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Towards a People-Driven African Union

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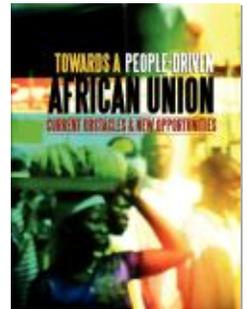
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4. PREPARATIONS FOR SUMMITS BY MEMBER STATES

The quality of preparation for the meetings of the Executive Council of Ministers and Assembly of Heads of State and Government differs from state to state. An observer of AU summits remarked that over half of the member states do not prepare adequately.⁶⁹

Those member states that prepare well for summits fall into two categories: the pace-setters, which are progressive in outlook, readily embrace democratic principles and support the integration agenda and those that respond cautiously to issues of democracy, placing an emphasis on state sovereignty.⁷⁰ These member states will prepare positions on all agenda items and tend to meet their financial contributions to the AU.⁷¹ They include those contributing 15 per cent each to the AU budget (Algeria, Egypt, Libya, Nigeria and South Africa), who have thus invested in the success of the institution, but also some smaller countries, especially in southern Africa, who place importance on AU decision-making processes and their obligations to participate. The reasons for this differing level of engagement are varied, and would merit further research: some states appear to place more importance on United Nations summits and processes than the AU equivalents; others on engagement with their respective sub-regional bodies; some simply seem to place less value on the obligations that membership of an organisation implies.

A further factor in the ability of member states to prepare sufficiently for summits is the capacity of government agencies to undertake the work. Thus, for instance, Algeria has an entire 'Africa Branch', which includes a multilateral relations section that heads a unit specifically responsible for the African Union;⁷² while in Mali, the African Union falls within the scope of the Africa division of the Political Affairs Branch. In Mozambique, though, the AU and Multi-lateral Department responsible for summit preparations has only three officials, and prior to July 2006 had only one person. In the bigger countries, the foreign affairs ministry will most likely have a legal affairs division; for example, South Africa and Ethiopia and all the francophone countries studied. In Botswana, by contrast, the Foreign Affairs Ministry does not have a legal affairs unit; these issues are the preserve of the Attorney General's chambers.

The capacity of the embassy in Addis Ababa is also critical. Many embassies in Addis Ababa are understaffed, meaning that briefings on meetings that the permanent representatives attend may not be rapidly transmitted back to their respective foreign ministries and other relevant government departments. The simple addition of a member of staff with this responsibility in all embassies in Addis Ababa could be a useful contribution to more effective and consultative decision-making at the AU-level.

National structures responsible for foreign affairs

In the civil law countries in Africa, the structure and responsibility of government officials is founded on a constitutional and regulatory legal framework that clearly defines their operational responsibilities. Their constitutions proclaim the attachment of their populations and national institutions to the ideals of the African Union and grant the executive the legal means to make this ideal a concrete reality.⁷³ This explicit constitutional commitment to African unity is generally not present to the same extent in the Commonwealth countries.

The constitutions of the civil law countries also grant substantial powers to the president of the republic in matters of foreign policy,⁷⁴ including the responsibility to appoint ministers and ambassadors and negotiate international commitments. Thus, in general, the staff of the office of the president includes at least one diplomatic adviser in charge of African affairs,⁷⁵ a chief of protocol, and a representative/attaché.

Similarly, the constitutions provide for the position of prime minister, whose role is to implement policy defined by the president,⁷⁶ and to act as a go-between or interface between the president and other organs of the state. Under certain circumstances, the prime minister may also represent the president at summits and thus take a direct role in decision-making.⁷⁷ Where this is the case, the office of the prime minister must include a diplomatic adviser working in coordination with his counterparts in the office of the president and with the departments concerned at the ministry of foreign affairs and other ministries interested in the agenda of the African Union summits. The prime minister also plays an important role in the preparation and conduct of the inter-ministerial consultations that are often organised in the context of preparations for and follow up to African Union summits.

Only Algeria and Republic of Congo, among the civil law countries studied for this report, had updated the decrees regulating conduct of foreign affairs to reflect the transformation of the OAU into the AU.⁷⁸ The other countries are thus forced to improvise solutions to respond to the new structures.

