

SPECIAL RESEARCH REPORT

MAPPING OF AU DECISION-MAKING ACTORS AND PROCESSES

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I INTRODUCTION

2022 marks the 20th anniversary of the inauguration of the African Union (AU) as the continental organization taking over from its predecessor the Organization of African Unity (OAU). This is also the first year of the transition of the AU Commission (AUC) into its new structure under the process for the institutional reform of the AU that has been launched in 2017. During the two decades since its establishment, the AU has evolved not only in its institutional development but also in terms of its working arrangements and decision-making processes and practices. These evolutions and developments are not simply a product of the norms that set the mandate, power and functions of the AU but also importantly the practice of the AU in the implementation of its mandate and the exercise of the powers and functions entrusted to it based on the demands and needs of African states and the continent as a whole.

Various research works and studies have been undertaken on the AU over the years.¹ From the perspective of policy practitioners, it has become clear that there is a need for a research work which, building on the essential publication of the AU Handbook, not only offers analysis of the institutional evolution of the AU but also importantly maps the key AU decision-making actors and the decision-making processes of the AU. Since 2014, a major source of reference in this respect has been the AU Handbook that is published by the AU with the support of New Zealand. As stated in the Handbook, at the heart of the book is information about 'the principal organs established by the AU Constitutive Act and subsequent protocols' and 'the subsidiary organs and programs established in accordance with the Constitutive Act as well as regional and other arrangements.'²

Diplomats and other policy practitioners that come to Addis Ababa to work on the AU spend a great deal of time and effort to understand the mechanics of how the AU works. This often

takes a great deal of time and for some by the time they have achieved mastery of how the AU functions, they may often be well into planning their next diplomatic destination. Clearly, such an understanding is essential both for planning engagement with the AU and for meaningful participation in AU processes and tracking policy and decision-making within and by the AU decision-making actors. The purpose of this study is to provide a source of reference that contributes to such an understanding of the mechanics of how the AU works in practice, which will complement and add depth and richness to existing works of the AU such as the AU Handbook. Admittedly, this research project is limited to mapping of the decision-making actors and the decision-making processes of the AU. As such, it only sets the ground work for a more in-depth analysis of the profiles, roles and dynamics of the various decision-making actors of the AU.

The following are the questions that this work seeks to examine in some detail. What are the various actors that have direct role in AU decision-making? What is the attribute of each of these bodies as decision-making actors including the sources of their role? What are the decision-making processes in the AU? The starting point for this work and for answering these and related questions is an appreciation of the character of the AU as an international organization and the accompanying attributes that set the legal and institutional context for the functioning of the AU.

II FRAMEWORK FOR ANALYSIS: DECISION-MAKING IN INTERNATIONAL ORGANIZATIONS

In the context of increased in global interactions and the expansion of the areas of interaction, the role of international organizations has come to acquire particular prominence.³ The post-Cold War

¹ These are utilized in the analysis below.

² Since 2014 the AU jointly with the Government of New Zealand annually publish the African Union Handbook. See <https://au.int/en/handbook>

³ C.F. Amerasinghe, *The law of international organizations: A subject which needs exploration and analysis*, 1 *International Organizations Law Review* (2004)9, 10-12; Tobias Lenz, *The rising authority of international organizations*, *CIGA Focus, Global* No 4. (2017).

period has witnessed significant increase in the role of international organizations. The transition of the OAU to the AU is in part a manifestation of this rise in the importance of international organizations. Parallel to this development, the study of international organizations has also become an important field of academic and scholarly interest, particularly in the field of international relations and international law.

For purposes of this study, it is important to outline the framework for analysis before embarking on the specific analysis of the actors and decision-making processes of the AU. To do so, it is necessary to start with a definition of an international organization. While there is no universally accepted definition, there is general consensus in the fields of both in international law and international relations on the essential constituent elements of international organizations. International organization is thus defined as an organization established by treaty, with a constitution and common organs, having a personality which is distinct from that of its member-States, and being a subject of international law with treaty-making capacity.⁴ Capturing similar elements, another source characterizes international organizations as 'public international organizations' '1) based on a formal instrument of agreement between the governments of nation-states, 2) including three or more nation-states as parties to the agreement, 3) having inter-governmental or supranational character, and 4) possessing a permanent secretariat performing ongoing tasks.'⁵ It is clear from these sources that an international organization has a treaty constituting it and defining its objectives and areas of responsibilities, organs responsible for carrying out its functions and legal identity or personality independent of its member states and investing it with international legal capacity.

In terms of classification, while international organizations are classified in many different ways,

⁴ Adelardus Kilangi, *Legal Personality, Responsibility and Immunity of the African Union: Reflection on the Decision of the African Court on Human and Peoples' Rights in the Femi Falana Case*, *AUCIL Journal of International Law*, Issue No. 1 (2013) 95, 103. See also ILC (2011), *Draft Articles on the Responsibility of International Organizations*, Article 2(a).

⁵ Marco Amici & Denita Cepiku, *Roles, Types, and Definitions of International Organizations*, in Marco Amici & Denita Cepiku (eds.) *Performance Management in International Organizations*, (2020) Chapter 2, 9-10.

one useful classification of particular significance for purposes of this study which focuses on decision-making is the distinction between inter-governmental and supranational international organizations. In simple terms, in 'supranational organizations, member states transcend national boundaries or interests and take the decisions by majority voting system, while in intergovernmental organizations state governments play a more prominent role, and unanimity applies.'⁶

As this distinction makes it clear, in supranational organizations member states have pulled a degree of their sovereignty, thereby subjecting themselves to be bound by majority decision of the international organization irrespective of their vote on the decision. Of course, there can also be supranational public international organizations with supranational institutions whereby a level of the sovereign power of their member states is delegated to or invested in such institutions. It is thus worth noting that in such fully-fledged supranational international organizations, there are institutions that are invested with separate legislative, executive and judicial authorities whose decisions have direct application in domestic legal system of member states, as exemplified by the EU and its institutions.⁷

On the other hand, intergovernmental organizations are traditionally characterized by pure 'executive multilateralism',⁸ whereby governments meet in conference, negotiate and take decision by consensus. It is however necessary to recognize that rather than being absolute, this classification can be used to categorize international organizations in terms of being more supranational or more intergovernmental.

Generally, while the role of states in inter-governmental organizations is most dominant, the role of the secretariat/bureaucratic and/or technical bodies is very limited, although the degree of such influence of such bureaucratic/technical bodies varies depending on the gravity of the technical capacity of member states and

⁶ *Ibid*, 9

⁷ *On the EU and its institutions see Neill Nugent, The government and politics of the European Union (2010, 7th Edition)*

⁸ Michael Zürn, *The Politicization of World Politics and Its Effects: Eight Propositions*, 6(1) *European Political Science Review*, 47-71, 52.

the diplomatic culture of the specific organization.⁹ It is worth noting that while this categorization is analytically useful, in practice this dichotomy may not capture the character of international organizations. The existence of majoritarian decision-making establishes the legal threshold for making binding decisions but does not make consensus useless. Indeed, consensus serves as a framework for enhancing the political as opposed to legal legitimacy and community wide acceptance of decisions.¹⁰

Considering the subject of this study, decision-making refers to the 'how' and 'who' of the adoption of policies, laws, resolutions, regulations, recommendations and guidelines. As such, one useful formulation of what constitutes decision-making for purposes of international organizations expounded by Bob Reinalda and Bertjan Verbeek states that 'Decision making within international organizations ... can be described as a process of phases: a 'barrier model', where an issue goes from preparation to decision and to implementation, or from agenda setting through deliberation on causes and alternative solutions to voting on a preferred solution.'¹¹

Regarding the form that decisions of international organizations take, a useful typology is the one advanced by Cox and Jacobson. As Reinalda and Bertjan pointed out this typology 'divides decisions of international organizations into seven categories: representational, boundary, symbolic, programmatic, rule-creating, rule-supervisory and operational.'¹² Elaborating on these categories, they pointed out that 'the first two categories refer to the functioning of the organization (internal procedures and external relations with other organizations), the second two to the elaboration of its purposes (with symbolic and programmatic texts), the third two to international law making and standard setting, and the final category relates

to the provision of services by organizations.'¹³

In terms of decision-making actors (bodies) in international organizations, while there are no universal classifications, it is possible to identify one of two ways of classifying them. The first consists of actors or bodies that are representative of States' delegations. The General Assembly of the UN or the European Council of the European Union (EU) are examples of such bodies. The other actors are secretarial and technical actors that may or may not have substantive decision-making authority. While most such secretarial and technical actors use only administrative, execution and advisory roles in influencing decision-making, in the EU system, the EU Commission enjoys the exclusive power to initiate legislation and in certain policy areas the EU bureaucracy enjoy exclusive competence to decide on their areas of competence.¹⁴ The second way of classification uses the constitutional separation of power framework and divides the decision-making organs of international institutions into legislative, executive and judicial actors.¹⁵ Understandably, these classifications may not capture the full range of actors and their special features in the decision-making process but are helpful in making sense of decision-making actors based on the formal authority/function assigned to them.

While the mainstream and dominant international relations theory on international organizations puts enormous emphasis on power and national interest of states (as is the case with the realist approaches of IR to international organizations) and the role of international organizations as agents or mechanisms or forums for collective action (institutional liberalist or functionalist approaches), their role in proffering useful lens for understanding decision-making actors and processes in the AU is not only limited but can also be misleading. As Thomas Kwasi Tiekou pointed out, 'the pan-African national character rejects power as a basis for international relations.'¹⁶

9 See Thomas Kwasi Tiekou, *Theoretical approaches to Africa's international relations*, in Tim Murithi (ed.) *Handbook of Africa's International Relations* (2014) 11-20

10 As Bob Reinalda & Bertjan Verbeek pointed out the preference for consensus is premised on 'the idea that a possibly weak, but widely accepted, decision is to be preferred over a stronger, yet barely accepted decision.' Bob Reinalda and Bertjan Verbeek, *The issue of decision-making within international organizations*, in Bob Reinalda and Bertjan Verbeek (eds) *Decision making within International Organizations* (2014), 15.

11 *Ibid*, 14.

12 *Ibid*, 16

13 *Ibid*.

14 *Ibid*, 15-16.

15 See for example, Frans Viljoen, *International Human Rights law in Africa* (2nd edition, 2012) 171-205; Michèle E. Olivier (2015), *The role of the African Union law in integrating Africa*, 22 (4) *African Journal of International Affairs*, 517-18.

16 Thomas Kwasi Tiekou, *Theoretical approaches to Africa's international relations*, in Tim Murithi (ed.) *Handbook of Africa's International Relations* (2014) 11-20, 12.

The analytical frameworks that stand to prove useful for understanding the AU as an international organization and factors that influence in AU decision-making include Global IR as expounded by Amitav Acharya,¹⁷ the Legon School of IR (LSIR) expounded by Thomas Tieku¹⁸ and those that take the force of ideas, norms, socialization, networks and the role of the technical institutions of international organizations seriously. Accordingly, Marco Amici & Denita Cepiku, those 'studies (Elsig 2010; Haftel and Thompson 2006; Brown 2010) that take into account the international secretariats of international organizations analyzing the administrative features including the role of the independent staff, the ability of international secretariats to initiate and recommend policies (Haftel and Thompson 2006) and in general on how international organizations are able to act autonomously (Grigorescu 2010; Brown 2010)¹⁹ are particularly useful for explaining the role of AU institutions in decision-making. One recent good study on the AU that illustrates this is the recent work of African international relations expert Thomas Kwasi Tieku.²⁰

There is also the sociological perspective of the constructivist approach whose analytical utility lies in the significance it attaches to the role of norms and socialization in shaping and influencing the behaviour of states as main decision-making actors in international organizations such as the AU. As Joahn J Hogan pointed out, '[s]tudies that focus upon the context in which negotiations take place consider actors to be essentially social decision-makers'.²¹ In applying this to Africa, Tieku argued that no theoretical account of Africa's international relations will be complete without taking into serious consideration a regional African norm called the pan-African solidarity norm.²²

17 Amitav Acharya, *Global International Relations (IR) and Regional Worlds: A new agenda for international studies*, 58 *International Studies Quarterly* (2014) 647-659.

