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MODALITIES ON THE IMPLEMENTATION OF THE CRITERIA OF
EQUITABLE GEOGRAPHICAL AND GENDER REPRESENTATION IN
AU ORGANS AND INSTITUTIONS

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I. INTRODUCTION

1. The legal instruments of the African Union and the practice of the Organization requires that the composition of African Union Organs and institutions must reflect and respect the principles of equitable geographical and gender representation. In all communications to the State Parties and Members States on elections, the Commission draws the attention of Member States of the need to ensure equitable geographical and gender representation. In addition, just before the elections, the Commission informs the Executive Council of the current geographical and gender composition of the organ in question.
2. However, despite the communication and information provided by the Commission, adherence to the principles of equitable geographical and gender representation has always been a challenge where the policy organs of the Union have not adopted the number of members per region and the gender configuration.
3. Regarding the requirement for geographical representation, it should be recalled that the Assembly adopted Decision Assembly/AU.356 (XVI) during its Sixteenth Ordinary Session held in Addis Ababa, Ethiopia in January 2011, in which the Commission was requested to “*ensure the respect of the principle of geographical representation in all African Union organs with elected members, except in cases where a region which has been duly informed has not presented candidates*”.
4. Furthermore, during the election of three (3) judges of the Court in July 2012, the Executive Council requested the Commission to prepare modalities on the implementation of the criteria of equitable regional representation and gender representation as well as representation of the principal legal traditions of Africa for future elections of the Judges of the Court and submit to the policy organs for consideration during the ordinary session in January 2013. [Decision Ex.CL/Dec.719 (XXI)]. The Modalities were prepared by the Commission [Annex of EX.CL/779 (XXII)]. However, the Modalities were not and have not been considered by the policy organs.¹
5. Lastly, during the June 2015 Summit held in Johannesburg, South Africa, the Assembly adopted decisions Assembly/AU/Dec.575 (XXV) and Dec.576 (XXV) wherein it requested the Commission to prepare modalities to ensure the scrupulous respect of the principles of equitable regional and gender representation in all AU organs and institutions.
6. These Modalities have been prepared by the Commission in conformity with the above named decisions of the policy organs.

¹ Several reasons might account for the non-consideration of the Modalities. One reason might be because the Modalities were not a separate Agenda item but were annexed to the Report. However, another reason is that sometimes, the issue of regional representation is raised only when the some candidates have not been elected. The Commission notes that as a matter of principle, regional balance must be respected.

II. REGIONAL REPRESENTATION

7. It should be recalled that the Council of Ministers during its Twenty-Sixth Ordinary Session in Addis Ababa, Ethiopia, from 23 February to 1 March 1976, adopted Resolution CM/Res.464 (XXVI) which was subsequently endorsed by the Assembly of Heads of State and Government. In this resolution, it was decided that there shall be five (5) regions of the OAU, namely, Northern, Western, Central, Eastern and Southern.

8. The Commission would like to point out that the total composition of AU organs and institutions varies. Generally, the total composition ranges from ten (10)² to fifteen (15)³ but the majority of organs has a total of eleven (11) Members.⁴

9. However, the Commission has noted that only the Statutes of the Commission and the Modalities on Election of Members of the Peace and Security Council prescribe the number of members of the Commission and members of the Peace and Security Council, respectively, per region.

i) African Union Commission

10. The total membership of the Commission is ten (10). This number includes the Chairperson, the Deputy Chairperson and eight (8) Commissioners. The Statutes of the Commission as well as the Rules of Procedure of the Assembly provide that each is entitled to two (2) members.⁵ In this regard, Members of the Commission are elected on the basis of equal geographical distribution.⁶

ii) Peace and Security Council of the African Union

11. The total membership of the Peace and Security Council (PSC) is fifteen (15). Article 5 (2) of the Protocol relating to the Establishment of the Peace and Security Council provides that the principle of equitable regional representation, amongst others, shall be applied during the election of Members of the PSC. Regarding the implementation of the equitable geographical representation of the PSC, the Modalities for the Election of the Members of the Peace and Security Council that were adopted in 2004 provides as follows:

- | | |
|------------|---|
| a) Central | 3 |
| b) East | 3 |
| c) North | 2 |
| d) South | 3 |
| e) West | 4 |

12. It should be noted that for PRC Sub Committees, the Commission would like to further recall that where such Sub-Committees are not composed of all Member

² The AU Commission

³ The Peace and Security Council

⁴ African Commission on Human and Peoples' Rights, African Committee of Experts on the Rights and Welfare of the Child, African Court on Human and Peoples' Rights, Advisory Board on the Prevention and Combating of Corruption

⁵ Article 6 (2) of the Statutes of the Commission and Rule 39 of the Rules of Procedure of the Assembly.

