempt to

⁴⁵ A Evans *A textbook on European Union law* (1998) 47.

⁴⁶ S Hix *et al* 'The Party System in the European Parliament: Collusive or Competitive?' (2003) 41 *Journal of Common Market Studies* 312.

balance both representation of the various member states and 'the various political traditions'. On 16 June 1953, the Assembly, recognising the crucial role of political parties in the internal organisation of the Assembly, unanimously adopted the proposal.⁴⁷ Accordingly, the three predominant party families of Western Europe at the time, namely Christian Democrat, Socialist and Liberal, soon formed their groupings in the CA. New party groupings, such as the Greens and non-attached members, came later.⁴⁸ Thus, the European Parliament party system became more able to structure transnational ideological positions and to translate these into competition over policy outcomes.⁴⁹

On the contrary, many African countries do not have distinctly clear national alignment of political forces, let alone cross-boundary party coalitions, as is commonly the practice in the European context. In other words, while the European Parliament has a well-developed alignment of political forces within its structure, this is not the case in the African context. In the African political milieu, the alignment of national political groupings does rarely subscribe to the conventional alignment of political parties based on ideologies, such as the Liberal, the Socialist, the Social Democrat, the Green, Conservative and the like, which is prevalent in Europe and other parts of the world. More often than not, political parties in Africa organise themselves along religious or ethnic affiliations.⁵⁰ The religious, tribal or ethnic origin of political leaders or election candidates matters more to their constituencies than their political ideologies and the policies they promise to pursue once they come to power or are elected to the national parliaments or other political organs.

Clearly, the dilemma as to what kind of cross-boundary political or ideological alignment, if any, can be created to bring members of the Pan-African Parliament into clearly defined groupings, remains difficult to answer at this moment. This would be interesting to observe in the future. Yet the representation of political groupings with numerous backgrounds which possess hardly any common political platform, may render reaching a compromise and prompt decision-making in the Pan-African Parliament difficult, if not impossible, at least for the near future.

Let us remain optimistic that this problem will not endure longer than expected and that the political parties that will be represented in the Pan-African Parliament will manage to unite themselves along certain commonly defined political programmes, transcending the prevailing

⁴⁷ As above.

⁴⁸ As above, also 327; see also Evan (n 45 above) 47.

⁴⁹ As above, 328.

⁵⁰ S Makinda 'Democracy and multi-party politics in Africa' (1996) 34 *Journal of Modern African Studies* 557.

diversity among the African political cultures. In the meantime, the Pan-African Parliament, like the European Parliament, should spur the process of formation of continent-wide political groupings in Africa through its rules of procedures. Only then would such highly diversified national political systems leave space for emerging cross-national party coalitions that would be formed within the Pan-African Parliament.

3.4 Representation of opinions

The Protocol provides that the representation of each member state must reflect the political opinion in each national parliament.⁵¹ Yet, there are no common rules of procedure that will be applied by the national parliaments in the appointment of their representatives to the Pan-African Parliament. It can, however, be observed from the experience of the European Parliament that the representation of all national opinions may involve an unforeseen predicament.

Initially, the mode of appointment of delegates to the European Parliament from among their own members was left to be determined in accordance with a procedure adopted by each individual member state, ensuring appropriate representation of the various political ideologies.⁵² In other words, the political breakdown of Parliament depended on the policy of national parliaments in nominating their delegations.⁵³ However, this did not prevent the exclusion of a number of parties, which had in effect made the Assembly less representative.⁵⁴ During the 1950s and the 1960s, the French and the Italian Parliaments selected members only from majority parties, or else allocated a token representation to some opposition parties, and above all excluded their powerful opposition parties — the Communists.⁵⁵ The election of members of the European Parliament through direct universal suffrage has helped to change the situation.⁵⁶

As we all know, the process of democratisation is a recent phenomenon in Africa, starting at the end of the Cold War. Yet the resurgence of democracy since the late 1980s has not produced a clear-cut division between democratic and non-democratic countries, but rather a wide spectrum of semi-democratic or semi-autocratic regimes with an extensive 'grey area' in between.⁵⁷ Monkam observed that

⁵¹ Art 4(3) Protocol.

