

Positioning the Pan-African Parliament: Origins, legal authority, and its role in strengthening Africa's soil governance framework¹

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Abstract

Flowing from the previous chapter, this chapter examines the Pan-African Parliament (PAP), focusing on its origins, legal basis, composition, and mandate, particularly in promoting a model law on soil governance for Africa. Established under the African Union (AU) as outlined in the Abuja Treaty and Constitutive Act, the PAP aims to ensure African peoples' participation in development and economic integration.

The chapter analyses the PAP's structure, powers, and functions, including the impact of the 2014 amended Protocol, which aspires to enhance its role as a legislative body. It highlights the PAP's mandate to foster cooperation among regional economic communities (RECs), member states, and specialised organisations, positioning it to advance policies for sustainable development and effective soil governance.

Despite challenges in asserting authority, the PAP's initiatives in food security, climate change, and economic integration align with Agenda 2063. With reforms in infrastructure, funding, and legislative capacity, the PAP is poised to play a crucial role in advancing Africa's transformation, including the development of a soil model law essential for the continent's future.

1 This contribution is partly based on research published by Ruppel & Houston (2021) and a forthcoming publication by Ruppel & Murray.

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Summary

This chapter provides an in-depth analysis of the Pan-African Parliament (PAP), exploring its historical foundations, legal framework, structural composition, and the scope of its mandate. It particularly focuses on the PAP's role in advancing soil governance in Africa, emphasising the development and promotion of a model law to address the continent's pressing soil management challenges. Established under the African Union (AU) through the Abuja Treaty and the Constitutive Act, the PAP serves as a cornerstone institution aimed at fostering African unity, economic integration, and sustainable development, while amplifying the participation of African peoples in these processes.

The PAP was conceived as part of the AU's vision to enhance democratic governance, integration, and development across member states. Its establishment is rooted in the Abuja Treaty of 1991, which laid the groundwork for economic and political cooperation across Africa. The Constitutive Act of the AU further entrenched the PAP as a critical institution for advancing the continent's developmental aspirations. This legal foundation underpins the PAP's legitimacy and outlines its primary goals, including promoting economic integration, harmonising policies, and representing the interests of African citizens.

The chapter outlines the PAP's organisational structure, which comprises representatives from the AU's member states. Each member state appoints five parliamentarians, ensuring representation of diverse political, social, and gender dynamics. The PAP's sessions provide a platform for debate, policy formulation, and the monitoring of AU programmes. However, its legislative powers have traditionally been limited, with its primary role being advisory and consultative. The 2014 amended Protocol on the PAP, often referred to as the Malabo Protocol, seeks to expand its legislative mandate, enabling it to pass binding laws in specific areas of continental significance.

Central to the PAP's mission is the promotion of cooperation among regional economic communities (RECs), member states, and specialised organisations. The chapter emphasises how this mandate positions the PAP as a critical actor in addressing cross-cutting issues such as soil governance, climate change, and food security. By fostering collaboration, the PAP has the potential to harmonise national policies and facilitate the adoption of regionally integrated strategies to combat soil degradation, enhance agricultural productivity, and mitigate climate impacts.

The chapter highlights the PAP's alignment with the AU's Agenda 2063, which outlines a blueprint for achieving a prosperous and sustainable Africa. Soil governance emerges as a priority, given its foundational role in food security, economic stability, and climate adaptation. The development of a model soil governance law is presented as a crucial step toward addressing the challenges of land degradation, nutrient depletion, and unsustainable agricultural practices across the continent. Such a law would establish standards, guidelines, and best practices for soil management, ensuring long-term ecological and economic benefits.

Despite its potential, the PAP faces significant challenges in asserting its authority and fulfilling its mandate. These include limited infrastructure, inadequate funding, and a lack of legislative capacity. The chapter underscores the need for comprehensive reforms to strengthen the PAP's institutional framework, enhance its resource base, and build its technical expertise. Additionally, the PAP must navigate the complexities of aligning diverse national policies and overcoming political resistance from member states that may view its initiatives as encroachments on sovereignty.

Nevertheless, the PAP's initiatives in food security, climate change, and sustainable development demonstrate its capacity to contribute meaningfully to Africa's transformation. By leveraging its mandate to foster cooperation and policy harmonisation, the PAP is well-positioned to lead the development of a model soil governance law. Such a law would not only address the continent's environmental challenges but also support broader goals of economic integration, social equity, and resilience to climate change.

In conclusion, the chapter paints a picture of the PAP as an institution with immense potential to shape Africa's future. While its journey toward becoming a fully empowered legislative body is ongoing, the PAP's focus on sustainable development, economic integration, and participatory governance underscores its relevance. With

targeted reforms and strengthened partnerships, the PAP can play a pivotal role in advancing soil governance, thereby, contributing to the achievement of Agenda 2063 and the broader vision of a united and prosperous Africa.

1 Introduction

The Pan-African Parliament (PAP) represents a groundbreaking initiative in Africa's journey towards political integration and democratic governance. Established during the transition from the Organisation of African Unity (OAU) to the African Union (AU), the PAP embodies the AU's commitment to providing a more inclusive platform for African voices in the continent's development process. This chapter explores the PAP's origins, legal foundation, and evolving role within the AU. The PAP's creation was driven by a desire to ensure that the diverse voices of Africa's people are reflected in the continent's political and economic strategies. The PAP's mandate aims to actively engage with and represent the interests of African citizens, ensuring that the AU's policies and programmes effectively address their needs and concerns.

A proposed Model Law on Soil Management in Africa is being developed by the PAP in consultation with Stellenbosch University and the German Environment Agency to highlight the need for effective soil management for food security and climate change mitigation. This initiative forms part of a process mandated by the PAP to address the continent's pressing soil degradation challenges and establish a unified legal framework for sustainable land use.

Recent amendments to the PAP Protocol, particularly those from 2014, mark a significant evolution in the Parliament's role and effectiveness. These changes reflect the ongoing efforts to enhance the PAP's legitimacy and operational capacity, aiming to transition it from a consultative body to a more powerful legislative institution. This chapter will assess the potential impacts of these amendments on the PAP's future and its contribution to Africa's political and economic integration, including its pivotal role in developing the Model Law on Soil Management.

2 The Pan-African Parliament

2.1 Genesis and formation

The PAP was conceived as part of the broader vision for African integration outlined in the 1991 Treaty Establishing the African Economic Community (AEC), commonly known as the Abuja Treaty.² The Treaty came into force in 1994 and, together with

2. Sehen (2006: 2).

the Charter of the OAU, has since formed the foundation for the operation of the OAU. During the period of coexistence with the OAU, the AEC established seven organs, one of which was the PAP.³ The PAP was intended to be a key platform through which the voices of African citizens could influence the AU's decision-making processes, ensuring that the people's concerns were heard at the highest levels.⁴ The Treaty specified that a protocol would be adopted to define the PAP's powers, functions, and structure.⁵

The PAP was originally conceived as an institution of the AEC, with its establishment planned for the final stages of the AEC's implementation, around 2028.⁶ The Abuja Treaty outlined a phased approach to achieving continental economic and political integration, envisioned over six stages spanning 34 years.⁷ This process aimed to create a continental free trade area and establish key regional and sub-regional institutions. However, this initial plan was overtaken by the rapid evolution of Africa's integration agenda. The creation of the AU in 2002, which replaced the OAU, accelerated these regional integration efforts.⁸

The OAU, the precursor to the AU, was founded on 25 May 1963 in Addis Ababa, Ethiopia. Almost two decades later, following the establishment of the OAU Charter Review Committee, the OAU's Assembly of African Heads of State and Government convened in Sirte, Libya, on 9 September 1999, for its Fourth Extraordinary Summit. During this Summit, the Assembly adopted the Sirte Declaration, which called for the formation of an African Union, a re-envisioned version of the OAU aimed at addressing contemporary challenges.