18 Thomas Kwesi Tieku, *The Legon School of International Relations*, 47(5) *Review of International Studies*, 656-671.

19 Marco Amici & Denita Cepiku, *Roles, Types, and Definitions of International Organizations*, in Marco Amici & Denita Cepiku (eds.) *Performance Management in International Organizations*, (2020).

20 Thomas Kwesi Tieku, *Punching above weight: How the African Union Commission exercises agency in politics*, 56(3) *Africa Spectrum* (2021) 254-273.

21 John J. Hogan (2020) *Competing Architects: Applying Social Contextualist Analysis to Negotiations on the African Peace and Security Architecture*, *African Security*, 13(1), 3-27.

22 Thomas Kwasi Tieku, *Theoretical approaches to Africa's international relations*, in Tim Murithi (ed.) *Handbook of Africa's International Relations* (2014).

Thus, in proposing the establishment of the OAU Mechanism for Conflict Prevention, Management and Resolution, Salim Ahmed Salim drawing on his belief in the African view that 'every African is his brother's keeper', urged member states that 'we in Africa need to use our own cultural and social relationships to interpret the principle of non-interference in such a way that we were enabled to apply it to our advantage in conflict prevention and resolution.'²³ Following the transition of the OAU to the AU, this pan-African solidarity finds expression in the principle of non-indifference that has become part of the AU foundational norm.²⁴

Additionally, the conceptualization by LSIR scholars of actors in interdependent terms, as opposed to some versions of IR scholarship that conceptualize actors, such as the state as an independent and atomistic entity, avail the most useful lens for understanding and explaining the role of various actors with role and influence in AU decision-making and the complex negotiations and interactions between them both formally and informally. Related, useful analytical lens that helps in capturing the non-formal and the external influence dimensions of decision-making in international organizations like the AU are those theories of IR focusing on how policy actors achieve desired policy objectives in terms of outcomes through the creation and sharing of networks,²⁵ including informal networking and exchange processes and Tieku's three dimensional guide to the study of international organizations, which apart from the actors internal to the international organizations recognizes the role of external actors.²⁶ On the role of such processes for law making in the AU, Tiyanjana Maluwa thus pointed out '[i]nformal contacts and discussions (whether internal or external) can also lead to proposals to elaborate a treaty.'²⁷

23 Council of Ministers Report of the Secretary General on Conflicts in Africa: Proposals for an OAU Mechanism for Conflict Prevention, Management and Resolution CM1710 (LVI) (Addis Ababa Ethiopia, OAU, June 1992) 12-13.

24 See Tim Murithi, *The African Union's Transition from Non-Intervention to Non-Indifference: An Ad hoc Approach to the Responsibility to Protect?* 1 *International Politics and Society*, (2009) 90-108.

25 Marco Amici & Denita Cepiku, *Roles, Types, and Definitions of International Organizations*, in Marco Amici & Denita Cepiku (eds.) *Performance Management in International Organizations*, (2020).

26 Thomas Kwesi Tieku, *Governing Africa: 3D analysis of the African Union's Performance* (Rowman & Littlefield Publishers, 2017)

27 T Maluwa, *Reassessing Aspects of the Contribution of African States to the Development of International Law through African Regional*

The foregoing analytical frame is useful both in situating the AU in the world of international organizations and identify attributes that makes it stand out. It is however of worth noting that no single analytical framework or even the combination of the above will be able to fully capture how the AU and its various institutions operate as the various AU institutions play various roles and take decisions depending on whether they play legislative, executive, judicial and consultative roles. But it is clear that the role of the institutions of international organizations, including the bureaucracies of these organizations play a role, as Thomas K Tieku pointed out, that goes beyond their administrative role involving the case of 'the tail wagging the dog'.

III THE AFRICAN UNION AS AN INTERNATIONAL ORGANIZATION

The AU as an organization in which the states that constitute its membership established it by founding international treaty, the Constitutive Act,²⁸ thus constitutes an international organization. Although international organizations are constituted by states, they are more than the sum total of the states that are members of the organizations. As pointed out in the foregoing section, by virtue of the responsibility assigned to them under their establishing treaty, they possess a legal personality separate from the personality of the States responsible for the establishment of the organizations.²⁹

As an organization that is vested with specific mandate and powers under the Constitutive Act, the AU thus possesses a legal personality that is separate from its member states. By virtue of its legal personality, it has the capacity to have rights and responsibilities that are enforceable in a court of law. The African Court on Human and Peoples' Rights thus opined that 'as a legal person, an

Multilateral Treaties, Michigan Journal of International Law 41:2, 2020, 327.v
28

The Constitutive Act is supplemented by the Protocol on the Amendments to the Constitutive Act of the AU of 11 July 2003 adopted in Maputo, Mozambique during the second ordinary session of the AU Assembly. This is the amendment that integrated the AU Peace and Security Council into the Constitutive Act through Article 20bis.

29 See in Michèle E. Olivier (2015), 22 (4) *The role of the African Union law in integrating Africa, South African Journal of International Affairs*, 513-533.

international organization like the African Union will have the capacity to be party to a treaty between States if such a treaty allows an international organization to become a party.³⁰ The nature of the functions entrusted to the AU as set out in the Constitutive Act and other similar instruments are of such a nature that necessitate the AU to act on the international plane, beyond the confines of the domestic sphere of its members, and as such AU's legal personality is also of an international character.

The AU was established under the Constitutive Act, which was adopted by thirty-sixth ordinary session of the OAU Assembly of the Heads of State and Government held in Lomé, Togo on 10-12 July 2000. 53 states of the OAU were the founding members of the AU. Following the accession of South Sudan to the Constitutive Act in 2011 and the endorsement of Morocco's application to AU membership in 2017, the AU has 55 member states. The size of AU membership gives the group significant weight for exercising influence in the international arena including within the UN system particularly where the membership speaks with one voice and engages on the basis of common African positions adopted within the framework of the AU. But at the same time, this size makes negotiation for decision-making via the conference of the 55 member states difficult, giving wider room for maneuver to AU's bureaucratic and technical institutions for influence in decision-making.

The transition of the OAU into the AU was a culmination of the continental integration agenda set out in the Plan and the Final Act of Lagos adopted during the 1980 OAU extraordinary summit held in Lagos, Nigeria and importantly in the Abuja Treaty of 1991 establishing the African Economic Community (EAC).³¹ The decision for the establishment of the AU was taken at the third extraordinary session of the OAU Assembly held in Sirte in September 1999 which adopted the Sirte Declaration calling for the establishment of the AU.³²

30 *Femi Falana v. The African Union, Application No. 001/2011, The African Court on Human and Peoples' Rights, para 70.*

31 *On the importance of the Abuja Treaty see Corinne A. A. Packer and Donald Rukare, The New African Union and its Constitutive Act, The American Journal of International Law, Vol. 96, No. 2 (Apr., 2002), 365, 369-371.*

32 *OAU Doc EAHC/Draft/Dec.(IV) Rev. 1, 8-9 September 1999.*

The Constitutive Act entered into force in May 2001 after the ratification by more than 2/3rd of the members of the OAU pursuant to Article 28 of the Act. The formal dissolution of the OAU on July 9, 2002, during the last thirty-eighth ordinary session of the OAU Assembly in Durban, South Africa was followed by the formal launch of the AU in Durban, with the convening of AU's first ordinary session on July 9-10, in Durban, South Africa.

The areas of cooperation of the States parties to the AU Constitutive Act and the subjects of the functional responsibilities of the AU are enunciated in the objectives and principles of the AU set out in Articles 3 and 4 of the Constitutive Act. As such the main purposes of the AU include the promotion of the 'the political and socio-economic integration of the continent', 'peace, security, and stability on the continent', 'democratic principles and institutions, popular participation and good governance' and establishment of 'the necessary conditions which will enable the continent to play its rightful role in the global economy and in international negotiations.'

The AU Constitutive Act enunciates under Article 4 the founding principles underlying the AU's legal and institutional framework. Of the 18 principles listed, the major principles include sovereign equality of states;³³ non-intervention and peaceful co-existence;³⁴ peaceful resolution of conflicts and non-use of force;³⁵ *uti possidetis*;³⁶ respect for human rights, sanctity of human life and democratic principles, and good governance;³⁷ and, rejection of impunity³⁸ and unconstitutional changes of governments;³⁹ In a departure from the OAU, one of the principles enshrined in the Constitutive Act is also the paradigmatic shifting right of the AU to 'intervene in a member state pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity'.⁴⁰

33 Constitutive Act, Article 4(a).

34 *Ibid.* Article 4(g) and (i).

35 *Ibid.*, Article 4(e) and (f).

36 *Ibid.*, Article 4(b).

37 *Ibid.*, Article 4(m) and (o).

38 *Ibid.*, Article 4(o).

39 *Ibid.*, Article 4 (p).

40 *Ibid.*, Article 4

In pursuit of the objectives of the AU and to guide the efforts towards realizing the ambitions of regional integration, socio-economic transformation and peace and security, the AU adopted Agenda 2063 as the blueprint for initiating and implementing programs aimed at achieving the seven aspirations of the agenda as follows

- (a) A prosperous Africa based on inclusive growth and sustainable development;
- (b) An Africa of good governance, democracy, respect for human rights, justice and the rule of law;
- (c) A peaceful and secure Africa;
- (d) An Africa with a strong cultural identity, common heritage, values and ethics;
- (e) An Africa where development is people-driven, unleashing the potential of women and youth; and
- (f) An Africa that is strong, united and influential global player and partner.

The pursuit of this agenda further necessitates that the AU adopts relevant policy, legal and institutional measures, including those that require harmonization of laws and implementation of decisions at the national level.

It is clear from the foregoing that the objectives and principles of the AU define in broad terms both the subject matters on which the AU has jurisdiction for policy-making and the areas of cooperation among member States within the framework of the AU based on the laws and decisions made in accordance with the applicable processes and by the responsible AU body. By subscribing to the Constitutive Act, member States of the AU have legally bound themselves to the objectives and principles of the AU. The legal instruments, policies and decisions that are adopted on the basis of the processes for such policy/law/decision-making are of such nature that are of consequence to the domestic arena of member states, although they may not have direct application. It is also worth noting that consistent with the sociological perspective of the constructivist approach to international organizations, the legal obligation of AU States to these norms shows that the AU rather than simply being a platform for individual member states to advance their interests the AU engaged in decision-making for the advancement,

implementation and enforcement of these norms, including by taking measures against states.

The powers of the AU extend to matters expressly mentioned in the Constitutive Act as well as those necessarily implied for effective performance of their duties, including entering into contract and buying services and property. This is based on the opinion of the International Court of Justice in relation to the UN that '[t]he Organization must be deemed to have those powers which, though not expressly provided in the Charter [Act], are conferred upon it by necessary implication as being essential to the performance of its duties.'⁴¹

The OAU can be categorized as inter-state or intergovernmental organizations. As such, the role of decision-making was in the hands of representatives of member States and decisions are, as a matter of rule, made by consensus. The OAU accordingly constituted no more than a forum for member states, who retain their sovereign power on decision-making. Unlike the OAU however, the AU is not purely an inter-governmental organization, despite the prominence of the role of states. Both from its mandate and practice, it is an inter-governmental organization with limited or quasi-supranational attributes. In respect of those attributes of the AU that invest it with a degree of supranationalism, AU member states are considered to have ceded a degree of their sovereign power to and/or have come to accept the exercise of influence and agency by AU bodies in AU decision-making processes. The characterization of the European Community in 1991 by Keohane and Hoffmann best captures this feature of the AU. They observe that the European Community (EC) is an example of 'supranationality without supranational institutions' whereby the EC has recently been continuing, even accelerating, its practice of 'pooling sovereignty' through incremental change: sharing the capability to make decisions among governments, through a process of qualified majority rule. ... Yet authority is not transferred to a supranational body because the crucial decision-making role is taken by an interstate body (the ECCouncil of Ministers).⁴²

⁴¹ See *Reparation for Injuries Suffered in the Service of the United Nations*, 1949 I.C.J. 174, 182 (Apr. 11).

