

SPECIAL REPORT

UPDATE ON THE REFORM OF THE AU: REVIEW OF THE 11TH EXTRAORDINARY SUMMIT OF THE AU

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PRELUDE

The African Union (AU) held a record number of 4 summits in 2018. The last and most recent of these was the 11th extraordinary summit held on 17-18 November here in Addis Abeba, Ethiopia.

This latest summit of the AU attracted the participation of at least 17 heads of state and government of AU member states. Surely compared to the attendance of AU heads of state and government for the China-Africa summit in Beijing, this is lamentable. Yet, it is considered to be not too bad for an extraordinary summit.

The principal agenda of this 11th extraordinary summit was the reform of the AU. It focused most particularly on the reform of the African Union Commission (AUC), the New Partnership for African Development, the African Peer Review Mechanism and effective division of labour between the AU and the Regional Economic Communities, member states and continental organizations.

In discussing about the AU, it is useful to make a distinction between different AUs. There is the AU of the Commission. There is the AU of member states and then there is also the AU of organs and agencies.

REFORM OF THE AU OF THE COMMISSION

The reform of the AUC as discussed and adopted by the AU Assembly covered three areas. The first was the newly revised structure of the AUC. The second area was the selection modalities and election process of the senior leadership of the Commission. The third and final area was the termination of appointment of the senior leadership of the AUC.

The Assembly adopted the newly revised structure of the Commission with no opposition. According to the new structure, the number of the AUC departments is reduced from eight to six. While some departments have been merged together, the portfolio of others have been redefined.

The merger of the Departments of Political Affairs (DPA) and Peace and Security is perhaps the most notable reorganization of the structure of the Commission.

Initially, the proposed designation of the new portfolio combining the two departments was Political Affairs, Peace and Security and Humanitarian Affairs. It is interesting to note that the humanitarian affairs, which is currently under the DPA, has been moved to the Department of Social Affairs.

Under the new structure of the AUC, the portfolio of the Department of Social Affairs was expanded to form 'Health, Humanitarian Affairs and Social Development'.

The departments of Economic Affairs and Trade and Industry merged together with the addition of Mining to form the portfolio of Economic Development, Trade and Industry and Mining. Mining was a last minute change introduced in the place of natural and mineral resources to ensure clear demarcation between the different portfolios.

The Department of Human Resources, Science and Technology was renamed Education, Science, Technology and Innovation. Similarly, the Department of Agriculture and Rural Development was reorganized to be Agriculture, Rural Development, Blue Economy and Sustainable Development.

From the existing portfolios of the Commission the only one that remained untouched is the Department of Infrastructure and Energy. This comes as no surprise given the strategic importance of infrastructure and energy for socio-economic transformation and regional integration.

A very interesting aspect of the newly reformed structure of the AUC is the establishment of a nonelected post of Director General.

This rationalization of the number of portfolios of the AUC departments is expected to create a lean structure. Yet, this ambition of making the AUC lean and efficient would depend on whether or not the AUC would focus exclusively on matters of continental scope on which it has comparative advantage. This in turn depends on whether the AUC would cast off its existing non-essential structures, while reinforcing the most strategic ones.

The next step in the reform of the AUC is the implementation of the decisions. This depends on the fine details that will be elaborated for translating the decision to rationalize the portfolios of the AUC into reformed and lean organizational structures and processes.

For many AUC watchers, the issue for the AU is not simply its overlapping and expansive areas of engagement. The AUC also suffers from inefficient procedures, complex and non-transparent human resources, administrative, legal and procurement processes and structures.

As rightly, noted in the issue paper on the reform of the structure of the AUC presented at the 6th retreat of the Executive Council in September 2018, the efficient and effective functioning of the AUC cannot be achieved through the rationalization of its current structures. Key for the reform of the AUC is what the issue paper calls 'various administrative reforms that address more systematic issues at the level of administrative rules, procedures and processes'.

Accordingly, an important part of the decision of the 11th extraordinary summit is that which requests the AUC to elaborate a roadmap on implementation of administrative and financial reforms to be presented at the 34th Ordinary Summit of the Executive Council in 2019.

Also notable is the decision for instituting effective performance management system that, among others, seeks to ensure administrative and disciplinary measures of accountability for misconduct, abuse of office, poor performance and non-delivery of assigned responsibility.

Again, given the challenge of implementation, on this aspect of the AU reform as with other areas the saying that the taste of the pudding is in the eating remains fitting.

Another important aspect of the decision on the reform concerns the termination of the appointment of the leadership of the Commission. Apart from the process that this has set for the termination of the term of office of the Chairperson and the Deputy Chairperson, it has vested a not-insignificant role in the Chairperson of the AU Commission in the termination of the term of office of the Commissioners.

True the reform did not end up transferring significant authority to the AU Commission. Neither was there expectation that the reform would effect such transfer of authority. Despite some minority voices and AU's limited attributes of supranational authority, much of the member states of the AU are adamant that the AU should principally remain an intergovernmental body.

Yet, it was interesting that compromise was reached on the role of the AUC with respect to the negotiations with the EU on post-Cotonou AU-EU relationship. While the AUC's role with respect to the ACP-EU post-Cotonou negotiations is limited to provision of technical support to African members of the ACP negotiating team, the summit endorsed the position of the AUC on AU-EU partnership post 2020.

