

PAN-AFRICAN PARLIAMENT



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**REPORT OF THE CONSULTATIVE MEETING ON THE
TRANSFORMTION OF THE PAN AFRICAN PARLIAMENT AND THE
RATIFICATION OF THE AFRICAN CHARTER ON DEMOCRACY,
ELECTIONS AND GOVERNANCE July 16 and 17 2010¹**

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1.0 Introduction

By a Decision of the Bureau of the Pan African Parliament a consultative meeting was held in Kampala- Uganda on the 16th and 17th July 2010. The meeting was attended by the Bureau of the PAP, Members of the Pan African Parliament from the East, South, North, West and Central African regions. A list of the participants is attached in Annex 1. Also participating in the meeting were members of the East African Legislative Assembly- EALA and members of the Parliament of Uganda, all of whom contributed greatly to the discussions. Before the meeting commenced, a moment of silence was observed in honour of the victims of the terrorist attacks in Kampala. In their contributions, participants deplored this act of terrorism on innocent civilians.

2.0 Opening Ceremony

2.1 H.E Dr. Idriss Ndele – The president of the Pan African Parliament

In his welcoming remarks, H.E Dr. Idriss Moussa Ndele the President of the Pan African Parliament reported that in January 2007, Heads of States and Governments, adopted the African Charter on Democracy, Elections and Governance, to promote and strengthen democratic principles, processes and procedures within member states. This was seen as being fundamental to Africa's stability, peace and long term security.

The objectives of the Charter, also sought to draw a framework for a vibrant and responsive African citizenry to fully participate in political processes, as well as debates within the national, regional and continental context. Gender, minority groups, persons with disabilities, ethnicities and the youth are protected by the equality provisions the charter laid out. The Charter finally focused on term limits for greater security, and sustained peace and made provisions for condemnation of unconstitutional changes of government through either coup d'états or manipulation of constitutions, which perpetuates poor governance, impunity and corruption- factors that undermine stability.

The President of the PAP pointed out that the process of ratification has been slow. Only 29 out of 53 countries have signed the Charter, out of which a mere six countries have appended their signature in the ratification column: Burkina Faso; Ethiopia; Mauritania; Sierra Leone, Lesotho and Rwanda. This represents 5 percent of the countries in Africa, which needs to have 25 percent, or 11 more countries deliver on promises made to consolidate strong and sustained democracies for one billion people on the African continent.

The Pan-African Parliament (PAP), constituted in 2004 was mandated to act as a common platform for all the peoples of Africa and their grassroots organizations and was given the responsibility to promote the Charter. There is strong mandate given to the PAP, through Article 45 of the Charter, which was reiterated at the Sharma el Sheik gathering of AU heads of state and government. The President pointed out that the meeting in Kampala was a joint collaboration between the AU Commission to work with national parliaments to ensure ratification of the Charter. The initiative will be repeated in the North, Central, West and Southern Africa. The President thanked the Government, Parliament and people of Uganda for their hospitality and the arrangements for the meeting.

2.2 The Representative of the Prime Minister of Uganda

In his remarks, the representative of the Prime Minister of Uganda pointed out that the Pan African Parliament (PAP) is to the African Union (AU) what the European Parliament (EP) is to the European Union (EU). It should be the legislative branch of the AUC, charged with, among other responsibilities, the legislative agenda of the continent. It is in this context that, there should be a close working relationship between the PAP and the AU Commissions to ensure that policies generated by the AUC are placed before the PAP for input to mainstream the voices of the people. The PAP in turn should then consult member parliaments for input to ensure that the advisory and consultative function of the PAP is fulfilled. He attributed the poor rate of ratification of AU Decisions to this disconnect. Many national Parliaments are not aware of the AU Decisions and hence do not ratify them timeously.

His Excellency pointed out that in line with Article 11 of the PAP Protocol, (AU, 2001) and since its inauguration on 18 March 2004, the PAP's mandate has been limited to an 'advisory and consultative' capacity. Article 2 (3) of the PAP Protocol envisages that in due course, the PAP will evolve into a legislative body, and its members shall be elected by universal adult suffrage. If Africa is committed to good governance, it is important that that the requisite powers be conferred on the Pan African Parliament. This is because without the requisite powers the PAP cannot call to account even the AU organs which it is meant to oversee. He further pointed out that if the PAP is expected to act "as the conscience of the African continent and the guardian of its democratic ideals" it is important to give it some form of teeth.

On the issue of transformation of the PAP, H.E pointed out that it is important to take lessons from the EP. It is important to note that in the 34 years of the EP's existence - from 'consultation', 'cooperation', 'assent' through to 'co-decision' - the powers and influence of the EP vis-à-vis other organs of the EU have been rising from the early years when it could be described as "an underdog fighting for recognition" From March, 1962 when the European Parliamentary Assembly changed its name to the European Parliament, to 1979 when Member of the European Parliament (MEPs) became products of direct adult universal suffrage through to the present, the powers of the EP have also been strengthening and expanding.

It is therefore important to have a dialogue on what the legislative powers of the PAP should be. It has been argued that "because of its lack of legislative powers and its weak decision-making role within the AU governance architecture, ... the PAP remains less effective than it should be and occupies a marginal position in the policy-making process of the continent" To the extent that the PAP's resolutions and recommendations are of no consequence in AU policy making, the impression is easily created that the PAP is merely a rubber stamping body unable to justify its existence and related costs. A balance needs to be struck between the powers of the PAP vis-à-vis those of national parliaments and other AU organs. If it is agreed that the PAP should have a legislative mandate, a feasible approach would be to incrementally increase the scope and depth of powers and issues over which the PAP can legislate on. This approach stems from the lessons learned from the EP where the powers and influence of the EP in relation to other organs of the European Community

have been expanding over the last three decades. The EP did not gain its budgetary and oversight powers overnight.

