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EXECUTIVE COUNCIL

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**PROGRESS REPORT CONCERNING THE INCIDENTS OF 27 MAY AND
01 JUNE 2021 AT THE PAN-AFRICAN PARLIAMENT**

27 TO 30 SEPTEMBER 2021, MIDRAND, SOUTH AFRICA

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I. BACKGROUND

1. Following the incidents of 27 May and 30 June 2021, the Chairperson of the AU Commission having expressed concern over the unfortunate altercations and disruptions over the course of the two days in a letter dated 01 June, 2021 recommended suspension activities of the Organ to facilitate a conducive environment to conduct free and fair elections.

2. Accordingly, the Clerk of the PAP Secretariat issued a press statement on suspension of the proceedings and advised the public that details about the way forward and a schedule to reconvene the Session will be communicated in due course.

3. The Chairperson of the African Union Commission ('the Commission') dispatched a Delegation of senior officers from the Commission and the PRC from 27 to 30 September 2021 to undertake fact-finding mission to the Secretariat of the Pan-African Parliament ('PAP') to Midrand, South Africa, following the events that recently occurred in the PAP to elect the President of the Parliament. In this regard, the report should be seen as work-in-progress since further missions might be conducted to the PAP to finalize this assignment.

4. The Delegation is comprised of the following:

- a. Mr. Ratebaye Tordeta, Deputy Chief of Staff, Cabinet of the Chairperson;
- b. Prof. Pierre Moukoko Mbonjo, Head of Reform Unit;
- c. Mr. Alexis Lumande, Representative of the Chairperson of the Permanent Representative Committee;
- d. Ms. Ouriatou Danfakha, Senior Policy Officer Cabinet of the Chairperson;
and
- e. Mr. Lagizaber Beyene Bekele, Legal Officer, Office of the Legal Counsel

II. TERMS OF REFERENCE

5. The mandate of the Delegation was to:

- a) establish account of events leading to and during the incident from 27 May to 01 June, 2021;

- b) advise the Chairperson of the Commission in the form of findings, conclusion and recommendations to address the issues that transpired the incident; and
- c) identify steps necessary to conduct free, fair, peaceful and transparent election of the PAP Bureau and Bureaux in line with the relevant decisions of the AU policy organs.

III. METHODOLOGY

6. The team engaged with the Clerk and other members of the PAP Secretariat, and met with the Minister of International Relations and Cooperation of South Africa concerning the incidents of last May/June 2021; and

7. It also reviewed written submissions forwarded by the interviewees.

IV. FINDINGS

Meeting with the Clerks and other staff of the Secretariat (28-29) September 2021

8. The Secretariat submitted a written report on the circumstances leading to the suspension of the Fourth (4) Session of the Fifth (5th) Parliament of the PAP which was the basis of discussion with the Delegation.

9. From the two days meeting with the Secretariat and from the foregoing report, the delegation has the following findings on the background of the incident and account of events:

- a) On 24 May 2021, the first controversy happened over the swearing in of two potential candidates from Mali and South Sudan where some Parliamentarian contested eligibility of such members on the ground that they did not have elected legislative assembly and that their parliaments were not democratically elected.
- b) On 26 May 2021, another controversy arose on modality of the application of the principle of geographical rotation in the election of the President of PAP. The Committee on Rules, Privileges and Discipline presented the report to the Session on the basis of legal advice proffered by the Secretariat where it concluded that it agrees on the application of the principle to the election of the President, but with effect from 2017.
- c) The Secretariat noted that the application of the principle prior to 2017 is unsustainable. The evidence of the principle of rotation within the PAP could be only traced unequivocally starting from 2017 where the Executive

Council called up on the PAP to apply the principle and subsequently resolution of the PAP Plenary on the matter.

