



REGIONAL INTEGRATION AND AU ORGANS AND INSTITUTIONS CHALLENGES AND OPPORTUNITIES

Introduction

This paper outlines the background to and challenges which civil society organisations face in engagement with the African Union organs and institutions as well as the obstacles to regional integration. It also lists opportunities which the CCP-AU may want take advantage of. The paper seeks to feed into the strategy discussions by the CCP-AU's thematic cluster on regional Integration and AU organs & institutions.

1. BRIEF HISTORY AND ARCHITECTURE OF THE AU ORGANS AND INSTITUTIONS

The African Union is a multi-dimensional intergovernmental organisation of the Continent charged chiefly with spearheading the integration of Africa. Its former iteration, the Organisation of African Unity (OAU),¹ gave greater credence to the liberation of the Continent from colonialism and other forms of domination, and consequently highly prized non-interference in the internal affairs of member states. Realising the constraints this placed on the institution's integration agenda, and its ability to be responsive to the needs of Africans, there was a concerted shift from non-interference to non-indifference. The new African Union, was predicated upon addressing Africa's challenges by focussing on democratic governance, human rights, peace and security, development, enhanced integration, greater participation of African peoples, the elimination of impunity and interference in massive violations of human rights. The Constitutive Act, adopted in 2000, enunciates this shift and establishes a network of organs aimed at achieving the refined objectives. In addition to these, the African Union has other institutions set up by treaty mechanisms, as illustrated below:

AU ORGANS	CONTINENTAL TREATY BODIES
Assembly of Heads of State & Government (AHSG)	African Commission on Human and Peoples' Rights (ACHPR)
Executive Council of Ministers (EC)	African Committee of Experts on the Rights and Welfare of the Child (ACERWC)
Permanent Representatives' Committee (PRC)	Advisory Board on Corruption (ABC)
Commission of the African Union (Secretariat)	African Union Commission on International Law (AUCIL)
Peace and Security Council (PSC)	New Partnerships for Africa's Development (now integrated into AU)
Pan African Parliament (PAP)	African Peer Review Mechanism (APRM)
African Court of Justice & Human (and Peoples) Rights (AfCHPR)	
Economic, Social and Cultural Council	

¹ Established in 1963.

² Protocol on Relations between the African Union (AU) and the Regional Economic Communities (RECs).

(ECOSOCC)	
-----------	--

In addition to these bodies, the Regional Economic Communities (RECs) are considered building blocks of the African Union and have a pivotal role to play in the integration agenda, as well as in operationalising various elements of the AU architecture. The RECs Protocol² provides for the formalisation, consolidation and enhanced co-operation between the Union and the RECs. However, there is little harmony between the organisational structure of the RECs and the AU. The 8 (eight) RECs officially recognised by the AU include:

- East African Community (EAC), est in 1967 (revived in 1993), Secretariat in Arusha, 5 countries
- Economic Community of West African States (ECOWAS), est in 1975, Secretariat in Abuja, 15 countries
- Southern African Development Co-operation (SADC), est in 1980, Secretariat in Gaborone, 14 countries
- Common Market of East & Southern Africa (COMESA), est in 1982, Secretariat now in Khartoum (from Lusaka), 19 countries
- Economic Community of Central African States (ECCAS), incl Angola, est in 1983, Secretariat in Libreville, 10 countries
- Arab Maghreb Union (UMA/AMU), est in 1988, currently frozen due to political disagreements, 5 countries
- Community of Sahel-Saharan States (CEN-SAD), est in 1998, Secretariat in , single largest membership of 28 countries
- Intergovernmental Authority for Development (IGAD), est in 1996 (replacing 1986 IGADD), Secretariat in Djibouti, 8 countries

In comparison, the regions defined by the African Union are 5 (five) as follows:

Regions	Southern Africa	Central Africa	Eastern Africa	West Africa	Northern Africa
Countries	10	9	13	15	6

The 6th region recognised by the African Union is the Diaspora. The Diaspora is considered a vital component towards achieving the objectives of the AU Constitutive Act. It is valued for its potential to mobilise “the requisite scientific, technological and financial resources and expertise for the successful management of the programmes of the African Union Commission”.³ The Diaspora is considered as a key stakeholder in the AU’s Strategic Plan 2009-2012 and is a standing agenda item for every summit. The AU will convene a Global Diaspora Summit on 25 May 2012, in South Africa.⁴

2. SAMPLE MAPPING OF CSOS INTERACTION WITH AU ORGANS AND INSTITUTIONS

Over the years, civil society has continued to engage with AU organs and institutions to ensure that the voices of African peoples are heard and considered

² Protocol on Relations between the African Union (AU) and the Regional Economic Communities (RECs).