⁵² G van Oudenhove *The political parties in the European Parliament. The first ten years (September 1952–September 1962)* (1965) 12.

⁵³ J Fitzmaurice *The European Parliament* (1978) 15.

⁵⁴ M Wastlake *A modern guide to the European Parliament* (1994) 185; see also Van Oudenhove (n 52 above) 12.

⁵⁵ Fitzmaurice (n 53 above) 15.

⁵⁶ Van Oudenhove (n 52 above) 12.

⁵⁷ C Santiso 'Promoting democracy by coordinating aid? Towards a more effective EU development assistance' (2003) abbreviated version of a large study in the *European Journal of Development Research* 203:7.

sub-Saharan Africa still has 'sham democracies', in which the rule of the single party, the state party, operates under cover of democracy.⁵⁸ Under circumstances where the ruling parties dominate the overwhelming majority of African national parliaments and the role of the opposition is hindered or weakened, the practical implementation of ensuring the representation of the various political opinions and opposition political parties in the Pan-African Parliament will definitely encounter problems, unless governed by some form of a standard procedure that the national parliaments will be bound to keep during the selection of their delegates to the Pan-African Parliament.

3.5 Direct elections

The Protocol envisages that the Pan-African Parliament will ultimately evolve into an institution with full legislative powers, whose members are elected by universal adult suffrage at a time that may be decided by the member states.⁵⁹ However, no specific time schedule is set as to when direct elections would begin.

Here, it is clear that the peoples of Africa are not going to elect the representatives to the Pan-African Parliament, at least not in the near future. Similarly, the European Parliament had no direct popular legitimacy, that is, the European Parliament members were not directly elected but delegated by the national parliaments of the member states, until the situation changed when the first direct elections to the European Parliament were held in June 1979. That means that, although direct popular participation ensures more transparency, legitimacy and participation, the direct election of members of the European Parliament by universal suffrage was introduced after a quarter of a century of existence of the European Parliament.

However, as far as the European Parliament is concerned, the achievement of its own direct election by universal suffrage in 1979 was in itself a major constitutional change that paved the way for subsequent changes which were far-reaching. Direct elections were expected to offer the prospect of a strong parliament,⁶⁰ a more politicised community with more powers and a wider role, with greater popular control and greater popular impact.⁶¹ Indeed, direct elections have transformed the European Parliament into a full-time body and created a new class of elected representatives in Europe.

⁵⁸ A Monkam 'The political dimensions of the future ACP-EU Partnership: How to promote human rights, democracy and governance dimensions' (1997) (ECDPM Working Paper No 41), Maastricht: ECDPM.

⁵⁹ Art 2(3) Protocol.

⁶⁰ Fitzmaurice (n 53 above) 93.

⁶¹ As above, 138.

On the other hand, despite the significant and growing role of the European Parliament, in recent years low voter turnout in European elections has remained a chronic problem. In the 1999 elections, the participation of the electorate declined to 50%. Several reasons can be attributed to this, but the major reason is the fact that national issues are more immediate concerns to citizens than what happens at the EU level, and that the European Parliament elections receive less media focus.⁶²

The Pan-African Parliament may also consider the merit of introducing the same principle of direct election in the future so that its members would have greater legitimacy that would enable them to win better trust and confidence of their electorates. At the same time, raising awareness of the general African public with a view to enhancing its interest in the day to day activities of the Pan-African Parliament would need serious attention in order to prevent similar citizen apathy towards participating in future elections of candidates to the Pan-African Parliament.

