

## *Chapter 9*

### **The role of parliament in regional integration – the missing link**

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#### **Introduction**

The growing emphasis on the need for good governance and greater accountability has resuscitated researchers' and practitioners' interest in the institution of parliament and its potential value and contribution to democracy and development. To this I would add integration, especially in Africa. The article is premised on the hypothesis that parliaments and parliamentarians are not sufficiently included in the process of integration and development, and the executive replicates its national dominance in that 'the ruling elite set [and approves] the integration agenda and implement the same with little involvement of other non-state stakeholders [including parliaments]' (Matlosa 2006: 118). Regional integration treaties and other instruments related to critical areas such as human rights, trade, environment and many others used to, and in certain instances continue to, pass through the House (of Parliament) instead of being passed by the House. This resulted in little, if any, debate on the instruments and their implications on domestic policy domestication, and harmonisation thereof became and remains difficult if not virtually impossible.

International treaties were and sometimes continue to be treated as the prerogative of the Head of State and the Executive. In recent years, the policy frontier has shifted to the regional, continental and international levels as decisions made at these levels (including those by unelected institutions such as the World Trade Organisation (WTO) and transnational companies) increasingly dictate the direction of national policy. It is therefore no longer business as usual for parliaments and parliamentarians as they are increasingly expected to know and oversee regional and international policy instruments which have a bearing on the national policy context.

Evidently, as well argued by Matlosa (2006: 118) 'the regional integration project underway in Southern Africa [and SADC in particular] propelled through both the

Regional Indicative Strategic Development Plan (RISDP) and the Strategic Indicative Plan of the Organ on Politics, Defence and Security Cooperation (SIPO) are state-centric and driven by the ruling elites and therefore lacks broad participation by other key stakeholders including political parties and legislatures'. Worth mentioning are also the SADC Protocols and other legal instruments which, despite parliaments' ratification, where so required, lack domestication and implementation mainly due to insufficient, if not total non-involvement, of parliamentarians. The need to enhance the role of parliamentarians and the institution of parliament in regional integration is therefore more profound than before. The continued negation of this cardinal role which can potentially enhance SADC and African integration is seen as the missing link in the SADC integration process. A comparative overview of the different African Regional Parliamentary Assemblies (RPAs) will be presented to show how parliament remains at the periphery of the African integration project. On the other hand, the European integration process which is hailed as a good model to emulate shows how progressively parliament was and continues to be drawn to the centre of the integration process, thus filling a potential gap. Using the SADC Parliamentary Forum as a reference point, the author argues that SADC parliaments are not fully engaged or drawn to the centre of regional integration. The ongoing debate about the transformation of the forum into a regional parliament or establishing a SADC regional parliament is reflected upon. In conclusion, the paper asserts that parliaments cannot on their own chart the integration process but they definitely do have a role to play. There is, however, a correlation between the level and resolve to deeper integration and the role that parliament can play. To the extent that SADC may remain more of an intergovernmental regional bloc holding on to member states' sovereignty instead of gradually graduating into supranationalism, the role that RPAs and other community institutions will perform will remain limited.

### **The missing link: exclusion of parliament in regional integration**

Although African regional parliaments and parliamentary assemblies are intended to assume the legislative and democratic oversight functions of regional integration organisations and processes in the long run, they remain so far at an infant stage of organisational development and are far from exercising the roles that fully-fledged parliaments play in democratic setups (Terlinden 2004). This can be attributed to many reasons but two are worth mentioning. The first is the fact that parliament's role

is weakened by the constitutional and legislative framework which gives primacy to the executive: in many countries the executive is a domineering structure wielding discretionary power and rendering parliaments subservient (Bretton Woods Project 2008). This results in parliament minimally exercising its prerogative over legislation. Secondly, parliaments are bypassed in policy-making processes and confined to rubber-stamping institutions or, where they are consulted, only a few members or select committees are involved.

For the first four decades of Africa's independence, the legislature did not actively take part in regional integration and development as this was almost a preserve of the executive, and parliaments only had to concern themselves with domestic legislative issues. The institution of parliament was as such reduced to making 'rubber stamp' decisions including regional and international treaties, protocols and other instruments, often without any parliamentary debate on these. In some legislatures, this practice continues as parliaments are constitutionally not mandated to ratify international instruments or because of executive manoeuvre which results in such instruments not being subject to proper parliamentary scrutiny. Regional and international instruments therefore continue to be passed through parliament instead of being passed by parliament resulting in lack of ownership by the legislature. Oversight and domestication of such instruments therefore become a challenge as the legislature is not fully part of the process and this leads to a slow integration process in Africa and in SADC in particular. This in turn results in people not participating in and adequately benefiting from regional integration and development.

The attention to the institution of parliament as a significant role player is in part owed to the external cooperating partners who have been calling for good governance, accountability and transparency as well as expressing the need to establish regional parliamentary assemblies (RAs). The Cotonou framework of Agreement stipulated the creation of the African Caribbean and Pacific-European Union Joint Parliamentary Assembly (ACP-EU JPA) as well as the strengthening of the capacities of national parliaments in matters of regional integration (Terlinden 2004: 2). The Group of Eight (G8) Action plan also emphasised effective parliamentary involvement in political decision-making processes. Despite the strong emphasis on good governance contained in the New Partnership for Africa's Development (NEPAD) the mechanism for parliamentary involvement is not stipulated and parliamentarians and

the broader civil society claim to have been left out in the development of the continental development plan.