In common law countries, the specific responsibilities for conduct of foreign affairs are not set out in the constitution and law in the same way. However, the president will always play an important role in setting foreign policy, even if this is not written down explicitly. Most African Commonwealth countries no longer have a post of prime minister, but where one exists the prime minister is the head of government, with responsibility for government policy in general, including foreign policy, and the presidency is a ceremonial post.⁷⁹

The minister of foreign affairs plays a very similar role in all countries studied, leading the process of preparation for summits; with the difference that in the civil law countries this role is spelt out in written decrees.⁸⁰ The ministry will then include specific units or departments that may be relevant to AU summits, including in particular units in charge of relations with the African Union, legal affairs, political affairs and international organisations or multilateral relations in general.

In several countries there are specific additional or subordinate ministries (*ministres délégués*) with responsibilities that mean they are always also closely involved in summit preparations. For example, in Algeria, there is a minister in charge of Maghreb and African Affairs;⁸¹ in Mali, there is a Ministry of Africans Abroad and African Integration;⁸² and in Senegal, a Ministry for NEPAD, African Economic Integration and Good Governance Policy. Kenya and other east African countries have ministries for regional integration. The justice department, in particular the international affairs section, is also consulted in most instances for comments, as there is invariably an agenda item on legal matters.

The ambassadors appointed by member states to the African Union also play a key role in summit preparations. In most cases, the diplomatic missions to Ethiopia also fulfil the functions of diplomatic representation to the African Union and the United Nations Economic Commission for Africa (ECA), whose headquarters are located in the Ethiopian capital. In the case of some of the civil law countries, the relevant decrees give these ambassadors, in addition to their usual roles, specific responsibilities to assist non-governmental institutions in their relations with foreign partners.⁸³ In addition, those countries that have their nationals in key positions within the AU Commission draw on them for information and advice about strategy in AU decision-making.

The sequence of events in the preparation for AU summits in civil law countries is usually as follows, with small variations.

- The ministry of foreign affairs receives the agenda from its mission in Addis Ababa, and immediately organises, through its African Union branch, an internal consultation that is generally attended by the legal affairs branch, the international organisations branch and, according to the importance of the summit, the general secretariat of the ministry and the office of the minister. The aim of this initial consultation is to provide the ministry with a more complete vision of the issues to be discussed during the summit.
- At the outcome of the consultation, a document is produced and presented to the minister. It contains the comments and suggestions made by the ambassador in Addis Ababa at the time of sending of the agenda.
- Following that, the ministry of foreign affairs dispatches the various technical documents to the technical ministries covering the proposed topics for their written comments.
- An inter-ministerial consultation is then organised by the ministry of foreign affairs, in close collaboration with the office of the president of the republic and the concerned departments of the office of the prime minister, with a view to preparing a fact sheet for each item on the agenda and ensuring that the other ministries cover all the technical aspects of the items on the summit agenda.
- At the outcome of these two consultations, the fact sheets are gathered into a single file containing the draft position papers on each agenda item or, at least, on the items of particular interest to the country in question. The file is presented to the minister for approval.
- After such approval is obtained, it is submitted to the president of the republic who provides a clear political orientation on each of the proposals contained in the file. (It may happen that the president gives instructions that are in total contradiction with the proposals put forward by the consultations organised under the aegis of the ministry of foreign affairs.)
- While the file is being prepared, the ministry remains in regular contact with the ambassador accredited to Addis Ababa for updates on the items on the agenda and opinions on the proposed positions.
- After it is prepared, the document is presented to the president for approval. The president submits it to his staff for an in-depth review, following which it is formally approved.

In common law countries, the process is not dissimilar:

- Officials at the diplomatic mission in Addis Ababa transmit documents to the department of foreign affairs. The documents will be accompanied by a briefing document from the ambassador in Addis Ababa who also sits on the PRC. This briefing document contains observations on positions of other member states on particular issues on the agenda.
- At the department of foreign affairs, the document is referred to the relevant official who heads the AU/Africa affairs desk. The Africa affairs desk may comprise a team of six officers. They will be responsible for drafting the briefs.
- A director within the foreign affairs department holds a meeting within the department to chart a strategy. This includes identification of relevant departments to make inputs under the agenda items.