African leaders recognised the need for stronger continental unity and cooperation in the face of globalisation, aiming to protect and leverage Africa's socio-economic and political potential in the international arena.⁹ Sideline discussions continued, culminating in a meeting of legal experts and parliamentarians in Addis Ababa, Ethiopia, to review the Draft Treaty on the formation of the AU and the Draft Protocol of the PAP.¹⁰ This led to the 36th Ordinary Session of the Assembly of the OAU, held in Lomé, Togo, from 10–12 July 2000. During this session, the Constitutive Act of the AU was adopted.

Article 5(1)(c) of the AU's Constitutive Act formally recognised the PAP as an organ of the AU.¹¹ Article 33 outlines the transitional provisions that marked the end of the independent existence of the AEC. This signified the formal merger of the OAU

3 Art 7(1)(c) of the Abuja Treaty.

4 Ibid.: Art 14(1).

5 Ibid.: Art 14(2).

6 Mngomezulu (2018: 47).

7 Art 6 of the Abuja Treaty.

8 Mngomezulu (2018: 47).

9 Art 8(i) of the Sirte Declaration.

10 Mngomezulu (2018: 48).

11 Art 17(1) of the Constitutive Act.

and the AEC into the AU, bringing together institutions that had coexisted separately for an extended period. Regarding the PAP, the Constitutive Act only stipulated that a protocol would be adopted to outline the specific objectives, functions, and powers of the PAP.¹²

2.2 The PAP Protocol

In March 2001, during the Fifth Extraordinary Session of the OAU Assembly, the Protocol to the Treaty Establishing the AEC Relating to the PAP was adopted. Within under three years, the Protocol received the necessary ratifications (24 member states) and came into force in December 2003. The PAP formally inaugurated its first parliamentarians in March 2004. The Protocol was adopted as part of the broader effort to implement the vision of the AU, which sought to create a more integrated and participatory governance structure for Africa.¹³ The Preamble of the Protocol strongly emphasises the promotion of popular participation, democracy, and the consolidation of institutions. Additionally, the promotion and protection of human and people's rights are central to its mandate, with explicit reference to the African Charter on Human and Peoples' Rights (ACHPR) as a guiding framework.

2.2.1 Composition and structure

The PAP Protocol outlines several critical aspects of the Parliament's operation. According to Article 2(2), the PAP, based in Midrand, South Africa, represents all the people of Africa. It comprises 275 parliamentarians representing the 55 AU member states, and its mandate is derived from these member states.¹⁴ Article 16 establishes that the seat of the PAP is to be decided by the Assembly and located in a state party, though the PAP may convene in other member states if invited. Rule 2 of the PAP Rules of Procedure designates South Africa as the host country.¹⁵

Each member state elects five representatives to the PAP, with at least one of them being a woman.¹⁶ Each member state's parliament selects PAP representatives, aiming to reflect diverse political viewpoints.¹⁷ Article 5 of the Protocol guides the election process. Additionally, PAP members are granted certain immunities and privileges across all member states while performing their duties.¹⁸

12 Ibid.: Art 17(2).

13 Art 4(c) of the Constitutive Act; Preamble of the PAP Protocol.

14 Art 4 of the PAP Protocol.

15 PAP Rules of Procedure 2004 (as amended to 2022).

16 Art 4(2) of the PAP Protocol.

17 Ibid.: Art 4(3).

18 Art 8 of the PAP Protocol; Rule 10 of the PAP Rules of Procedure.

The PAP consists of several key organs: the Plenary (formal sitting), the Bureau, the Secretariat, Committees, and regional groups. The Bureau, which includes a President, and four Vice Presidents elected for a three-year term, manages and administers the affairs of the PAP and represents each of Africa's five regions: Southern, Eastern, Western, Central, and North.¹⁹ The Permanent Committees support the PAP in carrying out its functions as outlined in the Protocol and Rules of Procedure.²⁰ Regional Caucuses represent the five regions and are responsible for nominating members to committees and leadership roles.²¹ Lastly, the Secretariat, headed by the Clerk and supported by two Deputy Clerks, oversees the implementation of the PAP's decisions and programs.²²

Per the Rules of Procedure, the PAP must hold ordinary sessions at least twice a year.²³ During these meetings, the Parliament debates motions and discusses matters approved by the Bureau.

In line with Rule 22(1) of the Rules of Procedure, the PAP operates through fifteen permanent committees, each focusing on specific issues: Permanent Committee on Agriculture, Rural Economic Development and Food Security; Permanent Committee on Monetary and Financial Affairs; Permanent Committee on Cooperation, International Relations, Peace and Security; Permanent Committee on Transport, Logistics and Infrastructure; Permanent Committee on Health; Permanent Committee on Education, Science, Technology and Innovation; Permanent Committee on Gender, Family, Youth, Sports and People with Disability; Permanent Committee on Justice, Human Rights and Immigration Matters; Permanent Committee on Rules, Privileges, Ethics and Discipline; Permanent Committee on Auditing and Public Accounts; Permanent Committee on Tourism, Arts, Culture and Heritage; Permanent Committee on Labour, Employment and Social Welfare; Permanent Committee on Economic Development, Mining and Energy; Permanent Committee of Natural Resources, Environment and Climate Change; and Permanent Committee on Trade, Customs, and Industry.

Under Rule 23, the Committees are empowered to receive evidence, summon witnesses, and request the production of documents and papers. This rule also outlines the process for presenting and debating reports in Parliament. Rule 24 details the procedures that enable Committees to perform their functions effectively. Specifically, Rule 25 states that the Chairpersons, on the advice of the Bureau, will determine the general business assigned to the Committees. Additionally, Committees are tasked with handling matters typically managed by the corresponding Specialised Technical

19 Part IV of the PAP Rules of Procedure.

20 Ibid.: Part V.

21 Ibid.: Part XVIII.

22 Ibid.: Rule 20.

23 Ibid.: Rule 28.

Committees responsible to the Executive Council, as outlined in Article 14 of the Constitutive Act.

Additionally, Parliament may assign any relevant issue to a committee as deemed necessary, as outlined in Rule 25(3). Rule 26 defines the specific functional domains for each Committee, ensuring that the Parliament can effectively oversee particular areas or departments.

A notable and proactive step taken by the PAP was adopting a resolution to align its committees with those of the AUC.²⁴ This alignment aims to enhance effectiveness, foster cooperation, and facilitate the oversight functions of the PAP.

2.2.2 Mandate and functions

The Constitutive Act and the Preamble to the PAP's Protocol clearly outline the vision African leaders had in mind when establishing the PAP. Article 17 of the Constitutive Act emphasises the PAP's role in ensuring the full participation of African peoples in the continent's development and economic integration. Similarly, the Preamble to the Protocol highlights the aim of creating a common platform for African peoples and grassroots organisations to engage more actively in discussions and decision-making on the continent's challenges.

Article 3 of the PAP Protocol articulates the objectives, reflecting the motivations behind its creation, including facilitating the effective implementation of the policies and objectives of the OAU/AEC and, ultimately, the AU; promoting human rights and democracy across Africa; encouraging good governance, transparency, and accountability among member states; increasing awareness among Africans about the objectives and policies aimed at integrating the continent within the framework of the AU; promoting peace, security, and stability; contributing to Africa's prosperity by advancing collective self-reliance and economic recovery; facilitating cooperation and development within Africa; strengthening continental solidarity and fostering a sense of common destiny among African peoples; and enhancing cooperation among Regional Economic Communities (REC's) and their parliamentary fora.