4 Waiver of immunity

The Protocol enshrines the freedom to vote in a personal and independent capacity and parliamentary immunities are guaranteed to the members of the Pan-African Parliament.⁶³ The term of office of a member of the Pan-African Parliament may be terminated if the national parliament or other deliberative organs recall him or her.⁶⁴ Also, the Pan-African Parliament shall have the power to waive the immunity of a member in accordance with its rules of procedure.⁶⁵ It is not, however, clear from the text of the Protocol whether the sending state's national parliament has the power to seek a waiver of immunity of its national delegate in the Pan-African Parliament. This legal *lacuna* may render the practical application of immunity provisions of the text difficult.

Requests by national authorities of the member states for a member's immunity to be waived were not uncommon in the European Parliament. The European Parliament has established a number of basic principles through practice, the most important of which is not to waive immunity if the acts of which a member is accused form part of his political activities.⁶⁶ In important exceptions to this general rule, the European Parliament has twice (in December 1989 and March 1990, respectively) taken decisions to waive the immunity of Jean Marie Le Pen,

⁶² Corbett *et al* (n 16 above) 359.

⁶³ Arts 6 & 9 Protocol.

⁶⁴ Art 5(f) Protocol.

⁶⁵ Art 8(2) Protocol.

⁶⁶ Jacobs *et al* (n 11 above) 42–3.

which were justified by the particularly obnoxious nature of the remarks he made in expressing his political opinion. A similar controversy arose in 1991, when the Greek government requested the lifting of the immunity of two Greek MEPs, who had been ministers in the former Papandreou government, in which cases no waiver was granted by the Parliament.⁶⁷

It is, therefore, anticipated that similar requests for waiver of immunity of a parliamentarian may come from member states. The Pan-African Parliament needs to prepare itself, in advance, and address them properly. A situation where a parliamentarian lives under fear of being recalled or his immunity unreasonably stripped should be prevented as far as possible. Indeed, this fear appears to be genuine as long as a national parliament is allowed to use these provisions to get rid of its political opponents on unjustified and dubious political grounds. Thus, the merit of putting 'safeguard clauses' in the rules of procedure of the Pan-African Parliament, that would effectively thwart the possible abuse of recall and waiver provisions of the Protocol, should be considered in the light of these unforeseen dangers. In this respect, the rules of procedure of the Pan-African Parliament may learn and adapt to the established principles of the European Parliament discussed above.

5 Multilingual parliament

The Protocol envisages that, apart from the existing four working languages, namely Arabic, English, French and Portuguese, 'African languages', if possible, will be the working languages of the Pan-African Parliament.⁶⁸ The phrase 'African languages' involves not only a tricky question of interpretation, but also a difficulty in practical application. The phrase 'other African languages' is not only broad but also undefined in the Protocol. How will the selection of African languages be agreed upon in the Pan-African Parliament? What criteria of selection would be applied? Would it be practically possible to allow as many African languages as possible to be used in the Parliament?

The European Parliament is unique amongst parliaments in the number of languages used. Following the recent enlargement of the EU which brought ten new member states from the former Eastern and Central European countries, raising the EU member countries from 15 to 25, the EU now has 20 official languages.⁶⁹

⁶⁷ As above.

⁶⁸ Art 17 Protocol.

⁶⁹ H Mahony 'EU to wrestle with 20 official languages' <<http://www.euroobserver.com/index.php?aid=15369&sid=9>> (accessed 14 May 2004).

The assumption is that elected members should not be expected to be competent linguists as they are not career diplomats, and the electorate should be free to elect any person he thinks would represent him or her, irrespective of his or her language abilities. Besides, the issue of language has another important aspect in that countries are eager to promote their national culture and language.⁷⁰

However, the use of many languages will require an interpretation service at any Parliament meeting, or at least to the formal ones. The same is true as regards the translation of all documents into all languages. The constraints of multilingualism in terms of delay in proceedings and cost are becoming self-evident. In 1990 alone, the costs of multilingualism have been estimated at the equivalent of £11 million or around 35% of the total budget of the European Parliament. After the recent EU enlargement, the cost of the EU's translation service is set to rise to around €800 million a year.⁷¹ Besides, Corbett and others remarked that the plurality of languages in the European Parliament makes the debates far from spectacular. They also get lesser media coverage than do most national parliaments.⁷²