⁴² Robert A. Keohane and Stanley Hoffmann (eds), *The New*

That the AU is an inter-governmental organization with limited supranational attributes can be inferred from its decision-making model. Accordingly, the Constitutive Act envisages that while consensus is preferred decision-making is based on two-third majority in the absence of consensus.⁴³ In functional terms, in the preamble to the Constitutive Act, member states expressed their determination 'to take all necessary measures to strengthen our common institutions and provide them with the necessary powers and resources to enable them to discharge their respective mandates effectively.' This clearly expresses their view that they have the desire to attribute substantive authority to the AU and its institutions and hence making them more than just a simple forum of inter-governmental cooperation. According to the AU Audit Report, '[t]aken to their logical conclusions, the remit of the AU and its modus operandi implied that African countries were prepared to cede a greater amount of sovereignty than they did under the OAU.'⁴⁴

As it will be discussed further below, the AU Assembly has the powers to determine common policies, monitor implementation of these policies and ensure compliance by member states. It also has the power to impose sanctions on member states that fail to comply with these common policies. Similarly, the Executive Council is also vested with the power to take decisions on the policy areas assigned to it under the Constitutive Act. The judicial organs of the AU, notably the African Court on Human and Peoples' Rights are invested with the power to deliver decisions that are legally binding on states.⁴⁵ The Peace and Security Council (PSC), an equivalent of the UN Security Council, is established as a 'standing decision-making body for the prevention, management and resolution of conflicts.'⁴⁶ Its wide powers include the institution of sanctions in cases of unconstitutional changes of government,⁴⁷ authorize the mounting and deployment of peace support missions,⁴⁸ and ensure the implementation of the convention

European Community: Decision making and Institutional Change (Boulder: Westview Press (1991)

⁴³ Articles 7 and 11.

⁴⁴ AU Audit Report (2007), 9.

⁴⁵ Article 30 of the Protocol Establishing the African Court on Human and Peoples' Rights.

⁴⁶ Article 2(1) of the PSC Protocol.

⁴⁷ Article 7(1)(g) of the PSC Protocol.

⁴⁸ *Ibid*, Article 7(1)(c).

on the prevention and combating of terrorism.⁴⁹ Under the PSC Protocol, AU member States are bound to accept and implement the decisions of the PSC in accordance with the Constitutive Act.⁵⁰

Apart from sanction for non-payment of assessed contributions and for non-compliance with AU decisions envisaged under Article 23, unlike the OAU Charter, which had no express provision for suspension or expulsion of erring members, the AU Act provides that '[g]overnments which shall come to power through unconstitutional means shall not be allowed to participate in the activities of the Union.' The supranational features of the AU can also be gathered from Article 4(h) of the Constitutive Act which gives the AU the right to intervene in member states in cases of grave circumstances such as genocide, war crimes and crimes against humanity, although this depends on the decision of the Assembly.

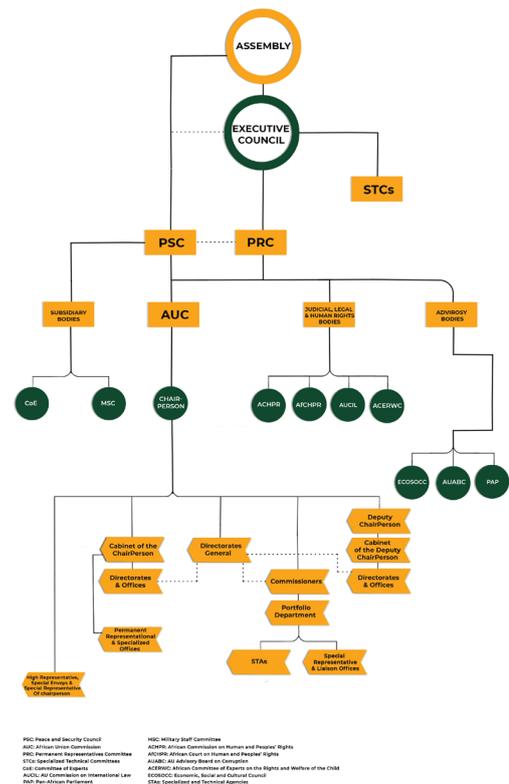
There are five features of the AU that can be gathered from the foregoing. First, the AU as an international organization is established by an international treaty. The AU, by virtue of the nature of what it is assigned to accomplish as set out in objectives and principles of its Constitutive Act, has an international legal personality separate from the legal personality of its member States. It is accordingly capable of acting on the international plane with legal rights and responsibilities. Third, the AU has norms (as enunciated in Article 4 of the Constitutive Act) that are binding on its member States and for whose implementation the AU is expected to initiate relevant policy, legal and institutional measures. Fourth, the AU is also endowed with relevant institutions through the execution of whose functions it strives to realize the objectives and principles of the Union. Fifth, like its predecessor the OAU, the AU is an inter-governmental body but unlike the OAU it is not exclusively inter-governmental. 'The requirement of unanimity in the decision-making process follows from the doctrine of the equality and sovereignty of States; in other words, no State can be bound without its consent. This principle... undermined the effectiveness of the OAU.⁵¹ The

AU on the other hand is clothed with limited supranational attributes by virtue of which it takes decisions that are binding on states by consensus or majority decision and has the power to enforce such decisions by imposing sanctions. It is however worth noting that only few of the AU institutions are invested with the power to take decisions that are binding on states and can institute sanctions.

III THE INSTITUTIONAL ARCHITECTURE OF THE AU

The AU organizational architecture can be described as having a vertical or a pyramidal structure whereby the AU Assembly, as the highest decision-making body, sits at the top.

Perhaps a more accurate depiction is the one represented in the map below which is based on the reporting lines as set out in the relevant AU legal instruments and AU Assembly decisions.



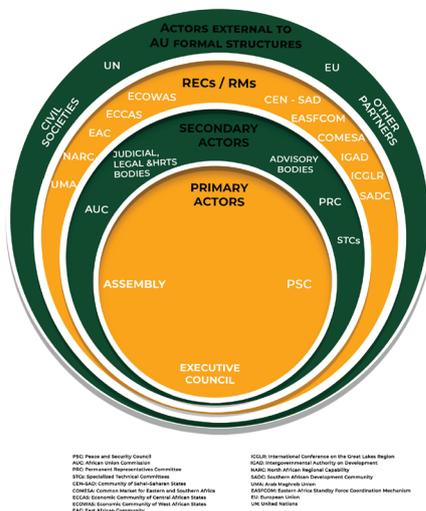
49 Ibid, Article 7(1)(i).

50 Ibid., Article 7(3)

51 Nsongurua J Udombana, *The institutional Structure of the*

African Union: A legal Analysis, 33 *California Western International Law Journal* (2002) 69, 92.

An alternative pictorial diagram that may also depict the organizational architecture is the eccentric circle whereby at the very core of the circle lies the AU Assembly. This is shown in the map below.



This prominent and central place of the AU Assembly is a continuation from the OAU and extends from the very first words of the OAU Charter and the Constitutive Act of the AU 'We the Heads of State and Government'.

In broad terms and drawing on the distinction identified in the section on analytical framework, one can consider the AU as an international organization that is made up of four types of institutions. The first types of institutions are those in which states are represented and as such primarily embody or reflect the role of AU member States in decision-making processes. They constitute the most dominant AU bodies in AU decision-making processes, including the AU Assembly and the Executive Council. While three out of five of these AU institutions envisaged in Article 5 of the Constitutive Act of the AU meet periodically in accordance with the schedule of meetings envisaged in their respective Rules of Procedure, two of these can be considered as standing decision-making bodies of the AU.⁵²

52 These two are the PRC and the Peace and Security Council.

The second set of AU institutions involves the institutions that constitute the bureaucracy of the AU. They are made up of the AU Commission, the principal AU bureaucratic body and the secretariats of various AU bodies. These constitute the administrative bodies of the AU responsible for the day-to-day operation of the organization and provide secretarial and other technical support for the functioning of the various other AU bodies.⁵³ These are envisaged to be professional entities that embody the values, objectives and the collective interest of the Union. As such, they are expected to operate according to international civil service standards and free from political influence of individual or factions of AU member states.⁵⁴

The third set of AU institutions are organs of the AU in which states are not represented. These include the Pan-African Parliament (PAP) and the judicial and quasi-judicial bodies of the AU. Of these while the PAP is a body meant to be representative of African citizens, the other are made up of experts with a judicial or semi-judicial role and exercise supervisory and monitoring authority in accordance with their respective mandates set out in their respective establishing legal instruments. Unlike the AU bureaucratic institutions whose organization and functions are set out in an instrument adopted by the AU Assembly, these AU organs are ordinarily established by treaty that require, after their adoption by the AU Assembly, ratification by AU member states for both their entry into force and application on AU member states.

While these foregoing three are considered as having a role in the legislative, executive and judicial decision making, the fourth type involves other actors such as those linked to the AU (Regional Economic Communities) and those outside of the AU system.

While the foregoing captures most of the formal AU decision-making actors, it does not capture the full picture of all aspects of actors with varying degree of role in AU decision-making. Accordingly,

53 The range of such roles are set out in the Statute of the AU Commission.

54 These standards are set out in the Statute of the AU Commission.

taking the foregoing categorization of AU decision-making actors as set out formally in AU instruments forward, the following part will provide a more in-depth mapping of AU decision-making actors both as identified formally in AU instruments and as evolved in the practice of AU decision-making processes.

IV AU DECISION-MAKING ACTORS AND PROCESSES

Methodologically, instead of the usual approach of listing the actors and their decision-making modalities and practice, the analysis that follows below presents the various AU decision-making actors and those other actors with varying degrees of influence in the AU decision-making process under six groups: those with legislative authority; executive roles; judicial roles; advisory and consultative roles; RECs/RMs; and others.

4.1. LEGISLATIVE BODIES

For purposes of our analysis and in line with the mandate and function of the AU discussed in previous section, AU's legislative role, as formulated by Frans Viljoen, is used here 'in an extended sense as referring to both the adoption of binding instruments ('lawmaking') and to the expression of 'advisory' views and recommendations (elaboration of 'soft law' norms).'⁵⁵ AU law, as identified by legal experts, is a reference to the body of treaties, resolutions, decisions, and declarations that establish rules and standards with varying degree of direct and indirect application to the member states of the African Union.⁵⁶ Legislative bodies accordingly encompasses AU actors that have direct part in the making and adoption of treaties, resolutions, decisions, policies, guidelines and declarations.

AU legislative bodies can be classified into primary a) legislative bodies, b) legislation processing bodies, c) quasi-legislative bodies and d) others.

⁵⁵ Frans Viljoen, *International Human Rights Law in Africa* (2nd Ed, 2012) 171.

⁵⁶ See O Amapo, M Olivier, and KD Magliveras (eds.), *The Emergent African Union Law: Conceptualization, Delimitation, and Application*, Oxford: Oxford University Press, 2021; Michèle E. Olivier (2015), 22 (4) *The role of the African Union law in integrating Africa*, *South African Journal of International Affairs*, 513-533

While primary legislative bodies and legislation processing bodies are involved in the making of the major AU policies, laws and decisions, quasi-legislative bodies are engaged in the development of soft-law instruments.

PRIMARY LEGISLATIVE BODIES

AU's primary legislative bodies as initially stipulated in the AU Constitutive Act are the AU Assembly and the Executive Council. Subsequently, in 2015 the AU Assembly elevated the status of the Specialized Technical Committees (STCs) enabling them to take decisions in their respective areas of responsibilities and hence making them part of the primary legislative bodies.