The EP is organically linked to the work of, among others, the Council of Europe, the Commission, ECB and the European Court of Justice. The work of the PAP should be plugged into the existing AU organs and strategic interventions such as the Peace and Security Architecture and its various components. The first step towards transformation of the PAP is enabling it to engage in functional cooperation with other AU organs. Whether the PAP ultimately takes up a legislative mandate or not, its resolutions and recommendations must find their way in regional policy making. If the PAP were to remain as it is currently designed and constituted, it runs the risk of losing credibility, legitimacy and contact with the people of Africa. At the same time, the AU governance system will remain without a parliamentary dimension, thus there will be limited democratic accountability and ownership of the AU agenda in member states.

H.E. thanked the PAP for taking the initiative to ensure that ratification of the Charter is achieved.

2.3 Her Excellency Mrs. Julia Dolly Joiner- Commissioner for Political Affairs – African Union Commission

H.E Madame Joiner registered her appreciation to the PAP for devoting the Consultative dialogue to the ratification of the Charter on Democracy, Elections and Governance. This step is a further demonstration of the significance of the Charter. She pledged to work closely with the PAP to ensure speedy ratification of the Charter.

The Charter, as adopted by the AU Assembly emerged in a specific historical context and reflected in a very direct way a commitment towards sustaining the democratic momentum in Africa. The decision to transform the Charter by the Assembly came at a time when a significant number of African States transformed themselves from authoritarian regimes to more democratic types. Most African Union member states introduced constitutional guarantees, with provisions for periodic elections, commitments to civil and political liberties, mechanisms for effective transfer of power and the renewal of leadership. The changes that were being experienced, particularly in the early 1990's served to usher in a confidence and commitment towards sustaining the progress made.

The development and adoption of the Charter was the most logical step forward to consolidate the gains made in the 1990's and ensure a culture of change, based on regular, free and fair elections is sustained. As an instrument of the African Union, the Charter provides the foundations for positive action when there are deep lapses in governance, as may be reflected in, for example, an unconstitutional change of government.

The Charter emanated from a number of detailed engagements between Member states and benefitted from the participation of stakeholders. This process reflected, in many ways, a consistency of commitment towards ensuring that a balance is struck between individual realities and the need to move forward as a collective. In the process of debate Member states demonstrated a willingness to make the necessary compromises and ensure that the shared values expressed in the Charter are indeed shared values. The adoption of the Charter was not the end of the process of value consolidation, but in many respects, was

only the beginning of a process. “These shared values need to find practical expression in the lives of the people in our continent and we need to permeate the dialogue and interactions that characterise people to people engagements”.

The Commissioner reported that over the last three years, the Commission for Political Affairs had embarked on a process to popularise the Charter amongst Member States and Civil Society. She reported that to date thirty six (36) Member States have indicated their commitment to ratify through their signature of intent and six (6) (Mauritania, Ethiopia, Sierra Leone, Burkina Faso, Lesotho and Rwanda) have completed the ratification process. To enter into force the Charter needs to be ratified by at least 15 Member States.

At the rate at which member states are ratifying the Charter, it is clear that democracy building is a long term endeavour and requires patience and resolve. The ratification of the Charter does not mean that democracy is established, “but in the absence of the ratification of the Charter, then future generations have little to hold government accountable”.

She thanked the PAP and national Parliaments for being in the fore front for ensuring that ratification takes place. The Commissioner reported that the summit for 2011 will be centred on Shared Values. Central to this theme will be the African Charter on Democracy, Elections and Governance. She committed to work closely with the PAP and national Parliaments to ensure ratification of the Charter.

2.4 The Speaker of Uganda: RT. HON. EDWARD SSEKANDI KIWANUKA - SPEAKER OF PARLIAMENT OF UGANDA

In the opening session, the Speaker of the Parliament of Uganda delivered the keynote address. In his address, he announced Uganda’s intention to ratify the African Charter on Democracy, Elections and Governance. He also announced his intention to follow up with the cabinet of the Ugandan Government to ensure ratification by 2011. The Speaker reported that the Minister of Justice and Constitutional Affairs of Uganda was working on the matter and was due to place his recommendations before the cabinet of the Government of Uganda. The Speaker stressed Uganda’s resolve to work together with the Pan African Parliament to ensure full ratification and domestication of all AU Decisions signed by the Head of State- H.E Yoweri Museweni. H.E emphasized the need for Africa to be integrated. He stated that without integration Africa would not develop. It is therefore important for Africa to move towards integration and one way of achieving this was to implement the shared Decisions made by the AU Heads of State and Governments.

He thanked the Pan African Parliament for having chosen Kampala to launch the 11 by 2011 initiative. The Parliament of Uganda commits to take the necessary actions to ascertain the state of play vis a vis the ratification of the Charter. The Parliament of Uganda is committed to the Decisions of the African Union and pledged its support to the advocacy campaign to ensure that at least 11 countries ratify the Charter before the end of 2011. The Speaker then launched the 11 by 2011 initiative.

3.0 State of Ratification of the African Charter on Democracy, Elections and Governance

3.1 Dr. Khabele Matlosa – UNDP Governance programme gave an overview of the African Charter on Democracy, elections and governance. He pointed out that the Charter was the culmination of a long political process. Desirous to enhance the relevant Declarations of the OAU/AU, including:

- 1990 Declaration on the political and socio-economic situation in Africa and the fundamental changes taking place in the world
- The 1995 Cairo Agenda for the Re-launch of Africa's Economic and Social Development
- The 1999 Algiers Declaration on Unconstitutional Changes of Government
- The 2000 Lome Declaration for an OAU Response to Unconstitutional Changes of Government
- The 2002 OAU/AU Declaration on Principles, Governing Democratic Elections in Africa
- The 2003 Protocol Relating to the Establishment of the Peace and Security Council of the African Union

the African Union developed the African Charter.

