

Issues Paper for the African Union Symposium

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**THE ARCHITECTURE AND
CAPACITY OF THE AFRICAN
UNION**

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THE ARCHITECTURE AND CAPACITY OF THE AFRICAN UNION

African Heads of State have committed themselves to the establishment of the African Union. This has ambitious structures, which will require considerable skill and capacity if they are to function effectively. A carefully phased and prioritised process could enable these institutions and structures to be set up incrementally and to maximum effect.

This Issues Paper addresses four principal issues:

1. The African Union reflects the ambitious impulse towards unity across Africa. As a result it has adopted the most ambitious unification model, namely one similar to the European Union. Is this necessarily the best blueprint? Or will it need to be adapted to the requirements of Africa?
2. The Constitutive Act of the African Union has identified the component institutions of the Union. But the specific powers and duties of these institutions need to be determined, along with the sequencing of their establishment. How are these components to be specified and prioritised?
3. The AU is created in a world with multiple international and regional organizations, which have overlapping mandates and capacities. What linkages should there be between the AU and other international and regional organizations?
4. All international institutions are ongoing projects, reflecting evolving conditions. The process of creation is as important as the final product. How should the process of building the AU be envisaged?

The African Union Blueprint

The design of the African Union, and the rapidity with which it is being set up, reflect the tremendous urge towards unity present across Africa. Unity is a faith in Africa, ingrained in popular mythology. There is no other continent in which the popular impulse towards common identification is so strong. For that reason, the architects of the African Union have sought a blueprint inspired by the strongest and most effective model of regional unification that exists, namely the European Union.

The EU is the most successful instance of regional political and economic integration in modern times, and its successes deserve study and, where possible, emulation. But it is worth considering the factors that led to Europe's success. The EU took half a century to emerge, based upon a major investment of resources by industrialised nations. A substantial part of its political motivation was to guard against the excesses of totalitarianism, which had rampaged over national frontiers in the 1930s and '40s: it emerged from member states that were anxious to pool their sovereignty in order to safeguard their freedoms. As industrial nations they also sought bigger markets, and recognised the economic and political disasters

that had followed from the protectionist exercises of the 1920s and '30s. Of all the exercises in regional integration, the European case is the most ambitious, demanding an extremely expensive bureaucracy, thousands of highly-skilled personnel. Ensuring that the different institutions of the Union work together, co-operating not only with the governments of the member states but also with a range of overlapping institutions such as the Organisation for Security and Cooperation in Europe and the Western European Union, is a major challenge. One of the EU's most onerous requirements is the convergence of the national laws, regulations and financial systems of all its member countries, with complex mechanisms for enforcement and sanctioning of the rules of the Union.

One aspect of the EU model that has not been followed in Africa is the centrality of elections and democratic referenda to approve countries' accession to the Union and its key components. In all cases in which European countries joined the EU and its precursors, or adopted the single currency, the issue was either a major theme of a democratic multi-party election, or a referendum, or both. The weakness of this democratic component in the AU process is an important issue that warrants careful attention.

Africa had other potential models to follow, from across the globe. These vary from the Gulf Cooperation Council, which is a common security pact, to MERCOSUR in the southern cone of Latin America, which focuses on subregional economic integration including infrastructure. But perhaps the most relevant example is the Association of South East Asian Nations (ASEAN), which has sought subregional integration along a rather different path to the European experience.

ASEAN was created in 1967 and has achieved the elimination of armed conflict between its member states, alongside a convergence of economic policies based on open capitalist economies. Its model is based on state-to-state relations, focusing on security and stability, emphasising non-interference and sovereignty, excluding reference to human rights, democracy and civil society. The basic motivation was that these countries, each of which felt their sovereignty imperilled by either the Communist threat, or secessionist tendencies, or both, would cooperate for mutual interest. The institutional apparatus of ASEAN is far more limited than the ambitious mechanisms established in Europe, with much resting on the personal interaction of heads of states and senior government officials from the member states. As with Europe, ASEAN began with like-minded states, but included a mandate that allowed it to incorporate others over time. In contrast to the European model, the democratic component has been weak, and in some cases non-existent.