Regarding the PAP's powers and functions, Article 11 of the Protocol states that it shall be vested with legislative powers, the scope of which will be defined by the Assembly. During its initial term, the PAP is limited to exercising advisory and consultative powers.²⁵ In this capacity the PAP is empowered to examine, discuss, and offer recommendations on a wide range of issues, including human rights, democracy, governance, and the rule of law, either on its initiative or at the request of the Assembly or other policy organs.²⁶ It reviews its budget, as well as that of the AU, and makes

24 PAP/P(3)/RES/03(I).

25 Art 11 of the PAP Protocol.

26 Ibid.: Art 11(1).

recommendations before approval.²⁷ The PAP also aims to harmonise or coordinate the laws of member states, promote the objectives of the AU and AEC, and identify challenges in Africa's integration process.²⁸ Additionally, it can request officials to attend its sessions, promote coordination among RECs, adopt its procedures, elect its President, and propose staffing structures.²⁹ The PAP also performs other functions to meet its goals outlined in Article 3 of its Protocol.³⁰

In line with Article 11(8), the PAP has adopted its Rules of Procedure, which clarify and expand upon its advisory and consultative powers. Key provisions include Rule 4, which specifies that the PAP will carry out its functions per Articles 3, 11, and 18 of the Protocol. These Articles outline the PAP's objectives, powers, and relationship with RECs and national parliaments. Rule 5 details the powers of the PAP, including overseeing the development and implementation of AU policies and programs; organising debates on the objectives, policies, and activities of the AU and RECs; examining, discussing, or expressing opinions on issues related to the AU or at the request of AU organs, RECs, or member states; making recommendations and resolutions on matters concerning the AU, RECs, and member states; exercising legislative and other functions as shall be defined by the Assembly in conformity with Article 11 of the Protocol; inviting representatives from AU organs, RECs, or member states to provide explanations to the Plenary on issues affecting the AU; and exercising all other incidental or auxiliary powers necessary for the discharge of its functions.

Of relevance next is Rule 73, which requires that all decisions of the Assembly and Executive Council, as well as programs of AU organs, be submitted to the PAP. Rule 74 allows the President of the PAP, after consulting with the Bureau, to invite the Chairpersons of the Assembly, Executive Council, or Commission to address the Parliament after their meetings, explaining major decisions. A debate among members will then follow. Rule 75 outlines the procedure for handling annual and other reports from the AU organs, ensuring that the PAP can effectively perform its advisory and consultative roles. The rule specifies that annual reports and other reports from AU organs must be submitted to the PAP. The reports will be referred to the appropriate Permanent Committees within the PAP. These Committees are tasked with reviewing the reports, deliberating on their content, and providing recommendations to the Parliament. The reports reviewed by the Committees will be debated in the full Parliament. The Parliament will then pass resolutions on these reports for consideration by the Executive Council. Rule 76 further stipulates that the President of the PAP is responsible for presenting resolutions and reports to the Assembly.

27 Ibid.: Art 11(2).

28 Ibid.: Arts 11(3-4).

29 Ibid.: Arts 11(5-8).

30 Ibid.: Art 11(9).

Article 18 of the Protocol emphasises the need for the PAP to collaborate closely with the parliaments of RECs³¹ and national parliaments of member states. However, the exact meaning of ‘close cooperation’ remains somewhat ambiguous, typically interpreted as holding annual consultative meetings to address shared interests.³² Magliveras and Naldi explain that these meetings are between equal partners, meaning that the PAP’s ability to exert its influence is significantly diminished. The PAP has established an Annual Speakers Conference, which has enhanced the PAP’s connections with regional and national parliaments.³³ Its goals include raising awareness among speakers of national and regional parliaments about AU decisions, particularly legal instruments, and the importance of their prompt ratification, domestication, and implementation by member states. Many of these instruments focus on governance, democracy, and human rights, providing a strong foundation for peace and security across the continent. The Conference also reviews the PAP’s activities and assesses the state of integration within Africa.

2.3 Missions

As part of its oversight function, the PAP conducts fact-finding missions to conflict zones and areas with human rights or humanitarian issues.³⁴ These missions are initiated through a Plenary Resolution, either proposed by a committee or the Plenary itself. The aim is to gather firsthand information on the conflict through direct engagement with citizens and stakeholders, allowing Parliament to make informed decisions. Any Parliamentary Committee can undertake a fact-finding mission, depending on the issue at hand. These missions, which have taken place in numerous countries, are viewed as vital for understanding conflicts and raising awareness among Parliament members. Between 2006 and 2019, the PAP conducted fact-finding missions in conflict areas such as the Great Lakes region, Democratic Republic of Congo (DRC), Darfur (Sudan), Central African Republic, Chad, Saharawi Arab Democratic Republic, Mali, Libya, South Sudan, Burundi, and Niger. These missions delve into various issues, including education, environmental protection, gender, and human rights, as seen in countries such as Rwanda, Sierra Leone, and Ivory Coast.³⁵

31 The AU recognises eight RECs: the Arab Maghreb Union (UMA); the Common Market for Eastern and Southern Africa (COMESA); the Community of Sahel-Saharan States (CEN-SAD); the East African Community (EAC); the Economic Community of Central African States (ECCAS); the Economic Community of West African States (ECOWAS); the Intergovernmental Authority on Development (IGAD); and the Southern African Development Community (SADC).

32 Magliveras & Naldi (2016: 228).

33 Nwebo (2019: 147).

34 Abanno (2023: 44).

35 Jancic (2019: 220).

For example, in Sudan, the PAP's intervention in 2007 played a role in peace efforts before the emergence of South Sudan.³⁶ Similarly, PAP engaged with the US Congress in 2017 to lift sanctions on Sudan, improving the country's humanitarian situation.³⁷ Feedback from countries visited suggests that PAP's presence gives citizens a sense of inclusion and optimism, signalling that the continent recognises their struggles.³⁸

Fact-finding missions result in reports and recommendations presented to the Plenary, which are then debated and shared with relevant stakeholders, including concerned countries and AU bodies. In some cases, reports were officially sent to countries such as Rwanda, Niger, and Côte d'Ivoire, where they helped shape policy.³⁹

However, as Abanno rightly points out, these missions are just a tool—not an end in themselves.⁴⁰ To drive meaningful change in member states, PAP should invite and question state representatives when mission reports are presented to the Plenary.⁴¹ While Parliament may pass resolutions based on these reports, political obstacles often hinder their implementation. As a PAP staffer noted, follow-up on recommendations is challenging, particularly when national parliaments are dissolved during conflicts.⁴² Moreover, while the Plenary may recommend a fact-finding mission, the concerned state can refuse to allow PAP to conduct the mission on its territory, citing sovereignty.⁴³ This limitation, coupled with the absence of an enforcement mechanism, adds to the challenge. Since PAP's recommendations are non-binding, states are under no obligation to adopt or implement its decisions, which limits the effectiveness of its conflict intervention efforts.

In line with its oversight responsibilities, the PAP frequently conducts election observation missions to promote constitutionalism and democratic governance in Africa.⁴⁴ The findings from these missions are presented to the Parliament for debate, after which resolutions and recommendations are made and submitted to the AU for further action.

The PAP began its election observation efforts in 2006, starting with independent missions in Ghana. The Parliament continued this practice in Zimbabwe, Algeria, and Malawi in subsequent years. However, a decision by the Executive Council on 1 February 2010, transitioned these missions to joint observations with the AUC, which limited the PAP's independence in reporting but allowed it to form 40% of the AU

36 Abanno (2023: 45).

37 Jancic (2019: 219).

38 Abanno (2023: 46).

39 Ibid.: 47.

40 Ibid.

41 Ibid.

42 Ibid.

43 Ibid.: 47–48.

44 Rule 4(1)(i) of the PAP Rules of Procedure.

observer composition.⁴⁵ In 2022, the Parliament observed elections in Kenya, Angola, Lesotho, Equatorial Guinea, and Tunisia, ensuring adequate representation in monitoring delegations. During these missions, the PAP collaborates with the AUC to gather information and assess electoral processes.