THE AU ASSEMBLY

The AU Assembly is the leading primary decision-making body of the AU, which is categorized above as being part of AU institutions that embody the role of AU member states in AU decision-making process. Like the General Assembly of the UN or the European Council of the EU, it is comprised of **Heads of State and Government of the 55 AU member states or their duly accredited representatives**. As stipulated in Article 6 (2) of the Constitutive Act, the Assembly is the supreme organ of the AU, hence the highest decision-making body that is at the apex of AU decision-making actors. The fact that the AU Assembly is a body in which member states are represented at the highest level and is AU's highest decision-making body is key for categorizing the AU as being mainly an inter-governmental body. These two features of the Assembly foregrounding States as the dominant actors in AU decision-making process, thereby tending to situate the AU mainly as inter-governmental in the universe of international organizations. Of course, this does not make the AU an exclusively inter-governmental organization to the extent that the nature of its decision-making formula and the existence of a degree of authority vested in it that go beyond the total sum of its member states cloth it with a

degree of supranational attributes, albeit limited as noted above.

The AU Assembly, as the supreme decision-making body, is vested with the most power in the AU system covering wide-ranging areas covering appointment of the leadership of the organs of the AU, establishment of AU organs, oversight over the affairs of the Union and law making. The powers and functions of the AU Assembly from which its legislative role arise are laid down in Articles 6-9 of the Constitutive Act as further complemented by the Protocol to the Amendment of the Constitutive Act and further expounded in the Rules of Procedure of the Assembly.

The legislative authority of the Assembly includes the following

- Determining the common policies of the Union;
- Receive, consider and take decisions on reports and recommendations from other organs of the Union;
- Establish any organ of the Union; and
- Gives directives to the Executive Council, (the PSC or the Commission added via Assembly Rules) on the management of conflicts, wars, acts of terrorism (added via Assembly Rules), emergency situations and the restoration of peace.

These powers and functions are further elaborated and enhanced in the Rules of Procedure of the Assembly under Rule 4 as amended 2007 and aligned Rules of Procedure adopted 2021. Thus, the Assembly also

- Amends the Constitutive Act in conformity with the laid-down procedures;
- Takes decisions on important AU matters; and
- Interpret the Constitutive Act pending the establishment of the Court.

Within the framework of the foregoing powers and functions of the Assembly, the legislative products of the AU include treaties (taking the

form of charters, conventions, protocols and there are at least 70 treaties), decisions (the AU Assembly has adopted over 800 decisions), policies (examples that fall under this category include the AU Post-Conflict and Reconstruction Policy of 2006, the African Humanitarian Policy and the AU Transitional Justice Policy of 2019).

It is worth noting that in the context of the decisions on the institutional reform of the AU, the agenda of the sessions of the Assembly are decided to be limited to three strategic areas. This is expected to ensure that the Assembly focuses on setting the strategic direction of the Union and takes decision on major strategic issues of continental concern.

While the Assembly is preeminently a political body in which States seek to advance their interests, consistent with the sociological perspective of the constructivist theory the negotiations and exchanges during the consideration of decisions by the Assembly is shaped by relevant norms, history, social practices and diplomatic traditions of the AU. Reference to pan-Africanism and Africa's historical experiences are not uncommon in AU Assembly policy debates. Of course, this also applies to other AU institutions in which states are the main actors.

DECISION-MAKING IN THE AU ASSEMBLY

Needless to state, its authority in respect of these various areas of decision-making relates not only to receiving, considering and adopting decisions taking those various forms but also in initiating some of these decisions. As such, as a decision-making actor, the Assembly combines the role of agenda setting in respect of those decisions it initiates through decision/s it adopts and that of adopting the decisions in respect to both those matters it initiated and those initiated by other AU institutions. That it engages in the interpretation of the founding instrument of the AU, which also defined its powers, albeit pending the establishment of the main judicial organ of the AU is reflective of the level of concentration of decision-making power in the AU Assembly.

In terms of decision-making modalities, the agenda for Assembly decisions is set either by the Assembly through its decision/s, by the Executive Council as a body that is tasked to prepare the agenda of the Assembly, by individual member states⁵⁷ and from the activities and reports of other organs of the AU, such as the PSC which reports to the Assembly directly. The draft preparation process may involve preliminary studies sometimes involving consultants, public consultations or consultation with stakeholders and other interest groups, technical negotiations, including with governmental experts. As discussed further below on the role of the PRC in legislation or decision processing, the proposal is then submitted to the PRC which scrutinizes its content. Only after consideration by the PRC, is the text ready for submission to the Assembly. Among other things, the PRC ensures the relevance of the proposed instrument *vis-à-vis* the policies and priorities previously adopted by the policy organs.

When draft working documents and accompanying draft decisions are prepared, their normative consistency and conformity is also assessed. Through the Legal Counsel and the STC on Justice and Legal Affairs, the draft is reviewed for consistency with other existing legal instruments, most notably the foundational ones such as the Constitutive Act.⁵⁸

While much of the draft that is tabled to the Assembly is prepared by the AU Commission and concerned AU organs and filtered by revision at the level of the PRC and/or the Executive Council, there are certain drafts that come directly to the Assembly from those who report directly to the Assembly. These drafts relate to those coming from the committees of the Assembly, the PSC and indeed those that are initiated by the Executive Council itself. Admittedly, in these instances as well,

⁵⁷ See Rules of Procedure of the Assembly.

⁵⁸ It is not however completely uncommon that the AU Assembly may decline to follow the legal opinion of the Legal Counsel. As Supreme Authority of the Union and interpreter of the Constitutive Act, pending the establishment of the Court of Justice, it could opt for a decision which according to the legal opinion may not be in line with the objectives and principles of the Union. During the consideration of Morocco's request for admission to the AU, the AU Commission presented a legal opinion that raised doubts about the consistency of the admission with the objectives and principles of the Union in January 2017. The Assembly opted for disregarding the legal opinion and decided to admit Morocco without any process or any condition.

the AU Commission plays a role in the drafting.

In terms of the machinery of decision-making by the Assembly, the key actors include a) the Chairperson of the AU Assembly who presides over and guides the proceedings of the conference of members of the AU Assembly and hence plays critical role in shaping the direction of and facilitating consensus, b) the bureau of the AU Assembly, which plays a role in the planning of and caucusing ahead of or in between Assembly sessions and in acting on behalf of the Assembly during emergency as happened during COVID-19, c) the high-level committees of the Assembly,⁵⁹ d) individual leaders members of the Assembly assigned to champion various themes (AU Champions)⁶⁰ and e) the AU Commission who work on the convening of the Assembly meeting, assist the Chairperson of the Assembly in the presentation of the agenda of the summit and draft decisions for consideration of the Assembly (through the Secretary General of the AUC) and in providing legal advice (through the Legal Counsel) on matters requiring legal advice and input during the course of the consideration of decisions.

The Assembly takes decisions through an inter-governmental conference format which are organized and convened as ordinary or extraordinary sessions of the Assembly. Although Article 6 of the Constitutive Act envisages that the Assembly holds an ordinary session at least once a year, since 2004 the AU held two ordinary sessions in January/February and June/July of each year.⁶¹ Within the framework of the

⁵⁹ The current AU Assembly High-Level Committees are the following: Committee of Ten Heads of State and Government on the Reform of the United Nations Security Council; Committee of African Heads of State and Government on Climate Change; High-Level Committee on African Trade; Committee of Ten Heads of State and Government Champions for Education, Science and Technology in Africa; High-Level Committee of Heads of State and Government on Libya; African Union Development Agency (AUDA-NEPAD) Heads of State and Government Orientation Committee.

⁶⁰ For list of current Champions see AU and New Zealand (2021), African Union Handbook 2021, 39-40. It is worth noting that sometimes, the area on which a champion is assigned would lead to the convening of dedicated summit on the subject as happened on the AfCFTA in Niger and as will be happening in May 2022 in Malabo, Equatorial Guinea on the humanitarian situation in Africa under the Championship of Equatorial Guinea's President on Refugees, Returnees and Internally Displaced Persons: Towards Durable Solutions to Forced Displacement in Africa.

⁶¹ This was established after the Assembly took a decision in its July 2004 summit.

institutional reform of the AU that started in 2016,⁶² the 2004 AU Assembly decision that increased the number of ordinary sessions of the Assembly to two was reversed. Accordingly in 2018 and as a follow up to the decision to the report of President Paul Kagame under Assembly/AU/Dec.635(XXVIII) of January 2017,⁶³ the AU Assembly decided that ordinary sessions would be held once a year.⁶⁴

While the AU Constitutive Act and the Rules of Procedure stipulate that the Assembly takes decision by consensus and failing which by majority vote, in practice and in keeping with OAU/AU diplomatic tradition the Assembly takes its decision invariably by consensus. This does not mean that the AU does not take decision without consensus. A case in point is the decision in the context of the institutional reform of the AU on the financing of the Peace Fund. It is to be recalled that 'the initial decision of the AU Assembly (Assembly Decision 605 July 2016) was that the Peace Fund would be financed through equal contributions from each AU region. The Assembly in its decision Assembly/AU/Dec.734 (XXXII) switched the basis for contribution (to the Peace Fund) to be the use of the scale of assessment for the regular budget.'⁶⁵ The AU was unable to reach decision by the consensus of all regions of the continent. As a result, decision was taken to proceed on using the scale of assessment for the regular budget to calculate the contribution of member states to the Peace Fund, but with reservation from countries of the northern region.

Decision-making by consensus not only draws on African values of consensual decision-making but also the disposition to enhance wide support for decisions in the AU. Such wide consensus is critical to follow up and implementation and when such is absent, it would lead to lack of buy in and support and hence difficulty in implementation. One such example is again the challenge that the initial

⁶² See AU Doc, Assembly/AU/Dec.606 (XXVII); and for the first independent analysis on the reform see Amani Africa Media and Research Services, *Seizing Africa's new moment for the reform of the African Union*, Amani Africa Report No.1 (July 2017).

⁶³ Paul Kagame, *The Imperative to Strengthen our Union: Report on the Proposed Recommendations for the Institutional Reform of the African Union* (29 January 2017).

⁶⁴ See AU Doc, Assembly/AU/ Dec.687(XXX) of January 2018.

⁶⁵ Amani Africa Media and Research Services (2021), *The African Union Peace and Security Council Handbook 2021: Guide on the Council's Procedure, Practice and traditions*, 105.

decisions of the Assembly on the institutional reform of the AU faced. Despite the decisions taken under Assembly/AU/Dec.635(XXVIII) of January 2017 an Assembly/AU/Dec.650 (XXIX) of July 2017, in January 2018, 'the Assembly decided that further consultations would be held **to deepen consensus**: that the Reform Troika (the previous, current and incoming AU Chairpersons) would be expanded to include the Assembly Bureau; and that 15 Ministers of Foreign Affairs, three per region, would play advisory role in the reform implementation process (Assembly/AU/Dec.687(XXX)).'⁶⁶

For legal instruments that take the form of treaties, the adoption of the legal instrument in the inter-governmental conference of the AU Assembly on the basis of the rules of decision-making during the conference is not consequential. As international treaties, these instruments are governed by the international norms relating to the entry into force of treaties. The right of each state to express its consent to be bound by the treaty, according to its own national legislation, is preserved in the form of signature and ratification.

THE AU EXECUTIVE COUNCIL

Immediately underneath the AU Assembly in the hierarchy of AU decision-making actors is the Executive Council of the AU. As one of the organs listed under Article 5 of the Constitutive Act, the Executive Council is established under Articles 10-13 of the Constitutive Act. Like the AU Assembly, it is the body of the AU which is made up of representatives of states. But it is made up of the Ministers of Foreign Affairs or such other Ministers or Authorities as are designated by the Governments of Member States, in practice and in conformity with Rule 18(1), the Organ is composed of Ministers of Foreign Affairs.