- Depending on the issues, lead government agencies such as the department of justice/attorney general's office will be requested to submit the government's position on the relevant agenda item. The AU Department will give the governments agencies requested to make submissions a period by which inputs should be receive.
- An inter-departmental meeting is held to discuss the submissions. The permanent secretary (or deputy) of the ministry of foreign affairs or director general/director within the department of foreign affairs will lead these meetings.
- On an ad-hoc basis, the officials at the AU/Africa desk may meet with civil society to discuss specific issues that may be discussed at the summit.
- The AU/Africa desk coordinates responses from other government agencies into a consolidated document.
- This document is then transmitted to a senior official, either a director general or permanent secretary for approval; the minister of foreign affairs (but not usually the president) will sign off on the final document.
- The foreign affairs ministry/department coordinates the delegation to represent the state at the summit.
- Once approved identical sets of documents are then transmitted to those who will be representing government at the summit. Ideally, this is done approximately two weeks before departure to the summit. Where documents are outstanding, this will be indicated in the prepared briefing documents.
- In the case of the president attending the summit, an advance team will visit the location to view premises.

The dissemination of the provisional agenda to member states marks the start of formal preparation for summits. However, preparation begins in practice much earlier – from meetings of legal experts, PRC meetings and ministerial conferences ahead of the summit. In addition, given that there are standard agenda items, preparations can begin on those items also before the agenda is distributed.⁸⁴ In Ethiopia, for example, even though at times the Foreign Affairs Ministry receives the agenda only two weeks ahead of summits, preparation begins at least two months in advance.⁸⁵

Normally, the ministries to which the theme for the summit is relevant will be consulted extensively. For example, ahead of the Khartoum summit, which focused on education and culture, the ministries of education in Kenya and Ethiopia were key in formulating the government's position.⁸⁶ In Ethiopia, the Africa Affairs Department learnt about it being a theme from the first ministerial conference on this topic that took place in Nairobi. The Ministry of Education and Culture/Tourism provided the Africa Affairs Department with its comments to the report from the ministerial conference.⁸⁷ By the time the department received the report of the ministerial conference from the AU Commission, the government position was already prepared. Ahead of the Banjul summit, which had as its theme 'rationalisation of RECs', responsible departments were again consulted. For example, the South African Department of Trade and Industry played a key role in providing information and a position for the government.⁸⁸ For the government of Mozambique, which does not have a dedicated ministry on regional integration, a director dealing with integration within the Ministry of Foreign Affairs and Cooperation formed part of the delegation to the Banjul summit.⁸⁹ In addition, for the June 2006 Banjul summit, legal officials (for example, the Justice Department of South Africa and the Attorney General's office of Kenya) were instrumental in providing comments to the single legal instrument establishing the merged African Court of Justice and Human and Peoples' Rights and the Charter on Democracy, Elections and Governance.

However, this system does not always work. As of April 2006, the Ministry for the East Africa Community in Kenya had not been informed and asked to comment on the Banjul summit theme of rationalisation of RECs.⁹⁰ Women's rights organisations have found that the ministers for gender or women's affairs are not

always informed about relevant matters, including texts as important as the Solemn Declaration on Gender Equality in Africa or the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.⁹¹ The much greater range of activities of the African Union compared to the OAU means that the need for consultation and inclusion of other ministries than foreign affairs becomes much more important; yet the mechanisms for this to happen are still faulty in many states.

In some cases, states also use consultants to help prepare for their participation in African Union activities, particularly on extremely technical points. Thus, Algeria called upon a consultant to present the draft protocol on the merger of the African Court on Human and Peoples' Rights and the Court of Justice of the African Union⁹² during an African Union experts' meeting held in November 2005 in Algiers.⁹³

An example of state preparation processes: Mozambique

The Ministry of Foreign Affairs and Cooperation is responsible for presenting the country's position on AU matters. The minister is assisted by two deputy ministers and the permanent secretary. One of the deputy ministers has responsibility on policy matters over the AU and Multi-lateral Department, which is located in the Africa and Middle East Division.

Once the official in the AU and Multi-lateral Department receives the draft agenda (since 2006 there are three officials in this department), an ad-hoc committee is established. The committee is composed of officials from the following divisions: research and statistics, legal affairs, relations with SADC and finance. Tasks are divided among these officials. Relevant government agencies are consulted: the Ministry of Justice was consulted extensively on the discussions on the single legal instrument establishing a the African Court of Justice and Human Rights. Two documents are prepared: a memo which provides background material; and a position paper, which propose Mozambique's stance on issues on the agenda. Also included is a comment on possible contentious issues at the summit. The documents are transmitted to the deputy minister for review. The foreign affairs and cooperation minister will give a briefing at the president's office. Thereafter, the position is endorsed for the summit. The AU and Multi-lateral Department suggests the composition of the delegation. This is approved by the minister of foreign affairs and cooperation and transmitted to the president for endorsement.

