

What can the Pan African Parliament do to accelerate the implementation of African Union Decisions?

By Irūngũ Houghton¹

Summary

The inclusion of an agenda item on the Domestication of AU Decisions in the 2009 Speaker's Conference: Linking The Pan African Parliament With National Parliaments is opportune. In October 2009, the gap between AU decisions and the practise of Member States is alarmingly wide to most observers. Unless there is a change in the behaviour of both African Union organs and Member States, the many important decisions being taken at continental levels risk the danger of not being nationally implemented. This will continue to have devastating consequences for the millions of African citizens denied good governance, fundamental freedoms and basic human rights. It will further expose our Pan African institutions to an obvious credibility challenge. This paper explores the nature of these decisions and outlines actions that national, regional and Pan African Parliamentarians can take to close this gap.

The Policy Promise: What decisions have been taken so far?

Since 2004, the African Union has raised the bar for many African countries by adopting new pro-poor, rights based policy standards and legal instruments. Combined with a number of important decisions taken by its predecessor, the Organization of African Unity (OAU), they hold African States to higher standards of performance. These decisions take the following five forms namely;

- **Treaties and Protocols** are legally binding and member states should take measures to abide by their provisions
- **Regulations** are applicable in all member states which shall take all necessary measures to implement them
- **Decisions** are binding on the individuals or institutions to which they are addressed
- **Directives** are addressed to any or all member states, to undertakings or to individuals. They bind member states to the objectives to be achieved while leaving national authorities with power to determine the form and the means to be used for their implementation
- **Recommendations, Declarations, Resolutions and Opinions** are not binding and are intended to guide and harmonise the viewpoints of Member States.²

Since the formation of the OAU, African Governments have agreed to ratify 38 Charters, Treaties, Protocols and Conventions. A third of these were developed after the African Union was established in 2001. Key among these are the African charter on Human and People' rights (1990), the Protocol to the African Charter on Human and People's on the Rights of Women in Africa (2003) and the African Charter on the Rights and Welfare of the Child(1990), the Convention on Preventing and Combating Corruption (2003) and the most recent, the African Charter on Democracy, Elections and Governance (2007) among others.

¹ Irūngũ Houghton is Oxfam's Pan Africa Director. Comments are welcome on this draft of the paper and can be forwarded to the author on Email: irunguh@oxfam.org.uk and Telephone: +254-733-635-354. The author acknowledges the Continental Advisory Research Team, which includes the Institute for Democratic Governance, Accra, Southern Africa Trust-Southern Africa, Midrand, FAHAMU, Nairobi, AfriMAP Project/Open Society Initiative, Johannesburg and Centre for Citizen Participation on the African Union (CCP-AU), Addis Ababa and Oxfam.

² Strengthening Public Participation in the African Union: A guide for you to contribute to the realisation of the vision of the African Union Forthcoming publication by the African Network on Debt and Development (AFRODAD), the Open Society Institute Africa Governance Monitoring and Advocacy Project (AfriMAP) and Oxfam International. A full list of these instruments can be found at <http://www.africa-union.org/root/AU/Documents/Treaties/treaties.htm>

Although non-binding and intended to guide and harmonise national policies of Members States, the African Union has issued a number of important policy declarations including the Dakar Framework for Action-Education For All: Meeting Our Collective Commitments (2000), the Abuja Declaration on HIV/AIDS, Tuberculosis, and Other Related Infectious Diseases (2001), the Maputo Plan of Action for Sexual and Reproductive Health and Rights 2007-2010 (2006), the Africa Health Strategy: 2007–2015 and the Post Conflict, Reconstruction Development Policy (2006). The emergence of these new continental policies and standards has gone hand in hand with further institutional transformation of the African Union and its organs. In 2008 and 2009, new leadership assumed the mantle of the African Union Commission and the Pan African Parliament respectively. In 2009, the African Union made a key decision to transform the AU Commission into an AU Authority, adopt the Sectoral clusters of the Economic, Cultural and Social Council (ECOSOCC) and a new African Union Strategic Plan 2010-2013.

The Imperative for Ratification and Implementation

The pre-occupation with the current debate within the AU of creating a 'United States of Africa' or a 'Union Government' since 2007, while an important reform debate, has failed to assess the specific actions taken to ensure that citizens realise the rights and services enshrined in decisions, protocols and conventions adopted by African states during the last 46 years of the existence of the OAU/AU. This is even more urgent in the context of the current energy, food, climate and economic crises facing the continent. Only implementation of key economic, political and economic policies will reduce the continent's vulnerability to these crises.

Since the African Union was established in 2002, the economies of Africa have grown by 6% on average with domestic savings increasing to 26% by 2007. In 2009, the global crisis seems set to reverse the economic growth and the development progress achieved in the last five years. It also threatens to dry up international aid and direct foreign investment commitments to Africa, diaspora remittances and the capacity of African states to respond adequately to challenges of poverty, suffering and injustice.