The legislative role of the Executive Council arises from its powers and functions as established in the Constitutive Act, delegated from the Assembly and further expounded in the Council's Rules of Procedure. The areas of responsibilities of the Council as stipulated in Article 13 of the Constitutive

⁶⁶ AU and New Zealand (2021), *African Union Handbook 2021*, 27.

Act that endows the Council with legislative role include the following: coordinating and taking decisions on policies in areas of common interest to the Member States, including: foreign trade; energy, industry and mineral resources; food, agriculture and animal resources, livestock production and forestry; water resources and irrigation; environmental protection, humanitarian action and disaster response and relief; transport and communications; insurance; education, culture, health and human resources development; science and technology; nationality, residency and immigration matters; social security, including the formulation of mother and child care policies, as well as policies relating to the disabled and the handicapped; and the establishment of a system of African awards, medals and prizes. It also receives reports from various AU bodies that report to it such as the Special Technical Committees or report to it by delegated authority from the AU Assembly and takes decision on the same.

As of December 2021, the Executive Council has adopted some 1125 decisions. The legislative products of the Executive Council take the form decisions, declarations and policies. Example of a decision include the decision on Education, Science and Technology Fund EX.CL/385(XXII) 1, Decision on the Policy on Access to Post-Primary Education for Victims of Forced Displacement in Africa (EX.CL/387(XII)1 and African Common Position on Migration and Development. An example of a policy will be the Decision on the African Union Gender Policy.⁶⁷

Considering that the Executive Council is also entrusted with the responsibility of preparing the agenda of the AU Assembly and reviewing draft decisions of the AU Assembly, it is possible to considering it as also playing the role of co-legislating with the AU Assembly. In the context of the decisions on the institutional reform of the AU and with the Assembly focusing on limited agenda items of strategic importance, this role of the Executive Council is further bolstered.

DECISION-MAKING IN THE EXECUTIVE COUNCIL

Just like the AU Assembly, the role of the Executive Council in respect of its various areas of responsibility relates not only to receiving, considering and adopting decisions based on submissions made from the PRC, the STCs, the AUC and AU Organs as applicable but also in initiating some of these decisions. As such, as a decision-making actor, similar to the Assembly, it combines the role of agenda setting in respect of those decision-making matters it initiates through decision/s it adopts and that of adopting the decisions in respect to both those matters it initiated and those initiated by other AU institutions. Additionally, however, the agenda of the Council is prepared and its working documents including draft decisions (initiated by the AUC) are processed by the PRC.

Much of the consultation on matters on the agenda of the Executive Council happen either at the level of the PRC or in the committees of the Executive Council. The committees of the Executive Council include: Ministerial Committee on Candidatures within the International System, Ministerial Committee on the Challenges of Ratification/Accession and implementation of the OAU/AU Treaties, Ministerial Committee on the Scale of Assessment and Contributions, Ministerial Follow-Up Committee on the Implementation of Agenda 2063, and Open-ended Ministerial Committee on the International Criminal Court.

In terms of the machinery of decision-making in the Executive Council, the actors that play key role are a) the Chairperson of the Council, b) Bureau of the Council, c) Committee of the Council, and d) the PRC that prepares the agenda and work on the draft working documents prepared by the AUC, e) the STCs who advise and report to the Council and f) the AU Commission. The same Member State that chairs the Assembly chairs the Executive Council.⁶⁸ Similar to the Assembly and the PRC, the Executive Council Bureau consists of a chairperson, three vice-chairpersons and a rapporteur. The Bureau positions are held by the same states that form the Assembly Bureau.

⁶⁷ AU Doc, EX.CL/487(XIV).

⁶⁸ Rule 16 of the Rules of Procedure.

Inputs into and influence on the decision of the Executive Council can be channeled through these various actors (in some cases ahead of the Council's meeting) and the intervention of members of the Executive Council during deliberations.

Similar to the Assembly and most AU bodies in which AU member states are represented, the Executive Council takes decision through an inter-governmental conference that is held as ordinary or extraordinary session of the Council. As envisaged in the Constitutive Act and its Rules of Procedure, the Executive Council meets at least twice a year in ordinary session and can meet in extraordinary session at the request of the Assembly, the Chairperson, any member State or the Chairperson of the AU Commission in consultation with the Chairperson of the Executive Council, and on approval by two-thirds of all member states. In terms of the format of decision-making, the Executive Council, similar to the Assembly, makes decisions by consensus or, where consensus is not possible, by a two-thirds majority vote by Member States. Matters of procedure, including the question of whether a matter is one of procedure or not, are decided by a simple majority. In practice, like the Assembly, the Executive Council ordinarily takes decision by consensus.

The decision-making dynamic and the relative weight of influence of various actors changes across agenda items, the political saliency of the agenda, the confluence of the agenda with various fault lines among member states, the level of consultation and preparatory work that went into the planning of the agenda and its outcome and the level of public and international interest on the subject. Where the agenda has high level of political and economic saliency as well as legal and institutional consequences and attracts wide public and international attention, the members of the Executive Council take a leading role in determining the final outcome of the deliberation of the Council on the agenda. It is likely in such cases that draft decisions would be adopted with major changes, unless most of the issues have been trashed out through consultations and negotiations both at the level of the PRC and among capitals. In other instances, the level of

engagement of the members of the Executive Council is less intensive, thereby paving the way for the adoption of drafts without substantial changes. These same dynamics obtain in the AU Assembly and in the PRC.

There is no provision in the AU Constitutive Act which of AU decisions are binding and will attract the application of Article 23 sanctions. Since in practice all AU decisions take the form of either decisions or declaration, other than those clearly designated as declarations it is not possible to determine the binding nature of decisions of the Assembly and the Executive Council. The AU attempted to fill in this lacuna through the respective rules of procedure of the Assembly and the Executive Council drawing on the Abuja Treaty and the EU. Accordingly, and as stipulated in the Rules of Procedure of both, the Assembly and the Executive Council take three forms: 1) Regulations, 2) Directives and 3) declarations, resolutions, recommendations. Regulations are applicable in and binding on all Member States which shall take all necessary measures to implement them. Directives, addressed to any or all Member States, to undertakings or to individuals, 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.⁶⁹ The rest of outcome documents of AU Assembly and Executive Council (Recommendations, Declarations, Resolutions, Opinions etc) are not binding and are intended to guide and harmonize the viewpoints of member states.⁷⁰ They have at best only political and persuasive value.

STCs

The Specialized Technical Committees (STCs) are the sectoral committees established under the AEC Treaty, but under the AU Constitutive Act, the STCs report to the Executive Council. Functionally speaking, the STCs shall: prepare projects and programmes of the Union and submit it to the Executive Council; ensure the supervision, follow-

⁶⁹ Rule 33 and 34 of the Rules of Procedure of the Assembly and Executive Council, respectively.

⁷⁰ *Ibid*

up and the evaluation of the implementation of decisions taken by the organs of the [AU]; ensure the coordination and harmonization of projects and programmes of the [AU]; submit to the Executive Council, either on its own initiative or at the request of the Executive Council, reports and recommendations on the implementation of the provisions of [the] Act; [and] carry out any other functions assigned to it for the purpose of ensuring the implementation of the provisions of the Act.

Apart from the nature of the role entrusted to these sectoral committees which endow them their status in legislative decision-making, In June 2015, at its 25th Ordinary Session, the AU Assembly decided to empower the STCs to take decisions on issues falling under their respective competencies, except where there are attendant financial and structural implications.

The Constitutive Act provided for seven STCs. Later one at its 12th Ordinary Session, held in February 2009, the Assembly reconfigured the STCs and enlarged the number to 14, to make the structure and thematic focus consistent with AUC portfolios.⁷¹ Like the Assembly, the Executive Council and the PRC, the STCs are composed of representatives of member states who are Ministers or senior officials responsible to specific sectors within their respective domestic jurisdictions.

There are two types of STCs. One type involves the AU STC on Justice and Legal Affairs. Thus, apart from the functions assigned to STCs in general under Article 15 of the Constitutive Act, the STC's Rules of Procedure, Rule 5, includes the following powers and functions:

- considering AU draft treaties and other legal instruments and submitting them to the Executive Council and Assembly for consideration and adoption;
- surveying international law with a view to selecting topics for codification within AU legal frameworks and
- submitting its recommendations to the Executive Council

All proposed legal instruments of the Union are submitted to this STC for review before submission to the Executive Council and Assembly for consideration and adoption. It plays this role even in respect of legal instruments initiated by other STCs. It is accordingly a kind of a super STC.

The rest of the STCs are committees that have sectoral (thematic) areas of responsibilities and their role in legislative processes of the AU is confined to their respective sectoral areas of responsibilities. The STCs are constituted based on the possession of their technical competence or sectoral specialization and as such they are made up of representatives of states drawn from their relevant sectoral ministries.

LEGISLATION PROCESSING BODIES

The legislation processing bodies of the AU involve those AU actors who are assigned the role of agenda setting, preparing drafts and reviewing the draft documents that are tabled as draft decisions to the primary decision-making bodies. These are the bodies that either hold the pen or play the role of filtering and reviewing draft documents that serve as basis for decision-making. These bodies as listed under Article 5 of the AU Constitutive Act are the PRC and the AU Commission (AUC).

THE PRC

Established under Article 21 of the Constitutive Act, the PRC is responsible for the conduct of the day-to-day operation of the AU, on behalf of the primary legislative bodies of the AU and is as such plays a

⁷¹ Decision EX.CL/B45(XXV) of June 2104 operationalized the following STCs: (1) Committee on Agriculture, Rural Development, Water and Environment; (2) Committee on Finance, Monetary Affairs, Economic Planning and Integration; (3) Committee on Trade and Industry and Minerals; (4) Committee on Transport, Transcontinental and Interregional Infrastructures, Energy and Tourism; (5) Committee on Gender and Women Empowerment; (6) Committee on Justice and Legal Affairs; (7) Committee on Social Development, Labour and Employment; (8) Committee on the Public Service, Local Government, Urban Development and Decentralization; (9) Committee on Health, Population and Drug Control; (10) Committee on Migration, Refugees and IDPs; (11) Committee on Youth, Culture and Sports; (12) Committee on Education, Science and Technology; (13) Committee on Communication and ICT; and (14) Committee on Defence, Safety and Security.

critical role for the functioning of the AU. Like both the AU Assembly and the Executive Council, the PRC is also a body made up of representatives of states, namely Permanent Representatives and other Plenipotentiaries of Member States accredited to the African Union. But unlike them, it is a standing body that meets at the AU Headquarters.

As per the terms of Article 21 (2) of the Constitutive Act, the PRC's legislation processing role arises from its assignment to prepare the Executive Council's work and act on its instructions. Other aspects of the legislation processing role of the PRC are spelt out in Rule 4 of the PRC's Rules of Procedure. These include

- Act as an advisory body to the AU Executive Council
- Prepare Executive Council meetings, including the agenda and draft decisions, and
- Make recommendations on areas of common interest to Member States, particularly on issues on the Executive Council agenda

It is within the framework of the foregoing that the PRC exercises its legislative processing role by setting the agenda, preparing the work of the Executive Council, including the draft decisions of the Executive Council and through the Executive Council, that of the Assembly.