Yet, the Commission's position has been strengthened. Whether the Commission stands to shape the future direction of the AU is a matter of what the AUC makes of its existing and newly acquired (from the reform) sources of authority and influence.

REFORM OF THE AU OF MEMBER STATES

There are two notable areas in the reform of the AU that specifically target the AU of member states. The first concerns the financing of the AU. The other is non-implementation of decisions of the Union.

From the reform of the AU, the part that directly touched on the AU of member states relates to the financing of the AU. Regarding the state of implementation of the decision on the financing of the AU, Dr Donald Kaberuka, the AU High- Representative, reported to the summit that nearly half (24) Au member states are at different stages of implementing the decision. Of these 21 are fully compliant, with some such as South Africa and Zimbabwe have even made advance payment for 2019.

Interestingly enough he pointed out that in the Southern region all except one are fully compliant. On the Peace Fund, 43 countries are reported to be fully compliant.

Regarding delays in implementation, Dr Kaberuka noted that member states owe the AU \$113 million for 2017 and the top three contributing countries owe the AU nearly \$100 million. Just over half AU member states have as yet to implement the 0.2 levy.

In the discussion on the scope of flexibility of the use of 0.2 levy, it was pointed out that there is scope for flexibility in terms of how member states source the payment of their assessed contributions. The flexibility however comes with caveats. First, flexibility does not mean going back to the status qua ante. Second, the flexibility is subject to predictability of payment and finally thorough compliance.

At the 11 extraordinary summit, the Assembly was presented with proposals on the new AU scale of assessment. It is anchored on the principles of ability to pay, solidarity, and equitable burden sharing. It also set 'caps' and 'minima' to ensure that no country or group of countries pays more than 40% of the Union's budget and that there is a minimum flat contribution of \$200,000.

The result is that the combined contribution of the group of countries paying the most will not exceed 40%. This addresses two concerns: the risky heavy dependency of the AU on contribution of a few member states and fear of major contributing countries of rising burden of contributions. Indeed, the percentage of contribution of major contributing countries is expected to decrease from 48% to 40%. In proportion to this reduction, the contribution of mid level contributing countries is expected to increase from approximately 29% to 35%. Seeking to ensure greater ownership and better overall burden sharing, the proportion of the contribution of countries at the lower scale of the contribution burden is expected to increase from the current 15% to 25% under the new scale of assessment.

The assembly decided that the new scale of assessment would be adopted at the next ordinary summit of the AU in February 2019 for it to take effect from 2020.

The most consequential aspect of the reform relating to the AU of member states is the adoption of the a new sanctions regime for the non-payment of assessed contributions. The regime defines three categories of timelines identifying different degrees of being in arrears.

The first and short term one is when a member state is late in paying contributions for six months. When a member state is late to pay for one year it would be deemed to be in an intermediate period of arrears. Finally, the longterm period that a member state would be considered to be in arrears is two years and above.

The short term, intermediate and long-term arrears would trigger cautionary, intermediate and comprehensive sanctions. Cautionary sanction deprives a member state of its rights to speak at the meetings of the AU. Intermediate sanctions include all sanctions outlined in Article 23(1) of the Constitutive Act. Comprehensive sanctions include in addition to those under cautionary and intermediary sanctions the ones listed under Rule 35 (2.b) of the Rules of Procedure of the Assembly plus suspension from participation in meetings of the Union.

It is expected that the sanctions regime would take effect from mid 2019.

One important aspect of the AU of member states that has not been addressed through the reform measures adopted at the 11th extraordinary summit of the AU is non-implementation of the binding decisions of the Union.

REFORM OF AU OF THE ORGANS

In the light of the focus of the reform on rationalization and limiting the engagement of the AU on priority areas of continental scope, the other aspect of the AU that the reform is expected to address is the AU of the organs.

This principally concerns the Pan African Parliament and the organs of the AU with judicial powers, notably the African Commission on Human and Peoples' Rights, the African Court on Human and Peoples' Rights, and the Committee of Experts on the Rights of the African Child.

Although initial proposal on the reform of the organs of the AU was tabled, member states indicated that they did not have the copy of the document in good time for reviewing it and felt that much of the proposals were formulated by the organs themselves. While the Head of the AU Reform Unit, Prof Pierre Mokoko made oral presentation on the proposals contained in the document covering the reform of these organs, it was decided that the Reform Unit would present revised proposals.

Also absent from the reform package presented at the 11th extraordinary summit is the areas of reform of the Peace and Security Council (PSC) of the AU, the highest decision making body on peace and security matters on the continent. The reform of this organ would also be one that is sure to affect not only how it functions as organ but also the role of PSC member states. This is also one of the areas of the AU reform that is expected with some anticipation. It is to be seen if it would be presented and considered in the next ordinary session of the AU Assembly expected early in 2019.



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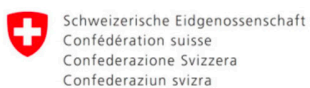
ABOUT AMANI AFRICA

Amani Africa is an independent African based policy research; training and consulting think tank with a specialization and primary focus on African multilateral policy processes, particularly those relating to the African union.

We support the pan-African dream of peaceful, prosperous and integrated Africa through research, training, strategic communications, technical advisory services, and convening and facilitation.

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