⁶ See Rule 39 (1) of the Rules of Procedure of the Assembly.

States, the geographical distribution agreed to is as follows: Central: 3, East: 3, North: 2, South: 3 and West: 4.⁷

III. GENDER REPRESENTATION

13. The promotion of gender equality is one of the principles for the functioning of the of the African Union under Article 4 (l) of the Constitutive Act. At the moment, in terms of gender representation in organs, the Commission would like to note that in some organs, females are well represented⁸ while in other organs they are not. Females are well represented in the African Committee of Experts on the Rights and Welfare of the Child and the African Commission on Human and Peoples' Rights. The African Court on Human and Peoples' Rights and the African Union Commission on International Law (AUCIL) are the organs where females are the least represented.

14. On the election of Judges of the African Court on Human and Peoples' Rights and members of AUCIL, the Commission also observes that in the past elections, there have been very few female candidates submitted by State Parties/Member States for election. Even where female candidates were submitted, the candidates were not elected. As already noted, this is despite the fact that in every election, the Commission reminds State Parties of the need to ensure adequate gender representation and accordingly to submit and elect female candidatures.

15. However, the Commission notes that it is only the Statutes of the Commission that prescribes a number on gender representation, namely, that at least⁹ one member of the Commission from each region must be a woman. Indeed, this has ensured that both women and men are equally represented in the membership of the Commission¹⁰.

16. A critical question that must be addressed in the Modalities is whether the requirement of equitable gender representation should be linked to each region (like the composition of the AU composition) or only for the total composition of the organ or institution.¹¹

IV. DEFINITION OF THE TERM "EQUITABLE"

17. It should be noted that the term "equitable" is not defined in the AU instruments establishing the organs and institutions. However, the term should be understood in its ordinary and literal meaning to denote fairness.

V. PROPOSALS

18. The Commission is mindful that apart from the principle of equitable geographical and gender representation, AU organs and institutions must be composed of competent men and women.

⁷ Composed of 15 Members

⁸ More than half.

⁹ Even though this term presupposes that all the two Commissioners from a region may be women, the practice of the organization has been that each region is entitled to one man and one woman.

¹⁰ For the first time, the Assembly elected a woman in July 2012 to be the Chairperson of the Commission

¹¹ See paragraph 26 below

19. In view of the above, the Commission would like to make the following proposals:

a) Regional Representation

20. Apart from the AU Commission and the Peace and Security Council, the remaining organs generally have a total membership of eleven (11). In this regard, the Commission would like to propose that in order to ensure equitable regional representation, the regional balance should be as follows:

i) Central	2
ii) East	2
iii) North	2
iv) South	2
v) West	3

21. The Commission makes this recommendation after taking note of the progressive approach adopted by the policy organs for the regional balance in the membership of the African Union Commission. The one (1) additional seat, instead of being left to be a floating seat, has been allocated to the Western Region based in order to ensure predictability during the elections.

22. The Commission had previously made a similar proposal relating to the regional balance in the African Court on Human and Peoples' Rights, which is composed of eleven (11) Judges. For example, in the Report on the Elections of the Judges of the African Court on Human and Peoples' Rights submitted to the Executive Council in July 2012 [Doc. EX.CL/741(XXI)], the Commission had proposed that "*in order to ensure representation of all the regions of Africa, the AU geographical representation formula should, as far as possible, be used unless the required number cannot be obtained from any of the regions, namely, East (2), Central (2), North (2), South (2) and West (3).*" In addition, this was the proposal in the Modalities for Election of Judges that was prepared in implementation of decision Ex.CL/Dec.719 (XXI) that was adopted by the Executive Council in January 2012.¹²

23. However, it should be recalled that in the Assembly Decision Assembly/AU.356 (XVI) on the respect of the principle of geographical representation in AU organs, the Assembly did posit one important qualification. The Commission was requested to "*ensure the respect of the principle of geographical representation in all African Union organs with elected members, **except in cases where a region which has been duly informed has not presented candidates***" (emphasis added). Furthermore, even the proposal made by the Commission in in the Report on the Elections of the Judges of the African Court on Human and Peoples' Rights submitted to the Executive Council in July 2012 [Doc. EX.CL/741(XXI)], the proposed regional balance was to be respected, .as far as possible, ***unless the required number cannot be obtained from any of the region*** (emphasis added).