Parliaments hardly influence the integration process currently being pursued by SADC at the national level, given that they do not always get involved in the activities of the SADC National Committees (SNCs) where they are operational (Matlosa 2006: 129). It is a fact that, in some instances, national parliaments are not even required to ratify or approve treaties or protocols and such instruments becomes part of national law without parliamentary involvement. 'It is also worth noting that not only are parliaments in the SADC region dominated by executives to the extent that they are unable to play their rightful role of ensuring accountability and constructive criticism of governments, they are also overwhelmingly dominated by ruling parties' (Ibid: 129-130).

The advent of globalisation has resulted in international democracy deficit as international and regional unelected institutions started to direct national policy to the exclusion of the elected representatives of the people and parliaments. The national context, especially in weaker/vulnerable states, is increasingly influenced externally including by transnational companies. The paradox of our time, on the other hand, is that while the substance of politics is fast globalising (trade, environment, terrorism, etc.) the process of politics is not (parliaments, elections, political parties, etc. remain firmly rooted at the national and local levels) (Inter-Parliamentary Union 2006: 155-8). Since Parliament is the embodiment of participatory democracy and the only institution constitutionally mandated to represent the people, to make laws and to exercise oversight over the work of the legislature, it follows that this triple role of parliament should be realised at the national, regional, continental and international levels to ensure an inclusive globalisation process. The inclusion of parliamentarians in the process of regional integration will ensure better results in the implementation and monitoring of regional and international instruments as well as constant feedback to and from the communities on the impact of such instruments. SADC through the SADC Treaty (of 17 August 1992) has graduated or is expected to graduate from mere cooperation to deeper regional integration where a degree of supranationalism is expected to gradually override the historical emphasis on state sovereignty. More specifically, SADC through the Treaty commits itself to the promotion of sustainable and equitable economic growth and socio-economic development through deeper

cooperation and integration, good governance and durable peace and security. Complementary to the Treaty, SADC has developed 27 SADC protocols and only 20 of them are enforced, the remainder lacking the requisite ratification by at least nine members. SADC protocols deal with important issues such as corruption, education and training, health, trade, the Tribunal, energy, fisheries and forests, shared watercourses, tourism, mining, transport and many more (SADC Parliamentary Forum 2006).

The expectation is that the region will achieve policy complementarity and harmonisation through the domestication of these protocols and achieve regional development for its citizens. At its 18th Plenary Assembly Session held on 1 June 2005, in Ezulwini, Swaziland, the SADC Parliamentary Forum extensively discussed the challenges in the implementation of protocols and lamented the slow ratification and implementation of protocols as well as their non-domestication, which according the Forum was largely a result of the non-involvement of the people's representatives, namely the parliamentarians (SADC Parliamentary Forum 2005). Furthermore, parliamentarians noted that they rarely knew which Protocols their governments had ratified or had not ratified – this making oversight over protocols impossible. To this challenge, the SADC Parliamentary Forum in collaboration with a South African based non-governmental organisation called SaferAfrica developed a comprehensive Compendium on SADC Protocols and other legal instruments which they then disseminated to parliaments, SADC Council of Ministers and other stakeholders.

Of concern to parliamentarians and other stakeholders of SADC integration is the SADC Protocol on the Facilitation of Free Movement of Persons which has been applauded as the most important protocol, in fact so much so that it is referred to as 'the mother' of all protocols. Surprisingly, this protocol could not even receive half the signatures of SADC Heads of State and Government – which is unusual for SADC Protocols. Currently, only six countries signed and only Mozambique ratified the protocol. Whilst the ratification and implementation of this protocol may rightly be viewed as vital for the process of true SADC integration, all indications are that this protocol may not be ratified any time soon. Although the interrogation of why the SADC Executive is refusing to sign and ratify this protocol may be beyond the scope of this article, the involvement of parliamentarians in this process would have

solicited the views of the ordinary people on this matter and paved the way forward. The lack of progress on this critical protocol has brought to question the commitment of the SADC Executive to deeper integration and the prospects thereof.

SADC has also put in place its integration, developmental and governance instruments, namely the Regional Indicative Strategic Development Plan (RISDP) and the Strategic Indicative Plan of the Organ on Politics (SIPO). Through the RISDP which is SADC's main macroeconomic policy framework, the region wants to promote sustainable and equitable economic growth, accelerate poverty eradication and attain other socioeconomic development goals. The RISDP also presents the region's integration road map which is to establish a free trade area by 2008, a customs union by 2010, a common market by 2015, a monetary union by 2016 and a single currency by 2018. Whilst a free trade area was launched in Johannesburg at the community's recent summit in Johannesburg despite Angola and the Democratic Republic of Congo's (DRC) non-participation, the realisation of the remainder of the milestones remain to be seen due to a multiplicity of factors such as multiple membership amongst member states, the impact of the ongoing Economic Partnership Agreements (EPAs) negotiations, questionable ability and willingness to meet certain integration prerequisites, and scepticism of individual member states agreeing to gradually forego national sovereignty for supranationalism. Through SIPO, the region commits to a regional politico-security architecture underpinned by the promotion of political, defence, state, and public security. The Organ on Politics, Defence and Security Cooperation is the principal driver of SIPO.