However, budget constraints have led to a reduction in PAP representation, with only six parliamentarians participating in the 2022 missions.⁴⁶ The Parliament's involvement has often been *ad hoc*, resulting in inconsistent engagement with AUC missions. This situation, along with concerns about their limited influence and unclear reporting roles, has hindered the PAP's impact.

2.4 Partnerships

Given the PAP's role in fostering close cooperation among RECs, member states, and specialised organisations across Africa, several significant partnerships have been established and supported by the PAP. Despite some challenges, the PAP has successfully executed various projects and initiatives crucial to fulfilling its mandate. Notable resolutions include those from the 3rd Ordinary Session, addressing issues such as adherence to the African Peer Review Mechanism (APRM),⁴⁷ developing a continental code of conduct on resource use,⁴⁸ and addressing crises in Togo and Côte d'Ivoire, among others.⁴⁹

The APRM is a mutually agreed instrument voluntarily acceded to by the AU member states as an African self-monitoring mechanism.⁵⁰ It is often described as Africa's unique and innovative approach to governance, to improve governance dynamics at local, national, and continental levels.⁵¹ The APRM conducts governance reviews in specific countries and, after completion, prepares a country review report, which is presented before the PAP. This process complies with the APRM base document, which stipulates that six months after the country review report has been considered by the Heads of State and Governments of the participating member countries, it must be formally and publicly tabled in key regional and sub-regional structures such as the PAP.⁵²

Additionally, the Chairperson of the AU Peace and Security Council routinely presents reports to the PAP on security issues, with discussions and recommendations made on addressing these challenges. For example, Mr Osman Keh Kamara, Sierra

45 AU EX.Cl/Dec.534 (XVI); Abanno (2023: 49).

46 Abanno (2023: 50).

47 PAP_Res.001/05.

48 PAP_Res.002/05.

49 PAP_Res.003/05; PAP_Res.004/05; PAP_Res.005/05; PAP_Res.006/05; PAP_Res.007/05.

50 Nwebo (2019: 95).

51 See <https://aprm.au.int/en/about/overview>, accessed 27 September 2024.

52 AU AHG/235(XXXVIII) Annex II para 25.

Leone's Ambassador to Ethiopia and Permanent Representative to the AU, presented on behalf of the AU Peace and Security Council at the 3rd Ordinary Session of the 4th sitting of the PAP, held on 13 October 2016 in Sharm-el-Sheikh, Egypt.⁵³ During these sessions, the PAP debates such reports and makes recommendations to address security challenges more effectively.⁵⁴

The PAP partners with the United Nations Food and Agriculture Organization (FAO) to advance food security and agricultural development across Africa.⁵⁵ Through this collaboration, PAP and FAO have worked together on several key initiatives designed to improve agricultural practices, enhance food systems, and address hunger on the continent. Their efforts focus on creating sustainable agricultural policies, supporting smallholder farmers, and promoting innovation in the agricultural sector to ensure long-term food security for Africa's growing population. The Pan-African Climate and Environmental Justice Alliance (PACJA) is also a key partner of the PAP. PACJA is a coalition comprising over 1,000 organisations from 51 African countries, dedicated to tackling climate change and environmental challenges across the continent.⁵⁶

The PAP's involvement extends beyond Africa through its partnership with the European Parliament (EU), national and regional parliaments, and civil societies. This includes the Joint Africa-EU Strategy (JAES), with the PAP and EU working together on monitoring and evaluation.⁵⁷

The PAP also has various memoranda of understanding (MoUs) for collaboration with organisations such as the Africa Capacity Building Foundation, the European Commission, and the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ).⁵⁸ These partnerships support advocacy, capacity-building, and monitoring efforts.

A notable development is the MoU signed on 10 October 2019 between the PAP, Stellenbosch University's Development and Rule of Law Programme (DROP),⁵⁹ and the German Environment Agency, Umweltbundesamt (UBA).⁶⁰ This agreement focuses on academic diplomacy and policy development related to sustainable development goals (SDGs), particularly land degradation neutrality and sustainable soil management. The partnership aims to address tensions between environmental sustainability, economic development, and human welfare, with a focus on the legal, political,

53 See <https://cocorioko.net/ambassador-kamara-addresses-the-pan-african-parliament-on-behalf-of-the-african-union-peace-and-security-council/>, accessed 25 September 2024.

54 Nwebo (2019: 134).

55 See <https://www.fao.org/africa/news-stories/news-detail/fao-and-pan-african-parliament-unveil-landmark-model-law-on-food-and-nutrition-security-in-africa/en#:~:text=The%20development%20of%20the%20Model,Pan%20African%20Parliament%20in%202016>, accessed 25 September 2024.

56 See <https://pacja.org/>, accessed 25 September 2024.

57 Onyilo & Halidu (2018).

58 Nwebo (2019: 185).

59 See <https://drop.sun.ac.za/>, accessed 25 September 2024.

60 See <https://bit.ly/3jQpn69>, accessed 25 September 2024.

economic, and social aspects of these issues. The resulting publication of a book,⁶¹ supported financially by the German Ministry for Development Cooperation (BMZ) and GIZ, aims to contribute toward developing model legislation for sustainable soil management in Africa.

2.5 Model laws

The PAP has played a significant role in the development of model laws, which serve as adaptable legislative frameworks for AU member states. These model laws promote legal consistency across the continent while allowing countries to tailor them to their specific contexts.⁶²

The PAP is authorised to endorse model laws, rooted in several foundational documents. Article 17 of the AU's Constitutive Act emphasises the PAP's role in facilitating full participation in continental development. Additionally, Article 3 of the PAP Protocol and Rule 4(a) of its Rules of Procedure empower the institution to promote regional cooperation and collective self-reliance, aligning with AU policies. Moreover, Article 11(3) of the PAP Protocol and Rules 4 and 5 support its mandate to harmonise member states' laws. This endorsement process is essential for ensuring legal coherence and advancing governance across Africa.

The model law development process involves three key stages: initiation, formulation, and approval. Proposals can originate from various sources, including PAP members, committees, AU institutions, and civil society organisations.⁶³ The PAP Secretariat provides essential technical support, while the Bureau assigns a relevant Permanent Committee to oversee the initiative. Each proposal must pass through a series of evaluations, including opportunity, legal, and capacity assessments before it can proceed.

Once a proposal is approved, a legislative drafting team, along with an advisory group, is established to manage the technical and political dimensions of the law's development. The drafting process begins with a comprehensive policy paper that serves as the foundation. This draft undergoes extensive review and consultation to incorporate feedback from diverse stakeholders. After revisions, the draft is vetted and approved by the Parent Committee before being submitted to the Plenary for final adoption. Once approved, the model law is forwarded to the AU Assembly for endorsement, and efforts are made to advocate for its implementation at the national level, alongside monitoring its effectiveness across member states.

Recent model laws adopted by the PAP include significant frameworks aimed at enhancing governance across various sectors. On 13 October 2019, the PAP adopted

61 Ruppel & Ginzky (2021).

62 See <https://pap.au.int/en/legislation>, accessed 10 December 2024.

63 See <https://pap.au.int/en/legislation>, accessed 25 September 2024.

a Model Police Law for Africa, intended to establish a comprehensive legal framework for policing throughout the continent.⁶⁴ This initiative is part of a broader effort to standardise law enforcement practices in line with human rights and regional standards. Furthermore, in 2024, the PAP adopted the Model Law on Cooperatives, aimed at supporting the creation of cooperative legislation and improving existing laws across the continent.⁶⁵ Collectively, the PAP's model laws reflect its commitment to fostering legislative harmonisation and addressing critical issues in Africa.