The African Charter on Democracy, Elections and Governance (the Charter) is inspired by the principles of good governance, popular participation, the rule of law and human rights that are contained in the African Union's Constitutive Act. The Charter is committed to achieving a political culture that is based on the holding of regular, free, fair and transparent elections conducted by competent, independent and impartial national electoral bodies.

The main objectives of the Charter include the following:

- Promote adherence to universal values and principles of democracy and respect for human rights;
- Promote rule of law, supremacy of the constitution and a culture of constitutionalism;
- Promote a culture of transfer of power through democratic, credible and transparent elections;
- Prohibit the scourge of unconstitutional changes of government which threatens stability peace and security;
- Promote effectiveness of the state/public institutions in governance especially in relation to service delivery;
- Promote sustainable human development and human security;
- Combat corruption in all its forms and manifestations;
- Foster popular participation in governance and development;
- Promote gender balance and equality in governance and development;
- Promote best practices in the management of elections.

The main themes covered in the Charter include: democracy, rule of law and human rights; culture of democracy and peace; democratic elections; unconstitutional change of government; political, economic and social governance;

Between 2005 and 2007, the African Union (AU), through the Department of Political Affairs, embarked on developing the African Charter on Elections, Democracy and Governance (ACDEG). This historic initiative included commissioning of technical/ research work; dialogue on the document; meetings of independent experts, government experts and legal experts. The substantive work was completed in June 2006 and the draft Charter was submitted to the Heads of State and Government Summit of the AU in July of the same year in Banjul, The Gambia.

The draft Charter was then referred back to a panel of legal experts for further refinement of its legal content. The legal expert meeting took place on 25-26 January 2007 in Addis Ababa, Ethiopia. Following the legal experts meeting, the Charter was adopted during the Heads of State and Government summit of 30 January 2007 held in Addis Ababa, Ethiopia. This development represented a historical milestone for democracy, peace, constitutionalism and human rights in the continent. Now that the Charter has been adopted, the challenge is signing, ratification, domestication and implementation by AU member states;

The adoption of the Charter in January 2007 represented a fundamental commitment of AU Member States towards deepening democracy and building peace in Africa. There is now a clear-cut realization that without democracy and peace, development may not be easily achieved. The Charter should now become a living document shaping and influencing the political culture and practice in all the 53 AU Member States. In order for this to happen, following the adoption of the Charter, AU Member States ought to sign, ratify, domesticate and implement the Charter.

The requirement is that 15 Member States have to ratify the Charter prior to its application. Thus far, about thirty six (36) countries have signed the Charter. Of these five (5) have already ratified the Charter. He thanked the PAP for its initiative to ensure that the Charter is ratified. "Initiatives like this one by PAP will go a long way in securing the remaining ten (10) signatories hopefully in 2011". In the final analysis, all the 53 AU member states should sign, ratify and domesticate the Charter if real transformation of the continent's governance architecture is to be realized.

3.2 Mr. Salim – African Union Commission- Political Affairs pointed out that Chapter 4 of the Charter requires state parties to: Commit to democracy, rule of law and human rights; Recognise and endure universal suffrage ;Take measures to ensure constitutional rule and constitutional transfer of power ;Take steps to strengthen the Organs of the AU that protect and promote human rights; Eliminate all forms of discrimination, especially based on political opinion, gender, ethnic, religious and racial grounds; Protect vulnerable groups such as minorities, migrants, people with disabilities; Respect ethnic, cultural and religious diversity; Respect the supremacy of the constitution; and amendment or revision of the constitution should be done through national consensus or, if need be, through referendum and protect equality before the law.

Chapter 5 requires state parties to: create and strengthen a culture of peace and democracy; Promote good governance through transparency and accountability; Strengthen political institutions; Provide support for the existence and operation of civil society within the law; Ensure there is civic education in the education system; Put in place relevant legislation and policies; Ensure and maintain political and social dialogue.

Chapter 6 requires state parties to: Ensure constitutional civilian control over the army and security forces; Put in place legal measures to deal with the unconstitutional removal of an elected government; Establish public institutions that support democracy and constitutionalism, ensure that such institutions are independent and accountable to competent national organs and that they have sufficient resources; Cooperate regionally and continentally to build and consolidate democracy.

Chapter 7 requires state parties commit to holding regular, transparent, free and fair elections in terms of the AU's Declaration on the Principles Governing Democratic Elections in Africa. To achieve this, State Parties shall establish and strengthen independent and impartial national election bodies; Ensure there are mechanisms that resolve election disputes timeously; Ensure that political parties can equitably access state controlled media during election periods; Ensure that there is a legally enforceable code of conduct for all those involved in elections.

Chapter 8 requires state parties to commit to holding regular, transparent, free and fair elections in terms of the AU's Declaration on the Principles Governing Democratic Elections in Africa. To achieve this State Parties shall:

- Establish and strengthen independent and impartial national election bodies
- Ensure there are mechanisms that resolve election disputes timeously
- Ensure that political parties can equitably access state controlled media during election periods
- Ensure that there is a legally enforceable code of conduct for all those involved in elections

Chapter 9 covers the issue of African traditional systems. Traditional authorities are important and State Parties should find ways for them to be part of the larger democratic system. Respect, compromise, consensus and tolerance should be promoted by Member States in addressing conflicts and promoting stability and security. The chapter also commits State parties to work towards generating productive employment, alleviate poverty and illiteracy and lessen the impact of diseases; implement environmental protection policies and are encouraged to accede to treaties and international legal instruments and work towards providing free and compulsory education to all and especially vulnerable groups

Mr. Salim stressed that the process of ratification and domestication of the Charter required the full participation of the Pan African Parliament and the national Parliaments.