In addition to SADC's designed development and integration instruments mentioned above, the region has acceded to other continental and international instruments such as the New Partnership for Africa's Development (NEPAD), its Peer Review Mechanism (APRM) and the Millennium Development Goals (MDGs). The APRM which is a governance instrument is, however, a voluntary instrument and not all member states acceded to it. NEPAD is a continental development plan whilst the MDGs are internationally accepted development goals in which at present Southern Africa amongst the regions of the world is seriously lagging behind. The design of both the regional and international instruments did not spell out a clear role for parliamentarians, and this omission, whether by design of default, casts doubt at the attainability of the many noble goals contained in the RISDP, SIPO, NEPAD, MDGs,

and many other instruments. If included, parliamentarians would have ensured that these instruments were domesticated, popularised, included in the budget and planning processes, and that the implementation was monitored and guided through parliamentary debate. The role of parliament in regional development and integration is therefore indispensable, and where it is omitted – as in this case – it becomes the missing link to attaining deeper regional integration.

### **Overview of experiences of African Regional Parliamentary Assemblies (RPAs) and integration**

The wave of regional integration embarked upon in the 1990s ushered in the establishment and consolidation of regional integration institutions including Regional Parliamentary Assemblies (RPAs) as institutions to uphold good governance, accountability and transparency. On the African continent, some of the RPAs established, notwithstanding their varying status of operation, the East African Legislative Assembly (EALA), Economic Community of West African States Parliament (ECOWAS-P), Inter-Parliamentary Union of Intergovernmental Authority on Development (IPU-IGAD), Network of Parliamentarians of the Economic Community of Central African States (REPAC), Pan-African Parliament (PAP), Parliament de l' Union Economique et Monetaire Quest Africaine (P-UEMOA) and also the Southern African Development Community Parliamentary Forum (SADC-PF) which with its proposed transformation into a fully-fledged parliament will be examined in more details in the next section. For details on the membership of each of the RPAs, see Annex 1. Other more ad hoc or theme-based parliamentary bodies such as the African, Caribbean and Pacific States, European Union Joint Parliamentary Assembly (ACP-EU JPA), African Parliamentarians' Forum for NEPAD and others were also established.

After the collapse of the first RPA and the then East African Community (EAC) in 1977 the community in its 1999 new EAC treaty proposed the EALA which was inaugurated in November 2001. In its revised treaty of 1993, the Economic Community of West African States (ECOWAS) introduced a parliament and signed the protocol for its establishment but it was not until March 2000 that it entered into force. The ECOWAS-P held its first session in January 2001. The SADC Parliamentary Forum was initiated through the 1993 'Windhoek Initiative' and

ultimately endorsed by the SADC Heads of State and Government Summit in 1997 as a parliamentary deliberative body without legislative powers. The continental parliamentary body, the Pan-African Parliament, was inaugurated on 18 March 2004, however as a deliberative body with consultative and advisory powers only. Far less established is the IPU-IGAD whose founding protocol was signed by Speakers in 2004 but it is yet to start operations in earnest.

The legitimacy and authority of any representative body, and in particular a parliament, depends on the process through which its membership is composed, namely the electoral or appointment process. All the RPAs named above (with the exception of EALA) are indirectly elected and or appointed through the national parliaments, as was the case for the European parliament between 1952 and 1979. In the case of EALA, Members of the Regional Parliamentary Assembly (MRPA) are nominated by parties represented in parliament, but serving MPs are themselves not eligible. Whilst this procedure may well broaden the political space and actors and allow EALA to consider its regional mandate, it potentially lead to a division between the regional body and the national assemblies at the expense of EALA's means to push the regional agenda at the national level (Terlinden 2005: 5). The RPAs do require parliaments to ensure fair political and gender representation in their nominations of Members of Regional Parliamentary Assemblies (MRPAs).

Some of the RPAs in their constitutive legislation have indicated their willingness to adopt the universal adult suffrage in the recruitment of their members in future. Desirable as it may be, its implementation will not only be costly but will face challenges of defining the constituencies and the management of the electoral process itself. Proportional representation versus representation of member states is another issue of concern in the membership of RPAs. Only the ECOWAS-P applies a degree of proportional representation in which Nigeria because of its population size of more than 126 million is allocated 35 seats on the 120-member parliament with the rest distributed to the other members almost in equal proportion. Nigeria also substantially pays more than the other member states into the budget of the regional parliament.

Except EALA, all other African RPAs only perform an advisory role without the traditional oversight role and lawmaking function of budget control. Even when this

role may be exercised, the executive is not obliged to take the advice and recommendations given. EALA may request the Council to submit proposals on matters which according to the parliament require their attention – and they have done so in the past (Terlinden 2004: 6). The ECOWAS-P, IPU-IGAD and SADC PF have virtually no oversight powers or lawmaking function. EALA and PAP may request people to appear before them, but in the case of refusal they are powerless and cannot subpoena as in the case of national parliaments. EALA reportedly asked 19 questions to the executive and they were all ‘duly’ answered. The limitation of this right to question the executive is that the questions automatically lapse if not answered within six weeks.

An important power to be exercised by parliament is the passing and oversight of the budget. Both EALA and PAP have limited budgetary oversight as they do not have the power to change the budget but only to review it. This reduces RPAs to merely ‘rubber stamp’ the budgets. EALA, ECOWAS-P and PAP all receive their budgets from their respective regional executive and this implies a high degree of dependence on regional executives and national governments which is not ideal for the independence and autonomy of a parliament. The SADC Parliamentary Forum, on the other hand, receives its money directly from parliaments in the form of membership contributions and contribution to the capacity-building initiatives through its Parliamentary Leadership Centre (PLC). This arrangement and contributions from cooperating partners allow a degree of self reliance and autonomy both from donors and the regional executive. The challenge with the contributions to the Forum is that all parliaments make the same contribution irrespective of the size of their respective national economies or size of population.