3 The Malabo Protocol

3.1 Background

According to Article 25 of the PAP Protocol, a conference of state parties is to be convened five years after the Protocol enters into force to assess its operation and effectiveness. This review aims to ensure that the Protocol's objectives are being met and that it addresses the evolving needs of the African continent.⁶⁶ The review will evaluate whether the Protocol effectively supports the PAP in fulfilling its mandate, based on the Parliament's experiences to date. Additionally, the results of this assessment will help member states identify areas for improvement and necessary adjustments.

Understanding the composition and governance structure of the PAP under the current Protocol is essential to appreciate the improvements introduced by the revised Protocol. Currently, PAP membership consists of representatives from AU member states that have ratified the Protocol. These members are elected or designated by their respective national parliaments or other deliberative bodies within member states.⁶⁷ After the selection, the national parliament or deliberative organ must notify the Clerk of Parliament of the newly appointed members.⁶⁸ The term of office for a member of the PAP begins once they have taken the oath of office or made a solemn declaration during a PAP Plenary session.⁶⁹ To qualify, the individual must already be a member of their national parliament or another deliberative body. The duration of their service as a PAP member is linked to their continued membership in their national parliament or deliberative organ.⁷⁰ There is no standardised process for electing or designating

64 See <https://apcof.org/wp-content/uploads/pap-model-police-law-for-africa.pdf>, accessed 25 September 2024.

65 See <https://pap.au.int/en/news/press-releases/2024-07-01/pan-african-parliament-adopts-model-law-cooperatives>, accessed 25 September 2024.

66 Art 25(1) of the PAP Protocol.

67 Rule 7 (1) of the PAP Rules of Procedure.

68 Ibid.: Rule 6(1).

69 Ibid.: Rule 7(2).

70 Nwebo (2019: 165).

members to the PAP; this process varies depending on the national constitution or the procedures of the respective deliberative organ in each member state.

By the end of its first term, the PAP faced substantial criticism due to its perceived lack of impact on the AU decision-making processes. Although it had the potential to influence AU affairs through consultative powers, the PAP's recommendations were often disregarded, leading to the perception that its limited influence was not merely a result of the Protocol's constraints but also the underutilisation of its non-legislative powers.⁷¹ The PAP Protocol also does not clearly define the extent to which AU bodies are required to engage the PAP or act on its advice.⁷² Theoretically, all AU organs (except the Court of Justice) fall under the PAP's oversight, investigative, and advisory functions.⁷³ However, the PAP has limited power over AU actions. Key areas such as budgetary decisions and the appointment of AU officials remain under the exclusive control of the AU Assembly. The PAP has frequently expressed frustration with such limited role, noting that it often ends up 'attending AU meetings' without any substantial input into decision-making processes.⁷⁴

The review process commenced in June 2009, involving the commissioning of a study, drafting of a revised protocol, preliminary brainstorming sessions, consultations, validation workshops, and meetings with government experts and Ministers of Justice/Attorneys General to refine the draft.⁷⁵ The revised Protocol (known as the Malabo Protocol) was adopted at the AU Assembly of Heads of State and Government meeting in June 2014, held in Malabo, Equatorial Guinea.

The revised Protocol is set to come into force 30 days after a simple majority (28) of member states deposit their instruments of ratification with the Chairperson of the AU.⁷⁶ Once it is in effect, it will replace the current Protocol.⁷⁷ As of 2024, fifteen member states have deposited their instruments of ratification for the revised Protocol. These countries are Benin, Cameroon, Chad, Equatorial Guinea, Gambia, Ghana, Madagascar, Mali, Morocco, Niger, Sahrawi Arab Democratic Republic, Sierra Leone, Somalia, Togo, and the Central African Republic.

3.2 Changes introduced

The revised Protocol introduces several significant changes: it officially designates the PAP as the legislative organ of the AU.⁷⁸ Specifically, Article 8 establishes the PAP's authority to propose draft model laws on subjects determined by the AU Assembly or suggested by the PAP, subject to Assembly approval. Harmonising or coordinating

71 Nzewi (2010: 4).

72 Sehen (2006: 32).

73 Ncube (2020: 106).

74 Ncube (2020: 106); PAP, Strategic Plan (2014-2017: 5).

75 Nwebo (2019: 168).

76 Art 23 of the Malabo Protocol.

77 Ibid.: Art 27(1).

78 Ibid.: Art 8(1).

member state laws through model legislation is a well-established practice within the AU, and the PAP has been engaged in such activities under the existing Protocol, as mentioned above.⁷⁹ What is new with the revised Protocol is that it explicitly grants the PAP the authority to propose draft model laws, albeit with a requirement for prior Assembly approval.

Article 8(2)(h) of the Malabo Protocol allows the PAP to receive, consider, and submit opinions on draft legal instruments, treaties, and other international agreements referred to it by the Council or Assembly. However, this involvement does not guarantee real influence. The Assembly or the Council may choose not to refer such documents to the PAP or to disregard its opinions.⁸⁰ As such, while the provision represents a step forward, it does not necessarily empower the PAP to play a substantive role in AU legislation without the proactive engagement of the Assembly or the Council.

Still, the revised Protocol significantly enhances the powers and functions of the PAP, particularly in the areas of oversight and liaison with other organs of the AU. For example, the PAP is explicitly empowered to receive and review reports from other AU bodies, including audit and activity reports, and to make recommendations based on these.⁸¹ Also, the inclusion of fact-finding, inquiry, and observer missions in the PAP's mandate further strengthens its oversight role.⁸² The revised Protocol also specifically states that the PAP can establish Parliamentary Committees and determine their functions and composition.⁸³ Furthermore, it grants the PAP the ability to engage in fundraising activities, while specifying that it cannot raise loans.⁸⁴

However, while these powers are more clearly defined, their practical impact remains limited. The PAP still lacks binding authority, as its oversight functions are not backed by enforceable powers. For instance, while the PAP can review reports from AU organs, it is only 'as may be referred to it' by the AU Assembly or Council.⁸⁵ This means that AU bodies are not required to submit reports to the PAP unless directed to do so. Similarly, while the PAP can request the presence of AU officials to assist in its work, there is no legal obligation for those officials to comply with the request.⁸⁶ Moreover, despite the increased emphasis on oversight, the PAP still has no direct control over the budget. It retains the power to debate and recommend changes to its budget and that of the AU, but final decisions remain with the policy organs.⁸⁷

79 Art 11(3) of the PAP Protocol; Abanno (2023: 54); Ncube (2020: 118-119).

80 Nwebo (2019: 177-178).

81 Art 8(2)(a) of the Malabo Protocol.

82 Ibid.: Art 8(3).

83 Ibid.: Art 8(2)(c).

84 Ibid.: Art 8(4).

85 Nwebo (2019: 176-177).

86 Nwebo (2019: 176-177); Art 8(2)(f) of the Malabo Protocol.

87 Nwebo (2019: 176-177); Art 8(2)(b) of the Malabo Protocol.

One of the significant challenges facing the PAP is the lack of continuity resulting from its membership structure.⁸⁸ Currently, members of the PAP are elected or designated from their respective national parliaments. Consequently, if these members lose their seats in their national parliaments, they automatically cease to be members of the PAP.⁸⁹ This structure leads to frequent turnover in the PAP due to the high rate of changes in national parliaments following elections.⁹⁰ The revised Protocol allows for members to be elected by national parliaments or other deliberative organs from outside their national parliament membership.⁹¹ This change aims to enhance the stability and continuity of the PAP by diversifying its membership base and reducing the impact of national parliamentary elections on PAP membership. While members of national parliaments or other deliberative bodies are still eligible to run for the PAP, they must resign from their national positions if elected.⁹²