3.3 Hon. Agnes Mukabaranga – the Chairperson of the Committee of justice of the PAP noted that the African Charter is similar to the Universal Declaration of Human Rights and a valuable framework to ensure democratization of the continent. She pointed out that the Charter would strengthen the APRM. However, she pointed out that there were several challenges in the ratification of the Charter. These include the fact that different African

countries have different concepts of democracy. Secondly, the formation of African Union institutions was not based on shared values but on the need to integrate the continent. It is important to harmonize concepts of democracy so that different countries can start from the same basis. Thirdly, many countries focus on poverty eradication alone without knowing that development and democracy go hand in hand. She urged all Parliaments to implore their governments to sign, ratify and domesticate the African Charter.

4.0 Dialogue

In the dialogue that ensued, the participants reaffirmed the need for the African Charter towards the democratisation of the continent. However several issues were raised notably: the need to adequately resource the PAP to undertake its oversight function over the implementation of AU decisions. Participants were concerned that the Assembly makes Decisions before those decisions are debated by the PAP. This creates a disjoint in the AU governance architecture and ensures that national parliaments are excluded from the AU processes. It is important for the AU Commission on political affairs to ensure that at all times the PAP is aware of the policies being made by the commission so that the PAP in turn can link national Parliaments to the AU processes. The absence of linkages between the AUC and its Parliamentary counterparts results in the delays in ratification. It is important for the AUC to respect the advisory and consultative function of the PAP even in the absence of legislative powers.

The participants pointed to the urgency to transform the Pap into a legislative body. Participants were of the opinion that without legislative powers it is difficult for the PAP to ensure enforcement and compliance at national level. It is important that oversight powers of the PAP vis a vis ratification and domestication of AU Decisions be explicitly defined. Other issues raised include the need to ground the African Charter in the African traditional realities to ensure relevance to the people of Africa; the need to ensure that the Charter speaks to disadvantaged groups in society; the need to ensure that African People own the Charter; the need for continuous dialogue between the PAP and the AUC Commissions.

Participants were very grateful for the opportunity to interact at a policy level with the AUC Commission for Political Affairs. The PAP members recommended that the meetings between the PAP and AUC should be held at regular intervals.

The participants noted that many African countries have made steady improvements in the consolidation of peace, good governance, economic growth and social development in recent years and congratulated the AUC for the Charter. It was the feeling of the meeting that since most African Constitutions have Bills of Rights and are good governance inclined; it should be easy to convince these governments to ratify the Charter

The meeting highlighted Africa's significant progress in advancing peace in recent years and cited this positive trend as a foundation for development that should be reinforced. Participants recognised the importance of ensuring the peace dividends reach the entire population. The meeting was at a loss at understanding how Mauritania which had ratified the Charter was the first country to act contrary to the Charter.

The meeting welcomed progress in improving governance in many African countries. The African Peer Review Mechanism (ARPM) was recognised as a successful AU/NEPAD and

Africa owned initiative. Participants cited capacity building in executive, legislative, judicial, public administration and electoral institutions as an ongoing priority. The protection of human rights was also highlighted.

The meeting felt that the countries which ratified the APRM should be encouraged to ratify the Charter. Support was expressed for progress towards regional integration in Africa, strengthened by the efforts of the AU and Regional Economic Organisations.

5.0 Role of Parliaments in ensuring the Ratification of the Charter on Democracy, Elections and Governance.

The Deputy Speaker of the Parliament of Malawi Hon. J.Chingola reported that the Parliament of Malawi was in the process of ratifying the Charter through a private Member's Bill. He outlined other modes of ensuring ratification. The Deputy Speaker pointed out that the Members of Parliament could implore their governments to ratify through Members motions and questions.

The East African Legislative Assembly- Hon. M. K. Sebalu welcomed the initiative and committed to ratify the Charter as a regional block. Hon. Sebalu pointed out that he was going to ensure that the issue of ratification of the Charter is brought before the appropriate body in EALA to follow up on the ratification. The East African Legislative Assembly pledged its support to advocate for the ratification of the Charter throughout the Eastern African Community.

Hon. Sebalu pointed out that the responsibility of signing treaties, conventions, and charters by Sovereign states is an executive function although ratification may vary from state to state subject to the legal regime of a given state. In some jurisdictions, some treaties are ratified by Cabinet while some specific ones are ratified by Parliament. However, many countries have provisions that require cabinet to lay before Parliament all treaties they have signed. This requirement therefore creates an opportunity for Parliaments to interface with the process of ratification.

Hon. Sebalu reported that it should be easy for member Parliaments of EALA to implore their governments to ratify the Charter. This is because the fundamental principles of the Community are modelled on principles of good governance, accountability, transparency, social justice, equal opportunities, gender equality and protection of human rights. Hon. Sebalu pointed out that three members of the EALA had already been reviewed- Rwanda, Kenya and Uganda.

Hon Sebalu informed the meeting that as the EALA, the legislative Assembly would invoke Rule 79 to ask the Council of Ministers why Partner states of the EAC have not ratified the Charter. EALA would also invoke Article 49 to liaise with national Assemblies on the matter of the ratification of the Charter.

He called upon all Parliaments in Africa to engage the executive and remind them of their continental obligation in respect of the ratification of the African Charter on Democracy, Elections and Governance.

The Deputy Speaker of the Parliament of Ireland- Hon. Brendan Howlin gave an outline of how national Parliaments ratify Decisions, laws and conventions made by the European Commission.