³ Strategic Plan of the African Union Commission, Volume 1: Vision and Mission of the African Union, May 2004.

⁴ Decision on the Report of the Implementation of the Roadmap and Global African Diaspora Process, Assembly/AU/Dec.367(XVII).

in the process of the making of decisions which affect their lives. Some notable examples of this include:

AU ENTITIES	INTERACTION	METHOD
AHSG, ECM	Summit	Participation, sharing of info and intel
AUC	DPA, Youth Dept, Gender Directorate, CIDO, Office of the Legal Counsel, Dept of Pol Affairs, Dept of Peace and Security	Advocacy towards, joint activities, provision of expertise and information
PRC	Briefings	Pre and post summit briefings, briefings on issues of interest and concern, invitation to CSO events
PSC	Meetings	One on one meetings on urgent action, use of the Livingstone Formula, provision of expert/on-the-ground analyses
PAP	Parliamentary sessions	Participation, sharing of info and intel
	Committee on Justice and Human Rights (CJHR)	Attendance of sessions, building of networks, briefings, provision of capacity, joint campaigns (ACDEG)
AfCHPR	Cases	Filing of cases of human rights violations
	Consultations	Invitation to consultations on issues affecting the Court like expansion of its jurisdiction
	Amicus curiae	Applications to make submissions as friend of the court
ACERWC	Cases	Bringing cases of violations of children's rights
	Advocacy	Advocating on specific issues related to the rights of children
ABC	Consultations	Participation in and providing expertise on the institutionalisation of the Board
NEPAD/APRM	Facilitation	Providing expertise and facilitating holistic CSO interaction with NEPAD.
	Governance mapping	Participation in, reporting on and providing a parallel APRM process, as well as post-review analyses
ECOSOCC	Membership and Clusters	CSO members as well as participation at cluster level
	JAES	Engagement
ACHPR	Advocacy	Issue specific and particularly towards norm-setting on human rights
	Observer status	Several African CSO have observer status with the Commission and actively participate in the open sessions
	NGO Forum	Immediately preceding each session
	Capacity building	Providing expertise, seconding staff
	Joint initiatives	Particularly with the issue-specific special rapporteurs, and with regard to facilitating missions by the Commission
RECs	Summits	Participation, sharing of info and intel
	Expertise and capacity	Early warning systems, expert analyses, receiving funding for mutual initiatives (ECOWAS)

3. CHALLENGES FOR CSO ENGAGEMENT

These types of engagement have continued despite the myriad of challenges faced by CSOs, including:

a. Limited spaces for CSO engagement

Despite the rhetoric on creating a Union of peoples rather than governments, CSOs on the continent continue to operate in an atmosphere of suspicion and mistrust linked to external funding. Accusations continue to be levied on CSOs regarding their pursuit of a foreign agenda. This is doublespeak, particularly coming from governments and a continental institution that have more than half their funding from the same external partners. However, the rhetoric continues to define CSO spaces for engagement with the institutions creating a lack of

uniformity and a reliance on personal relations, as discussed below. Some organs are very receptive to CSO input. For example the Human Rights Commission has long valued the input of CSOs, but faced flack from the policy organs of the AU for its close ties. In 2008 the Commission was banned from receiving financial support from CSOs and their budget was increased six fold to facilitate this. However, CSOs have continued to provide expertise and technical capacity to the institution. Others, like the policy organs of the Union seek to continuously restrict CSO participation, by, for example limiting access to the summits. It is far easier for a Chinese or European delegation to access the AU summit than for the representatives of African peoples.

