



African Union
Reforms Engagements

AFRICAN UNION REFORM

BRIEFING NOTE
FOR STATE ENGAGEMENT



initiatives for
human rights



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I. BACKGROUND

1. In 2017, the AU entrusted President Paul Kagame with the responsibility of leading a comprehensive reform of the Union.¹ The focus of this AU Reform is to ²
 - i. Streamline the AU's priorities to four core areas: peace and security, political affairs, economic integration, and global representation.
 - ii. Realign African Union institutions to deliver against those priorities.
 - iii. Connect the African Union to its citizens
 - iv. Manage the African Union efficiently at both political and operational levels.
 - v. Implement strategies to attain financial independence and sustainability.
2. Prior to this reform process, there have been several attempts at reform in the past, most notably in 2007 following a high-level panel led by Professor Adebayo Adedeji was convened to evaluate the structure and functions of the African Union Commission (AUC) to improve the AUC's effectiveness in carrying out its responsibilities.³
3. Since 2017, the AU reform has so far significantly concentrated on the structure of the African Union Commission, recruitment to the new structure and some of the working methods of AU policy organs such as the summit of the AU and coordination meeting with Regional Economic Communities.
4. The current phase of the reform concerns the review and update of mandate and structure of key AU organs and institutions. These include: Judicial organs, legal and human rights bodies: The African Commission on Human and Peoples' Rights (ACHPR); The African Court on Human and Peoples' Rights (ACtHPR); The African Committee of Experts on the Rights and Welfare of the Child (ACERWC); AU Commission on International Law (AUCIL); AU Advisory Board on Corruption (AUABC), The Pan African Parliament (PAP), The Peace and Security Council (PSC) and Specialised Technical Committees (STC)

¹ Kagame, Paul. "The imperative to strengthen our Union." Report on the Proposed Recommendations for the Institutional Reform of the African Union 29 (2017).

² Kagame, n 1 above.

³ AU. "Audit of the African Union." Addis Ababa (2007): 1.

II. OPPORTUNITIES AND CHALLENGES OF THE CURRENT REFORM PROCESS

5. The AU reforms present an opportunity to strengthen the Union and ensure the African continent has a robust and relevant common framework to effectively address the complex challenges of this time, which occur in contexts of recession, conflicts, pandemics. The reform is an opportunity to reflect on ways to strengthen the AU not only institutionally, but also substantively and procedurally.
6. Agenda 2063 provides a substantive framework with critical milestones the implementation of which has unfortunately remained weak.⁴ The weakest implementation so far falls under Aspiration 1 on building a prosperous Africa based on inclusive growth and sustainable development as well as Aspiration 3 on good governance, democracy, respect for human rights, justice and rule of law.⁵
7. It is therefore important to clearly establish the relevance of the ongoing AU reforms to Agenda 2063, especially with regard to challenges of costing and implementing this Agenda.
8. Although the 2017 report of the review led by President Kagame finds that the 'change in direction'⁶ needed to make the AU more relevant requires that the ambitions of agenda 2063 be given further prioritization,⁷ the reform proposals provided by the Consultants (Deloitte, Touche Africa and Maziwisa) do not demonstrate any rationalisations between the reform recommendations and the achievement of the aspirations of agenda 2063.
9. A major gap in the current reform efforts so far is inadequate consultation with critical stakeholders, including the users of these AU bodies and organs, civil society, private sector and other non-state actors.
10. Member States have not had the opportunity for consultations at the national level to engage African citizens on the reform recommendations. Yet, one of the main recommendations of this reform is to enhance the connection

⁴ African Union *Second Continental Report on the Implementation of the Agenda 2063*, 2022. The scores show underperformance below 50% for most goals under the Agenda 2063, yet, the First Ten-year Implementation Plan for Agenda 2063 (FTYIP) which was published in 2015 is coming up for review next year in 2025.

⁵ As above.

