

Submission by AfriMAP to the Audit Review of the African Union

23 October 2007

AfriMAP is pleased to make this contribution to the Audit Review of the African Union (AU) on the basis of its experience over the past three years in monitoring compliance with AU treaties and standards and seeking to promote civil society engagement with AU processes and institutions.

AfriMAP, a project of the Open Society Institute network of foundations in Africa, worked with Oxfam and AFRODAD to produce the report *Towards a People-Driven African Union: Current Obstacles and New Opportunities*, published in January 2007, that considers issues of participation in the AU, and has also published a set of studies of the implementation of the African Peer Review Mechanism (APRM). AfriMAP participated, together with other civil society organisations, in a consultative dialogue organized in May 2007 by the Pan-African Parliament (PAP) in collaboration with the Southern Africa Trust on the theme 'Building Effective Mechanisms for Civil Society Engagement with Pan African and Regional Institutions'. AfriMAP was invited by the Africa Citizens Directorate (CIDO) of the AU Commission to organise a panel discussion on the Union Government proposals during a session of the CIDO Civil Society Forum held in June 2007 in advance of the AU Accra summit, and was also one of the co-sponsors of an independent civil society meeting in Accra attended by representatives of more than 100 organisations from 30 countries in Africa that debated the proposals. For this meeting it commissioned papers from a range of experts, available on the AfriMAP website; the report of the conference will be available shortly.

AfriMAP shares in the disappointment of other civil society organisations that the timetable for the conduct of the Audit Review does not allow for wider consultation and participation by civil society, parliamentarians and other stakeholders in the institutions of the AU, including the institutions responsible for ensuring respect for the AU's human rights standards. A very limited number of submissions to the process can be expected, although many more would have useful contributions to make were the timelines more generous.

The critical finding from our work with a broad range of civil society organisations interested in engaging with the AU is the need for the AU institutions to be far more open to organisations and individuals who are not government officials, members of the AU Commission, or the small group of insider-outsiders who have privileged access because of their efforts to build up personal contacts in order to gain an understanding of AU processes. Looking forward, the loudly expressed view is that any new institutions and structures established at continental level should enhance the democratic accountability of the AU and empower Africa's citizens and communities, and not just its governments. This will require not only the vision of greater political and economic integration among Africa's states, but steps to increase participation in AU decision-making, as well as a clear focus on creating effective institutions that can implement and enforce the decisions that they take.

The following findings and recommendations that we hope may contribute to the Audit's work are drawn from the report *Towards a People-Driven African Union* and AfriMAP's other engagement with AU processes:

Monitoring and implementation of AU decisions

Decisions taken in meetings of the Permanent Representatives Committee (PRC), Executive Council of Ministers and Assembly of Heads of State and Government are key to the success or failure of the African Union and its institutions. Yet there is no effective mechanism to monitor and ensure implementation of decisions taken at summits. This vacuum threatens to undermine the entire purpose of the AU.

1. Increased diplomatic and political support should be given to the work of the AU Commission in monitoring and reporting on implementation of Assembly decisions. The PRC should establish a committee to consider the report of the Chairperson of the AU Commission to the Assembly at each summit, request that this report include detailed information on implementation of decisions by member states, and propose measures to be taken in case decisions are not being implemented.

Ensuring access to information about AU debates

A critical difficulty for African citizens – and even government officials – in engaging with the African Union is the difficulty of accessing up to date information about issues that are on the table for discussion. To remedy these defects perhaps the most urgent requirement is for mechanisms to improve access to and distribution of AU documentation, both for member states and civil society organisations. The AU Commission should exercise the considerable autonomy it has under the Constitutive Act to find alternative and more efficient ways of enabling public access to information. Amongst other things, the AU Commission should:

2. Prepare a policy on information disclosure and access for adoption by the PRC, modelled on international best practice. This policy should provide for automatic publication of most documents, as well as the right for African citizens to request and obtain access to all official documents, except where explicitly categorised as confidential according to published, restrictive criteria. Denial of access should be subject to an appeal procedure.
3. Seek and invest more substantial resources for the rapid translation and distribution of documents needed for summits and other meetings. This should include exploring new media technologies that could allow for papers to be downloaded directly by state officials in their capital cities, thus circumventing the need for the embassy in Addis Ababa to pass on the documentation manually.
4. Adequately resource and improve the AU website, in particular to keep all details up to date, provide a search function and archive system and complete those sections that are currently empty.
5. At minimum, publish on the AU website the draft agendas for summit meetings and supporting documents (including the AU Commission Chairperson's report on activities and documents submitted on agenda items by states) as soon as they are distributed to states.
6. Ensure that an accurate record of the proceedings of each summit is prepared and circulated within one month of the summit to all accredited participants and made available on the AU website.