- d) Nonetheless, the report was never considered by the Parliament due to procedural technicality that the report has not been endorsed by the Committee itself.
- e) As regards the principle of rotation, the Southern Regional Caucus advocated for retroactive application of the Principle since the establishment of PAP, while the other extreme led by the Western Regional Caucus opposed the retroactive application of the principle.
- f) On 27 May 2021, the Session was postponed following detection of Covid-19 case on a staff of the Secretariat.
- g) On 30 June 2021, the Office of the Legal Counsel responded to the request by the Acting President of PAP for legal opinion on the application of the principle of rotation. The office advised the principle has always existed in the 2001 Protocol and it should be applied with effect from 2004, the first election of the President.
- h) On 31 June 2021, the session reconvened and the Acting President issued a ruling on the geographical rotation on the basis of the OLC legal guidance. However, majority of the members opposed to the ruling citing absence of both consensus and substantive discussion on the matter.
- i) Following the reading of the list of candidates by the Ad Hoc Election Committee, the Southern Regional Caucus tabled a motion to debate on the principle of rotation which was met with strong opposition from the Western Regional Caucus. The ruling of the Ad Hoc Committee on the motion that the matter was outside its terms of reference was subject of contestation by the Southern Regional Caucus.
- j) Afterwards, there were a number of incident including threat against fellow parliamentarian and members of the Secretariat, brawls between members of Southern and Western Regional Caucuses, unauthorized entrance of an armed bodyguards of PAP member to the Plenary and interference with proceeding by the bodyguards who snatched the ballot box, and constant violation of COVID-19 protocol.
- k) As a result, the session was adjourned for the next day for 01 June 2021.

- l) On 01 June 2021, the Session was largely a repeat of the scene from the day before and as a result the Clerk announced to the Plenary an indefinite suspension of the session.

10. The report further provided what it referred as drivers of incident, proposed way forward and conclusion. Some of these elements that are deemed relevant have been captured in the findings and recommendations of the Delegation.

11. On the second day of the meeting, the Clerk made a disclaimer that in preparing the report not all the staff were consulted and the report can only be taken as his own appreciation of the incidents. On that note, he invited staff to take the floor and share their appreciation of the events of 31 May and 01 June 2021, if they felt that the report did not capture their observations.

12. On that basis, the Sergeant at Arm of the Secretariat expressed concern against the report citing absence of consultation in the preparation of the report and he only heard of the report the day before when it was presented by the Clerk. Accordingly, he provided the following statements where he considers the report to be factually incorrect and other times misleading:

- a) Regarding the controversy on the South Sudan representatives, the contention was that their parliament has been dissolved and at that point there was no active parliament to allow nomination and swearing in of representatives from South Sudan. Hence, the context was different from the case of representatives from Mali where the argument was that their parliaments were not democratically elected.
- b) On the two days in question, he was in charge of the security arrangement of the session and he asserted that at no point in time the so called bodyguards entered the Plenary with arms as alleged by the report.
- c) The assertion that the principle of rotation could only be traced unequivocally from 2017 is wrong. The principle can be traced in PAP's records as early as 11 March, 2007 where the PAP adopted a resolution to apply the principle of rotation.
- d) In terms of dynamics of the dispute, it was only the Southern Regional Caucus that formally submitted written position. Some members from the Western Regional Caucus raised issues ostensibly supporting the candidate from the Region. But, that cannot be said that it constitutes the position of Western Region Caucus as a whole and it is misleading to generalize to the extent that the dispute was between regions.

- e) The Legal Department in the Secretariat has one Legal Officer that constitutes the Department and who profess a legal advice. In an Organization like the AU, when an Officer advise without going through the records and based on his limited appreciation of the issue, that is dangerous and would mislead the audience. It would have been advisable to resort to the Office of the Legal Counsel who has more Officers and can provide a well-informed opinion.
- f) When we talk about drivers of the crisis, it was quite a simplistic approach to focus on the immediate of the incident. It was not what happened during the incident that was drivers, it has been a major leadership crisis in the PAP since 2015 that should be considered as a driver of the incident.
- g) The electoral proceedings before 2015 had been adhered to the principle of rotation. The established practice of leadership rotation within the five (5) regions was however hijacked in 2015 when the candidate from Central Region was elected and re-elected again 2018 in spite of the fact that the region had hold the post previously. In 2009, the OLC facilitated the PAP President election where the late Hon, Idriss Ndele Moussa from Chad, Central Region was elected President for period from 2009 – 2012. From 2004 to 2009, the Presidency was occupied by Eastern Region while from 2012 – 2015, a candidate from Western Region was elected President.

13. The Legal Officer of the Parliament on his part indicated that while he acknowledges that there was a discussion in 2007 by the PAP Plenary on the application of the rotation principle, in 2011 the plenary decided not to integrate it into the rules of procedure. The rules of procedure are sovereign to any decision prior to their adoption. This is why the issue of rotation does not appear anywhere before 2011 and the principle of rotation can only be traced back from 2017.