⁶ African Union *Building a More Relevant Africa Union* 2017 p 9.

⁷ As above, p10.

between the African Union and its citizens, so as to increase the relevance of the Union to its citizens.⁸

11. Further, it remains unclear the extent to which AU organs, agencies and institutions have been consulted by the Consultants working on the AU reform (Deloitte et al).⁹
12. This approach of insufficient stakeholder consultation may contribute to a persistent cycle of reform within the AU, as it may not adequately engage or reflect the diverse perspectives and needs of all stakeholders, including member states, AU agencies and institutions, civil society, the private sector among others.
13. Financial implications of the reform to member states are unclear. While the reform goal to ensure the Union is financially independent and sustainable is welcome, there is need for critical reflection on the ownership of the Union by all African states Member States. There is need for accurate and clear information on financial responsibilities of member states with regard to the reform proposals as well as apt for states to consider these implications internally.

⁸ Paul Kagame *The Imperative To Strengthen Our Union Report on the Proposed Recommendations for the Institutional Reform of the African Union* 2016.
By H 29 January 2017

⁹ Retreat of The Permanent Representatives Committee (PRC) on the AU Institutional Reform and Agenda 2063, 8-11 June 2023, Kigali, Rwanda.

III. MEMBER STATES OBJECTION TO THE ADOPTION OF REFORM PROPOSALS, AS AT FEBRUARY 2024

14. In light of the foregoing challenges and in order to allow an opportunity for meaningful engagement with the reform process and recommendations we object to the adoption of the reform proposals as presented, and propose that:
 - i. That Member states are granted time for national consultations on the proposed reforms within government structures and with its citizens.
 - ii. That the Reform Unit is allowed an opportunity to further engage member states on the reform proposals.
 - iii. That the AU agencies and institutions are consulted.
 - iv. That clarification is provided on how other stakeholders - including users of the AU organs and mechanisms, civil society, the private sector and other non-state actors - can engage with the reform process and provide feedback on the reform proposals. For instance, a questionnaire can be provided or contacts through which to send inputs to the Reform Unit and/or to the Consultants.
 - v. That reasonable time is allowed for this wider stakeholder consultation. To this end, the documents containing reform proposals should be made publicly accessible. This will ensure that African Citizens and the users of the AU organs whose mandates and structures are under review, have an opportunity to participate in strengthening the Union.
15. It may be argued that once ECOSOCC was consulted, CSOs' perspective was incorporated into the reform process. However, it is important to note the advisory-only status of ECOSOCC and its constraining membership criteria.
16. To truly center citizens within the Union, as the reform efforts must expand to include these varied voices comprehensively.
17. These recommendations will enable Member States and the African citizens they represent to engage meaningfully with the reforms, to engage decisively on the financial, substantive, procedural and institutional implications of the reform and work together to ensure the reform outcomes are capable of advancing the aspirations of Agenda 2063.

IV. SUBSTANTIVE RECOMENDATIONS FOR THE REFORM PROCESS – A FOCUS ON AFRICA’S HUMAN RIGHTS SYSTEM

1) **The reform should result in enhanced promotion and protection of human and peoples’ rights rather than diminished protection.**

Reforming the African human rights system has immense potential for positive and negative outcomes. One of the primary concerns is the risk that the reform process could potentially be used to undermine the robust normative framework within the African human rights system. It's crucial that the reform process not only preserves but also enhances the protections offered by the African human rights system. To this end, the reform process should take into account:

- a) **Human rights as a universal standard:** Human rights are founded on universal applicability. These rights are inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status. The reform should uphold this universality, ensuring no group is discriminated against.
- b) **Progressive realization of rights:** The African human rights system has made significant strides in recognizing and protecting various rights. Diminishing these rights in the name of reform would be a regressive step. Instead, reforms should aim at the progressive realization of rights, continually expanding and enhancing the scope of protections.
- c) **Inclusivity and diversity:** Africa's strength lies in its diversity. A reformed human rights system should reflect this diversity, respecting and protecting the rights of all individuals, including those from marginalized communities. This inclusivity is essential for fostering social cohesion and national unity.
- d) **International obligations and reputation:** Many African countries are signatories to international human rights treaties. Backtracking on human rights commitments through the reform process could harm Africa's standing in the global community. The AU needs to align its reforms with international human rights standards.
- e) **Economic and social development:** There is a strong link between the protection of human rights and socio-economic development. A system that robustly protects human rights encourages investment, promotes social stability, and fosters development. Reforms that weaken human rights protections could have adverse economic and social impacts.

- f) **Legacy and future generations:** Today's decisions will shape the legacy left for future generations. The reform process must strengthen, rather than diminish, the human rights framework, ensuring a just and equitable society for future Africans.

2) **Strengthen the capacity and credibility of the African Human Rights System (resources and competency).**

There is need for increased resource allocation to African human rights bodies. Due to inadequate funding the human rights mechanisms struggle with inability to conduct comprehensive investigations, shortage of skilled personnel, lack of proper infrastructure including technology which all hamper effective case management, justice delivery and promotion of human rights. The reform process should introduce creative ways to ensure sufficient financing beyond the regular budget allocations including exploring opportunities for voluntary contributions.

The credibility and integrity of the African Human Rights System hinges on the competency and quality of its 33 mandate holders, including judges, commissioners, and experts responsible for upholding human rights standards. Despite legal qualifications specified by relevant charters, political influences often compromise the selection process, leading to a lack of qualified personnel. Reform efforts should focus on establishing transparent and robust procedures for the nomination, vetting, and election of these officials to ensure their high competency and moral integrity.

3) **Expand access by African citizens and by CSOs to the mechanisms of the African Human Rights system (standing).**

The requirement in article 34 (6) of the African Court Protocol which requires a separate declaration from countries after ratifying the protocol to enable individuals and CSOs to access the African Court presents a significant challenge. It limits the ability for Africans to seek justice and hold governments accountable. This challenge hampers the effectiveness of the African Court in protecting human rights and maintaining the rule of law because of reduced accessibility due to political and bureaucratic barriers. To address these challenges, it is proposed that the protocol be amended to remove the need for a separate declaration, simplifying the process for individual right holders and CSOs to submit cases and empowering them to effectively utilize the court, strengthening justice, accountability, and human rights across the continent.

Access to the African human rights system is also inhibited due to confusing and inconsistent interpretations of existing norms and standards, making it difficult for people to understand and use the system effectively. For example, there are issues surrounding the participation of CSOs in the African Court on Human and Peoples' Rights' advisory opinion process. According to Article 4 (1) of the Protocol that establishes the Court, an African organization recognized by the African Union is eligible to request an advisory opinion from the Court. However, the Court's interpretation of "recognition" does not include recognition by organs of the African Union, (such as observer status before the African Commission) which is arbitrary and ambiguous since the Court fails to offer clear and concrete guidance about how to obtain such recognition. This lack of clear definition confuses CSOs about their eligibility for court engagement, undermining their ability to contribute effectively to human rights advocacy.

The restrictive interpretation by the Court can also discourage CSOs from participating in the system thus limiting the scope of human rights discourse and protection. To address these challenges, the reform process should:

- a) Clarify the definition of "recognition" within the protocol, outlining specific criteria or statuses, such as observer status, that qualify CSOs for Court engagement.
- b) Enhance transparency around the criteria and processes for obtaining recognition and the rights that come with it, ensuring CSOs are well-informed and can actively participate in the African human rights system.
- c) Create more inclusive and consistent policies that allow a broader range of CSOs, to access advisory opinions and contribute to the human rights dialogue in Africa.
- d) Simplify Access Procedures: Recommend simplifying legal processes and guidelines for accessing human rights mechanisms. Clear and non-technical language should be used, and these guidelines should be translated into multiple local languages to ensure comprehensibility and broader reach.