The delegation normally comprises the President, the Minister for Diplomatic Matters located in the President's Office, and the Minister of Foreign Affairs and Cooperation. Officials working on AU matters in the ministry will also form part of the delegation. Additional members from other departments are determined by the theme of the summit.

Engagement with national parliaments

In many of the states considered for this report, the ministry of foreign affairs briefs the parliamentary foreign affairs committee on foreign affairs in general and the progress achieved and problems encountered in relation to the AU. In Kenya, for example, the Minister of Foreign Affairs will include participation at the AU as part of a general activity report to the national parliament.⁹⁴ Apart from reporting on AU participation, the minister of foreign affairs will outline priorities and submit a budget for approval by parliament in an annual budget speech. The budget will include the AU contribution and travel costs for AU meetings. The Prime Minister of Mozambique reports to parliament on activities of the cabinet including AU summits.⁹⁵

In the course of our research, we were however unable to find examples of close collaboration between the executive and parliament with a specific view to preparing for the participation of a member state in an African Union summit. This is the case even when states had proposed items for the summit agenda. For example, in 2006 Mali proposed an agenda item for the Khartoum summit relating to youth in Africa based on the conclusions of the *Françafrique* summit held in Bamako in December 2005, and for the Banjul summit on the creation of a research centre on migration, but neither of these proposals were debated in the National Assembly. The government cites the principle of separation of powers to explain this situation, since the constitution forbids parliamentarians to interfere in matters that are within the jurisdiction of the executive.⁹⁶

The South African Department of Foreign Affairs did not formally brief the Foreign Affairs parliamentary sub-committee on the AU specifically, between the Khartoum and Banjul summits.⁹⁷ Similarly, a parliamentarian in the Kenyan parliament and representative at the Pan-African Parliament confirmed that reporting to parliament was not done, even in relation to the executive's nomination of a candidate to serve on the African Court on Human and Peoples' Rights.⁹⁸

Composition of national summit delegations

Each state is allowed a delegation of four people who may be accredited to attend the Assembly: the head of state and three others. However, many countries bring far more personnel than the official delegation, even though they will not be able to attend all the relevant meetings.

In the francophone countries, the office of the president of the republic and the relevant departments within the ministry of foreign affairs begin discussions on the size of the delegation that will represent the country to the AU summit, under the supervision of the prime minister, who conducts budgetary arbitration where necessary. Ultimately, the office of the prime minister is responsible for determining the composition of delegations that will represent the country at international meetings.⁹⁹ In general, the delegation from francophone countries is composed of persons directly responsible for the items examined both within the ministry of foreign affairs and within the government as a whole, in addition to persons appointed by the office of the president.

The composition of member state delegations in Commonwealth countries will in most instances include the foreign affairs ministry, officials of the AU/Africa directorates within the foreign affairs ministry, the presidency, and the ambassador and staff in Addis Ababa. Officials from the government agency attending to justice matters may also be part of the delegation. At the Khartoum summit where the theme was education and culture, ministers responsible for these issues were also included in some delegations such as that of Kenya.¹⁰⁰ The financial costs for attendance of AU summits and the financial contribution to the AU Commission are borne by the ministry of foreign affairs.

In all cases, the size of a delegation depends on the financial resources of the member state, its interest in the issues to be debated during the summit and above all the possibility of accommodation in the country hosting the summit. For instance, the Banjul summit was attended by Algeria's president, prime minister, minister of foreign affairs and delegate minister in charge of Maghreb and African affairs; whereas the Malian delegation included only the president and the minister of foreign affairs. Libya, meanwhile, reportedly had a total complement of several hundred people.

There is no real tradition in any of the countries studied of associating civil society with the diplomatic activities of the president or the minister of foreign affairs. However, Mali included women's organisations in the official delegation to the Maputo summit to adopt the Additional Protocol to the African Charter on the Rights of Women.¹⁰¹ In Senegal, President Abdoulaye Wade has, over the last two years, decided to

include two or three students in his official delegation, apparently to introduce them to the management of African affairs.¹⁰²

Upon its arrival at the summit location, the delegation holds a coordination meeting supervised by the ministry of foreign affairs during which the final details of the approach to be adopted during the summit are ironed out to ensure that, with or without the minister, the delegation will uphold the positions of the state. In some cases, the head of state may be consulted if the position prepared has become obsolete due to new developments. There are also often politically difficult agenda items for which decision-making is left to the summit.¹⁰³