He pointed out that the role of the Irish Parliament in EU affairs has developed, gradually and incrementally, since Ireland's accession to the EU (then the EEC) 1973. With the passage of the European Communities Act, a Joint Committee on Secondary Legislation of the European Communities was established to oversee the transposition of EU law into Irish law. This Committee was reconstituted in 1993 as the Joint Committee on European Affairs in response to the need for the Irish Parliament to play an oversight role in terms of Ireland's membership of the EU which, after the Maastricht Treaty, was also concerned with greater political integration as well as economic integration. In the wake of the two Nice Treaty referendums, the EU (Scrutiny) Act was enacted which has led to the establishment of the Joint Committee on European Scrutiny (JCES) to work alongside the Joint Committee on European Affairs (JCEA).

The EU (Scrutiny) Act 2002 places a statutory obligation on government Departments to inform the Irish Parliament of draft EU measures. On receipt of a proposal from the Commission/Member State, a Government Department prepares an information note and submits this along with the draft EU law to the JCES. The information note includes a summary and aim of the proposal, its legal basis in the Treaties, the anticipated negotiation period, the expected implementation date and the implications for Ireland. The type of proposals covered by the Act includes directives, regulations, Council decisions and Common Foreign & Security Policy (CFSP) measures.

On receipt of relevant documentation, an advice note is prepared by the JCES Policy Advisors on each EU legislative proposal. At its meetings, the JCES conducts an examination of these proposals in public session and determines if any proposal requires further scrutiny. If it decides that a proposal warrants further scrutiny, it can undertake a detailed examination itself by seeking further information or by holding hearings with the key stakeholders. It can also refer the proposal to the relevant sectoral committee for further scrutiny, following which the JCES prepares a report containing recommendations, which is laid before both Houses of Parliament and sent to the relevant Minister. Under the 2002 Act, the Minister is obliged to have regard to the recommendations of the JCES. Government Departments are also obliged to provide the Irish Parliament with six-monthly reports on the EU measures, proposed measures and other developments within the Departments' area of responsibility. These reports are considered by the JCES as well as the relevant sectoral committee. In addition, the Government is obliged to make an annual report to the Irish Parliament on developments in the EU. This report is co-ordinated by the Department of Foreign Affairs.

The Irish Parliament also has a general oversight role in respect of EU matters and the Government's interaction with the EU. The JCEA has power to invite the Minister for Foreign Affairs to brief them on the agenda for meetings of the EU General Affairs and External Relations Council, while sectoral committees have power to invite the line Minister to brief it on the agenda of other Council meetings. Discussions in the Lower House of the Irish Parliament following meetings of the European Council also provide for open debate

involving statements by the Prime Minister and the Opposition leaders followed by a question and answer session.

Ministerial regulations or Statutory Instruments made under the European Communities Acts 1972-2007 in order to transpose EU law can give rise to summary and indictable offences. Regulations creating **indictable** offences must be laid expeditiously before each House of the Irish Parliament. Each House of the Irish Parliament can pass a resolution annulling the Regulations within 21 days. Where such a resolution is passed, the Regulations will be annulled, but without prejudice to the validity of anything previously done. There is no requirement, under the Acts, to lay Regulations creating **summary** offences before the Houses. In addition, the JCEA has the power to recommend to the Irish Parliament that any Regulation be annulled. If the Houses of the Irish Parliament agree in the form of a resolution passed within one year, then the Regulations are annulled, again without prejudice to the validity of anything previously done.

Section 4 of the European Communities Act 2007 allows for Ministerial Regulations to be made under other primary legislation (i.e. primary legislation other than the European Communities Acts 1972-2007). There is no requirement under the 2007 Act for such Regulations to be laid before the Houses of the Irish Parliament. The provision allowing the JCEA to recommend annulment of Regulations applies only to Regulations made under the European Communities Acts 1972-2007 (and not to Regulations made under other primary legislation).

The Irish Parliament also plays an active role in two other aspects of EU business – the Justice & Home Affairs (JHA) area and Irish participation in European Security & Defence Policy (ESDP) operations. On the latter, Irish participation in EU military operations under the ESDP are subject to the **triple lock** mechanism – UN-mandated Cabinet approval and Irish Parliament approval. Therefore, if the Irish Defence Forces were to become involved in an ESDP mission, the Irish Parliament must approve this participation.

In the JHA area, until the entry into force of the Lisbon Treaty, Irish Parliament approval was required for certain “options or discretions” provided under the Treaty of Amsterdam and the Treaties of Nice. These related primarily to TEC measures such as visas, asylum, and immigration, judicial co-operation in **civil** matters and to judicial co-operation in **criminal** matters under TEU measures. In the case of the TEC measures, Ireland could opt in to the measure in either the early stages of negotiation, i.e. within the first three months, or could accept the measure after it had been adopted by the Council. Prior approval of the Irish Parliament was required in either case. . Following the entry into force of the Lisbon Treaty, the Irish Parliament has maintained its role under the Constitution whereby it must approve Ireland’s participation in legislation and activities under the newly titled area of freedom, security and justice.

The Lisbon Treaty gives EU national parliaments a number of new powers and entitlements aimed at enhancing the democratic legitimacy and accountability of the EU. The European Act 2009 provides for the operation of some of these powers by the Irish Parliament. Section 7 of the European Act 2009 provides for the operation of new powers for the Irish Parliament under the terms of the Lisbon Treaty. In particular, Section 7 (1) and Section 7

(2) provides for the operation of the new powers of the Irish Parliament in accordance with Article 48.7 of the Treaty of the European Union and Article 81.3 of the Treaty on the Functioning of the European Union. These are known as *passerelle* or bridging clauses and enable national parliaments to block such decisions. This has become known as the '**Red Card**'. Section 7 (3) and Section 7 (4) provides for the operation of the new powers for the Irish Parliament under the terms of Protocol 2 of the Lisbon Treaty on the application of the principles of subsidiary and proportionality. The Protocol outlines how this power will operate. It puts in place an early warning system known as the '**Yellow and Orange Card**' procedure which gives EU national parliaments the power to ensure that the EU institutions respect the principle of subsidiarity.