All matters on which the Executive Council takes decision, with the exception of those that are directly to be tabled to the Executive Council,⁷² are to be considered and cleared by the PRC before their presentation and consideration by the Executive Council. Due to this legislative filtering role of the PRC covering almost all areas of responsibilities of the AU, the work load of the PRC is extensive and heavy. Additionally, this also makes the PRC the site for undertaking much of the preparatory work. It is also platform for negotiation not only among member states of the AU themselves but also between member states of the AU and other organs of the AU. In so many ways, the degree of effectiveness of the legislative decision-making of the AU depends significantly on the effectiveness

⁷² A recent good example is the controversy over the accreditation by the AU Commission Chairperson of Israel, which was not considered at the level of the PRC but tabled directly before the Executive Council.

of the PRC. Despite the fact that it does not have formal primary legislative role, the PRC exercises by virtue of its position significant influence in the legislative decision-making processes of the AU, making it a very central actor.⁷³

THE MECHANISMS OF LEGISLATION PROCESSING IN THE PRC

The PRC ordinarily works on the basis of the agenda set by other AU organs and as part of working on established agenda items. It is also possible for the PRC to work on agenda initiated within itself either by its sub-committees or from proposal by a member state. While drawing on these agenda items initiated by others, it is the PRC that determines what goes into the agenda of its ordinary or extraordinary session. This it does during the consideration and adoption of its agenda. Working documents are prepared by the AUC and the Drafting Committee. It engages in reviewing and processing legislations or decisions of the AU through both the meeting of its subsidiary committees and the inter-governmental conference format in the plenary of the meeting of the whole of the PRC made up of representatives of the 55 member states, except those suspended for areas or unconstitutional changes of government.

In terms of the machinery of legislation or decision processing in the PRC, the actors that play key role are a) the Chairperson of the PRC, b) Bureau of the PRC, c) Committees of the PRC and their respective chairpersons, d) the AU Commission (including the sector departments, the DCP, the Secretary General and the Legal Counsel) and e) the various organs that present their reports and draft decision for consideration and appropriate revisions without compromising the legal instruments of the organs. The sub-committees of the PRC include

⁷³ A South African scholar describes the PRC as 'the most active'; a 'hands-on' body, engaged continuously in negotiations on a variety of issues. Frans Viljoen, *International Human Rights Law in Africa* (2nd Ed, 2012) 171-173.

- Sub-Committee on General Supervision and Coordination on Budgetary, Financial and Administrative Matters
- Sub-Committee on Audit Matters
- Sub-Committee on Economic and Trade Matters
- Sub-Committee on Headquarters and Host Agreements
- Sub-Committee of the Whole on Multilateral Cooperation
- Sub-Committee on the New Partnership for Africa's Development (NEPAD)
- Sub-Committee on Programmes and Conferences
- Sub-Committee on Refugees, Returnees and Internally Displaced Persons in Africa
- Policy Sub-Committee of the Special Emergency Assistance Fund for Drought and Famine Relief in Africa
- Sub-Committee on Structural Reforms
- Sub-Committee on Rules, Standards and Credentials
- Drafting Committee
- Sub-Committee on Human Rights, Democracy and Governance
- Sub-Committee on Environmental Issues

- Sub-Committee on Budget Matters

In addition to the official structures of the PRC, a larger informal bureau of 15 Member States traditionally convenes to support arrangements for the Assembly Summit sessions.⁷⁴ At the PRC level, the five regional groups serve as informal discussion or caucus structures, chaired by the longest-serving representative, who acts as the Dean.

Similar to the Assembly and Executive Council, the Bureau of the PRC consists of a chairperson, three vice-chairpersons and a rapporteur. The Bureau positions are held by the same states that form the Assembly and Executive Council bureaus. The format of decision-making is also the same as that of the Assembly and the Executive Council, hence by consensus or failing consensus by two-thirds majority vote.

There are two stages to the process of consideration,

negotiation and adoption of reports and draft decisions to be submitted to the Executive Council and the Assembly. The first is the presentation and deliberation on reports and proposals corresponding to the agenda of the PRC. The second stage is the drafting of decisions based on the deliberations and recommendations that emerged from the celebrations as summarized by the Chairperson of the PRC and agreed to by the membership of the PRC. This formulation of draft decisions is carried out through the Drafting Committee since 2019 following its reconstitution.

AUC

Established under Article 20 of the Constitutive Act, the AUC is the key bureaucratic arm of the AU, critical to the provision of administrative, secretarial and related technical support to the various AU institutions, including the primary legislative bodies of the Union. Clearly, unlike the Assembly, Executive Council, the PRC and the STCs, the AUC is not made up of state representatives. As envisaged in the Statutes of the Commission, it is rather constituted by international civil servants and technocrats.

Its role in AU legislative process arises from the various functions assigned to it under the AUC Statutes adopted by the Assembly in accordance with Article 20(3) of the Constitutive Act. The functions of the AUC set out in Article 3 of the Statutes relevant to its role in the legislative process include the following: Initiating proposals to be submitted to the AU's organs, organizing and managing the meetings of the Union and preparing strategic plans and studies for the consideration of the Executive Council.

Consistent with those theories of international organizations that recognize the significance of the technical expertise and the advisory, the agenda setting, and drafting roles of bureaucracies, the role of the AU is not limited to the formal functions assigned to it in its Statute. It also arises from the tradition of the functioning of the institution and the place it occupies in the decision-making process. In practice, literally almost all AU bodies depend on the AUC and the

⁷⁴ AU and New Zealand (2021), *African Union Handbook 2021*.

secretariat/bureaucratic/administrative body of AU organs for the preparation of working documents in the process of their consultations, deliberation and consideration and adoption of decisions. Additionally, the technical expertise the AUC possesses and the institutional memory, among others on account of being a custodian of AU decisions, gives it greater influence in decision-making than just the limited administrative role to which it is conventionally imagined to be confined to.

The roles of the AU relevant to AU legislative process that Tieku⁷⁵ identified based on both formal rules and the practice of AU decision-making include: rule-drafting powers (referring to the fact that the AUC holds the pen for drafting the various base and outcome documents that the primary legislative bodies consider, review (these include the PRC) and adopt as legislative decisions), agenda setting and convening powers (on the basis of which the AUC lays down the foundation for drafting, consideration and reviews of drafts by the PRC and decision making by the primary legislative bodies and shapes the organization and flow of the meetings of the PRC, the STCs, the Assembly and the Executive Council) and strategic powers by virtue of which the AUC since 2004 adopted three strategic plans, most notable of these is the initiation and framing of Agenda 2063, which serves as a blue print for the long-term development of the continent.

QUASI-LEGISLATIVE BODIES

The quasi-legislative bodies are those with the mandate for the development of soft-law instruments and the drafting of legal instruments in their areas of responsibilities. These bodies include the Pan-African Parliament (PAP), the African Commission on Human and Peoples' Rights (ACHPR) and the African Committee of Experts on the Rights and Welfare of the Child (ACERWC).

⁷⁵ Thomas Kwesi Tieku, *Punching above weight: How the African Union Commission exercises agency in politics*, 56(3) *Africa Spectrum* (2021) 254-273.

PAP

As initially envisaged in the Protocol establishing it, the PAP is established as a body that is intended 'to ensure the full participation of African peoples in the development of and economic integration of the continent.' PAP was established following the adoption of the Protocol to the AEC Treaty to establish the Pan-African Parliament by Assembly of the OAU, at its 5th Extraordinary Summit in Sirte on March 2, 2001.⁷⁶ It is envisaged to evolve ultimately 'into an institution with full legislative powers, whose members are elected by universal adult suffrage' like the European Parliament. But in its current set up, the PAP is made up of five legislatures (two of which women) from each State Party to the PAP Protocol designated by the legislative body of each member state rather than being elected directly by universal suffrage.

As set out in the initial PAP Protocol, it is vested only with deliberative, advisory and recommendation functions. Its objectives include to facilitate effective implementation of the policies and objectives of the AEC and the AU, promote the principles of human rights and democracy in Africa; encourage good governance, transparency and accountability in Member States. Other aspects of its objectives and functions critical to its role as quasi-legislative body includes its function to contribute to harmonization and coordination of member states legislations.

In pursuit of these objectives, the PAP, either on its own initiative or at the request of the Assembly or other policy organs, can examine, discuss or express an opinion on any matter and make such recommendations it may deem fit. Under Article 11 it also has advisory and consultative role. It is on the basis of its deliberative and promotional role that the PAP played, but with no contribution to legislation until 2014.

Under the new PAP Protocol adopted in the June 2014 AU summit held in Malabo, Equatorial Guinea, the status of the PAP is enhanced. Accordingly, it

⁷⁶ See *Decision on the Draft Protocol to the Treaty Establishing the African Economic Community Relating to the Pan-African Parliament, Assembly of the Heads of State and Government, 5th Extra-Ord. Sess., O.A.U. Doc. EAHG/Dec. 2 (V), Sirte, Great Jamahiriya (2001) (adopting the Draft Protocol to the Treaty Establishing the African Economic Community Relating to the Pan-African Parliament).*

is stipulated that the PAP shall be the legislative organ of the AU, with the AU Assembly determining the subjects/areas on which the Parliament may propose draft model laws and for the Parliament to make its own proposals on the subjects/areas on which it may submit or recommend draft model laws to the Assembly for its consideration and approval.

The PAP has thus far played no role in forging AU law and legal order. It is the combination of its deliberative and recommendation power and significantly the power to propose model laws that gives PAP its quasi-legislative role, as such model laws constitute soft-law instrument of the AU. It could thus play an indirect role through the adoption of soft law instruments (in its advisory and consultative capacities) or when it is finally able to prepare model laws, as quasi-legislation, to serve as guidelines to member states, when it actually directs its efforts and attention towards exercising its powers for producing such instruments.

ACHPR

The ACHPR is the leading human rights body of the AU established under the 1980 African Charter on Human and Peoples' Rights (African Charter), the founding treaty of the African human rights system. The ACHPR as a quasi-judicial body is made up of legal experts and is expected as such to carry out its functions independently. Although the 11 members of the ACHPR are elected by the AU Assembly upon presentation of their candidacy by their respective national government, they don't represent the country from which they come from. Rather, they act on their personal capacity.

The ACHPR has the mandate for the promotion and protection of human and peoples' rights and for the interpretation of the African Charter. Its quasi-legislative role arises from its promotional power set out under Article 45(1) of the African Charter. This more specifically refers to its mandate 'to formulate and lay down principles and rules aimed at solving legal problems relating to human and peoples'⁷⁷ rights and fundamental freedoms upon which African governments may base their

legislations'. On the basis of this, the ACHPR has been engaged in the development of various soft-law instruments. These take the form of guidelines, principles, declarations, resolutions and general comments. Additionally, in accordance with Article 66 of the Charter, additional protocols or agreements may be adopted to supplement the present charter. Perhaps it is the leading AU body that has the most track record in the development of soft laws and in the drafting of human rights legal instruments.

In terms of soft law development, examples of the work of the ACHPR include the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa, 2008, Declaration of Principles on freedom of Expression and Access to Information in Africa 2019 and Principles and Guidelines on the Right to Fair Trial and Legal Assistance in Africa. It has also developed a model law on the right to access to information, which shaped the legislation of various member states on access to information.⁷⁸

Within the framework of Article 66 of the African Charter and sometimes on the request of the Assembly and the Executive Council, the ACHPR has been engaged in the drafting of various human rights legal instruments. These include the Protocol to the African Charter on the Rights of Women (Maputo Protocol), the Protocol on the Establishment of the African Court on Human and Peoples' Rights, Protocol on the Rights of Persons with Disabilities in Africa, the Protocol on the Rights of Older Persons in Africa and the Protocol to the African Charter on the Rights of Citizens to Social Protection and Social Security.

ACERWC

Similar to the ACHPR, the ACERWC is a legal technical body that is composed of legal experts but those whose areas of expertise is related to children rights. The members of the Committee like that of the ACHPR do not represent the country from which they come from and they operate on

⁷⁷ African Charter on Human and Peoples' Rights, Article 45(1)(a)

⁷⁸ For further details on the soft-law instruments developed by the ACHPR see <https://www.achpr.org/resources>

their personal capacity.

