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UNIÃO AFRICANA

Addis Ababa, ETHIOPIA P. O. Box 3243 Telephone: +251115-517700 Fax : +251115-517844
Website : www.africa-union.org

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REPORT ON THE REVIEW OF THE PROTOCOL TO THE TREATY ESTABLISHING THE AFRICAN ECONOMIC COMMUNITY RELATING TO THE PAN AFRICAN PARLIAMENT

**REPORT ON THE REVIEW OF THE PROTOCOL RELATING
TO THE PAN AFRICAN PARLIAMENT**

I. INTRODUCTION

1. The Pan African Parliament was established, as an advisory and consultative body to the African Union, in terms of the Protocol to the Treaty Establishing the African Economic Community Relating to the Pan-African Parliament adopted at Sirte, Libya in 2001. The Protocol entered into force on 14 December 2003, 30 days after the deposit of the instruments of ratification by a simple majority of Member States”.

2. Article 25 of the Protocol calls for a review of the functions, operations and effectiveness of the Protocol, the system of representation, etc, after five years of its entry into force. The Article reads as follows:

“1. Five years after entry into force of this Protocol, a Conference of the States Parties to this Protocol shall be held to review the operation and effectiveness of this Protocol, and the system of representation in the Pan-African Parliament, with a view to ensuring that the objectives and purposes of this Protocol, as well as the vision underlying the Protocol, are being realized and that the Protocol meets with the evolving needs of the African Continent.

2. At intervals of ten years thereafter, further Review Conferences of States Parties to this Protocol may be convened at an interval of less than ten years, if so decided by the Pan African Parliament.”

3. Additionally, Article 2(3) of the Protocol provides that:

“3. the ultimate aim of the Pan African Parliament will be to evolve into an institution with full legislative powers, whose members are elected by universal adult suffrage. However, until such time as the Member States decide otherwise, by an amendment to this Protocol:

- (i) The Pan African Parliament shall have advisory and consultative powers only;
- (ii) The members of the Pan African Parliament shall be appointed as provided for in Article 4 of the Protocol”

II. THE REVIEW PROCESS

4. Pursuant to the provisions of the Protocol as set out above, a review of the Protocol would principally involve the three issues set out in Article 25 of the Protocol in addition to any others that may be deemed relevant. These issues are:

- the operation and effectiveness of the Protocol;

- the system of representation in the Pan- African Parliament, with a view to ensuring that the objectives and purposes of this Protocol,;
- the vision underlying the Protocol, are being realized and that the Protocol meets with the evolving needs of the African Continent.

5. A review of the operation and effectiveness of the Protocol would necessarily entail an assessment of what grey areas have been observed in the Protocol and how they should be addressed, what constraints and challenges have been encountered; Has the Protocol achieved its objective; Has the Pan African Parliament performed as expected and if not why?, etc.

6. On the system of representation in the Pan- African Parliament, it will be necessary to address the issue of the most important factor, country or population, which led to inclusion of this aspect in Article 25 of the Protocol. Presently all Member States are represented by five members, one of whom must be a woman. Further, in what way could the current system of equal representation of five members per country be modified?

7. On whether the vision underlying the Protocol are being realized and whether the Protocol meets with the evolving needs of the African Continent, again there is need for a comprehensive assessment. What have been the achievements and effectiveness of the PAP in discharging its mandate so far? After the assessment, it will be necessary to address the way forward. Are member States ready to empower PAP to have full legislative powers (or some additional powers and if so what) as envisaged in Article 2 (3) of the Protocol to the Treaty establishing the African Economic Community? Is PAP prepared in terms of its capacity or is it structured well enough to perform the role of legislative body? Would there be need for additional resources and are they available? What role could be assigned to the PAP in the ratification, harmonization and implementation of OAU/ AU treaties?

8. All these issues could be addressed by the Study. However, detailed terms of reference will need to be prepared in due course. In the meantime, for the avoidance of doubt, it should be clarified that, in terms of the Protocol relating to the Pan-African Parliament and the Vienna Convention on the Law of Treaties, the current institutional framework envisaged under the said Protocol shall remain in place until such a time as Member States have agreed on an amended Protocol and the latter has entered into force.

III Recommendations for the review process

9. In view of the foregoing observations, the Commission submits the following recommendations:

1. That the Commission be authorised to initiate the review process. In this regard, consultants be engaged to undertake a study, which shall also involve consultations with all the stakeholders.
2. This would be followed by a Validation workshop of independent experts including representatives of the PAP;

3. Thereafter, the study shall be submitted to relevant senior officials from Member States to consider the study.
4. The recommendations of the government senior official will be submitted to the Executive Council in January 2010 for Council to provide Policy guidance on the on the issues raised.
5. Thereafter, a draft Protocol shall be prepared, which shall be submitted to a Validation workshop of independent experts followed by a meeting of Senior Officials and government legal Experts.
6. The outcome will then be submitted to a meeting of Justice and/or Attorneys General for consideration.
7. The Draft Protocol as approved by Ministers of Justice and/or Attorneys General will then be submitted to the Assembly through the Executive Council in July 2010 or January 2011.
8. The PAP should be required to urgently amend its Rules of Procedure to conform to the legislative instruments of the AU. In this regard, PAP should ensure that Members of the Bureau are elected periodically within a pre-determined period, drawing inspiration from the instruments for other Organs of the Union.

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Report on the review of the protocol to the treaty establishing the African economic community relating to the Pan African Parliament

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