As a parliament EALA is entitled to make laws but this is also seriously constrained as the parliament ‘can only put forward and vote on motions and bills if they have no cost implications to any fund of the community’ (Terlinden 2004:7-8). Even bills by EALA or the Council do not become law until the three heads of state, namely of Kenya, Uganda and Tanzania assent. If no assent is received for a second time, such bills lapse and the East African Executive can therefore be said to have a veto right over EALA’s decisions.

### Evolution of the European Parliament (E-parliament): a brief overview

The European Parliament (E-Parliament) which is hailed worldwide as a classic example of transnational democracy has over the years graduated from a fig-leaf status to a colegislature. It was not until 1979 that the E-Parliament was merely a forum to be consulted on a small range of legislative proposals prior to their adoption by the European Council. Worth noting is the fact that the Parliament was nevertheless given the right to dismiss the Commission in a vote of censure with a two-thirds majority. The system whereby ministers alone could adopt legislation suffered from 'democratic deficit' and Parliament had to fight for its powers; this it has done with considerable success (Corbett et al. 2005: 2-4).

The E-Parliament over the past four decades has evolved both in scope and powers to being a bicameral system in conjunction with the Council. This role was supposed to be enhanced through the new EU Constitution which is unfortunately facing an impasse after it could not pass the referendum in crucial EU states. The step-by-step increase in legislative powers of the E-Parliament is demonstrated in the table below.

**Table 1: Chronology of the evolvement of the European Parliament**

Year	Development	Implication
1970-1975	<b>Budget treaties</b>	Council and Parliament jointly became the budgetary authority in which case Parliament could exercise final vote on its adoption or rejection.
1975	<b>Conciliation procedure</b>	The procedure was to regulate the Council's legislative powers and Parliament's budgetary powers in which any disagreement would be referred to a conciliation committee composed of Council and an equal number of Members of European Parliament (MEPs). It would, however, be up to the Council to adopt the legislation in question
1979	<b>MEPs first election by universal suffrage</b>	Enhanced democratic legitimacy and more public debate on European issues as well as providing the Parliament with full-time MEPs

<b>Year</b>	<b>Development</b>	<b>Implication</b>
1980	<b>Isoglucose judgement of the Court of Justice (cases 138 and 139/79)</b>	Legislation was struck down because the Council did not allow Parliament to express its opinion and this enhanced the Parliament's bargaining power as the Council could no longer afford to by-pass the parliament.
1987	<b>Single European Act/Procedures for the adoption of Community Acts</b>	1. <i>Cooperation Procedure</i> – consultation procedure requiring Council's position be referred back to Parliament which then had three months to adopt or reject; 2. <i>Assent procedure</i> – Parliament assumed equal rights with Council in the ratification of accession treaties and association agreements.
1 November 1993	<b>Treaty of Maastricht</b>	This brought significant increase to the powers of the European Parliament including the right to vote for the President of the Commission, President of the Central Bank and the Ombudsman, all of whom have to serve terms of five years in line with the Parliament term of office
1 May 1999	<b>Treaty of Amsterdam</b>	Scope of codecision was extended to include most nonagricultural legislation. Parliament's vote on the European Commission President became binding.
1 February 2003	<b>Treaty of Nice</b>	Further extended the scope of codecision to enable parliament to take other institutions to court, in line with the expanding EU the number of MEPs increased to more than 700 – the preferred ceiling,
Unknown	<b>New constitution</b>	Parliament spearheaded the constitutional process which proposed to (i) consolidate Parliament's position as colegislator with Council, (ii) codecision to apply to virtually all areas including agriculture and the whole annual budget, (iii) increase in Parliamentary powers including scrutiny and recall of Commission decisions, (iv) reinforcement of Parliament's position in the election of the Commission President.

For more information refer to Corbet et al. (2005: 3-6).

The developments and changes above have resulted in what is now referred to as a classic two-chamber legislature in which the Council represents the states and the

European Parliament represents the citizens (Hix 1999 quoted in Corbet et al. 2005). It is evident from Table 1 above that the European Parliament has gradually been taking centre stage in shaping the European integration and asserting its role and function at the continental level. In 1999, the European Parliament also demonstrated its power of scrutiny including dismissal of the Commission which had hitherto seemed only theoretical. Parliament set up an independent Committee of experts to investigate the Santer Commission and it was evident that a vote of no-confidence was imminent. Within two hours before this, the Commission pre-empted it and resigned. In the autumn of 2004, President-elect Barroso realised that unless he changed his team, he would not obtain the necessary approval from Parliament and three months later returned with a new team.

It is unimaginable what Europe would have been without a power-wielding transnational parliament which represents not only the European capitals but also the diversity of political interests including opposition parties and civil society. The unique feature of the Members of the European Parliament is that they further engage not merely as ruling versus opposition parties but are based on political groupings such as Christian Democrats, Greens, Alliance of Liberals and Democrats for Europe, Independents or Democrats, the non-attached groups, and so on. The full-time arrangement of MEPs allows them not only to spend time at the heart of decision making in Brussels but, most importantly, to ask questions, knock on doors, dialogue with each other in and across political groups, give feedback to their constituencies and obtain new negotiating mandates. This makes the EU system more open, transparent and democratic than would otherwise be the case. 'In short, the Parliament brings pluralism into play and brings added value to the scrutiny of EU legislation' (Corbett et al. 2005: 6).