CCP-AU should engage at the highest levels of the AUC and other organs and institutions, using the hook of 2012 which has been declared by the AU as the Year of Shared Values. In the January 2011 Summit, the AHSG adopted a Declaration on the theme: “Towards Greater Unity and Integration Through Shared Values”, and undertook to enhance the participation of CSOs and the media in promoting Shared Values, towards ensuring African ownership, and identifying obstacles to and “measures to be adopted to facilitate continental integration”.⁵ Pillar 3 of the AU’s Strategic Plan for 2009-2012, on Shared Values, also highlights the importance of active participation and contribution of all segments of African society.⁶ This presents CCP-AU with an advocacy hook on issues of increasing and structuring CSO participation. The election of a new bureau of Commissioners at the AUC also provides CCP-AU with an opportunity for renewed engagement.

b. Personalities and personal relationships

The Union may have undergone transformation but the culture of the institution remains rigid, requiring engagement with the institutions, with few exceptions, to be based on personalities. Over the years, CSOs have been able to engage with various AU institutions by establishing interpersonal relationships with various staff and office bearers. The flip side also means that access to or engagement with the institutions will depend on the continued presence of particular people and a need to constantly re-establish those relations.

Although CCP-AU cannot avoid establishing interpersonal relations of its own, it could work to broaden CSO spaces by making use of the few formal mechanisms specifically adopted to facilitate engagement with the various AU organs and institutions. Most notable of these being:

- i. Observer status with the ACHPR and ACERWC

⁵ Declaration on the Theme of the Summit: “Towards Greater Unity and Integration Through Shared Values” Assembly/AU/ Decl.1(XVI).

⁶ AU Strategic Plan 2009-2012, Assembly.AU/3 (XII). 12. Promote the active participation and contribution of all segments of the African society in Africa’s development and integration. 12.1 Develop and implement programmes for the promotion of active participation and contribution of all segments of the African society and Africans in the Diaspora, in Africa’s development and integration.

- ii. The PSC's Livingstone Formula which requires greater engagement to test it and consequently iron out the chinks
- iii. The African Governance Platform which is in the process of being institutionalised, recognises participation by civil society outside ECOSOCC. Such participation should be welcomed considering the increasing frustration among other AU institutions with ECOSOCC's lack of delivery
- iv. Ad hoc and regular briefings to the PSC, PRC and PAP (CJHR), are a key way of building institutional links with these organs
- v. ECOSOCC, despite the prevalent non-accessibility issues, has access to summits and other high level decision making processes. It therefore makes sense to engage with and/or input into their consultative processes. The new bureau seems eager to engage more broadly with African CSOs beyond the previously stated participation at cluster level
- vi. CIDO, under the office of the Chairperson, is responsible for facilitating the participation of CSOs and the Diaspora in the AU. However, previous experiences has shown that personality plays and gate-keeping tendencies have made it difficult for CSOs to effectively interact with CIDO. Continued and persistent complaints about this seem to have reached key players in the AUC and there have been entreaties to CIDO to reform. Engagement at the highest levels of the AUC could help to tip the scales
- vii. ABC, as part of its strategic plan, has identified CSOs as key partners and will be developing a mechanism for interaction. CCP-AU should take advantage of this process to ensure that the ABC develops user-friendly engagement structures
- viii. ACDEG – the coming into force of the African Charter on Democracy, Elections and Governance in February 2012, is yet another opportunity for CCP-AU, as the Charter contains strong provisions on civil society participation and access to information.

c. Limited access to information

There is no culture of allowing access to information among the AU institutions making it challenging to engage without a free flow of information. Currently much of the information which gets out is obtained through interpersonal relationships, and subsequently shared amongst CSOs. AU has a new website, but is still making little endeavour to provide Africans with concrete information on what is coming up at the summits or even share reports which inform the decisions made at the Summit.

CCP-AU would do well to enhance its web presence to make maximum use of modern media like blogging and social networking to increase the flow of information and feedback on the AU, its institutions and processes, and actively seek participation of Africans prior to the summits.

d. Resources

Engaging at the continental level is resource intensive, not only for attending meetings, obtaining information and keeping track of what is happening, but also

in establishing and maintaining the necessary interpersonal relationships. This, combined with apathy towards the institution and limited access, discourages many CSOs from engaging at the continental level.