The Irish Parliament has given practical effect to these new powers in a Resolution which the Irish Parliament adopted on 10 December 2009. The key points of the Resolution are:

- The detailed work to support the new role is to be conducted through the Parliamentary Committee system, while respecting the sole authority of the Irish Parliament to adopt the necessary resolutions under the 2009 Act;
- The separate and equal responsibilities of both Houses of the Irish Parliament are respected by providing for separate Select Committees of both Houses, while also recognising that the Committees may, in the interest of efficiency, conduct their work jointly;
- The Joint Committee on European Scrutiny will be delegated with responsibility for the day-to-day operation of the 'Yellow and Orange Card' procedure in considering whether draft legislative acts comply with the principle of subsidiarity and for reporting to the Irish Parliament on cases of non-compliance;
- The Joint Committee on European Affairs will support the 'Red Card' procedure, on referral by the Irish Parliament, by considering notification of decisions under the general *passerelle* clause and reporting any opposition to such decisions to the Irish Parliament;
- The Joint Committee on Justice, Equality, Defence and Women's Rights will, on referral by the Irish Parliament, consider notifications of decisions under the specific *passerelle* clause relating to family law issues with cross-border implications, and will report to the Irish Parliament where it considers that such decisions should be opposed;
- The Joint Committee on European Scrutiny and European Affairs will each have responsibility for identifying acts of the EU institutions which may infringe the principle of subsidiarity and for reporting to the Irish Parliament for the purposes of requesting the Minister for Foreign Affairs to bring proceedings before the European Court of Justice;
- The motion also provides that the Irish Parliament will consider the necessary motions under the 2009 Act, which are to be tabled by the relevant Committees on foot of their reports, and which are to be given priority on the Order Paper (subject to the sole discretion of the Prime Minister under Standing Order 26(2) to decide the order in which business shall be taken).

The motion also provides for the role of the Speaker in transmitting the decisions of the Irish Parliament to the relevant EU institutions.

The report by the JCEA and the JCES also underlined the principle that the new powers given to national parliaments by the Lisbon Treaty are given to the plenary bodies and not to Committees. This principle is reflected in the motion. It is also reflected in the system established by the Clerks of both Houses of the Irish Parliament for the receipt and circulation of documents received from the European Commission and the Council of the EU. An administrative arrangement has been in place since 9 March 2010 whereby the Clerks will lay a report in each House of the Irish Parliament on a weekly basis containing a list of all documents received by the Irish Parliament from the EU. This means that every Member of Parliament and Senator will be able to view these document and not just the members of the JCEA and FCES.

It is estimated that between 40% and 50% of legislative measures throughout the Member States is now of EU origin. Thus European-devised law and regulation is hugely important for every Member State and its parliament. The methods of transposing the significant body of EU law into national law varies according to the type of Member State and its own constitutional requirements. I hope this outline of the Irish position viz-a-viz the EU is of interest and benefit to honourable delegates.

The Deputy Speaker of the Parliament of Uganda the RT. HON. REBECCA ALITWALA KADAGA implored all the Member Parliaments of the PAP to urge their governments to sign and ratify the Charter. She noted that there would not be sustainable peace in Africa if some countries were not on the same page in terms of the democratisation process. Peace and security would only be sustainable if all African States shared the same ideals of democracy, peace and security.

The Deputy Speaker wondered why it was taking long to ratify the Charter given the fact that most African Heads of State and Governments have already ratified international instruments on Human Rights, governance and democracy. In her contribution she announced Uganda's intention of creating a data base of all the International instruments, treaties and conventions signed by Uganda. The intention is to set up an ad hoc committee of the Committee of Foreign Affairs to ensure adequate follow up to ratification and ultimately domestication of international instruments signed by the Government of Uganda. The same will happen for all the African Union Decisions signed by the Republic of Uganda. She urged all PAP member parliaments to establish a similar committee so that there is coordinated action on the ratification not only of the Charter but other AU decisions.

Hon. Joram Gumbo- 4th Vice President of the PAP. - Hon Gumbo pointed out that although good constitutions enshrining fundamental rights and freedoms are found in almost every African country, these have not achieved good governance. This is despite the fact that there has been an unmistakable desire by the Heads of States in Africa for good governance. Almost all African countries are signatories to international and regional declarations and resolutions on democracy, development and good governance. He was therefore surprised to see that whilst Africa is quick to ratify international treaties, it has taken a long time to

have the minimum number of ratifications required to bring an African Charter signed by African Heads of State into force.

Hon Gumbo felt that the parliaments both at national and continental levels had been the weakest link in all this. The reason for the delay in ratification was due to the fact that Parliaments are not aware of their oversight and scrutiny role. It is important for all Parliaments to request for reports from their governments on AU decisions either through the Foreign Affairs committees or through reports presented to Parliamentary plenaries. He lamented the fact that although Parliaments should be directly answerable to the electorate, they have tended to be answerable to the EXECUTIVE.

The PAN AFRICAN Parliament should return from its sabbatical leave and play a vanguard role of ensuring that democracy, good governance and ratification of AU treaties, conventions is achieved. Calling upon member governments to ratify Treaties and conventions signed by our respective Heads of States is not being disloyal or subversive. This is the reason for the establishment of the PAP. Heads of State expect the PAP to play its oversight and scrutiny role.