Promoting civil society engagement with AU processes and summits

Inadequate obligations on states hosting the summits to be open to civil society participation and unclear rules of accreditation continue to limit African citizens' access to AU summits. Civil society leaders interviewed for the report *Towards a People-Driven African Union* recounted their recurrent difficulties in obtaining visas to enter the country where the summit is being held, accreditation to attend meetings, or even meeting space to hold civil society discussions alongside the summits. The AU Commission's interaction with civil society organisations more generally should also be more transparent and more open to a wider range of groups.

7. The PRC should make use of the rules of procedure that enable it to form committees and hear briefings from civil society organisations in relation to any topic in which their expertise may be useful.
8. The agreement signed between the AU Commission and the host country for an AU summit should include provisions requiring the country to facilitate civil society access. This should include easy granting of visas, freedom from harassment for civil society representatives, facilitation where necessary for civil society meetings and ensuring that adequate accommodation is available for delegates from civil society as well as government.
9. The AU Commission should initiate consultations on revised criteria for observer status for civil society organisations at the AU that would increase the number of qualifying organisations and should also adopt and publish clear criteria to govern the process by which civil society organisations may obtain support from the AU Commission for their accreditation to attend AU summits.
10. All departments at the AU Commission should be instructed to consult as widely as possible with civil society organisations, the organised private sector and representatives of those people directly affected by the issues being discussed in the development of decisions to be adopted at summits.
11. The African Citizens' Directorate (CIDO) should be required and given the resources to enable it to respond promptly to all inquiries from civil society organisations and African citizens about AU procedures and processes and to distribute AU documents widely to civil society organisations that have expressed an interest in the relevant issue, inviting comment where appropriate.
12. CIDO and the Women, Gender and Development Directorate should establish a steering committee to draw up the programmes for their respective pre-summit forums, publicly announce the meetings, invite papers and presentations on the summit themes and solicit interest in participation. The composition of the steering committee should rotate among organizations to ensure there is no 'AU capture' by a small set of insiders. The role of ECOSOCC in these fora should be clarified, on the basis of consultation.

Improving preparation for summits

The decision taken in 2004 to hold two summits a year places great stress on the administrative capacity of the AU Commission to prepare for and implement the decisions of the heads of state. Many decisions require other meetings to be organised to develop policies and implementation strategies, so that the entire time of the Commission can be taken up in organising meetings. Furthermore, member states often fail to respect rules of procedure in relation to summit preparations and conduct, increasing the administrative burden. The distribution of preparatory documentation prior to summits has been described as ‘catastrophic’. Often agenda items are not adequately considered by member states before the summit is required to make a decision upon them.

Procedures around preparations for summits need to be revised and strengthened so that fewer meetings are held and so that deadlines for submission and distribution of documents are adhered to. Either substantially more resources need to be allocated to the Commission by member-states or the number of summits must be reduced to one each year, as is the case for the heads of state summits of other bodies with far greater resources.

13. The AU Assembly should increase the AU Commission budget to enable the Commission to hire more staff and prepare effectively for summits and other AU processes.
14. In the absence of additional financing to the Commission, heads of state should consider reducing, at least in the short term, the number of meetings of the AU Assembly of Heads of State and Government to once a year, with scheduled meetings of the Permanent Representatives Committee and Executive Council of Ministers twice a year as currently. The number of extraordinary summits should be reduced.
15. The rules of procedure of the Executive Council of Ministers and the Assembly should be amended to require all meetings whose deliberations and resolutions will be considered at a summit to be held at least six weeks before the summit. This should enable reports of meetings to be translated and circulated in good time.
16. The AU institutions should establish a calendar for AU meetings at the outset of each year, to be published by the AU Commission. This calendar should indicate deadlines for documents to be received in respect of each meeting.
17. The Executive Council of Ministers and Assembly of Heads of State and Government should ensure respect their own rules of procedure. In particular, if member states do not submit proposed agenda items on time and with appropriate documentation the items should not be listed on the summit agendas for discussion. A separate procedure could be specified for exceptional situations where the rule may be waived.
18. The PRC should ensure that draft decisions considered at summits are thoroughly debated and properly prepared before they are presented to the Executive Council and Assembly. This should lead to smoother functioning of the decision-making process.

