



PAP/BUR/04/09-2023

DATE: 08 September 2023

Hon. Presiding Officers of National Parliaments

Cc: Clerks/Secretaries General of National Parliaments

Dear Hon. Presiding Officers,

RE: UNLAWFUL LETTER FROM THE 2ND VICE PRESIDENT ON THE PAN AFRICAN PARLIAMENT (PAP) PROTOCOL GUIDELINES FOR DESIGNATION OR REDESIGNATION OF MEMBERS TO THE PAN AFRICAN PARLIAMENT

I refer to the letter of even reference dated 30th August 2023, addressed to Hon. Speakers of national Parliaments and Senates by the 2nd Vice President, Hon. Dr. Ashebir Woldegiorgis Gayo, purporting to act on behalf of the Pan African Parliament and as Acting President of PAP. Hon. Presiding Officers are advised to ignore the letter on the basis that:

- i. The letter is written on a letterhead entitled “Office of the Acting President”. There is no such statutory office within the Pan African Parliament.
- ii. The author of the letter, Hon. Dr. Gayo, is not the Acting President of the Pan African Parliament. In line with Articles 12(4) and 12(7) of the Protocol to the Treaty Establishing the African Economic Community relating to the Pan African Parliament (*hereinafter* referred to as the PAP Protocol) as read with Rule 19 of the PAP Rules of Procedure, I am the bona-fide Acting President of the Pan African Parliament in line with the principle of rotation and as appointed by the H.E President Fortune Charumbira on 21st August 2023.
- iii. The letter seeks to unilaterally reverse the decisions of the Plenary Assembly, which is the supreme decision-making body of the Pan African Parliament. No individual has the authority to reverse the decisions of the Plenary. In that context, Hon. Professor Massouda Mohamed Laghdaf, the 1st Vice President, was duly sworn-in in plenary after all the necessary verification processes had been conducted by the Rules Committee. She is, therefore, the bona-fide 1st Vice President and representative of the Northern Caucus on the Bureau.
- iv. The amended PAP Rules of Procedure adopted on 4th November 2022 define a “**Sitting**” as “*the period during which Parliament is sitting and includes committee meetings.*” Therefore, Members of PAP, whether new or re-designated, can be sworn-in during any sitting of PAP and, for the avoidance of doubt, there is no contradiction with the Protocol.
- v. Rule 9(3) of the PAP Rules of Procedure provides that, “*The taking of oath of office ... shall not preclude a Returning Member of the Bureau or Bureauxes from continuing to perform his or her functions until the end of his or her term of office.*” The taking of oath

is, therefore, not a precondition for a Returning Member of the Bureau or Bureauxes to assume office and execute their responsibilities.

I will clarify the points above in greater detail below.

THE QUESTION OF ACTING PRESIDENCY

The document is written on a letterhead of the “Office of the Acting President”. There is no such statutory office within PAP. Rather, Vice Presidents are appointed Acting President by the substantive President based on *ranking and rotation* as provided for in Articles 12(4) and 12(7) of the PAP Protocol as read with Rule 19 of the PAP Rules of Procedure. In accordance with the principle of rotation, I was duly appointed as the Acting President on 21st August 2023, prior to the President’s taking leave of absence for the Zimbabwe elections.

The appointment was premised on the fact that both the 1st Vice President and the 2nd Vice President have duly acted before in the President’s absence and we have all respected these appointments based on ranking and rotation. In fact, the 2nd Vice President, who is now claiming to be the Acting President, was the last to act in the same capacity as recently as March 2023 during the Committee Session when the President was away on official duty.

Secondly, the issue of rotational Acting Presidency was discussed and resolved in a Bureau Meeting convened on 10 May 2023 wherein I indicated my availability for rotation from mid-August into September 2023. Hon. Dr. Gayo did not make any indication of his preferred dates for rotation. Therefore, in line with the principle of rotation and the decisions of the Bureau, the lot fell on me this time to serve as Acting President. Even if we were to ignore the principle of rotation, which is an integral value of the African Union, and use ranking only as the criteria, the 1st Vice President, Hon. Massouda Mohamed Laghdaf, would be the most senior and, hence, the Acting President. So both in terms of ranking and rotation, Hon. Dr. Gayo is not the Acting President

STATUS OF THE FIRST VICE PRESIDENT

Article 5(1) of the PAP Protocol states that, “*The Pan-African Parliamentarians shall be elected or designated by the respective National Parliaments or any other deliberative organs of the Member States, from among their members.*” It is purely the sovereign and exclusive prerogative or, if you will, the responsibility of the National Parliament of a Member State to make such designation. The only restriction or disqualifying factor that is placed on Member States is found in Article 7 of the PAP Protocol which states that, “*Membership of the Pan-African Parliament shall not be compatible with the exercise of executive or judicial functions in a Member State.*”

For the avoidance of any doubt, the relevant Rules of Procedure of the Parliament are reproduced below:

Rule 6 Verification

After the election or designation of a person to be a Member of Parliament by a Member State, the National Parliaments or any other deliberative organ of the Member State shall notify the Clerk of Parliament of the new Members elected.

- 1) The Clerk of the Pan-African Parliament shall invite in writing the National Parliament or any other deliberative organ that has elected or designated the person to be a Member of Parliament to provide the secretariat with information about the person relevant for the verification of membership by the Clerk.
- 2) Where there is any doubt regarding the credentials of the elected or designated Member, the Clerk shall refer the information obtained under this Sub-Rule (2) to the Permanent

Committee on Rules, Privileges, Ethics and Discipline for verification in accordance with the provisions of Article 4 of the Protocol.