Meeting with the Minister of Foreign Affair of the Ministry of International Relations and Cooperation of South Africa

14. The delegation met with the Minister on 30 September, 2021, who conveyed the following statement as it pertains to the 31 May and 01 June 2021 incidents at the PAP:

- a. The Minister expressed her appreciation on the decision of the Chairperson of the Commission to task a senior team of delegation to look into the matter of PAP. She also affirmed the commitment of the Republic of South Africa to AU and its organs and institutions hosted in the country. Further, she indicated the intention of the Government to host all AU

institutions in the country in one facility. In this regard, she informed the delegation that plans are well under way to construct the premise.

- b. South Africa resolves to the terms of the Host Agreement including the provision of security and privileges to the officials working for AU's institutions hosted in the country.
- c. The Minister informed the delegation that she is in receipt of report of auditors that raised a number of seeming violation of the funding provided by AU and the host government. Accordingly, she requested the Chairperson of the Commission to submit the audit report to the PRC and onward submission to the Executive Council to decide on the type of action to be taken against such violation. She reiterated that the report be taken seriously and considered by the Policy Organs.
- d. She further expressed her concern and displeasure regarding some communications of the Clerk. She referred to a letter dated 01 September 2021 to all AU member states implying that South Africa has failed the Organ as a host state. In this regard, the Minister conveyed her regret for not being consulted before dispatching a letter on such an important subject.
- e. She also pointed out that Parliaments are governed by their own internal rules which are different from that of government. Hence, governments should not be seen interfering in the business of a legislative assembly like that of the PAP.

15. The Minister proposed the following possible way forward to address the issues raised during the incidents:

- a. Necessary disciplinary measures should be taken against members of the Parliament who are responsible for physical or verbal violence against fellow parliamentarian and staff of the Secretariat.
- b. The Office of the Legal Counsel should step in to provide interpretation on contested legal issues.
- c. Orientation should be administered to new Parliamentarian on professional conduct attached to the roles as members of Parliament;
- d. Both the Chairperson of the Union and Chairperson of the Commission should consider attending the next session of the Plenary. The Chairperson of the Union should also consider engaging Heads of state of

some members of the Parliament who took a leading position during the incidents and who were at forefront of the contestation.

V. LEGAL BRIEF BY THE OFFICE OF THE LEGAL COUNSEL OF THE AFRICAN UNION COMMISSION ON THE APPLICATION OF THE PRINCIPLE OF GEOGRAPHICAL ROTATION

16. The Legal Officer of the AU Commission briefed the delegation as follows:
- a. The principle of geographical rotation obligates the Union to ensure election process of political offices in AU Organs be carried out in such a way to systematically allow each region of the Union to assume the role on rotational basis as an established customary international law within the Union.
 - b. In this regard, it is noted that the 2001 Protocol of PAP does provide for the principle of rotation albeit the observed ambiguity in its formulation and application by the PAP. The requirement of rotation stipulated in Article 12(4) should be applied for the PAP Bureau as a whole and not for the vice presidents only.
 - c. Article 12(2) of the Protocol obligates election of the Bureau of PAP to ensure equal representation of the five (5) regions of Africa while Article 12(4) requires to rank vice-presidents initially with the result of vote and later by rotation.
 - d. The reference to both 'regions of Africa' and requirement of 'rotation' by the Protocol in Article 12(2) and Article 12(4), respectively, implies the need to ensure the application of principle of rotation on the Bureau members considering the five regions of the AU. Rotating the vice presidents while disregarding the principle in electing the President is considered an erroneous interpretation of the Protocol and it deviates from the established practice of the Union as enshrined in different Policy Organs decisions as clearly cited below.
 - e. Members of the Bureau are designated as Officers of the Pan-African Parliament charged with collective management and administration of the Organ as such the Presidency cannot be seen as separate from that of the Vice-Presidency (Article 12(5) of the PAP Protocol).
 - f. If the President is elected from one region of Africa, each vice-president is ought to be elected from the remaining four (4) regions. Hence, the rotation principle under Article 12(4) cannot be limited to vice-presidents

and exclude the President, otherwise this application will be contrary to the Union principle of geographical rotation. Thus, the election process of members of Bureau ought to apply principle of geographical rotation and taking into account regions of previous office holders of the Presidents and Vice Presidents.