### **The SADC parliamentary forum and SADC integration**

Before the Parliamentary Forum was established, there had existed no regional mechanism for parliamentarians of SADC member states to debate and inform SADC of the popular views on development and other issues affecting the peoples and countries of SADC. In other words, there was no mechanism for introducing and sustaining SADC's regional integration agenda in national parliaments. It was understood that through the Parliamentary Forum, the ordinary people of SADC

would know SADC, its objectives, programmes and activities better. The establishment of the SADC Parliamentary Forum has also ushered in a mechanism for parliamentary-civil society interaction which in turn is an enhancement of plural democracy. The approval of the establishment of the SADC Parliamentary Forum by the SADC Executive confirmed the need to provide a parliamentary mechanism at the regional level to accelerate the process of establishing the enabling legislative, regulatory, policy, institutional and democratic environment for regional integration. It was observed that without adequate information, knowledge and relevant competencies on SADC issues both at national and regional levels, parliamentarians and national parliaments could not effectively exercise their influence and legislative roles for the benefit of the region and its peoples.

The establishment of the SADC Parliamentary Forum, though only as a parliamentary platform to discuss matters of regional concern, has presented SADC parliamentarians with an opportunity to participate, albeit only at a deliberative level, in the region's development and integration agenda. The ideal situation for true parliamentary participation in regional integration is the transformation of the Forum into a truly regional legislative assembly, an ideal which the Forum continues to strive for. The stated vision of the Forum is to be 'a delivery-focused, people-centered institution that accelerates and promotes parliamentary participation in the regional decision making for the benefit of the citizens of SADC' (Strategic Plan 2006–2010). The primary objective of the Forum is to strengthen the implementation capacity of SADC by involving parliamentarians in SADC activities (SADC Parliamentary Forum 2000–2005: 2). Notably, an analysis of the Parliamentary Forum's objectives shows that seven of the fifteen objectives, namely i, ii, iv, v, vi, xii and xvi (SADC Parliamentary Forum Constitution, Art. 5(a-o)) relate directly to capacity building for effective implementation of SADC policies. Accordingly, a number of awareness, advocacy, research, capacity building and institutional development activities have also been implemented in the areas of HIV/AIDS, Information Communication Technologies (ICTs) for effective parliamentary and legislative performance and many other areas.

The Forum has identified four strategic objectives as key focus areas for intervention, namely

1. Improvement of Institutions of Democratic Governance in the SADC Region
2. Effective Implementation of Regional Integration Programmes
3. Enhancing increased professional performance of Members of Parliament and Parliamentary Staff under the Parliamentary Leadership Centre
4. Establishing strategic partnerships and alliances for parliamentary cooperation.

The creation of the Forum has presented SADC parliamentarians with an opportunity to interrogate important regional and development challenges and make recommendations on the same. The communiqués which emanate at the end of each major conference are powerful instruments in communicating parliamentary consensus on any matter of regional importance. The Forum at the level of plenary and thematic meetings is serving as a platform for parliamentarians to acquire information, exchange knowledge and experiences and promote best practices where necessary. SADC parliamentarians through the SADC Parliamentary Forum discuss and continue to engage in important issues for the region such as HIV/AIDS, gender, elections, African debt, trade and integration, the energy crisis, information communications technologies (ICTs), SADC protocols, transboundary waters, poverty and development, aid and development, and many others.

The Forum is widely acknowledged for its regional role in promoting democracy and governance through its election observation programme and also its work on gender and women empowerment. The Parliamentary Forum since 1999 has observed more than 10 elections in the region including the Democratic Republic of Congo (DRC) elections held in 2007 and, as a result, has participated in other elections missions and activities beyond the region. The Forum's formulation of the Norms and Standards for Elections (2001) which even preceded the SADC's Principles and Guidelines for Elections and which has been the principal instrument used by parliamentarians in election observation missions is acknowledged as classic parliamentary leadership in promoting governance in the region. In addition, the Forum developed a comprehensive guide to be used mainly by its election observers who constitute parliamentarians and their supporting staff. This covers the

observation framework, mission preparation, in-country orientation, the pre-election period, voting and counting, and the post-election period.

This document and the Norms and Standards are hailed as the most comprehensive election observation instruments 'from which other institutions could learn important lessons on monitoring and observation of elections' (Matlosa 2006: 133). A comparative analysis of the Forum's Norms and Standards and its guidelines and the SADC's Principles and Guidelines reveals that the former's strength lies in its details and emphasis in respect of election management whereas the latter puts more emphasis on election observation. Undoubtedly, through the SADC principles, the SADC executive has expressed a commitment to credible and legitimate elections in conformity with the AU principles (Matlosa 2006: 133). Another noteworthy elections observation in the region is the Electoral Institute of Southern Africa (EISA's)/ECF Principles for Election Management, Monitoring and Observation in SADC (PEMMO). There have been calls to merge the three elections instruments into one, but such calls ignore the fact that the instruments are diverse and serve divergent political interests.

The Forum has also played a critical role in the promotion of gender equality and advancement of women's empowerment in the region. The Forum's advocacy work in this area is also credited for having influenced SADC's raising the bar for women in political decision-making positions from 30% to 50% and monitoring the same. Currently, the SADC Parliamentary Forum's gender desk is engaged with the SADC Gender Unit to mobilise for the upgrading of the Gender Declaration into a protocol. As a gender advocacy mechanism, women's caucuses were created in some SADC parliaments and at regional level. An MP's guide on gender and development was developed on which basis the Forum conducts training sessions for MPs in gender advocacy and analysis skills. The Forum's gender programme has also extensively reached out to civic groups working in the area of gender and women's empowerment. The overall impact of the programme is on sensitisation about gender, gender budgeting and mainstreaming, and women's empowerment.