19. The PRC, Executive Council and Assembly should establish and respect official hours of work for summit meetings. There should be time limits for debates on individual agenda items and member state contributions to the debates.

ECOSOCC

The Economic Social and Cultural Council (ECOSOCC) is the primary structure directed at facilitating civil society engagement with the AU institutions. Most civil society organisations welcome the decision to establish the body as an organ of the AU. However, there have been significant problems in establishing the ECOSOCC structures at both continental and national level. There is a need to increase institutional support for ECOSOCC and to ensure that the election of ECOSOCC national chapters and continental representatives are as democratic as possible.

20. The ECOSOCC Interim Steering Committee should initiate a widely consultative planning process to take into account the diverse opinions relating to the future role and function of ECOSOCC.
21. The ECOSOCC Interim Steering Committee should provide procedural guidelines and secure adequate resources for the election of final ECOSOCC structures at national and continental level. These elections should be as transparent and democratic as possible – and take place on an urgent basis, since the interim structures have now been in place for a long time.
22. The rules of procedure of the PRC, Executive Council and Assembly, and the ECOSOCC Statutes, should be amended to permit ECOSOCC to suggest items for the agenda and to establish procedures by which ECOSOCC may be consulted prior to draft decisions being forwarded to heads of state by the PRC or Executive Council.
23. The public profile and role of ECOSOCC national chapters in relation to information distribution should be strengthened. The AU Commission could be required to distribute all documents relevant to AU summits directly to the ECOSOCC national chapters at the same time as they are distributed to states. The ECOSOCC national chapter could then distribute the documents to all national civil society organisations registered with it and convene a meeting in advance of each summit. In this meeting, foreign affairs ministries could brief civil society organisations and seek their opinions on draft government positions. The ECOSOCC national chapters should conduct awareness campaigns about their role.
24. The ECOSOCC Interim Steering Committee should publicise its role and purpose through active leadership and participation in the AU-CSO Forum and other civil society meetings.
25. The ECOSOCC Assembly should meet during the time of the AU summits and in the same location. Its agenda should relate closely to the summit debates. In this way it would promote interaction between the AU's civil society body and state representatives.

The Pan African Parliament

The establishment of the Pan African Parliament is a positive development that presents an opportunity for citizens' interests to be taken into account in AU policy making. PAP can also play an effective role in creating awareness and popularizing AU programs at national level: it is notable that its website is already the most informative of all AU institutions. In accordance with the Protocol that establishes it, PAP's role has been consultative and advisory during its first five years; it is to have legislative powers for its subsequent terms, which the Assembly must define.

26. While we acknowledge that traditional roles and lines of separation of power at the national level are not always replicable at the regional level, we strongly recommend that PAP's legislative powers be defined as widely as possible, and that it be given strong oversight powers in relation to the AU Commission and other AU institutions, including the human rights bodies. AU institutions should be required to report annually to the PAP on their exercise of responsibilities. Consultation on these powers should begin as soon as possible to enable them to take effect by the time the second term of the PAP begins in 2009.
27. We also recommend that consideration be given to the possibility of achieving direct election of members of PAP in the future, in order to strengthen the democratic accountability of the AU.
28. We also recommend the establishment of a civil society liaison office within PAP structures to facilitate civil society input into PAP deliberations.
29. The AU should ensure that PAP is adequately funded to carry out its mandate. We have observed that PAP's precarious funding situation has seriously constrained the continental parliamentary body's capacity to deliberate on key continental issues due to such factors as limited time allocated to parliamentary sessions and limited support to committees and members in the form of research and analysis.
30. Relations and coordination between PAP and the sub-regional parliamentary bodies such as the ECOWAS Parliament, the SADC Parliamentary Forum (SADC PF), the East Africa Legislative Assembly (EALA), the Inter-Parliamentary Union of IGAD member states (IPU-IGAD), the network of parliamentarians of the Economic Community of Central African States (ECCAS) should be clearly defined in order to make continental integration effective.
31. The states that have not yet ratified the protocol establishing the PAP should be urged to do so.