The European and south-east Asian models have several elements in common. They were driven by strong interests, political, economic or both. Even without the formal treaties, secretariats and commissions, the countries of the regions would have been drawn closer together out of self-interest. Usually, the formal agreements and commissions have been running behind the political and economic dynamics. The institutional architecture is the icing on a cake that has already been baked.

The African Union, while on paper resembling the EU, is politically more sympathetic to the ASEAN model. It is based on governments whose immediate priority is to preserve their national sovereignty, not to pool it. However, lacking the strong state structures, common security interests, and dynamic economies of south-east Asia, we have to ask whether the ASEAN model is also easily transferable.

In fact, the African Union is an experiment in a wholly new kind of regional union. We might call this an 'aspirational union'. It is an expression of an end-point, a culmination of a process, rather than a stepping stone.

How might an 'aspirational blueprint' work? There is a model and a parallel. The model is a regional union, such as the EU or indeed ASEAN, seen from the viewpoint of its successful completion. Under this model, the importance of the blueprint in the AU

Constitutive Act is that it specifies the final destination. But the main challenge is the roadmap.

The parallel is an international human rights convention, which, unlike a trade organisation or a regional union, has weak enforcement mechanisms or none at all. Examples are the Universal Declaration of Human Rights and the Convention on the Rights of the Child. These conventions have been signed and ratified by the great majority of the world's states, but are very rarely respected in full. They cannot be enforced. At most, there are United Nations committees and independent CSOs that monitor compliance. States can violate them with impunity, but this does not make them useless exercises. Over time, the values and standards expressed in the conventions are 'domesticated', as a new generation of citizens (and public servants and political leaders) grow up who believe that they should guide public policy. In short, over decades or generations, they shape new moral thinking. This 'domestication' process works through education, monitoring, peer review and civil society activism.

Components of the African Union

Article 5.1 of the Constitutive Act of the African Union specifies that the organs of the Union shall be:

- (a) The Assembly of the Union;
- (b) The Executive Council;
- (c) The Pan African Parliament;
- (d) The Court of Justice;
- (e) The Commission;
- (f) The Permanent Representatives Committee;
- (g) The Specialized Technical Committees;
- (h) The Economic, Social and Cultural Council;
- (i) The Financial Institutions;

This is an ambitious list, reflecting a model drawn from the European Union. The Constitutive Act lays out blueprints for each of these, while also leaving many of the details for future elaboration. We need to ask several questions:

1. *Which are they key organs?* The Union cannot function at all without two of the organs, namely the Assembly and the Commission. The Executive Council runs a close third. These are essentially the same organs as exist today under the OAU. However, their governance and administrative responsibilities will be considerably heavier, given the task of setting up and running the other institutions envisaged by the Constitutive Act. If the AU is to truly become a Union, the Parliament and the financial institutions will be key.
2. *What is the timing and sequencing of the establishment of the institutions?* Theoretically, all are important. However, the priority given to the respective organs will depend on what is seen as the overriding political concern. If the principal impetus is for regional economic cooperation and integration, then the Economic, Social and Cultural Council, the specialised committees and the financial institutions should be prioritised. If the first agenda is governance and democracy, then the parliament and court of justice should be established first. If the main concern is

peace and security, then the existing organs should suffice, but will require a much more extensive engagement with existing problems and related institutions. A related question is how the AU will relate to existing institutions and initiatives in these areas, including NEPAD, the RECs, ADB and ECA in the field of economic integration, the African Inter-Parliamentary Union, existing subregional parliaments and the African Commission on Human and People's Rights in the case of democracy and governance, and the RECs, CSSDCA, NEPAD and the UN Security Council in the case of peace and security.