It is important to note that the current system, where national parliaments or other deliberative bodies determine the election procedures for PAP members, is a temporary measure.⁹³ This interim arrangement will remain in place until a code for direct universal suffrage for electing PAP members is established. The revised Protocol does not specify when or by whom a code for universal adult suffrage will be developed, nor does it clarify how and when this code will come into effect.⁹⁴

The revised Protocol introduces a significant step towards promoting gender equality by mandating that at least two out of the five members of the PAP from each member state must be women.⁹⁵ Additionally, as is the case under the current Protocol, the representation of each state must reflect the diversity of political opinions in their national parliament or deliberative body, ensuring that opposition parties remain represented within the PAP.⁹⁶

The revised Protocol introduces several other improvements. For instance, Article 5(1)(d) mandates that the election of the PAP President be overseen by the Chairperson of the Assembly, promoting fairness and transparency. This is an improvement over the current internal process, which can be subject to influence by the incumbent president.⁹⁷ Additionally, the election of the Bureau is rotational, preventing disputes based on regional allegiances.⁹⁸

The revised Protocol outlines that each member country is responsible for paying allowances to its Parliament members and leadership, whereas the current provision

88 Nwebo (2019: 172).

89 Nwebo (2019: 172); Rule 8(1)(e)-(f) of the PAP Rules of Procedure.

90 Nwebo (2019: 172).

91 Art 5(1)(a) of the Malabo Protocol.

92 Ibid.: Art 5(6).

93 Ibid.: Art 5(3).

94 Nwebo (2019: 174).

95 Art 4(3) of the Malabo Protocol.

96 Ibid.: Art 5(1)(b).

97 Nwebo (2019: 176).

98 Nwebo (2019: 176); Art 12(1) of the Malabo Protocol.

mentions that members will receive allowances for expenses but does not specify who is responsible for paying them.⁹⁹ Another significant change is the appointment of the Secretary-General and Deputy Secretaries General,¹⁰⁰ replacing the titles of Clerk and Deputy Clerks,¹⁰¹ and clearly defining the Secretary-General as the accounting officer.¹⁰² This helps prevent conflicts between administrative roles that are a source of contention.¹⁰³

In terms of leadership accountability, Article 20(1) introduces a requirement for the Chairperson of the Assembly to deliver a speech on the state of the AU at each new term's inaugural session of the PAP. Additionally, the Chairperson of the Commission must present the Activity Report of the Commission at least once during each term.¹⁰⁴

Another major duty is to 'encourage National and Regional Parliaments to ratify and integrate treaties adopted by the AU into their legal systems.'¹⁰⁵ Importantly, the revised Protocol acknowledges the critical role of civil society and community-based organisations in Africa's integration and development.¹⁰⁶ It also emphasises the inclusion of the African diaspora, encouraging their full participation as a vital component in building the AU.¹⁰⁷

3.3 Ratification

Despite the positive changes introduced by the revised Protocol, its impact remains conditional on ratification by AU member states. Unfortunately, the AU has a track record of slow ratifications, and this historical challenge suggests that the road ahead will not be easy.¹⁰⁸ At the 8th Annual Conference of Speakers in Midrand, South Africa, with the theme 'Adoption of the African Union Treaties, in particular, the new Protocol of the PAP', then Prime Minister of Lesotho, Rt Hon Bethel Pakalita Mosisili, emphasised the importance of citizen participation and engagement in the ratification process. In his opening speech, he stressed that adopting the new Protocol should not be solely a government-driven effort but must involve the people at every stage.¹⁰⁹ He

99 Art 10 of the Malabo Protocol; Art 10 of the PAP Protocol.

100 Art 13(1) of the Malabo Protocol.

101 Art 12(5)-(6) of the PAP Protocol.

102 Art 13(5) of the Malabo Protocol.

103 Nwebo (2019: 176).

104 Art 20(2) of the Malabo Protocol.

105 Ibid.: Art 3(k).

106 Ibid.: Art 3(i).

107 Ibid.: Art 3(m).

108 Nwebo (2019: 180).

109 See <https://www.eac.int/press-releases/524-873-770-african-speakers-lobby-forstronger-continental-assembly-want-au-member-states-to-ratify-malabo-protocol>, accessed 25 September 2024.

stressed the importance of educating the populace on the significance of the revised Protocol and the broader AU treaties.

In response, the AU Executive Council urged the PAP to identify and address the challenges delaying ratification within the framework of existing follow-up mechanisms in collaboration with the AU Commission. Several factors have been identified as contributing to the poor state of ratifications, including many countries facing challenges in localising AU decisions due to insufficient coordination and alignment between continental and national priorities; most AU member states lack clear, structured processes for ratifying and implementing AU instruments, resulting in delays and inefficiencies; governments often have inadequate systems to monitor progress, leading to poor accountability; insufficient budget allocations further hinder implementation; the roles and responsibilities for implementing AU decisions are often fragmented and unclear, limiting effectiveness; a lack of capacity and resources hampers governments' ability to follow through; and key stakeholders, such as ministries, parliaments, the judiciary, and civil society, are frequently disconnected from the ratification process, impeding collective efforts to drive implementation.¹¹⁰

Generally, both the executive and the legislature play roles in the ratification and domestication of international legal instruments, with the executive typically taking the lead. The specific legislative procedures required may vary depending on the provisions of each national constitution. Consequently, the governments of AU member states are responsible for managing the ratification and domestication processes for AU legal instruments. Therefore, their willingness to cooperate and advance these instruments is crucial; without it, the instruments will not come into force.¹¹¹

One major challenge is that the executive branch often represents states at AU summits where legal instruments are adopted. Unfortunately, the executive rarely involves parliamentarians in negotiations or informs them about decisions and commitments made on behalf of the state. Sometimes, parliaments are not updated on summit decisions or provided with bills necessary for ratifying these instruments. Furthermore, there is often no dedicated government ministry or department for AU affairs, or existing ones may be ineffective. When parliaments have a constitutional role in ratifying or domesticating treaties, it frequently becomes a formality rather than a critical review due to executive dominance in African governance structures.

Additionally, citizens and stakeholders are often unaware of these instruments and their impact on their rights, leading to a lack of public pressure for their ratification and implementation. Currently, the AU lacks systematic structures to track and report on the progress of ratification and the implementation of its legal instruments. Commitments made at summits are often not fulfilled, creating a significant gap between norm-setting and implementation. This gap impedes progress towards AU's goals on constitutionalism and democratic governance. Addressing these issues requires

110 EX.CL/Dec. 979 (XXXI); Nwebo (2019: 181).

111 Nwebo (2019: 180-182).

vigorous advocacy and efforts to raise awareness among stakeholders about their role in promoting AU policies and programs.