International financial institutions have recently revised African growth prospects down from an average of 6% to 2.4% for 2009. The consequences of a reduction in growth, even if African economies may avoid shrinking, are likely to be higher unemployment and poverty, increases in infant mortality and long-lasting impacts such as higher school drop-out rates, reduced access to healthcare, environmental degradation, and political instability. In this context, the Millennium Development Goals and a range of international and continental human rights standards will not be met. This scenario produces a ***development imperative*** for Africa's legislators to hold their national executives and continental institutions accountable for delivery on these standards.

The very mission of the Pan Africa Parliament also mandates it to act. Articles 3 of the Protocol establishing the Pan Africa Parliament clearly states that the Parliament shall promote the “effective implementation of the policies and objectives of the OAU/AEC and ultimately, of the African Union” and basic principles of human rights, democracy, good governance, peace and prosperity among others among African peoples. Article 11 goes further to state PAP’s mandate to “examine, discuss or express an opinion ...pertaining to respect of human rights, the consolidation of democratic institutions and the culture of democracy, as well as the promotion of good governance and the rule of law” and “work towards the harmonization or co-ordination of the laws of Member States.”³ To date, besides election monitoring and fact-finding missions, the Parliament has precious few examples of where it has decisively exercised this mandate.

A recent Decision by the Assembly of Heads of States and Governments in the Sirte Summit, July 2009 provides an opportunity to transform this. In the recent Assembly, Africa’s leaders expressly urged their States “to prioritize and accelerate the signing and ratification and accession to OAU and AU Treaties and called on African Union Organs including the Pan African Parliament to assist with advocacy and sensitization of Member States”. They further called on all Governments to ratify and accede to all existing treaties by July 2010 and for future treaties, one year after they have been adopted. This decision reaffirms a **mandate imperative** for the Parliament to monitor and advocate for the ratification and domestication of treaties and the implementation of continental policy standards.⁴

Progress of ratification and implementation to date

By its own admission, the African Union has done very poorly in accelerating the ratification of key legal instruments. By the time of the Audit of the African Union in 2009, only 18 of the 35 instruments had come into force with the rest awaiting the minimum number of ratifications by Member States. Despite spirited attempts by the AU Commission to encourage States during the Treaties Week to ratify the remaining instruments, progress has been slow.

For instance, too few States have ratified the Amendments to the AU’s own Constitutive Act to bring these into force. Popularisation of these instruments among the publics of Africa is equally weak. The High Level Panel for the Audit of the AU furthered noted; “For all those treaties that guarantee and expand the range of rights and policy standards for the peoples of Africa, it has been difficult to verify the extent to which these treaties have been adequately popularised. Unless people are aware of their rights, they will be unable to access and exercise them.”⁵

Table 1 below on the state of ratification on the African Union website suggests that States need to take their own instruments more seriously. Only 11 countries⁶ have ratified 2/3 or more of the 35 instruments adopted by the Assembly with 13 countries⁷ having ratified less than 1/3 of the same instruments.

³ Protocol To The Treaty Establishing The African Economic Community Relating To The Pan-African Parliament

⁴ See “Decision on the Status Of Signature and Ratification Of OAU/AU Treaties, Ex.Cl/499(Xv), Executive Council, 24 – 30 June 2009, Sirte, Libya

⁵ Report of the High Level Panel on the Audit of the African Union, 2007, Addis Ababa, Ethiopia

⁶ They include The Comoros, Ethiopia, Gabon, Libya, Mali, Mozambique, Nigeria, Niger, Rwanda, Tanzania and Togo

⁷ They include Central African Republic, Djibouti, Democratic Republic of the Congo, Eritrea, Guinea Bissau, Namibia, Saharawi, Seychelles, Sierra Leone,

However, a more worrying sign lies in the poor integration of AU decisions and declarations into national policies, laws and budgets. This can be illustrated below by looking at only three critical areas; agriculture, education and health.

AU policy Standard	State of Implementation	Impact on African Citizens
Increase spending on agriculture to 10% of national budgets	Only 6 countries have reached this target, 17 countries spend less than 5%	44 countries import 25% of their food needs Price food hikes cause 28 million people to sink into poverty
Increase spending on education to 20% of national budgets, achieve universal primary education with gender parity	5 countries have reached this target, another 10 countries spend more than 15%	15 countries have 80% enrolment rates for primary education, girls now comprise 45% of children in primary education in 29 countries, yet, retention of girls and overall quality is still weak and the average teacher/pupil ratio in SSA is 45:1, above recommended 40:1 ratio
Increase spending on health to 15% of national budgets, universal access to HIV prevention, treatment and care, strengthen health systems	5 countries have reached the 15% target, average spend is 9%, health systems remain weak with only 12 countries having more 50% births attended by health personnel	Improving child and adult mortality rates, HIV infection rates are falling, but huge inequities exist between urban and rural, rich and poor, with most people living positively with HIV/AIDS not having access to ARVs and only children in 12 countries having a 50% chance of health personnel attending their birth ⁹

Three major obstacles currently strangle the implementation of AU legal instruments and policy standards. They are; a weak political will by States to popularize these decisions nationally, the absence of effective national systems to translate these decisions into policy, budgetary and legal reform and a lack of energy and capacity by AU Organs to monitor and urge state compliance.