The Forum also continues to make many strides in its contribution to SADC integration and development such as in the area of capacity building and advocacy for parliamentarians in respect to HIV/AIDS, Information Communications

Technologies, Regional Integration and many more. With the creation of the Parliamentary Leadership Centre in 2005 which is the capacity-building wing of the Forum, parliamentarians and staff of parliament receive practical and functional training aimed at improving their services and the professional performance of the institution of parliament as a whole. The above is an indication that the Forum, notwithstanding its current status that it is not yet a parliament, contributes greatly to SADC integration through capacity-building initiatives for parliamentarians and staff of parliament. Its advocacy work in the areas of governance and democracy has greater impact beyond parliaments as is evident from the elections work.

### **The forum versus a regional parliament**

On 8 September 1997, the SADC Summit of Heads of State or Government 'approved the establishment of the SADC Parliamentary Forum as an autonomous institution of SADC, in accordance with Article 9(2) of the Treaty' (SADC 1997: 18). In approving the establishment of the Forum, Summit noted that 'the main objective of the Forum is to constitute a Parliamentary Consultative Assembly. The ultimate goal of the Forum is to establish a Regional Parliamentary Framework for dialogue on issues of regional interest and concern' (Ibid.). It needs to be pointed out, however, that the position of the Forum as a treaty organisation proper is viewed as tenuous even from within the SADC Secretariat, and this has resulted in a continuously more informal relationship between the two organisations instead of the ideal complementary formal relationship between them. In part, this relates to the claim of autonomy by the Forum which is necessary, given that it is a parliamentary institution that should be distinct from an executive institution such as the SADC Secretariat. Secondly, the continuous non-transformation of the SADC Parliamentary Forum by the executive into the long-awaited regional parliament has added to this tenacity.

Notwithstanding this, the Forum has undertaken several missions to present its case to many heads of state and government in the region and has received support from a number of them privately and publicly. Currently, the impasse results from the SADC Executive through the Council of Ministers and the Summit which fails to act as a collective and to grant the transformation of the Forum to a regional parliament. It is also believed that the SADC Executive's caution with transforming the Forum into a regional parliament resulted from the Forum's election observation of the 2000

Zimbabwean election in which the parliamentary observation mission contrary to the SADC mission did not give the election a clean bill. It is believed that as a result the Forum was not invited to the 2008 Zimbabwean Presidential and General Elections despite having successfully observed elections in more than ten countries for close to ten years.

The transformation of the Forum into a regional parliament should also be analysed in the context of the general executive-parliamentary relationships on the continent. The Pan-African Parliamentary which is supposed to be a continental parliamentary body was instituted without legislative powers, and its assumption of such powers after the first five years is not automatic but will depend on executive assent. As discussed earlier, only the East African Legislative Assembly was given limited legislative powers whilst the ECOWAS Parliament has mere consultative and advisory powers. This brings to question the willingness and readiness of the African executive to subject itself to regional and transnational parliamentary scrutiny and oversight.

Notwithstanding the SADC Executive's non-transformation of the Forum into a legislative body, the Forum's 13-member parliaments (with the exception of one) have been paying their membership fees faithfully over the past eleven years. Not only that, but the Plenary Assemblies which are usually held twice a year and bring together more than 60 parliamentarians including Speakers of Parliament who are Members of the Executive Committee, have been well attended. Attendance of the many thematic meetings and other capacity-building activities over the years has been very high. Plenary Assemblies usually receive the host Head of State or Government or his most senior representative to deliver the keynote address whilst ministers or their deputies do the same in the case of thematic meetings which are held in the different member states. The presidents or their representatives and members of the cabinet who presided over the Forum activities never disowned or denounced the SADC Parliamentary Forum publicly. Instead, many of them would welcome the Forum as an important regional player in need of transformation into a fully fledged regional parliament. It is evident from this that there is general support for the existence of the Forum and the course that it stands for, but this, however, does not translate into a regional collective consensus necessary to transform the Forum into the requisite regional parliament.

Reasons advanced for the refusal to establish a SADC Parliament include

- financial and resource (technical, human) constraints arising from the creation of the SADC Parliament and also sustaining the Pan-African Parliament;
- ceding of a degree of sovereignty by national parliaments and member states before the Parliament is empowered to legislate;
- current configuration of the geopolitical regions of the African Union (AU), which is the basis of organisation for PAP, excludes a significant number of SADC countries;
- need to respect national policies in the context of a regional framework.

The SADC Parliamentary Forum's response to this is that the Parliament is envisaged to gradually evolve and develop once the legal framework is in place (SADC Parliamentary Forum 2007). It is believed that financial constraints could be overcome through the secondment of staff from national parliaments and the possibility of renegotiating donor finance, which is currently available to the Parliamentary Forum.

Pending legislative powers, the SADC Parliament could begin the process of harmonising laws and regulations. Notwithstanding the small size of the Southern Africa geopolitical region, SADC Parliaments collectively played a decisive role in the preparation of the PAP Protocol, a process that has strengthened cooperation and understanding among the members of the Parliamentary Forum. The Forum further believes that it wants to consolidate this cohesion which in turn will strengthen SADC.