3. *What is the sequencing of cooperation?* The African Union process is founded on a sharing of powers between states that have hitherto retained sovereign control over all aspects of decision-making. In reality, due to aid dependence and lack of resources, this sovereign control has often remained fictional, but governments have continued to claim their right to independent decision making. Treaty obligations such as the commitment to an African Economic Union have rarely been implemented in full. There are reasons for this reluctance to share powers. It follows that 'softer' issues of cooperation, such as the environment, HIV/AIDS, and information and communication technology cooperation, should be prioritised, while 'harder' issues of establishing regional enforcement measures should be tackled when a higher degree of confidence has been built between states.
4. *What are the resource requirements for the Commission and other institutions?* The first issue here is, have the Commission and the other organs been budgeted? And to what extent can their tasks be shared with existing institutions in order to cut down duplication and reduce costs? Second, it is evident that, under any scenario, the AU will be much more expensive than the OAU. Where will the resources come from? If these resources are to be primarily membership dues, how will the AU augment its resources in comparison with the OAU which has always had chronic funding problems? Or will the AU be seeking other sources of funding? Given that most African countries are highly dependent on concessional finance from OECD countries for their basic budgetary requirements, does it make sense for the AU to turn to these governments, or would it be advised to go directly to international aid partners for its financial needs? That in turn, however, has far-reaching political implications for the accountability of the Commission and other organs of the AU. It should be borne in mind that the viability and credibility of the AU will depend critically on its level of resourcing.
5. *What are the human resource requirements for the AU?* One challenge is the expert task of actually designing the institutions and the management systems required. What provisions are envisaged for seeking technical assistance in building the necessary institutions? Building a regional organisation is a complex task and there are relatively few experts on whom to draw. There is experience both within Africa at subregional level and outside Africa that can be utilised. The second challenge is the skilled staff required for managing the institutions themselves. This may require special training programmes to upgrade the skills of AU staff members. The third challenge is selecting the individuals who will head the institutions, including the Secretary General and Commissioners. Special procedures for nominating and short-listing for these exceptionally demanding positions will be necessary. The candidates should be chosen on the basis of leadership skill and managerial capacity. In this respect, lessons can be learned from the UN and other international organisations. The

AU must be able to attract and retain the very best. We must avoid the situation in which governments remove their least desired individuals to multilateral institutions, or merely pursue placing their people in post in order to have a presence. Transparent criteria and standards will be required.

6. *What changes in the structure and policies of member governments are required?* An effective African Union will require substantial changes in the methods of working of member governments, placing additional burdens upon them at the same time as lessening their discretionary powers. Membership of the AU will entail sharing sovereignty in key areas of lawmaking as well as economic measures to lower tariffs and promote economic and financial convergence. There is a pressing need for detailed studies about the additional requirements on member governments.

A basic point underpinning all these considerations is that institution building has eluded Africa, at both national and regional levels. The history of building institutions in Africa has been disappointing. In designing the African Union and building the necessary institutions, it is necessary to review the record of building and sustaining the required governance capacities. The weakness of institutions has been a major impediment to the private sector and democracy. A general African standard for institution building has been lacking.

Linkages between the AU and other International and Regional Organizations

When the Organisation of African Unity was established almost four decades ago there were many fewer international and regional organisations, and their mandates and tasks were much more limited. In the intervening years, matters have changed substantially. Within Africa, a range of subregional organisations has developed in response to specific challenges. These include SADC, ECOWAS, EAC, IGAD, AMU etc. In addition, international organisations, especially the UN, have taken on larger and more complex mandates. One of the major challenges facing the AU will be how to relate to these other organisations.

1. *Immediate issues regarding linkages between the AU and RECs.* For historical reasons, there is no structural relationship between the OAU and RECs. This has been problematic given the peace and security mandate of the OAU, alongside the fact that the principal responsibilities for enforcing peace and security has been assumed by the RECs. An immediate question is, what kind of interface is required between the AU and the RECs? Should this be several structures specific to the functions of RECs (e.g. one for peace and security, one for economic integration, etc) or is one single interface required?
2. *Long-term issues of integration or cooperation between the AU and RECs.* A longer term, strategic question is, does the AU propose to integrate RECs into its structure, or to cooperate with them? Will the RECs continue to exist as autonomous entities as the AU is established or is it envisaged that, over time, they will gradually be absorbed into the AU? If the 'integration' or absorption scenario is followed, how will this occur? If the 'cooperation' scenario is followed, which is the most realistic given the relative capacities of the organisations as they exist today, mechanisms will be

required to promote and monitor consistency between RECs' policies and their compatibility with the long-term aim of regional convergence.