The Vice President recommended that the report should be presented to the PAP at each session on the state of ratification of the AU decisions. This will ensure that at national level, member Parliaments oversee the ratification of Decisions signed by Heads of State and Governments.

The African Charter on democracy provides Africa with an opportunity to develop a new democratic ethos throughout the continent. All African Parliaments committed to democratization of the continent have a responsibility to ensure the ratification of the African Charter on Democracy, Elections and Governance.

6.0 Recommendations for the Ratification of the African Charter

Different regions represented by the chairpersons of the regional caucuses, Hon. Sawadogo-West Africa, Chitika Molobeka- Southern Africa, Hon. Soulemain- East Africa and Hon. Khemakhem made recommendations to move the process of ratification forward as follows:

- Each regional caucus to be sensitized on the need for ratification,
- Each Member of the PAP who attended the Kampala meeting to immediately become a champion for his/ her Parliament
- Each PAP member Parliament to produce a state of ratification report to be submitted to PAP
- The PAP to work closely with the African Union Commission to ensure that the minimum is obtained but also to ensure that the rest of the member states ratify.

7.0 Transformation of the PAP into a Legislative Body

Hon. Tidjani Serpos the Chairperson of the Committee on Rules presented a report on the progress made to date on the transformation of the PAP. Hon Serpos reported that the transformation of the PAP is in response to the requirements of the Protocol establishing the PAP which requires the revision of the Protocol, the transformation of the AU governance architecture and in line with AU Decision passed in 2009 to transform the PAP into a legislative body.

He reported that several meetings had been held between the PAP and AUC together with the consulting team working on the matter. He also reported the initial report on the transformation of the PAP had been debated by the PAP plenary at the last session in April 2010. The PAP is preparing its input through the Committee on Rules. Hon Serpos reported that as the African Union Commission is being transformed into an authority, the mandate of the PAP needs to be reviewed to align it with the transformation of the Commission into an authority.

Hon Serpos pointed out that the fundamental issues that need to be considered in the process of the review of the Protocol include:

- The mode of appointing Members of Parliament; currently PAP MPs are selected by member parliaments and not through indirect universal suffrage. This will ensure that all PAP MPs are elected and not appointed.
- The mandate of the PAP. The duration of the PAP would be five years. Members of the PAP shall be elected for 5 years and shall be replaced by alternate members in national Parliaments. This is to ensure that the mandate for all PAP MPs begins and ends at the same time.
- The PAP will be expected to fund the operations of the Parliament to ensure that the institution operates effectively.
- The term of office for the Bureau shall be for 5 years renewable once.
- The MPs of the PAP shall have the same ranking as that of Commissioners of the AU
- Legislative powers of the PAP and legislative procedures will cover agreed spheres of jurisdiction. The legislative domains shall cover 17 areas which include voting the AU Budget. The legislative initiative shall be the exclusive preserve of the Assembly which shall exercise it through the Executive Council and the AU Commission- the Pan African Legislative Act.
- Legislative Procedures for voting the Budget shall be spelt out by the Protocol.
- consultative and oversight powers
- powers of the accounting officer of the PAP

The other issues which are being addressed in the review of the Protocol include among other things, PAP's representation role and PAP's relations with other AU organs.

8.0 Kampala Communiqué on the African Charter on Democracy, Elections and Governance

After intense dialogue and debate the meeting issued a communiqué as follows:

Cognizant of the Decision EX.CL/Dec. 31(iii) adopted in Maputo, Mozambique, in July 2003 and Decision EX.CL/124 (V) adopted in Addis Ababa, Ethiopia, in May 2004 respectively, which recommended that African Union Member States develop and adopt the African Charter on Democracy, Elections and Governance;

Recognizing the adoption of the African Charter on Democracy, Elections and Governance by the Eighth Ordinary Session of the African Union Assembly of Heads of State and Governments held in Addis Ababa- Ethiopia on 30th July 2007;

Cognizant of the forthcoming 16th African Union summit to be held in January 2011 on the role of the African Charter on Democracy, Elections and Governance on shared values;

Now therefore, we the Members of the Pan African Parliament, meeting in Kampala-Uganda on the 16th and 17th July 2010 hereby resolve as follows on the matter of the African Charter on Democracy, Elections and Governance;

- 1.1 That all Members of the Pan African Parliament implore their governments to sign, ratify and domesticate the African Charter on Democracy, Elections and Governance;
- 1.2 That all Members of the Pan African Parliament urge their Ministers of Justice and Constitutional Affairs and Ministers of Foreign Affairs to bring to the attention of their Cabinets the need to expedite the ratification process;
- 1.3 That the Pan African Parliament in collaboration with the African Union, Regional Parliamentary Bodies, national Parliaments and civil society organizations popularizes the Charter within the Member States of the African Union so that African citizens own the process;
- 1.4 That the Pan African Parliament brings to the attention of its caucuses, committees and the plenary the issue of the ratification of the African Charter on Democracy, Elections and Governance with a view to adopting a resolution on the speedy signing and ratification of the Charter on Democracy, Elections and governance by member states.
- 1.5 That the Pan African Parliament identifies champions in the 5 regions of the continent to ensure speedy signing and ratification of the African Charter on Democracy, Elections and Governance;
- 1.6 That the Pan African Parliament should replicate the initiative in the Central, Northern, Southern and Western African regions; and
- 1.7 That the PAP should implore the countries which have already adhered to the African Peer Review Mechanism (APRM) to ensure that they ratify the Charter on Democracy, Elections and Governance.