4 Ongoing developments and challenges

The PAP has developed several strategic plans aimed at strengthening its role and effectiveness in advancing the AU's goals.¹¹² The PAP's 2018-2023 Strategic Plan is closely aligned with the AU's Agenda 2063, a comprehensive vision for Africa's transformation over the coming decades.¹¹³ In supporting AU member states, RECs, national and regional parliaments, and the AUC, the PAP is focused on advancing key flagship projects and priority areas outlined in Agenda 2063, including infrastructure development, economic integration, human capital development, and good governance.¹¹⁴ The PAP has called on all African nations and their legislatures to join the Association of Secretaries-General of African Parliaments (ASGAP). This initiative is seen as a strategic step toward realising the ambitious objectives outlined in Agenda 2063.¹¹⁵

The PAP Strategic Plan 2024-2028 was adopted in November 2024, marking a significant milestone in the institution's development. However, the details of the plan have not yet been publicly disclosed. The previous Strategic Plan (2019-2023) focused on bringing the voices of African people to the forefront of the PAP's functions, ensuring popular participation, good governance, and greater representation in decision-making.¹¹⁶ The plan set out specific and time-bound strategic objectives, which included: strengthening parliamentary functions of the PAP; enhancing partnership, co-ordination, outreach, and institutional capacity; promoting human rights and the shared values of the AU; and building research, and learning, knowledge management, communication, and advocacy capabilities within the PAP. The plan notes that PAP faces significant challenges regarding the slow ratification and domestication of its Malabo Protocol and other AU legal instruments.¹¹⁷ Key issues include low visibility, lack of political will among member states, and limited involvement of the PAP in AU governance activities. Centralised control by the AUC and inadequate funding further hinders the PAP's effectiveness.

Several other critiques have been raised regarding the PAP: Abanno observes that the PAP's programs and activities calendar is not aligned with the AU calendar. This misalignment limits PAP's impact on critical issues, as discussions in the Parliament

112 The PAP's first Strategic Plans covered the periods 2004-2007, 2009-2012 & 2014-2017.

113 AU EX.CL/Dec.886(XXVII).

114 Nwebo (2019: 119).

115 See <https://pap.au.int/en/news/press-releases/2024-09-17/pan-african-parliament-appeals-expanded-asgap-membership-propel>, accessed 25 September 2024.

116 PAP, Strategic Plan (2019-2023: 6).

117 Ibid.: 13.

often occur too late to influence AU decisions.¹¹⁸ Also, the PAP parliamentarians are non-residents in Midrand, South Africa, and meet only a few times per year for up to two weeks during ordinary sessions. This limits the time available for meaningful engagement and extensive deliberation, particularly on pressing issues.¹¹⁹ The Plenary, as the Parliament's decision-making organ, convenes for only a few sittings each year, restricting PAP's ability to exercise continuous influence. Once these sessions conclude, parliamentarians return to their national parliaments and constituencies, shifting their focus to domestic duties. This leaves the Secretariat in Midrand responsible for advancing the decisions, recommendations, and reports made during the sessions, which creates a disconnect in the continuity and follow-through on the PAP's objectives.

Mngomezulu underscores the hypocrisy inherent in the PAP's mandate to promote good governance amid widespread issues of free, fair, and credible elections in many African countries.¹²⁰ The pervasive election malpractices—including voter intimidation and manipulation of results—significantly undermine democratic practices.¹²¹ In several instances, Electoral Commissions are complicit with political leaders, releasing inauthentic results that distort the electoral landscape. Sesay further critiques the situation by arguing that numerous African nations fail to uphold true democratic values. He emphasises that when individuals gain parliamentary roles in their home countries through flawed electoral processes, their subsequent involvement in the PAP casts doubt on the Parliament's claim to represent the majority of Africans effectively.¹²² Ultimately, Sesay contends that the PAP's influence remains limited in a context where most citizens are disenfranchised and lack meaningful control over their leadership selection.

Nwebo adds that a modern parliament requires an adequate and conducive working environment with sufficient office space, infrastructure, and a state-of-the-art information technology unit to support its functions effectively. The South African government has made efforts to facilitate the Parliament's work per the host country agreement. However, Nwebo found that the PAP currently operates at Gallagher Estate in Midrand, South Africa, which is leased from the government as a temporary site.¹²³ Much of the equipment is outdated and insufficient to meet the demands of the Secretariat, let alone the members of Parliament during sessions and committee meetings. Although the South African government designated a permanent site for the PAP years ago, work on the new location has yet to begin.¹²⁴ Moreover, the PAP remains

118 Abanno (2023: 89-90).

119 Ibid.: 82.

120 See also Adeyeye & Adeyeye (2024).

121 Mngomezulu (2018: 57).

122 Sesay (2008: 22).

123 Nwebo (2019: 189).

124 Nwebo (2019: 189); See <https://mg.co.za/africa/2021-06-09-what-is-the-point-of-the-pan-african-parliament/>, accessed 25 September 2024.

understaffed, relying on temporary staff funded by development partners.¹²⁵ The PAP has also faced significant funding challenges since its inception because its budget is part of the AU's annual budget.¹²⁶

Another challenge is the lack of effective communication between the PAP and AU institutions.¹²⁷ Many AU bodies fail to understand the importance of PAP investigations, resulting in inadequate implementation of its recommendations. Additionally, on the note of visibility, despite being established to involve African peoples in decision-making, most Africans remain unaware of the PAP's existence and mission.¹²⁸ As Fagbayibo notes, PAP members are national legislators accountable primarily to their governments, not directly to citizens, diminishing their obligation to explain their actions to civil society.¹²⁹

Scholars and commentators have frequently questioned PAP's effectiveness, with many studies highlighting concerns about its structure and capacity.¹³⁰ This underscores the perception that the PAP has struggled to assert itself as a significant player in continental affairs. During the October 2017 session, several PAP members voiced their frustration with the slow pace of ratifying the revised Protocol. They questioned the purpose of their role, asking, "What are we for?" and lamented, "Every time we're here, we obsess over the same issues. If we are not making laws, then what's the point of being here?"¹³¹

Concerns about the PAP's lack of legislative authority are intensified by the longstanding scepticism toward African parliaments. Mpanyane highlights how many view these parliaments as powerless, ineffective, or merely symbolic.¹³² Magliveras and Huliaras echo this sentiment, arguing that post-colonial African parliaments have often served as extensions of the executive, functioning as 'rubber-stamping' institutions rather than independent legislative bodies.¹³³ This scepticism fuels fears that the AU has replicated this ineffective model at the continental level.

Despite facing challenges, the PAP is actively continuing its work. According to Magliveras and Naldi, the PAP provides a significant boost to the aspiration and vision of some Africans to establish a democratic foundation for the AU.¹³⁴ The 12th Annual Conference of Speakers of African National and Regional Parliaments, held in Midrand, South Africa, served as an important platform to evaluate the progress of the

125 Nwebo (2019: 190).

126 Ibid.: 191.

127 Ibid.: 193.

128 Dinokopila (2013: 323).

129 See <https://theconversation.com/why-the-pan-african-parliament-must-clean-up-its-act-if-it-wants-to-survive-97095>, accessed 25 September 2024.

130 Ncube (2020: 106).

131 See <https://www.news24.com/news24/pan-african-parliament-in-grip-of-existential-crisis-20171017>, accessed 25 September 2024.

132 Mpanyane (2009: 1).

133 Magliveras & Huliaras (2016: 276).

134 Magliveras & Naldi (2003: 233).

African Continental Free Trade Area (AfCFTA) Agreement. H.E. Chief Fortune Charumbira, incumbent President of the PAP, along with other leaders, highlighted the AfCFTA's potential to transform Africa's economic landscape, noting that 54 countries have signed the agreement, with 48 ratified.¹³⁵ Additionally, two key protocols—the Digital Trade Protocol and the Protocol on Women and Youth in Trade—were recognised as important advancements, providing a legal framework to promote digital and inclusive trade.

5 Model Law on Sustainable Soil Management in Africa

Although not publicly available at the time of writing, the PAP Strategic Plan 2024-2028 focuses on strengthening the institution's impact in several critical areas.¹³⁶ The plan highlights developing and promoting continental model laws, aimed at harmonising legislation across African nations to support economic development and integration. It also prioritises enhanced legislative oversight, empowering PAP to hold AU institutions accountable, and ensuring greater transparency and integrity among member states. Additionally, the plan reinforces the PAP's role in representation, solidifying its position as a key voice in continental decision-making. Finally, the plan focuses on building institutional capacity, and enhancing PAP's operational efficiency and financial sustainability, to support its role as the legislative arm of the AU.