Judicial institutions

The Constitutive Act of the African Union provides for an African Court of Justice, and a protocol to the Constitutive Act adopted in 2003 would establish such a court to adjudicate on the interpretation and application of Union treaties. However, this protocol is not yet in force. Meantime, a protocol to the African Charter on Human and Peoples' Rights that entered into force in 2004 provides for an African Court on Human and Peoples' Rights. The first judges of the Court on Human and Peoples' Rights were sworn in at the Banjul summit of the AU in



2006. The merger of these two courts has been agreed in principle, and there is a draft protocol on the table providing for the merger, yet lack of time for the meetings to agree the detailed content of the protocol has meant that it has not been adopted. There is thus currently no judicial institution with responsibility at African level to adjudicate on the interpretation of treaties.

The position of the long-established African Commission on Human and Peoples' Rights (with a secretariat in Banjul) and the more recently created African Committee of Experts on the Rights and Welfare of the Child (which still lacks a secretariat), in relation to the new Court need to be clarified, and their own structures strengthened. The African Union Convention on Preventing and Combating Corruption provides for the establishment of an Advisory Board on Corruption, with mainly promotional and limited quasi-judicial powers, and is mandated among other things to build partnerships with the African Commission on Human and Peoples' Rights, civil society and intergovernmental and governmental bodies; however, such a body has not yet been established.

32. The draft protocol establishing an African Court of Justice and Human and Peoples' Rights should be debated and agreed as soon as possible. This court should have jurisdiction over the interpretation and application of all African Union treaties, with two chambers for human rights and other matters.
33. The relationship of the African Court of Justice and Human and Peoples' Rights with the courts established by the regional economic communities (RECs) should be complementary and provided for in the new protocol, with consideration given to the African Court's jurisdiction to take referrals from the REC courts.
34. The place of the African Commission on Human and Peoples' Rights and the African Committee of Experts on the Rights and Welfare of the Child in the new African Union architecture should be clarified, on the basis of wide consultation with all relevant stakeholders.
35. The role of the Advisory Board on Corruption to be established under the African Union Convention on Preventing and Combating Corruption in relation to these other institutions should also be clarified.
36. The AU Commission and Assembly should provide adequate funding for all the judicial and human rights institutions.

Member states

Despite the widely acknowledged significance of the transition from the OAU to the AU, research for the report *Towards a People-Driven African Union* indicated that only a few states prepare adequately for the AU summits. Often not even officials from all relevant departments are consulted. The capacity of governments and Addis Ababa embassies to collate, analyze and distribute information is a serious constraint on effective decision making. Of particular concern is the almost total absence of examples of efforts by the executive to engage parliament or civil society organisations in discussions around national positions.

37. Ministries of Foreign Affairs should ensure that all relevant ministries and other branches of the executive are informed about and invited to contribute on the agenda items that concern them at forthcoming summits. This may require providing additional staff at embassies in Addis Ababa whose responsibility it is to collate and forward material related to AU business to the appropriate agencies.
38. Ministries of Foreign Affairs should also broaden the set of institutions that contribute to the development of national positions on AU policy proposals. This should include relevant parliamentary committees, constitutional bodies such as national human rights institutions, ECOSOCC national chapters, the media and other fora organized by civil society organisations. ‘Best practices’ in this regard should be encouraged in all member states.
39. In civil law countries where the responsibilities of government departments are regulated by decree, states should update these decrees to reflect the new institutions of the African Union.
40. Member states should create civil society / ECOSOCC focal points in their departments of foreign affairs and provide guidance to embassies in Addis Ababa to respond to requests for information from civil society organizations. Pre- and post-summit fora should be called at which civil society can contribute to, be informed about and comment on the positions taken by the government at the summit.
41. Member states should meet assessed financial contributions to the AU. Failure to do so undermines the AU Commission’s ability to fulfil its responsibilities.

AfriMAP, the Africa Governance Monitoring and Advocacy Project, was established in 2004 by the Open Society Institute (OSI)’s four Africa foundations — the Open Society Foundation for South Africa and the Open Society Initiatives for Southern, West and East Africa (OSISA, OSIWA and OSIEA) — as a response to the transformation over the previous few years of the Organisation of African Unity into the African Union (AU), and the AU’s adoption of new commitments to standards of democracy and governance, in particular the APRM. Afrimap is based at OSISA in Johannesburg, South Africa.

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