The mandate of the ACERWC, similar to the ACHPR, covers both a protection and promotion mandate. Among others under Article 42 it is vested with the mandate 'to formulate and lay down principles and rules aimed at protecting the rights and welfare of Children in Africa.' Within the framework of this, the ACERWC has been engaged in developing various soft law instruments taking the form of general comments and statements and declarations. The most significant of the soft law instruments developed by ACERWC take the form of general comment. Examples of this include General Comment No 7 on Article 27 on Sexual Exploitation, General Comment on Article 31 on the Responsibility of the Child, and General Comment on Article 30 on Children of Incarcerated and imprisoned parents and primary care givers.⁷⁹

AU COMMISSION ON INTERNATIONAL LAW

The AU Commission on International Law (AUCIL) was created in 2009 by the AUCIL Statute as an independent advisory organ in accordance with article 5(2) of the AU. The quasi-legislative role of the AUCIL arises from the mandate entrusted to it under Article 4 of the AUCIL Statute. Of significance in this respect is the mandate to propose draft framework agreements and model regulations.

4.2. EXECUTIVE BODIES

Various AU institutions additionally play the role of execution, involving the monitoring implementation and taking enforcement measures including sanctions. The institutions in this category can be grouped into primary executive bodies and others.

PRIMARY EXECUTIVE BODIES

These are the bodies that have both oversight role by virtue of which they monitor and supervise the implementation of decisions, policies and laws or take measures for implementation and enforcement power by virtue of which they institute sanctions. The AU institutions that fall under this category are the AU Assembly, the Executive Council, the STCs and the PSC of the AU.

THE AU ASSEMBLY

The executive powers of the Assembly are two and consist of the monitoring of AU policies and decisions and ensuring compliance by all member states. The Assembly executes its monitoring and oversight role through receipt of reports of various AU institutions and reports on implementation of decisions. Moreover, the Assembly adopts the budget of the Union and appoints and removes the leadership of institutions of the Union based on established processes.

The second aspect of the executive role of the AU Assembly is executed through the imposition of sanctions in case of failure to comply with decisions and policies.⁸⁰ The assembly may also impose sanctions on a member state that is in default of paying its contributions to the AU, such as the denial of the right to speak at meetings, to vote or to present a candidate for an AU position. Governments that come to power through unconstitutional means are also to be suspended from participation in AU activities. Thus far, only sanctions relating to arrears and unconstitutional changes of government have been instituted and no sanction has as yet been instituted in respect to non-compliance with AU decisions and policies.

THE EXECUTIVE COUNCIL

The council is also empowered to monitor implementation of assembly policies. This is a much more limited and focused responsibility compared with the assembly's power to monitor

⁷⁹ Further details on similar soft law instruments see <https://www.acerwc.africa/general-comments/>

⁸⁰ Article 23 of the Constitutive Act of the AU.

implementation of AU policies and decisions as well as to ensure compliance. Like the Assembly, the Executive Council also has the power of enforcement of AU policies particularly as they relate to financial contributions of member states, based on the report of the joint committee on scale of assessment and contributions and the F15. It is within the framework of this that it took a decision to sanction the following states for not paying assessed contributions on time:

Cautionary sanctions: Sao Tome and Principe, Guinea and Congo. These states lost their speaking right at AU meetings

Intermediate sanctions: South Sudan, which has lost voting rights, office eligibility, recruitment of South Sudanese nationals, among other things. (EX.CL/Dec.1119(XXXVIII)).

THE PSC

The PSC was, as indicated above, added as an AU organ by the Protocol on Amendments to the Constitutive Act of the African Union in 2003. It is designated as 'the standing decision-making organ for the prevention, management and resolution of conflicts' according to Article 9 of the said protocol. The details of the powers, functions, working arrangements and the tools for the execution of its mandate are outlined in the Protocol establishing the PSC.

In order to deliver on its broad mandate on conflict prevention, management, resolution and post-conflict peacebuilding, the PSC is given powers and functions which allow it to take various measures geared towards execution of its mandate. First, the PSC is invested with promotional and implementation power. This is the first power of the PSC under Article 6(a) of the Protocol. This promotional power of the PSC covers in specific terms the advocacy responsibility entrusted to it under the Protocol to ensure peace, security and stability are promoted and relevant AU instruments are implemented. This can be gleaned, for example, from Article 7(1) (i), (m) & (n) of the PSC Protocol. In this respect, the PSC has been advocating AU's common positions and interests on peace and

security issues. This the PSC undertakes through the convening of thematic sessions aimed at promoting implementation of relevant norms including those relating to democracy, good governance and human rights and the convention on prevention and combating of terrorism as well as the common defense and security policy.

Second, drawing on its mandate on conflict prevention, the PSC is vested with the power to 'anticipate and prevent' 'conflicts' (Art. 3 (b)) or 'disputes and conflicts as well as policies that may lead to genocide and crimes against humanity' (Art 7(a)). It also has the power 'to initiate early response to contain crisis situations so as to prevent them from developing into full-blown conflicts' (Art. 4 (b)). While the preventive mandate of the PSC remains poorly implemented, the various ways it is implemented include the issuance of press statement and communiques, the use of preventive diplomacy (the deployment of Panel of the Wise ahead of the election in Guinea in 2010 and the role of AU election monitoring chief in deescalating tension and facilitating smooth transfer of power in Zambia in August 2021), preventive field mission as it did in June 2019, which along with the diplomatic measures of the UN and the muscular pressure of ECOWAS helped in breaking the stalemate and securing the announcement on 18 June of the date of the presidential election for 24 November 2019.

Third, as envisaged in Article 7 (g) of the PSC Protocol, one of the tools at the disposal of the PSC is the institution of sanctions whenever an unconstitutional change of government takes place in a member state. Since the adoption of the PSC Protocol, Article 7(g) of the PSC Protocol has been applied in response to 20 cases of unconstitutional changes of government: in Central African Republic (2003, 2013), Madagascar (2003, 2009), Togo (2005), Mauritania (2005, 2008), Guinea (2008, 2021), Niger (2010), Cote d'Ivoire (2011), Guinea Bissau (2012), Mali (2012, 2020, 2021), Egypt (2013), Burkina Faso (2015, 2022) and Sudan (2019, 2021).

In two instances, the PSC also used coercive deployment for addressing cases of unconstitutionality. The first case of Comoros involved breach of constitutional term by the

incumbent using illegal election and the second case of The Gambia related to the refusal of an incumbent to hand over power after losing an election. In March 2008, the AU launched Operation Democracy in the Comoros to end the illegitimate rule of the incumbent regime on the Comorian island of Anjouan. Spearheaded by troops from Tanzania and Sudan the operation forced the incumbent ruler Mohammed Bacar to step down after he had organized an illegal election in order to cling onto power. In this instance, the AU used military force to restore constitutional governance. In 2016, the AU endorsed an ECOWAS military operation, ECOMIG, to ensure the election results in the Gambia were upheld and implemented, and that the incumbent who lost the election was made to surrender power to the democratically elected president Adama Barrow.

Within the framework of the power of the PSC under Article 7 (1, c-d), it has the power to 'authorize the mounting and deployment of peace support operations' and 'lay down general guidelines for the conduct of such missions... and undertake periodic reviews of these guidelines.' Between 2003 and 2020, the AU has mandated and authorized deployment of fourteen AU-mandated peace support operations (PSOs), as well as four AU-authorized PSOs. These PSOs have been conducted by AU forces, regional organizations and ad hoc coalitions of states and have performed a variety of roles including ceasefire monitoring, electoral observation, peace-building, stabilization and even counter terrorism.⁸¹ In addition, two humanitarian missions have been authorized to support efforts to contain the Ebola virus pandemic in West Africa and DR Congo. Although the PSC also authorized the deployment of an intervention force under Article 4(h) of the Constitutive Act in December 2015, the request for the endorsement of the decision did not receive the support of the AU Assembly.

The PSC is made up of 15 member states. For purposes of decision-making, the PSC convenes session. These are held at the level of Ambassadors, Ministers and Heads of State and Government, although legally speaking there is no distinction

between actions taken by the PSC at Ambassadorial level, which is the most common level where decisions are taken, those taken at the higher level. The levels may simply signify the higher political importance member states attach to the agenda when they meet ministerial and heads of state and government levels.

The key actors in PSC decision process are – chairperson of the month (who is the lead in crafting the agenda of the PSC), individual members of the council, the AU Commission via the Chairperson, the Commissioner for Political affairs and Peace and security and the PSC Secretariat, RECs/RMs, non- state actors engaged in mobilization of public opinion, producing ideas, advocacy and partners that bring their global legitimacy extending role and financial weight.

As outlined in the Amani Africa's AU Peace and Security Council Handbook, the process of decision-making at the level of the PSC involves a) the tracking of conflicts and crisis and issuance of early warning, b) agenda setting, c) initiating proposals and preparing working documents (taking the form of background note, concept note, briefing or report of the AU Commission Chairperson, field mission report etc), d) consultations at the level of the Committee of Experts and the Military Staff Committee as applicable for harmonizing positions, e) convening of the PSC session, presentation of briefings and deliberation and finally consideration and adoption of the decision through the silent procedure.

OTHER EXECUTIVE BODIES

The other executive bodies are those who play the role of monitoring and facilitating implementation of decisions, policies and laws of the Union on account of their administrative, technical power and thematic/specialized competence.

PAP

Currently, the only way that PAP executes a soft executive role through its mandate to facilitate the effective implementation of the policies

⁸¹ See African Union Peace and Security Council Handbook, 126-128.

and objectives of the OAU/AEC and, ultimately, of the AU. Article 18 of the Protocol Relating to the Establishment of the Peace and Security Council (PSC) states that the PSC 'shall maintain close relations with the Pan African Parliament in furtherance of peace, security and stability in Africa' and that it shall, whenever requested, submit reports to the Pan African Parliament, in order to facilitate the discharge of the PAP's responsibilities. In the future, it is foreseen that the continental parliament will oversee the main executive structures of the AU.

STCS

The STCs have executive role including to ensure the supervision, follow-up and the evaluation of the implementation of decisions taken by the Organs of the Union; ensure the coordination and harmonisation of projects and programmes of the Union; submit to the Executive Council either on its own initiative or at the request of the Executive Council, reports and recommendations on the implementation of the provisions of the Constitutive Act; and, carry out any other functions assigned to it for the purpose of ensuring the implementation of the provisions of the Constitutive Act.

AUC

AUC plays a critical role in the implementation of AU decisions. The AUC takes a central role in implementing the decisions of the Policy organs. The AUC coordinates and monitors the implementation of the decisions; follows up and ensures the application of the Rules of Procedure and Statutes of the organs of the Union of the Union in close collaboration with the PRC; implement the decisions taken by other Organs; and work out draft common positions of the Union and coordinate the actions of Member States in international negotiations; and submit an annual report to the EC and Assembly on implementation.

The AUC carries out these in two ways. The first is through technical support to and promotional work undertaken with member states. The second is through tracking, documenting and reporting on

implementation. In 2018, to enhance the role of the AUC, the Assembly decided that the co-ordination and monitoring capacity within the Bureau of the Chairperson of the AU Commission should be strengthened, to enable it in communication and information, monitoring, follow-up, reporting and liaison with Member States, AU Organs, institutions and AUC departments regarding implementation of AU decisions. In 2019, the 34th Ordinary session of the Executive Council vide Decision EX.CL/Dec.1034 (XXXIV), requested the AUC to take stock of all previous decisions adopted on the implementation of decisions so as to improve and strengthen the existing mechanism on the follow-up of implementation of Policy Organs' decisions.

Additionally, it also carries of implementation measures based on roles entrusted to it through sectoral legal instruments. The AUC for example is thus vested with substantive authority with respect to peace and security as stipulated in the PSC Protocol.⁸² Article 10 (2) (a) of the PSC Protocol, for example, stipulates that the Chairperson of the Commission 'shall bring to the attention of the Peace and Security Council any matter, which in his/her opinion, may threaten peace, security and stability in the continent'.