CCP-AU is strategically placed to bridge this gap between national level action and action at the continental level, by virtue of its focus in tandem with its membership. It would however need to establish formal mechanisms to ensure complementary input at both the national and continental levels.

e. Lack of co-ordination

Lack of co-ordination between the AU institutions themselves and between the AU and RECs means that CSOs have to engage multiple times with different institutions, as there is no guarantee of a trickle effect. This means a heavier investment on the part of CSOs looking to bring their issues to the AU table. For example on Sudan, CSOs have had to utilise extensive resources to separately advocate towards the ACHPR, the PSC and the Mbeki Panel. CSOs tried to address this disparity by asking the organs to work together, in this instance, asking the PSC to work together with the ACHPR towards fact-finding and addressing the conflict in Sudan.

4. REGIONAL INTEGRATION CHALLENGES

Although AU member states are agreed on the need for accelerated economic and political integration of the continent, the process of reaching this goal is still very much contested.

a. Gradualists vs immediatists –

There are essentially two schools of thought within the AU on the process of integration. One school promotes immediate integration with the creation of appropriate structures and subsequently filling in of the institutional gaps, while the other promotes a gradual approach to integration with the building up of existing structures into an eventually unified continent. The positions are hotly contested with the immediatists lamenting the continued rhetoric which has been ongoing since before the creation of the OAU and the need for concrete action towards integration. The gradualists are adamant about the need to be realistic regarding the realities of the continent and the insufficient infrastructure and resourcing to bring it all into being. In 2006, the AU commissioned a study into the implications of integration⁷ and has since held several ordinary and extraordinary sessions, made several decisions and instituted several mechanisms towards the realisation of the integration agenda. In February 2009, an Extraordinary summit decided to move towards immediate integration on a step by step basis. A wording which reflected the lack of consensus on the process. One of the first steps towards accelerated integration was the transformation of the African Union Commission into a strengthened African Union Authority, comprising of a President, Vice President and Secretaries. The Commission was charged with submitting proposals of this new structure as well

⁷ Study on an African Union Government towards the United States of Africa, 2006.

as amendments to all the necessary legal instruments to give effect to the decision, and convene the necessary consultations at Ministerial and Ambassadorial level, which it has done. Although the Commission reported to the last summit, the decision was deferred to the January 2012 summit. It is pertinent to mention here that this process is tied up with other related processes, in particular the decision of the Union to expand the jurisdiction of the African Court, and the review of the mandate of the Pan African Parliament, as the related instruments were in the list of instruments to be necessarily reviewed as part of the transformation process. It is also important to mention that the 11 (eleven) instruments under review will require adoption, ratification and implementation and this is flagged as a major hindrance given the very low rate of adherence to treaties by member states. If this first step has already taken 3 (three) years with limited progress and no end in sight, it is worrying to imagine when continental integration will be actually be achieved. Also with the change of leadership in Libya, which pushed the integration agenda, a little too strongly, I might add, it will be interesting to see if this issue will continue to have momentum. The other integration priority, namely the rationalisation of the Regional Economic Communities has also made little progress with the 2008 tripartite agreement between EAC, SADC and COMESA to establish a free trade area, which is yet to be realised. There has also been no progress in harmonising the AU recognised regions with the REC membership.

b. Lack of clarity

There is also a lack of clarity on the integration agenda fostered by the divergent views and compounded by the AU practice of decision making by consensus. This, therefore results in decisions which are unclear and challenging to implement. For example, the decision to transform the Commission into an Authority was very vague, leaving it to the Commission to fill in the blanks. However, efforts towards the establishment of a strong and independent institution were quickly eroded during the various consultations that followed, leaving a structure which had little improvement on the current one and causing some to question the value of undergoing the lengthy process of amending all 11 (eleven) instruments. There have also been so many different decisions and mechanisms for implementation, that have resulted in a lack of clarity regarding the priority actions for integration.

c. Lack of political will

Despite the rhetoric, a lack of political will can be inferred on the integration agenda from the lack of concrete movement in this regard and the refusal to allow greater independence of the Commission. Libya during the late Gaddafi's reign, consistently pushed the integration agenda by repeatedly introducing proposals for amendments to the decisions, incurring the wrath of 12 (twelve) Southern African states who submitted a counter proposal at the January 2011 summit, calling for respect of the integrity of AU decision making processes. It would also seem that every time there is a lack of consensus the AU establishes yet another mechanism to report back on a possible way forward.