¹² As already indicated, the Modalities which were annexed to Report EX.CL/779 (XXII) were not considered by the policy organs of the Union.

24. In this regard, the Commission would like to propose the following exception to the general recommendation above:

- i) Where the region has not presented the required number or more candidates during any election, then that region will forfeit the seat(s) that will not have been filled. This will be in accordance with decision Assembly/AU/Dec.356 (XVI) which requested the Commission to ensure the respect of the principle of geographical representation, except in cases where a region which has been duly informed has not presented candidates. In this case, the other regions will be given the opportunity to fill the vacancy during that election.¹³

This will ensure that all regions submit the requisite number of candidates or more in any election to avoid paralyzing the work of the organs.

- ii) Where a region presented the required number of candidates but the candidate (s) could not obtain the required number of majority to be elected, then that region should be allowed to present candidates during the next session of the Executive Council. If this is not the case, then the numbers per region could be rendered meaningless. However, the only drawback is that this will prolong the electoral process.
- iii) In order to ensure that the candidates being elected from all the regions meet the required eligibility criteria, the voting procedure during elections as stipulated in Rule 38 of the Rules of Procedure for the Executive Council should be scrupulously adhered to in all elections. This means that the majority in the rounds should be two-thirds and the Chairperson of the Executive Council will have the powers to suspend the election in accordance with the procedure under Rule 38. In this regard, the previous decision of the Executive Council whereby it decided to reduce the required majority after the third round to simple majority will no longer apply.

b) Gender Representation

25. The Commission recalls that the promotion of gender equality as one of the principles for the functioning of the African Union. The Commission further recalls that the Statutes of the Commission prescribes that at least one member of the Commission from each region must be a woman.

26. In view of the above, the Commission proposes that at least half of the Member in all organs and institutions should be women. However, for the requirement of adequate gender representation to be meaningful, the requirement must not only be met globally but should be linked to each region. In this regard, at least one (1) Member from each region must be a woman.

¹³ The imbalance will be rectified during the next election.

27. Unlike the practice for electing Members of the Commission (where at least one woman has been understood to mean one woman), the Executive Council should be allowed to elect more women into the organs and institutions of the Union. In these Modalities, “at least” should be understood in its ordinary meaning. It will therefore be possible for a region to be represented by only women or more women respectively.¹⁴

c) New Organs

28. For new organs and institutions, Member States and the Commission must ensure that both the number and the gender configuration of the new organ or institution is included in the constituting instrument.

d) Submission of Candidatures by Regions

29. To avoid paralyzing the work of the organs and institutions of the Union, all regions must always submit more than the required number of candidates during any election. If this is not complied with, the Executive Council will be too preoccupied with elections in all its sessions for the filling in of vacancies.

30. All the regions must therefore put mechanisms in place to ensure that more candidates are submitted.

e) Election Procedure

31. To avoid confusion, the Executive Council shall conduct the vote on a regional basis and not globally for the organ i.e. fill in the vacancies for the Central Region, then East, then North etc..

f) Effective Date

32. The Executive Council will need to decide on the effective date for implementation of the Modalities.

33. The Commission recommends that the Modalities should be effective upon their adoption by the Executive Council in order to start immediately addressing the imbalances in the composition of the AU organs and institutions.

VI. RECOMMENDATIONS

34. The Commission would like to make the following recommendations to the policy organs for consideration:

- a) In order to ensure scrupulous respect for the principle of equitable regional representation in AU organs and institutions, the following formula¹⁵ should be adopted: *East (2), Central (2), North (2), South (2) and West (3), except in cases where a region which has been duly informed has not presented candidates;***

¹⁴ For example, the Western Region may have 3 or 2 women Members.

¹⁵ On the understanding that all organs, except the Commission, has 11 Members

- b) In order to ensure scrupulous respect for the principle of adequate gender representation in AU organs and institutions, *at least one (1) Member in each region should be a woman;*
- c) All regions should submit more candidates than the existing vacancies;
- d) The Executive Council shall conduct the vote on a regional basis; and
- e) The Modalities should be effective immediately upon their adoption by the Executive Council;
- f) For new organs and institutions, the number and gender configuration should be included in the constituting instrument.

VII. CONCLUSION

35. The Commission would like to humbly submit the above proposals and recommendations to ensure the scrupulous respect of the principles of equitable regional and gender representation in all AU organs and institutions.

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