3. *Security organ.* As outlined in the Constitutive Act, the institutions of the African Union do not provide for a 'security council' or similar. This reflects the set-up of the EU, within which armed conflict is unthinkable, and which delegates external security affairs to the OSCE and NATO. Given the importance of peace and security issues in Africa, it seems unlikely that the existing Conflict Management Centre at the OAU will be disbanded and the security functions of the Central Organ will be discontinued. But this raises the question of how the AU will relate to the Conference on Security, Stability, Development and Cooperation in Africa (CSSDCA) and the New Partnership for Africa's Development (NEPAD), both of which have peace and security mandates at a regional level. To avoid competing or contradictory regional security authorities, it is important that there should be a single 'African security council', whether located at the AU, CSSDCA or NEPAD, with ancillary specific peace and security functions delegated to RECs and other regional security bodies.
4. *Governance, democracy and human rights.* One of the tasks of the AU is to promote governance, democracy and human rights. Democratic decision-making is a complex task and some clarifications of the principles will be required before structures are established and mandates give. The European Union theoretically operates on the principle of 'subsidiarity', whereby decision-making power is delegated to the most devolved competent authority. But the tendency of disgruntled parties to appeal against lower-level decisions leads to an upward drift in authority. Where roles are not clear, mandate disputes between different bodies can lead to paralysis of the decision-making machinery. In the African context, the challenges are likely to arise in the area of liaison between the African Parliament and national and subregional parliaments, such as the recently established East African Parliament. Another set of challenges arises in the field of the rule of law, and the extent to which regional instruments such as the African Charter on Human and People's Rights are justiciable through regional mechanisms. In these respects it is important that the AU promotes existing regional organisations, such as the African Inter-Parliamentary Union and the African Commission on Human and People's Rights.
5. *Relationship with the UN and other international organisations.* Many key activities in the peace and security field, as well as the sectors of development, planning, health, education and the environment, are increasingly dealt with by international organisations. The UN Security Council currently spends about half of its time dealing with Africa. The UN specialised organisations such as UNDP, UNICEF, UNHCR, WHO and FAO are also deeply engaged in African affairs, along with multilateral financial institutions such as the World Bank. In fields such as poverty reduction strategies, these institutions have taken the lead not only in national partnership but at a regional level as well. The AU will need to explore modalities for engaging with these international organisations.
6. *Wider linkages within Africa.* The OAU was set up at a time when civil society organisations were weak, and were rarely regarded as legitimate international actors. This has changed dramatically. Theory and practice of international relations today focuses on the multiplicity of actors and their roles in building 'security communities', promoting economic integration and social and cultural exchange. The

AU needs both a theory and practice of how it can engage with these actors. How will it seek to leverage a collaborative and meaningful association with relevant CSOs, private sector corporations, research institutes, foundations, universities, and other independent institutions?

Participation in the Process of Setting up the African Union

From the above points, it is evident that we should not assume that the AU can spring into being, as a fully-formed set of institutions, and drive the process of African political and economic integration. Rather, the process of establishing the African Union and the processes of integration should be conducted in parallel. In this respect, our immediate aim should be one of *process* not of end result. As with the vision of the EU, the constitution of the AU should be to promote ‘ever closer union’. Therefore the final set of concerns we must address are to do with how this process is to work, what checks and balances, what feedback and correction, what monitoring, will be required.