- g. Considering the established practice in other Organs of the Union including the Assembly and the Executive Council of the Union , the argument that the phrase '**and subsequently by rotation**' under Article 12(4) of the Protocol can only apply to vice-presidents is not justifiable neither in line with the overarching principles of geographical rotation and subsequent Executive Council decisions EX.CL/Dec.979(XXXI) adopted in June 2017, where the Council called upon the PAP '*to apply the African Union values, rules and regulations in managing all activities of the organ, including rotation of the Bureau and Presidency...*' and EX.CL/Dec1018(XXXIII) adopted in June 2018 where it requested '*the PAP to comply with the principle of geographical rotation among the five regions of Africa in future elections of the Bureau*'.
- h. In similar vein, in 2007, the PAP plenary resolved to apply principle of rotation to membership of the Bureau and all its Bureaux starting from 2009.
- i. From the above, it is noted that the two decisions of the Executive Council simply reiterated the practice of the Union since its establishment and the same principle has been reflected in the PAP Protocol and practice of the PAP Plenary. Hence, the Executive Council decisions are considered declaratory to customary international law rather than presenting a new element that was not in the practice of the Union and that of the PAP.
- j. Thus, the election process shall be conducted in accordance with above cited rules and decisions of the Policy Organs to allow each region to assume both the presidency and role of vice-presidencies on rotational basis. Rule 16(8) of the PAP Rules of Procedure which stipulates that "at all times...there shall not be more than one member of the Bureau from the same region" further reinforce this interpretation.
- k. Any Election of the PAP Bureau that doesn't respect the mentioned customary international law and decisions on geographical rotations shall be deemed inconsistent with the Principle and is in violation of the 2001 PAP Protocol. Such, the election should be limited to regions who never occupied the presidency of PAP and shall be eligible to present candidates for the post.

17. Accordingly, the following has been underlined:
- a) Both the 2001 Protocol of PAP and the decisions of the Executive Council clarified the principle of rotation in line with the prevailing practice of the Union. The currently operational Protocol of PAP adopted in 2001 has incorporated the principle of rotation yet wrongfully applied over the years by PAP.
 - b) The principle of geographical rotation has been strictly adhered to since its adoption by AU Policy Organs. This practice has been consistent and largely uninterrupted with mandatory effect within the entire Union.
 - c) Thus, PAP is duty bound to apply and strictly adhere to the Executive Council Decisions EX.CL/Dec.979(XXXV) adopted in June 2017 where the Council called upon the PAP *'to apply the African Union values, rules and regulations in managing all activities of the Organ, including rotation of the Bureau and Presidency...'* and EX.CL/Dec1018(XXXIII) adopted in June 2018 where it requested *'the PAP to comply with the principle of geographical rotation among the five regions of Africa in future elections of the Bureau'*.
 - d) Hence, there might be a need to reopen the call for candidates for the President and Vice President positions of PAP as consequence to this opinion, similar to the decision adopted by the Heads of State and Government Orientation Committee of AUDA-NEPAD in relation to the recruitment of the CEO position, to allow regions that are eligible to occupy the position of PAP President to present their candidates

VI. CONCLUSION

18. In conclusion, the fact-finding Mission notes as follows:
- a. There was lack of consensus among members of the Secretariat with respect to the account of the incidents in the course of the two days of disruptions on 31 May and 01 June, 2021.
 - b. The delegation observed a consistent call for the entry into force of the Malabo Protocol and to transform PAP into a legislative Assembly of the Union.
 - c. There were concerns over the running of PAP's affairs by the Clerk given the fact that he is not an elected official of the Organ. It should be recalled

that the Bureau of PAP had been dissolved prior to the election that is yet to take place, in addition to the suspension of all parliamentary activities by the Chairperson of the AU Commission.

- d. The legal advice of the Secretariat to the Rules Committee regarding the application of the principle of rotation, fail to include the previous resolution of the PAP in 2007 that agreed to apply the principle of rotation in the election of the Bureau and its Bureaux. The fact that PAP chose not to incorporate the principle in the 2011 Rules of Procedure, does not absolve the fact that the principle has been discussed by the PAP and it can be traced in records of the latter.

VII. RECOMMENDATIONS

19. The Executive Council may wish to request the Chairperson of the Commission to appoint a high level mechanism comprising of Ministers from five regions of the Union and relevant departments of the Commission (CCP, CDCP, OLC) to undertake the following tasks:

- a. Carry out oversight over the immediate implementation of the decisions and rules of the Policy Organs to allow a transparent, peaceful and fair election of PAP's Bureau and Bureaux;
- b. Review and facilitate implementation of the recommendation of the Audit Report that alleges mismanagement of PAP funds;
- c. Propose disciplinary measures to be taken against members of Parliament who were responsible for violence (physical and verbal) against fellow parliamentarians and staff of the Secretariat.

2021-09-27

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