The Parliamentary Forum posits that the current status of the SADC Parliamentary Forum does not allow it to fulfil its potential role and, in addition, results in the perception that it is nothing more than an association without recognition from the leaders of SADC. A SADC Parliament can act as a vehicle that promotes the political, economic and social development of the region guided by a common agenda and strengthened by broad participation. The SADC Parliamentary Forum in its Constitution Article 8(2)(b) provides that 'upon the Forum becoming a Parliamentary structure, the Plenary Assembly would be the legislative body in full consultation with SADC authorities and without infringing on the sovereignty of SADC national Parliaments' legislative functions'.

The proposed establishment of a SADC Parliament should be seen in the context of a region integrating and firmly placed on a path of lasting growth and development. The Parliament would add value to the process of integration by spreading a culture of human rights and gender equality, as well as encouraging good governance, transparency and accountability, thereby consolidating democracy throughout the region. By providing a regional forum for dialogue and consultation, the Parliament would promote public participation in regional governance and encourage greater political, cultural and social contact between peoples and institutions. It would strengthen economic integration and accelerate development as well as assist in the necessary process of rationalising the multiplicity of Regional Economic Communities that have overlapping membership. The Parliament would help to develop an understanding amongst peoples with diverse political, cultural and legal backgrounds as well as enhance the development of a SADC consciousness and identity with a vision of a common destiny. A SADC Parliament, it is believed, would also promote peace and stability through advancing peaceful means of resolving differences in the region.

A critical question about SADC integration is whether its integration will move towards more supranational features in its structures and decision-making process, at least in the foreseeable future, or whether it will just remain an intergovernmental arrangement as is currently the case. It will therefore not be inaccurate to suggest that the future role of the SADC Parliamentary Forum and other parliamentary bodies in regional governance and regional development will be shaped, to a large extent, by the future scenario of what will happen to SADC itself (Ibid. Constitution Article 8(2)(b)). In case this assessment is correct, chances for the SADC Parliamentary Forum to mobilise enough political will for its speedy transformation into a fully-fledged regional parliament with a reasonable amount of oversight, investigative and law-making powers unfortunately may not be sufficiently high, unless and until such time that SADC integration itself moves again into higher gear.

The real arena for parliamentarians to accelerate regional integration for the time being thus remains the national parliament in the member states whilst the motion for a regional parliament can continue to be debated. The focus therefore should be on how the knowledge and skills of SADC parliamentarians could be enhanced so that they could more effectively drive the regional integration agenda from within their

respective national contexts. Again, the role of the regional level would be that of a platform for knowledge sharing, peer learning, exchange of experience and the highlighting of lessons learned and good practice. This, in turn, should again inform policies and policy debates on national level where the real decision-making power lies. Parliaments as the legislative arm of government are, by nature, very much at the heart of governance.

The Forum through the Parliamentary Leadership Centre and other parliamentary stakeholders can fill this capacity gap whilst continuing to convene parliamentarians at regional fora to act as a necessary pressure group on issues of regional importance. Four 'generic' areas for parliamentary intervention are discernible, namely *regional integration, development, governance and democracy*.

### **The case for parliamentary role in regional integration**

Parliamentary role in regional and multilateral affairs is necessitated by the fact that the distinction between foreign or international and national or domestic has become increasingly blurred. 'Parliaments must therefore step beyond the traditional Executive prerogative in international affairs, and subject governments to the same degree of oversight as in domestic policy arena' (Inter-Parliamentary Union 2006: 157). In practical terms, the First Conference of Presiding Officers of Parliaments held in 2000 decided to operationalise this by, amongst others,

- Influencing their respective countries' policy on matters dealt with in the United Nations and other international negotiating fora;
- Keeping themselves informed of the progress and outcome of these negotiations;
- Deciding on ratification, where the constitution so foresees, of texts and treaties signed by governments; and
- Contributing actively to the subsequent implementation process.

However, according to the Inter-Parliamentary Union (2006) there are certain prerequisites for enhancing the role of parliament at the regional and international level such as:

- Having a clear legal basis for a parliamentary involvement;
- Being informed sufficiently in advance of government policies and negotiating positions together with accurate information about the policies and their background;
- Having the necessary organisation and resources to address the issues, including sufficient expertise among the individual parliamentarians involved through their work in specialised committees;
- Being afforded an opportunity to put questions to ministers and negotiators, and thus be able to express its political (though not necessarily legally binding) views to the government;
- Being included as a matter of course in governmental delegations to international fora.

Parliament is an institution constitutionally mandated with the triple role of representation, lawmaking and oversight including passing and reviewing government budget/expenditure. Mohammed Salih (2005: 13), however, expounds on this by arguing that with multiparty democracy, African parliaments began to assume more seriously the six generic roles of political governance which are

1. Legislation, where proposals and programmes emanate, in the main, from the political executive;
2. Representation by providing the link between government and people;
3. Scrutiny of the executive to ensure that government is accountable, including the power to remove it;
4. Political recruitment of a pool of talent, some of which is expected to find its way to leading political and decision-making positions;
5. Legitimacy through representative legislation, debating public affairs and government performance openly; and finally
6. Conflict management.

It needs to be stressed that in positioning themselves as important role players in regional and international policy matters, parliaments never laid claim to a negotiating

mandate, nor sought one, as this remains the task of the executive. However, parliaments must be able to scrutinise the negotiations and be kept fully informed as they unfold and be afforded an opportunity to express to the executive their political views (Salih 2005:13). It is important for the envisaged regional role of parliament to be complemented by the new concepts such as shared governance or the governance continuum linking state-centered and societal-centred governance. African parliaments are increasingly invited to take a more profound role in anti-corruption campaigns, gender auditing, observance of social justice, and ethnic or violent conflict management (Salih 2005:13). As part of acknowledging the increasing regional and transnational role of parliaments it is argued that parliamentary diplomacy has resulted in the proliferation of international and trans-national parliamentary bodies, as well as an increased international role for national and regional parliaments (Manda 2008: 11-13, quoting Stavridis 2002).