2.0 TRANSFORMATION OF THE PAP

On the issue of the Review of the Protocol to the Treaty Establishing the African Economic Community Relating to the Pan African Parliament;

Guided by Article (2) 3 of the Protocol establishing the PAP which indicates that the ultimate aim of the PAP shall be to evolve into an institution with legislative powers whose members are elected by universal adult suffrage;

Reaffirming our collective will as the Pan African Parliament to comply fully with the decisions of the African Union Assembly of the Heads of State and Government;

Cognizant of the need to have legislative powers to strengthen the effectiveness of the Pan African Parliament as an oversight body and as a body charged with the harmonization of the legislation of Member States;

Committed to implementing the AU Decision to review the Protocol to the Treaty establishing the African Economic Community relating to the Pan African Parliament, now recommends as follows:

- 2.1 That Members of the Pan African Parliament sensitize their respective National Parliaments on the African Union decision on the transformation of the PAP and the need for legislative powers with a view to strengthening its effectiveness as an oversight body and as a body charged with the harmonization of the legislation on the continent; and
- 2.2 That Members of the Pan African Parliament sensitize their Parliaments on the review process of the Protocol with a view to developing synergies between regional, national and the Pan African Parliament.

9.0 Conclusion

In closing the meeting the President the PAP- Dr. Idriss Moussa Ndele thanked the Government and Parliament of Uganda for their hospitality and arrangements. He committed to ensure that the Government of Chad ratifies the Charter.

The President congratulated Members of the PAP whose countries that had ratified the Charter and urged them to share the methods used with other Members of the PAP.

The participants welcomed the Communique for its forward-looking and action –oriented focus that introduces a range of initiatives. They recommended the establishment of a Follow-Up Mechanism to ensure regular monitoring of the implementation process in response to the ratification of the Charter.

SUBMISSION

This Report is hereby respectfully submitted with attachments for your kind study and further action.

Lyn. Chiwandamira

Dated: 26 July, 2010

Administrative Report on the Kampala Consultative Meeting on the Transformation of the PAP and Ratification of the African Charter on Democracy, Elections and Governance

1 Funding: In addition to the PAP, The consultative meeting was funded by GTZ, AWEPA, OSISA, and AND NEPAD. NEPAD came on board due to the limited financial support offered by the other partners and due to the request from the Second Vice President to include all East African Member Parliaments of the PAP. The different development partners funded different aspects of the meeting. The budget allocations are indicated in Appendix 2.

2. Cooperation with the Uganda Parliament

The Office of the Speaker of the Parliament of Uganda communicated through the PAP office (Vice President Mugenyi) that the Parliament would provide support with immigration formatives and protocol services, ground transport for the Bureau Members and Participants. However, due to the fact that the meeting had not been included in the Budget of the Parliament of Uganda, the PAP was requested to pay an allowance for 25 Members of staff who helped with administrative tasks, health care, security, protocol, and rapportouring. In addition the PAP was requested to fuel the cars which were used to transport delegates. The lesson learnt is that for the forth coming meetings it is important for the PAP to be as self sufficient as possible. Overall, the PAP received a lot of support in terms of arrangements especially with the media coverage.

3 Protocol Services

Although the Parliament of Uganda provided support with arrivals and departures, it was very difficult for them to undertake other protocol related activities e.g. lost luggage and delivery at the hotels and also clearance of cargo items. It is therefore strongly recommended that a PAP protocol officer accompany Mr. Ahmed at these big meetings to assist with these logistical issues.

4 Branding material and Documentary

The one big weakness of the meeting was the lack of branding material for the event. OSISA had produced the material but sent the materials by Cargo. The items only arrived towards the end of the meeting and even then critical materials did not arrive e.g. the conference banners. This affected the quality of the overall presentation. Several items are still with OSISA in South Africa. The lesson learnt is that all materials for any PAP event should be produced and delivered to the PAP. The PAP should be responsible for transportation to avoid these problems.

Pamuzinda productions were contracted through the assistance of OSISA to produce a documentary for the Ratification of the Charter. There was some confusion with what they were supposed to do at what time. For example, during the dialogue from the floor, Pamuzinda was requested to undertake interviews thereby missing a critical component of the proceedings. The lesson learnt is that for the other meetings, the PAP must come up with an explicit programme which shows the assignments for Pamuzinda at any given point in time. Pamuzinda had to be called in for the Closing ceremony. Furthermore, there was

evidence of multiple reporting as different persons gave orders to Pamuzinda in terms of candidates for interviews.

5. Speakers and Assistants

Some Speakers came with assistants and requested the PAP to pay for their accommodation and meals. There is need for a clear policy on this matter and the lesson learnt is that for future conferences, the invitation letters must be explicit on this matter.

6. Overall Result

Despite these problems the meeting was a huge success. It achieved its objectives namely:

Outcome attained

- High visibility for the PAP was achieved.
- Awareness was raised in the East African region on the transformation agenda of the PAP and support was received from EALA and the Parliament of Uganda;
- A call to action and a call to ratify the Charter and support the transformation process of the PAP was accepted by all participants as evidenced by the adoption of the Communiqué

Impact attained

- Support for the transformation of the PAP into a legislative body was obtained by the Parliaments represented at the meeting,
- The African Charter on Democracy, Elections and Governance was popularized
- Pan African members of Parliament advocacy at regional and national levels was sustained
- The regional Communiqué for ratification of the Charter by 11 countries was adopted and all MPs presented agreed to be national champions for the Charter in their respective countries;
- There was broader participation by the MPs in the East African region,
- The convening power and functional abilities by PAP to effect a seismic shift in governance and democratic principles in Africa was demonstrated;
- The impetus towards the transformation of PAP into a legislative body was increased.
- The PAP's abilities to take initiative and effect change for African's political transformation was proven and firmly established

End.