1. *The role of summits and the council of ministers.* Major decisions about the AU architecture and capacities will be made in the existing OAU organs and their successors. The complexity of the issues to be resolved by the summits and council meetings will entail extensive preparation and briefings before these meetings, and perhaps changes in the structure of the meetings so as to allow for technical committees to work in parallel and present their findings and recommendations to the heads of state and ministers.
2. *Broadening the engagement.* Up to now the AU process has been driven almost exclusively by governments. It is necessarily a sovereign process, but the experience of elsewhere indicates that success will depend upon broadening the ownership of the process, so as to engage others more fully. Public dialogue on the AU was initiated at the June 2001 OAU-CSO meeting, which included presentations and a question-and-answer session led by the former Secretary General and senior staff members. At Sirte in 2000 and subsequently at the 2001 Lusaka Summit, Africa’s Heads of State and Government agreed that broader consultation was necessary. This raises the question, how are people to be engaged, sensitised and activated on a regular basis in the process of building the Union? One component of this is the engagement of the media to cover the activities and deliberations of the AU. Another is regular consultative fora, both for general issues (along the lines of the 2001 OAU-CSO meeting, perhaps held annually before the summit) and for specific issues.
3. *Democratising the process.* The Constitutive Act invites parliamentarians to take on a pivotal role in the architecture of the Union. One of the recurrent themes of regional organisations, including the EU, is that they suffer from a ‘democratic deficit’—i.e. that the decision-making process at the regional level is less democratic than at the national level. If the AU were to follow this pattern it would be unfortunate, as some African countries do not score highly in terms of democratic freedoms and decision-making. Given that one of the aims of NEPAD is the promotion of democracy and good governance, it seems appropriate to construct an AU system that provides a ‘democratic surplus’—i.e. the regional institutions and processes are more democratic, transparent and accountable than most national political processes.

4. *Internationalising the process.* Like it or not, the reality of Africa today is that it is integrated into a global order on unequal terms. The viability of African initiatives such as NEPAD and the AU depend critically on the extent to which they are able to obtain buy-in from OECD countries, both in terms of agreement on the basic concepts, and in terms of resource provision.
5. *Leadership, cooperation and sovereignty.* The first section of this paper has underlined that powerful political and economic interests, overriding the concerns of sovereignty, impelled regional integration in Europe and south-east Asia. In Africa, there are equally powerful reasons why sovereignty should be pooled. If Africa speaks with one voice at an international level, it is able to obtain a far better deal on issues of common concern such as the environment, international trade rules and HIV/AIDS drug prices. If African governments unite, they will become individually as well as collectively stronger and more prosperous. However, unlike in Europe and south-east Asia, the political constituencies and economic interests backing integration are relatively weak. This is related to the quality of governance and level of economic development. The most democratic countries on the continent are the most enthusiastic supporters of integration, while the most powerful business interests (South African industry) are already actively promoting it by regionwide investment strategies. These processes need to be boosted. The most important factor in this respect is leadership: Africa needs inspiring, consistent, high-level political leadership that repeatedly emphasises the imperative of unification.

Implications

Africa has embarked upon its most ambitious combination of regional initiatives ever, including the African Union and NEPAD. These initiatives cannot afford to fail: failure would be a devastating blow to the self-regard of Africa and the reputation of African institutions and initiatives globally. The coming year presents an opportunity that needs to be seized. In order for this to work, careful attention must be paid to the requirement of institution building. Africans must examine best practices in management and institution building. Leadership of institutions is also called for. We need to focus on establishing standards for leaders, and examine how we select our leaders.

If the African Union is to succeed, national governments must cede some of their sovereignty. The Constitutive Act, in both spirit and letter, is not threatening to the standing of governments. Sovereignty is combined for the common good. This will be a gradual process, but it must be begun at once.

The following issues need to be addressed:

1. Given the background of weak linkages in the past between the OAU and the subregional organizations (SADC, ECOWAS, EAC, IGAD, AMU etc.), how is the AU process rectifying this weakness?
2. How can subregional organizations be helpful to the integration process? What kind of structural relationship is envisaged to integrate the RECs into the AU?
3. How does the AU model reflect specifically African experiences and aspirations?
4. How are CSOs and other stakeholders to be engaged, sensitized and activated in the process of building the Union?
5. What is the timing and sequencing of the establishment of the institutions?
6. Given the provisions for human rights in the Constitutive Act of the AU, what monitoring and enforcement mechanism should be established?

7. How are existing national and subregional parliaments to relate to the African parliament? What principles for assumption of powers are to be followed?
8. What are the resource requirements for the AU Commission and other institutions. Where will the resources come from? If they are to be primarily membership dues, how will the AU augment its resources in comparison with the OAU which has always had chronic funding problems?
9. What provisions are envisaged for seeking technical assistance in building the necessary African institutions?
10. What are the human resource requirements for the AU? How should its senior staff and leaders be selected?
11. How will it seek to leverage a collaborative and meaningful association with relevant research institutes, foundations, CSOs, universities, and other independent institutions? What interface does the AU anticipate with the UN?