On the other hand, the prospects of a reduction in the number of working languages of the EU are slim. If anything, they are likely to expand as the members of the Community increase, making the conflict between democratic fairness and logistical practicality ever more acute. Owing to this difficulty, it has increasingly become the practice to use English, French and German as 'working languages', as opposed to 'official languages', to hold internal meetings and to prepare documents for internal use by the European Parliament.⁷³

In any case, one important lesson may be drawn from the experience of the European Parliament. Whatever democratic flavor it may contain at face value, the idea of allowing as many national languages to be working languages in the Pan-African Parliament may not work in practice. It will require a huge financial outlay, which the continent can ill afford at the moment.

6 Permanent seat

The Protocol provides that, although the Pan-African Parliament will be able to convene in any location in the AU for its regular sessions, the permanent seat of the Pan-African Parliament will be decided by vote of the AU Assembly of Heads of State and Government.⁷⁴ Accordingly,

⁷⁰ Jacobs *et al* (n 11 above) 35.

⁷¹ Mahony (n 69 above).

⁷² Corbett *et al* (n 16 above) 358.

⁷³ Mahony (n 69 above).

⁷⁴ Art 16 Protocol.

Africa's Heads of State are scheduled to meet in July 2004, where a decision will be taken on the host country.

Initially three countries, namely South Africa, Egypt and Libya, were vying to host the Pan-African Parliament. The government of Libyan Arab Jamahiriya has made a tactical withdrawal of its bid for the seat of the Pan-African Parliament in anticipation of its plans to host the upcoming Pan-African Stand-by Forces headquarters, leaving Egypt and South Africa as the only remaining contenders.⁷⁵

South Africa's President Mbeki has been engaged in an intensive campaign to persuade his fellow African leaders to accept his country's offer of hosting the continent's Parliament. His efforts seem to be bearing fruit, as a lot of countries promised support and some members of the Southern African Development Community (SADC) have tacitly endorsed the idea that the permanent seat of the headquarters of the Pan-African Parliament be in South Africa. All indications are that South Africa will be the seat of the Pan-African Parliament.⁷⁶

In what appears to be a somehow belated effort, the Speaker of the Parliament of Egypt, Dr Ahmed Fathy Srorr, in an exclusive interview with *Sub-Saharan Informer*, stated that if the seat of the Pan-African Parliament is in Egypt, it will be of paramount benefit to Africa. However, he acknowledged that last year Egypt was more concerned with the problems of the Middle East than those of Africa.⁷⁷ The announcement of the host country during the forthcoming AU summit will, undoubtedly, be testing the ability of Africa's diplomats and statesmen to reach consensus in order to promote continental interests.

In the case of the European Parliament, this issue has been more controversial. Since the member states have failed to agree on a single place of work for the Parliament, the work of the institution remains divided between Brussels, Luxembourg and Strasbourg.⁷⁸

7 The capacity dilemma

Finally, a few words regarding the influence of limited capacity on the effectiveness of the Pan-African Parliament will be in order. It is obvious that the financial and logistical capacity of many African states to effectively implement decisions at national or continental level is limited. As a result, consideration of the financial implications of any initiative or proposal, both at national and continental level, has become a common

⁷⁵ <[Http://www.afrika.no/Detailed/4911.html/news](http://www.afrika.no/Detailed/4911.html/news)> (accessed 31 May 2004).

⁷⁶ As above.

⁷⁷ <<http://www.subsaharaninformer.com/news/news.asp?cat=6&subcat=>> (accessed 10 May 2004).

⁷⁸ Evans (n 45 above).

practice in Africa. It may, thus, be important to consider the arrangements put in place in the Protocol regarding the financial implications on member states of the Pan-African Parliament. The Protocol provides that an allowance shall be paid to the members of the Pan-African Parliament to meet expenses in the discharge of their duties provided in the Protocol. However, the Protocol is silent as regards the sources of finance for the allowance of members of the Pan-African Parliament.