4) Strengthen compliance, implementation and enforcement of the norms, decisions, and recommendations of the African human rights system.

The AU is struggling to enforce decisions and recommendations from its human rights bodies, significantly impairing the human rights system in Africa. This challenge stems from member states' lack of compliance, often due to limited political will or resources, and their reluctance to accept decisions they perceive as threats to

their sovereignty or national interests. This challenge undermines the legitimacy and credibility of Africa's human rights system. The ineffective implementation of decisions can disillusion victims of human rights abuses potentially fostering a culture of impunity and raising questions about the authority of the AU's human rights institutions. To address this crisis, a coordinated effort is needed to strengthen the AU's enforcement capabilities, increase political commitment, and build capacity within member states to implement human rights decisions effectively. For the AU to strengthen its capability to implement and enforce human rights norms, decisions, and recommendations, it is proposed that:

- a) It could establish a compliance and follow-up mechanism within the powers of the Assembly and directly linked to article 23 of the Constitutive Act. This unit within the AUC could be tasked with monitoring the implementation of decisions and recommendations, issuing regular reports on member states' compliance, and providing technical assistance to ensure that these are carried out.
- b) An inter-ministerial committee should be established within the Executive Council with the mandate to ensure effective follow-up and implementation of the African human rights system's recommendations and decisions. This committee should be required to report regularly to the Assembly and recommend actions for the Assembly to consider, to ensure compliance with the decisions and recommendations of the system's mechanisms.

5) Strengthen CSOs engagement in the AU processes through enhancing transparency, inclusivity, accessibility and participation.

The AU has increasingly faced criticism for restricting CSOs and citizen engagement despite its Constitutive Act emphasizing citizen-centric integration. This pattern emerges through various decisions and interpretations by AU policy organs and treaty bodies, which collectively hinder the active participation and access of CSOs to the AU framework.

- a) **Policy organ decisions:** Several decisions of AU policy organs place stringent restrictions on which CSO should or should not be allowed to participate in the AU human rights process. Imposing strict criteria or procedural hurdles limits the scope for CSOs to contribute effectively to the AU's agenda.
- b) **Restrictive membership criteria for ECOSOCC:** The ECOSOCC of the AU, intended to be a platform for civil society engagement, has been hampered by restrictive membership criteria. These limitations prevent diverse CSOs from contributing their perspectives and expertise.

- c) **Interpretation of Article 59 of the Banjul Charter:** The ACHPR's interpretation of this provision to mean complete secrecy of complaints proceedings before the African Commission effectively leads to a blackout of processes, constraining CSOs' ability to access important mechanisms for human rights protection and advocacy within the AU system. As a result of the restrictive interpretation of article 59 pending communications before the African Commission are kept secret. This inhibits potential intervention by Amicus Curiae who can provide expertise to guide the Commission in the development of its jurisprudence. The secrecy also contributes to the invisibility of the African human rights mechanisms at the local, national regional and international levels.

This pattern is problematic as it contradicts the AU's foundational principles of citizen-centric governance and undermines the effectiveness of its human rights system. Civil society plays a crucial role in representing diverse interests, providing checks and balances, and ensuring that the AU's policies and actions are grounded in the realities of its citizens.

Several key recommendations are proposed to address the pattern of restricting CSOs in the AU.

- a) The AU Policy Organs should ease the participation of CSOs by simplifying application processes and criteria for observer status that are inclusive.
- b) There should be a reform in the membership criteria of the ECOSOCC to allow a broader range of CSOs to participate, ensuring diverse representation.
- c) Article 59 of the Banjul Charter needs a purposeful and progressive interpretation to enhance transparency and credibility of the complaints mechanism and facilitate CSO engagement in human rights processes.
- d) The AU should implement transparency and accountability measures to enable CSOs to monitor and evaluate policy implementation effectively, ensuring the organization's actions align with its foundational principles and goals.



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