Parliamentary diplomacy may be defined as activities of regional parliamentary institutions aimed at promoting good relations between states by bringing about tolerance, pluralism and mutual understanding and which provide a channel for advocating, negotiating and ultimately articulating the interests of the peoples of the region (Manda 2008: 11-13, quoting Stavridis 2002). Regional integration, on the other hand, is a process in which nation states volunteer to pull their resources as a means of achieving greater economies of scale harnessed through a larger and diverse market. It is also important to highlight the potential political gains of regional integration as an integrated region adopts and harmonises its policies and political agenda.

The advent of the Pan-African Parliament underscores the need for Regional Parliaments. The Protocol in Article 3(9), 11(7) and Article 18 envisages a greater role for regional parliaments which are supposed to be the building blocks of PAP. Article 18, for instance, provides that PAP

...shall work in close cooperation with the Parliaments of Regional Economic Communities and the National Parliaments or other deliberative organs of member states. To this effect, the PAP may, in accordance with its Rules of Procedure, convene annual consultative fora with the parliaments of the Regional Economic Communities and the National

Parliaments or other deliberative organs to discuss matters of common interest.

The above clearly highlights the need for Regional Parliamentary participation in the functioning of PAP. The relationship between the African Union and the Parliamentary fora of the Regional Economic Communities is complementary and mutually reinforcing. Although it is clear from the protocol that the establishment and functioning of the Pan-African Parliament does not depend on the existence of parliamentary fora of Regional Economic Communities, parliamentary fora are necessary for PAP to fulfil the specific objectives and functions as set out in Articles 3 (9), 11 (7) and 18. In other words, a Regional Economic Community without a parliamentary forum will be deprived of interaction with the existing Regional Parliaments during PAP meetings and be dependent on bilateral parliamentary contacts. In the case of SADC, the SADC Parliamentary Forum is currently not an integral part of SADC and without its transformation into a regional parliament or a treaty organisation proper it cannot formally influence the SADC Summit or any other important organ. Participation in this forum would be of great advantage to SADC.

### **Conclusions**

The limited powers of the RPAs is indicative of the general approach governments take towards regional integration in that the integration process is primarily intergovernmental rather than supranational (Terlinden 2004). The continued emphasis and adherence to preserving national sovereignty in both the executive and legislative spheres renders what most currently refer to as 'integration', that is an institutionalised form of intergovernmental cooperation, thus retaining the core elements of the then Southern African Development Coordinating Conference (SADCC).

The struggle over the establishment and strengthening of RPAs as Terlinden (2004) rightly puts it must therefore be regarded as an extension of the domestic struggles between executives and parliaments over political space and influence. To an extent, the creation and consolidation of RPAs have also led to an intraparlimentary competition between the national and regional legislature and especially between members at both levels as to who has overriding powers. Such competition should

be avoided and managed, and the complementarity of the two entities should be emphasised by which national parliaments can enforce regional parliamentary consensus because of their full parliamentary status. RPAs can serve as fora for such consensus building and advocacy on important regional matters. The PAP as the continental parliamentary body, though not with any legislative powers, can be instrumental in advocating for harmonisation of parliamentary business at the national and regional levels. Its assumption of using RPAs as building blocks which is currently not clearly defined in its protocol must be clarified, at least operationally.

While RPAs may not necessarily steer the path of regional integration, they can support it by acting as accelerating catalysts, provided they are willing to pick up the challenge and assert that role (Terlinden 2004). Learning from the European integration process and in particular the gradual process that the E-Parliament took to assume the legislative and oversight powers it has today, which, admittedly, is not as comprehensive as they would want it to be, is a lesson that integration is a process and not an event. The role of parliament in the integration process (which in the case of Europe grew gradually and cumulatively) will not occur automatically but will require legislature to assert itself. For deeper integration to take root, the legislative and executive hold on to sovereignty must gradually give way to transnationalism. External challenges which threaten African and SADC integration such as the ACP-EU Economic Partnership Agreements should be confronted head on and the African community should be guided by its ideal to promote unity and integration for the benefit of the African populace.

### Annex 1: Member states of Regional Parliamentary Assemblies

Regional Parliamentary Assembly	Country Membership
East African Legislative Assembly	Kenya, Tanzania and Uganda
ECOWAS –Parliament	Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, Togo. (Mauretania quit)
Inter-Parliamentary Union of IGAD Member States (IPU-IGAD)	Djibouti, Eritrea, Ethiopia, Kenya, Somalia, Sudan, Uganda
Network of Parliamentarians of the Economic Community of Central African States (REPAC)	Angola, Burundi, Cameroon, Central African Republic, Chad, Congo, DRC, Gabon, Equatorial Guinea, Rwanda, São Tomé and Príncipe
Pan-African Parliament (PAP)	Each of the 54 AU member states of Africa except Morocco
Parliament of UEMOA (P-UEMOA)	Bernin, Burkina Faso, Côte d'Ivoire, Guinea-Bissau, Mali, Niger, Senegal and Togo
SADC Parliamentary Forum (SADC PF)	Angola, Botswana, Democratic Republic of Congo (DRC), Lesotho, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia, Zimbabwe (SADC except Seychelles which is currently processing its application).

Source: Terlinden (2004)

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