It may rightly be assumed that each member state will be covering the full cost, including allowance and transport, of its own delegates to the Pan-African Parliament, in accordance with its own national practice as far as the determination of the amount of allowance is concerned. This would definitely put significant financial pressure on many African states. Sending five national representatives from each member state twice in a year for a duration of up to one month each to attend the Pan-African Parliament's session will obviously be a costly enterprise for many of them. Sooner or later this may result in reduced interest in participation. For the time being, an immediate solution that would resolve the problem of resource capacity of African states will not be found.

It has been suggested that the Pan-African Parliament be a permanently functioning body instead of its current *ad hoc* arrangement, and that the number of members of the Pan-African Parliament be raised to 1 080 delegates, who shall be drawn from among the African states on the basis of proportional geographical and population representation.⁷⁹ No doubt, a permanent Pan-African Parliament with an increased number of members is better than an *ad hoc* body with only a nominal number of members. Yet, proliferation of institutions or expansion of the existing ones should be matched with the capacity to run them effectively. Thus, when a proposal of this sort is forwarded, it should simultaneously address the basic dilemma of where such capacity will come from.

8 Conclusion

As mentioned above, the official launching of the Pan-African Parliament is an important event that should be celebrated by the African people. However, as we celebrate the birth of this important continental institution, we should not lose sight of the fact that the current mandate of the Pan-African Parliament is not adequate. There are additional steps that need to be taken in order to continue building on such a positive move.

⁷⁹ Update 2004 'Pan-African Parliament: Size, structure and elections' <<http://www.africafront.com/gage7000.php>> (accessed 09 March 2004).

There are a few important issues that we need to reflect upon with a view to further improving and strengthening the Pan-African Parliament. These are: paving the way for the direct election of the members of the Pan-African Parliament by universal suffrage; enhancing the legislative and budgetary powers of the institution to enable it to fully take part in important decision-making in the AU; enhancing its supervisory and even litigation mandates and providing detailed rules of procedure that would encourage the formation of political groupings in the Pan-African Parliament. These issues need to be considered carefully in the future. The Pan-African Parliament should also endeavour to ensure the representation of all national voices, in particular opinions of opposition parties.

We should, at the same time, take into account that whatever the powers of the Parliament may be, the national parliaments remain the decisive fronts where the resolve and commitment to democratic changes are tested. The effort of strengthening democracy, good governance and human rights and ensuring accountability, transparency and participation of the grassroots in political decision-making should start at the national level, in the national parliaments. Thus, having strong national parliaments is an important precondition for the creation of a strong Pan-African Parliament. Developments at the national level must support and complement developments at the regional level and *vice versa*. It is also crucial to bear in mind that taking a continental initiative of this magnitude and making it successful may seem an ambitious and expensive venture. Initiatives at the political front, such as the creation of the AU and its institutions, including the Pan-African Parliament, would not be sustainable unless buttressed by parallel progress in the economic front. The African continent can ill afford to do this and we need to avoid reckless spending and utilise institutions that we finance effectively. This should also be the case as far as the Pan-African Parliament is concerned. The question of using African languages in the Pan-African Parliament should also be considered in the light of the cost of its implementation and other practical problems it is going to pose.

Finally, the strength of the AU depends on the strength of its institutions and the strength of these institutions depends on the strength of the people who created them. As noted above, though the prospects of the AU and its institutions appear to be obvious, it would be naive to underestimate the obstacles and enormous challenges that lie ahead. At the same time we should remain confident that, despite the daunting challenges, the Pan-African Parliament would prevail over all the hurdles. Above all, the peoples of Africa should demonstrate their resolve and determination to assist the AU in surmounting the challenges of accomplishing the lofty goals of durable peace, greater democracy and sustainable development it has set for itself.