Very few Heads of States or Ministers of Foreign Affairs report regularly on the decisions raised and the plans for their domestic implementation to their citizens, National Assemblies and Governments despite decisions committing them to do so.¹⁰ Furthermore, from the example of the Solemn Declaration on Gender Equality, preciously few states take their responsibility to report back to the African Union conscientiously. A 2009 report produced by the AU Commission showed that 2/3 of States have yet to report back on their commitments under this Declaration. Those that have, reveal a mixed picture. There has been progress in the establishment of gender and HIV/AIDS machineries but only 2 out of the 18 Governments have instituted measures to domesticate the principle of gender parity (Senegal and South Africa). Furthermore, all 18 Government reports were submitted without involvement by women's organizations and other non-state actors, a fact that flies in the face of the principle of inclusiveness and a "people driven Union".¹¹

⁹ African Monitor Africa in our hands: Development Support Monitor 2009 <http://www.africanmonitor.org>

¹⁰ Report Of The Commission On The Administrative Issues Referred To The Commission By The 11th Extraordinary Session Of The Executive Council, Executive Council, 29 - 30 January 2009, Addis Ababa, Ethiopia

¹¹ AU Commission Synthesis report from members states on the solemn declaration on gender equality in Africa to the Executive Council, 26 - 30 January 2009, Addis Ababa. The 18 countries are Algeria, Burundi, Ethiopia, Lesotho, Mauritius, Namibia, Senegal, South Africa, Tunisia, Burkina-Faso, Cameroon, Cote d' Ivoire, Ghana, Mali, Nigeria, Rwanda, Niger, Senegal and Zimbabwe.

Although somewhat removed from the domestication and implementation of Treaties and Standards, there is another area that needs to be highlighted because of the implications it has for Africa's negotiating capacity with global powers and rich countries. Meeting in Khartoum in January 2006, Heads of States agreed that they would not collectively hold Summits with individual States but only meet as an African bloc with regional blocs such as the European Union, ASEAN or the Organisation of American States for example. This decision has been violated or conveniently ignored by a series of Summits with individual countries such as China (2006), France (2007) and Turkey (2008). In July 2009, the Executive Council requested the Commission and Permanent Representatives "to take the necessary measures to ensure full participation of Member States" in the second Korea-Africa Ministerial Forum in November 2009. This is an area that the Pan African Parliament could look into alongside the importance of ensuring consistent participation by Parliamentarians and expert citizens in National Delegations in key trade, debt, health, financing for development global fora.

A menu of actions the Pan African Parliament could consider

Under Article 4.1(b) of the Rules of Procedures of the Assembly, the Assembly is required "to monitor the implementation of policies and decisions of the Union as well as ensure compliance by all Member States". The recent Sirte Decision calls on the Pan Africa Parliament among other AU Organs to support the Assembly in this regard.

A first step in this regard would be for PAP to identify a core set of treaties and standards that hold the most promise of improving the position and condition of the millions of African citizens who battle daily against food insecurity, lack of shelter and essential services, violence and discrimination. Appropriate PAP committees could undertake periodic monitoring and missions to states to monitor compliance, to identify best practises and urge action where there is no movement on ratification, domestication and implementation.

For PAP to speak with one voice, it must eschew national outlooks and interests and embrace responsibility for the continent as a whole. Elsewhere I have argued that the values of shared responsibility and non-indifference enshrined in Sirte Declaration and the Constitutive Act of the AU constitute a political and moral basis for abandoning the historical pre-occupation with nation-state sovereignty. Furthermore, the emphasis on a "people driven" Union signals a departure from the widespread conception of representative democracy. In its place, comes a vision of African peoples actively shaping the allocation of public resources, the delivery of services, regulatory frameworks and the processes of governance.¹² In this way active citizenship underpins effective, politically accountable and responsive states and, it may be added, an inclusive union. PAP must act to facilitate the voices, visibility and active participation of citizens in the Union without regard to their nationality. PAP could work with non-state actors especially African CSOs in developing this capacity.

Despite an AU decision to establish National Commissions or mechanisms to popularise the African Union, very few countries have instituted them. PAP MPs could approach the Ministry responsible for the AU and catalyse the establishment of these mechanisms. In between PAP sittings, PAP MPs could regularly provoke debate among relevant national legislative committees on the integration of these treaties within domestic legislation. MPs could urge and support their Heads of States or Ministers to brief public hearings or parliament prior to AU Summits to seek public mandate for some of the positions to be taken in upcoming Summits. Web pages on Government and National Assembly websites could be designed to have a page on AU decisions, status of national ratifications, Government positions and its participation in the African Union.

¹² Irungu Houghton "Identifying the domains of competence and the possible impact of the establishment of a Union Government on the sovereignty of states" in ISS Monograph 140, 2008

By taking some of these actions, the Pan African Parliament will help to close the alarming gap between the decisions and current practise of Member States. However without this, many important decisions being taken at continental levels risk the danger of not being implemented at national levels. This will continue to have devastating consequences for the millions of African citizens denied fundamental freedoms and basic human rights. It will also further expose our Pan African institutions to an obvious credibility challenge.

4,873 words. Ends