- 3) Where the information availed for verification of a person under Sub-Rule (2) is not compatible with membership of Parliament, the person elected or designated by the Member State shall not be sworn in as a Member of Parliament and the President shall inform the relevant National Parliament or any other deliberative organ accordingly.
- 4) Where the National Parliament or any other deliberative organ of a Member State notifies the Clerk that the status of the elected or designated Member has become incompatible with membership of Parliament, the Clerk shall notify the Bureau and the President shall declare before the House that the membership of the person has been terminated.
- 5) Where the President makes a declaration under this Sub-Rule (5), the Clerk shall inform the relevant National Parliament or deliberative organ of the Member State in writing that the person is no longer a Member of Parliament.

The Plenary, at the May 2021 Session of PAP, was faced with the issue of the swearing-in of the South Sudan delegation who were all new to the PAP. A Member objected to their swearing-in on the grounds that they were recently appointed into the South Sudan Parliament and had not been sworn-in as Members. The Member noted specifically that the South Sudan Parliament had not been inaugurated with leadership in place. The objecting Member stated that it would be wrong to swear-in the delegation at PAP in the absence of any evidence that they were indeed parliamentarians from their national parliament. The objection was overruled, and plenary approved their swearing-in because the Committee on Rules, Privileges and Discipline had cleared them as required by the Rules and that PAP cannot look beyond the requirement of Article 5(1) once a National Parliament makes the designation.

Unlike the South Sudan delegation that involved new Members being sworn-in, the Mauritania delegation consisted of returning members of the Pan-African Parliament and all the verification processes were duly complied with. Hon. Professor Massouda Mohamed Laghdaf is thus the bona-fide 1st Vice President as approved by Plenary. Hon. Dr. Gayo cannot reverse that decision without moving a motion in plenary.

SWEARING-IN OF MEMBERS OF PAP & RETURNING MEMBERS OF THE BUREAU AND BUREAUXES

Article 13 of the PAP Protocol provides for an Oath of Office during a “*Sitting*” of the Pan African Parliament but does not define which session constitutes a sitting of the Parliament. The definition of a “*Sitting*” of the PAP is articulated in the definition clauses of the PAP Rules of Procedure and states that, “*Sitting*” ***means the period during which Parliament is sitting and includes committee meetings.*** Therefore, Hon. Dr. Gayo’s insistence that a Member cannot be sworn-in during Committee sittings is in violation of both the PAP Protocol and the Rules of Procedure. National Parliaments are, thus, at liberty to send new and re-designated Members for swearing-in during both Committee sittings and plenary sessions.

Additionally, as I have already stated above, Rule 9(3) of the PAP Rules of Procedure provides that,

“The taking of oath of office ... shall not preclude a Returning Member of the Bureau or Bureauxes from continuing to perform his or her functions until the end of his or her term of office.”

The taking of oath is, therefore, not a precondition for a Returning Member of the Bureau or Bureauxes to assume office and execute their responsibilities. Returning Members of the Bureau and Bureauxes of Committees and Caucuses can, therefore, resume their positions and perform their

functions while awaiting swearing-in at the next sitting of the Parliament. This has engendered stability, continuity and strengthened the effectiveness of the Bureau, Committees and Caucuses.

CONVENING OF AN EXTRAORDINARY SESSION & DECLARING VACANCIES

Under Rule 17(c) of the PAP Rules of Procedure, it is the Bureau that determines the draft agenda and programmes of the Sessions of the Parliament. For the avoidance of doubt, Article 12.5 of the PAP Protocol states that the Bureau shall consist of the President and four Vice Presidents representing each of the five regions of Africa. Accordingly, Hon. Dr. Gayo has no authority to unilaterally convene a session of Parliament.

Secondly, a session of the PAP cannot last for two days unless it is an Extraordinary Session. When a session is called for a single purpose, as indicated in Hon. Dr. Gayo's letter, then it becomes an Extraordinary Session and triggers Rule 29 of the PAP Rules of Procedure which states that convening such an Extraordinary Session requires written notice signed by two-thirds of the PAP Parliamentarians. In other words, Hon. Dr. Gayo has no authority to call for an Extraordinary Session either. His letter is, therefore, null and void.

It is regrettable that Hon. Dr. Gayo has unlawfully attempted to place himself above the Constitutive Act of the African Union, the PAP Protocol, the Rules of Procedure of the Parliament and the Plenary. The letter and its contents must, therefore, be dismissed with the contempt that it deserves.

On behalf of the rest of the Members of the Bureau of the Pan African Parliament and indeed on my own behalf, please accept our unreserved apologies for the confusion Hon. Dr. Gayo's letter may have caused.

Please accept, Hon. Presiding Officers, the assurances of my highest consideration.



HON. LUCIA MARIA MENDES GONCALVES DOS PASSOS
ACTING PRESIDENT OF THE PAN-AFRICAN PARLIAMENT

Cc: H.E. Moussa Faki Mahamat, AUC Chairperson
H.E. Dr. Monique Nsanzabaganwa, Deputy Chairperson, AU Commission
AUC Legal Counsel
PAP Bureau Members
PAP Regional Caucus Chairpersons
Mme Lindiwe Khumalo, Clerk of the Pan African Parliament
Deputy Clerks
Director of the Bureau