To that end, a crucial ongoing initiative, as mentioned, is a proposed Model Law on Sustainable Soil Management in Africa, being developed by the PAP, DROP (from Stellenbosch University), and the UBA. This initiative aims to emphasise the critical need for effective soil management in supporting food security and mitigating climate change.¹³⁷

On 11 November 2022, the PAP already introduced a Model Law on Food and Nutrition Security to guide AU member states in developing national or sub-national legislation aimed at ensuring the right to adequate food and promoting food security.¹³⁸ While the Model Law includes provisions on the access to, and responsible management of, essential natural resources such as land, water, fisheries, forest resources, and biodiversity (Article 7(1)), the absence of "soil" from this framework is a significant oversight. Soil is not merely an agricultural medium, nor should it be treated as a synonym for "land". It is a distinct and dynamic ecosystem crucial for food production,

135 See <https://pap.au.int/en/news/press-releases/2024-09-19/significant-progress-afcfta-implementation-highlighted-conference-s>, accessed 25 September 2024.

136 See <https://pap.au.int/en/news/press-releases/2024-11-12/pan-african-parliament-adopts-2024-2028-strategic-plan-fourth>, accessed 10 December 2024.

137 See <https://pap.au.int/en/news/press-releases/2024-07-04/pan-african-parliament-and-pacja-harmonize-voices-urge-climate>, accessed 25 September 2024.

138 See <https://pap.au.int/en/news/press-releases/2024-06-28/pan-african-parliament-unveils-land-mark-model-law-food-and-nutrition>, accessed 25 September 2024.

climate resilience, and overall environmental health. The degradation of soil undermines food security, hinders climate mitigation efforts, and compromises the broader goals of the Model Law. For instance, the definition of “food loss” in Article 3(iv) should explicitly include soil degradation, as soil plays a central role in food quality, availability, and sustainability across the supply chain.

The objectives outlined in Article 2 of the Model Law emphasise a comprehensive approach to food and nutrition security. This includes ensuring the availability, accessibility, stability, and utilisation of food while upholding the right to adequate food. The law also aims to define rights and responsibilities, create an enabling environment for all stages of the food supply chain—production, processing, distribution, and consumption—and establish governance structures and accountability mechanisms to support food and nutrition security. While soil is not directly involved in these stages, its fundamental role as the foundation of agricultural systems makes soil health integral to achieving the law’s objectives. Sustainable soil management is vital for ensuring the availability and stability of nutritious food; without it, efforts to achieve food security will be severely undermined. Thus, recognising soil as a critical resource is essential for the law’s success.

Although the Model Law mentions “land” three times, it fails to adequately address the unique and critical issues related to soil health, lumping soil together with broader land management. These include conflicts between state land ownership and customary systems, land commodification, agricultural expansion, and mining. Additionally, unsustainable practices such as overgrazing, pesticide misuse, and poor land management are significant contributors to soil degradation, further highlighting the need for soil-specific provisions.

While Article 7 addresses several key issues affecting agriculture and soil sustainability, such as equitable access to eco-friendly inputs, credit, insurance, and sustainable technologies, it does not fully address the challenges related to soil health. For example, the law overlooks gaps in soil data and public awareness, which hinders effective monitoring and intervention. Other critical issues include weak enforcement, corruption, inadequate legal oversight of foreign investments, and the limitations of Environmental Impact Assessments (EIAs) in addressing the long-term effects of land use changes on soil health.

Thus, the Model Law falls short of safeguarding the fundamental resource that supports food production—soil. Without a dedicated framework for soil protection, food security policies remain incomplete and vulnerable. Consequently, a dedicated soil model law is essential to complement the Model Law on Food and Nutrition Security, ensuring that soil health is fully integrated into the broader strategy for achieving sustainable food security.

On 3 July 2024, the PAP adopted another crucial Model Law on Climate Change to support member states in developing national legislation to effectively address the

impacts of climate change.¹³⁹ This initiative reflects PAP's commitment to establishing a unified legal framework that tackles climate-related challenges across Africa. However, the contents of the Model Law have not yet been publicly revealed. Should this law include provisions addressing the role of soil in mitigating climate change, it would be a significant step forward. Nevertheless, this would not diminish the need for a dedicated soil model law. Climate change is one of many sectors directly affecting soil health, impacting critical areas such as food security, agriculture, water management, and biodiversity. Therefore, a focused, dedicated approach to soil is vital to ensure comprehensive, long-term solutions to the complex challenges affecting, and being affected by, soil across the continent.

6 Conclusion

Overall, the PAP faces significant challenges, including the quest for legislative powers, inadequate budgets, and a lack of autonomy over AU funding, which impedes its functions and advocacy for ratifying the Malabo Protocol and other legal instruments. Granting the PAP legislative authority, as argued by Magliveras and Naldi, could enhance its credibility and promote democratic reforms across Africa.¹⁴⁰ While comparisons with the EU Parliament often highlight the PAP's shortcomings, they may be unfair given the differing political and financial realities in Africa.¹⁴¹

To fulfil its potential, the PAP must focus on leveraging its existing framework and capabilities. Despite limited direct legislative influence, it has issued numerous recommendations and resolutions on critical continental issues since its establishment in 2004. However, the risk remains that without further reforms, the PAP will continue to be underdeveloped. The 2022 update to the Rules of Procedure reflects some proposed changes, yet the lack of ratification of the Malabo Protocol creates governance inconsistencies.

The PAP's future success hinges on sustained political support from AU member states, effective implementation of its revised mandate, and meaningful engagement with African citizens. After 20 years, the question of the PAP's value remains critical. Its initial vision—as a forum to represent African unity and facilitate cooperation on issues such as governance, development, and regional integration—holds undeniable symbolic and practical importance. If the PAP were to function effectively, it could serve as a cornerstone for African democratic processes, accountability, and collective problem-solving. Yet, the institution is marred by significant challenges. Leadership

139 See <https://pacja.org/a-model-law-on-climate-change-adopted-what-is-next/#:~:text=On%20July%203%2C%202024%2C%20the,guide%20legislation%20at%20national%20levels,> accessed 25 September 2024.

140 Magliveras & Naldi (2003: 233).

141 Mpanyane (2009: 7-9).

crises,¹⁴² corruption allegations,¹⁴³ limited legislative power, and minimal visibility have eroded its ability to function as a true legislative body. The perception that it mirrors the ineffectiveness of many national parliaments across Africa further undermines its credibility. These deficiencies, coupled with the considerable costs—around USD 15 million annually for the AU and additional expenses borne by member states and South Africa—raise questions about its significance, especially considering the socio-economic challenges many African countries face.¹⁴⁴

Thus, the PAP today stands at a crossroads. On the one hand, it has made significant strides in increasing its responsibilities and engaging with African citizens and AU organs. Regarding its model laws, the PAP holds value in spurring real change across the continent if member states domestically adopt these laws. In this context, a Model Law on Sustainable Soil Management would be a critical step toward addressing the foundational issue of soil health and its importance for food security, climate resilience, and environmental sustainability. By focusing on the soil as a vital natural resource, the PAP could catalyse stronger legal frameworks across African nations to protect and restore soils, ultimately strengthening the continent's agricultural and environmental policies. On the other hand, its potential remains constrained by political inertia, structural limitations, and the need for greater ratification and cooperation from member states. The future of the PAP will depend on whether these political aspirations can be realised through effective reforms, appropriate funding, enhanced public engagement, and stronger commitments from African leaders.

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142 See <https://issafrica.org/iss-today/pan-african-parliaments-woes-reflect-a-crisis-in-leadership>, accessed 27 September 2024.

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