4.3. JUDICIAL AND QUASI-JUDICIAL BODIES

One of the advances the AU made over its predecessor is that the AU Constitutive Act introduced a judicial organ in the system, the Court of Justice. However, at the time of adoption of the Constitutive Act, the African Court on Human and People's rights was already established under the 1998 Protocol to the African Charter on Human and Peoples' Rights (ACtHPR) on the Establishment of an African Court on Human and Peoples' Rights (entered into force in 2004, a few years after the shift from OAU to UA). Ultimately, a decision was taken to merge the two Court into one in 2008 before even the entrance into force of the 2003 Protocol on the African Court of Justice.

⁸² For details on this see Amani Africa Media and Research Services, *The African Union Peace and Security Council Handbook 2021: Guide on the Council's Procedure, Practice and traditions (2021)*

As of now, the number of instruments of ratification necessary to allow the entry into force of the Court of Justice and Human Rights are lacking. Further complicating the matter, the AU in June 2014 adopted another (Malabo Protocol) Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights adding to the existing judicial power of the Court of Justice and Human Rights international criminal jurisdiction. With none of the legal instruments on the Court of Justice and Human Rights receiving the required number of ratifications, currently only the ACtHPR is in operation.

ACtHPR

This is the only AU body with full judicial power that is currently in operation. As a fully-fledged Court, the ACtHPR is endowed with the power of handing down binding judgements. Under the Protocol establishing it, the ACtHPR has jurisdiction over all cases and disputes submitted to it concerning the interpretation and application of: the African Charter, the founding human rights treaty of the African human rights system; the Protocol establishing the ACtHPR; and any other relevant human rights instrument ratified by the state party concerned, such as, for example, the African Charter on Democracy, Elections and Governance which the Court has relied on.⁸³ In the exercise of its jurisdiction over contentious matters submitted to it under the above mentioned instruments, the Court passes binding judgments that member states are legally bound to abide by and give effect to. In January 2016, the AU Assembly, as part of a decision on streamlining AU working methods, decided to provide for individuals to, in some circumstances, directly petition the Court on the implementation or otherwise of AU policy organ decisions as well.⁸⁴

Under article 5 of the 1998 Protocol establishing the Court, the African Commission, State Parties to the Protocol and African inter-governmental organisations are entitled to submit cases directly to the Court. NGOs with observer status before

the African Commission and individuals can bring cases directly to the Court only against State Parties that have made a declaration accepting the jurisdiction of the Court in accordance with article 34(6).

Most of the cases of the ACtHPR are brought to it through those given direct access under Article 34(6). Currently, there are only six States Parties with Article 34(6) declaration, namely Burkina Faso, Gambia, Ghana, Malawi, Mali and Tunisia from where NGOs with observer status with the African Commission and citizens can access the court directly. States parties with previous Article 34(6) declaration namely Rwanda, Tanzania, Cote'd Ivoire and Benin withdrew their declaration over the course of 2016-2020.⁸⁵

As a judicial body, the ACtHPR is made up of 11 judges elected from amongst people of high moral character and recognised practical, judicial or academic competence and experience in the field of human and peoples' rights nominated by states. Members have traditionally been elected by the Executive Council and appointed by the Assembly. In February 2020, the Assembly decided to delegate its authority to the Executive Council to appoint members.

The ACtHPR usually sits four times a year in four-week ordinary sessions. It also sits in extraordinary sessions. The decision-making in the ACtHPR involves processes similar to national courts. As such it involves receipt of cases, determination of jurisdiction by the court and if jurisdiction is established to examine submissions of the applicant and the respondent on admissibility and merits, the holding of a hearing, the drafting of judgement, internal review and the handing down of judgement containing either the unanimous view of the members of the court or the majority view and separate opinion or the majority view and dissenting opinion of the minority. After a judgement is handed down, the ACtHPR also holds hearings on reparations and hands down separate judgement on the same. After the handing down of judgement, the actual enforcement of

⁸³ See for details, Ben Kioko, *The African Charter on Democracy, Elections and Governance as a justiciable instrument*, 63 (s1) *Journal of African Law* (2019) 39-61.

⁸⁴ AU Doc. Assembly/AU/Dec.597(XXVI).

⁸⁵ See for example, SH Adjolohoun, *A crisis of design and judicial practice? Curbing state disengagement from the African Court on Human and Peoples' Rights* 20 *African Human Rights Law Journal* (2020) 1-40.

the judgement is that of the Assembly and the Executive Council. Not surprisingly, enforcement of judgement is a major problem.

THE AFRICAN COMMISSION OR ACHPR

The Other judicial body with quasi-judicial authority is the ACHPR which is established under the 1980 African Charter on Human and Peoples' Rights (the African Charter). Just like the ACtHPR, the ACHPR lays down its own rules of procedure befitting of institutions of such standing internationally. The ACHPR is vested under Article 45 of the African Charter with the mandate of the promotion and protection of the rights and freedoms enshrined in the African Charter and the interpretation of the African Charter. It is also entrusted with the mandate of monitoring the implementation of the Maputo Protocol on the Rights of Women. As has been discussed earlier, using its promotional mandate, the ACHPR engages in quasi-legislative making. These are ordinarily driven by the special mechanisms of the African Commission and thematic portfolio holders.

Like the ACtHPR, the ACHPR consists of 11 members elected from amongst people of high moral character and recognized practical, judicial or academic competence and experience in the field of human and peoples' rights nominated by State Parties to the Charter. Members have traditionally been elected by the Executive Council and appointed by the Assembly. In February 2020, the Assembly decided to delegate its authority to the Executive Council to appoint members. The ACHPR elects its Chairperson and Vice Chairperson, who constitute the Bureau of the African Commission.

In terms of its protection mandate, the ACHPR like the ACtHPR, has the power to receive and decide on complaints from States Parties to the African Charter and from individuals, groups including collective communities and NGOs with observer status with the ACHPR. Unlike the ACtHPR, individuals, groups and NGOs have direct access to the ACHPR.

Under the 2020 Rules of Procedure of the African Commission, the Commission convenes four ordinary sessions of 21 days each. It can also convene extraordinary sessions of 15 days. As set out in the Rules of Procedure of the African Commission, the decision-making process involves receipt of complaints (communications), determination of seizure, and invitation of the complainant and the respondent state to submit on admissibility of the complainant under Article 56 of the African Charter and on the merit of the complaint, the drafting of decisions on admissibility and when the complaint is declared admissible, to proceed to drafting of decision on the merit and delivering decision on the merit. Unlike in the ACtHPR, the holding of hearings in the African Commission is exceptional. The decision-making process is based on exchange of files submitted by the complainant and the respondent state and the deliberation on draft decisions on admissibility and merit of the communication. The Commission has a Working Group Communications which undertakes preparatory review of draft decisions particularly on seizure, strike out of communications and admissibility. The drafts on admissibility and merit are considered in the plenary meeting of the Commission which are held in closed sessions. Although commonly decisions are taken by consensus, it is also possible to adopt decision on the basis of majority view of members and dissenting opinion/s of the minority.

ACERWC

The mandate and organization of the African Committee of Experts on the Rights and Welfare of the Child (ACERWC), its composition, methods of work and decision-making process are the same as those of the ACHPR. The mandate of the ACERWC has a specific focus on children's rights under the 1990 African Charter on the Rights and Welfare of the Child. The Committee can receive individual and inter-state communications, examine state reports and undertake other protective and promotional activities.⁸⁶

⁸⁶ See Article 32 the African Charter on the Rights and Welfare of the Child.

4.4. ADVISORY AND CONSULTATIVE BODIES

The other category of AU actors are the advisory and consultative and the technical and specialized bodies. These are of two types, those with role in decision-making and those that mostly technical role, whose contribution lies in implementation of programs decided by the AU decision-making actors.

The AU actors with advisory and consultative role and who through their advisory and consultative role contribute to AU decision-making include the AU Advisory Board on Corruption. Established under the AU Convention on the Prevention and Combating of Corruption, the Board's mandate is to promote and encourage the adoption of measures and actions by State Parties to the Convention to prevent, detect, punish and eradicate corruption and related offences in Africa; to follow up on the measures; and to regularly submit reports to the AU Executive Council on the progress made by each State Party in complying with the provisions of the Convention.

The African Peer Review Mechanism (APRM) is another such AU actor with advisory and consultative role involving influence on AU decisions. While it was established in 2003 as an instrument for AU Member States to voluntarily self-monitor their governance performance, the AU Assembly in 2014 decided to integrate it into the AU. In this context, the APRM has been given a wider role including as an early warning tool for conflict prevention in Africa and a monitoring and evaluation role for the AU Agenda 2063 and the United Nations Sustainable Development Goals (SDGs) Agenda 2030.⁸⁷

The specialized and technical agencies of the AU also play a part but as noted above their role is largely in implementation of programs. The one such entity that also have a role in contributing to AU decision-making is AUDA-NEPAD. Following its transformation in 2018 as a development agency, it is mandated with coordinating and

executing priority regional and continental projects to promote regional integration towards the accelerated realisation of Agenda 2063 and strengthening capacity of African Union Member States and regional bodies; advance knowledge-based advisory support, undertaking the full range of resource mobilisation, and serve as the continent's technical interface with all Africa's development stakeholders and development partners.

4.5 REGIONAL ECONOMIC COMMUNITIES (RECS)

RECs are sub-regional regional organizations of African states, each led by a Head of State or Government on a rotational basis and having similar to the AU its own decision-making institutions of various degrees of authority and bureaucratic infrastructure. Generally, the purpose of the RECs is to facilitate regional economic integration between members of the individual regions and through the wider the 1991 Abuja Treaty African Economic Community (AEC). Apart from the Abuja Treaty, in the AU the role of RECs is also recognized under Article 3 (i) of the Constitutive Act.

The RECs are envisaged to work closely with the AU and serve as its building blocks. The complementary relationship between the AU and the RECs is mandated not only in the Abuja Treaty and the Constitutive Act as noted above but is also guided by the: 2008 Protocol on Relations between the RECs and the AU; Protocol Relating to the Establishment of the African Union Peace and Security Council (2002); Memorandum of Understanding (MoU) on Cooperation in the Area of Peace and Security between the AU, RECs and the Regional Mechanisms (RMs) for Conflict Prevention, Management and Resolution of Regional Standby Brigades of Eastern and North Africa; and Agenda 2063.

The RECs are regarded as playing important role in the implementation of the various initiatives of the AU that arise from the decisions of AU bodies. The AU recognizes for these purposes eight RECs, namely: (1) CENSAD; (2) COMESA; (3) EAC; (4) ECCAS;

⁸⁷ See Assembly/AU/Dec. 631(XXVIII), Assembly/AU/Dec. 686(XXX), Assembly/AU/Dec. 720(XXXII) and Assembly/AU/Dec. 721(XXXII)

(5) ECOWAS; (6) IGAD; (7) SADC; and (8) UMA.

Despite the foregoing facts, the exact role and place of the RECs in the AU decision-making processes has not been clearly established. One of the issues that the institutional reform of the AU sought to address was exactly this issue. Under the institutional reform of the AU, two major changes that sought to enhance the role of RECs and clarify the mechanics on the interface between the AU and RECs.

First and as part of creating mechanism for enabling the participation of RECs in AU decision-making, as we noted earlier the AU Assembly decided that, from 2019, it would meet once a year in ordinary session, instead of the two ordinary sessions established in 2004. In the place of the June/July ordinary session of the Assembly, it was decided that the Bureau of the Assembly would hold a coordination meeting with the RECs, with the participation of the Chairpersons of the RECs, the AUC and the RMs.⁸⁸ Since 2019, the coordination meeting has been held annually. The next coordination meeting in 2022 is expected to take place in Zambia.

Second, In February 2020, the AU Assembly adopted the Protocol on Relations between the AU and the RECs, and authorized the Chairperson of the AU Commission (AUC) to sign the Protocol on behalf of the Union.⁸⁹ The Assembly also adopted the Rules of Procedure for the Mid-Year Coordination Meetings. In addition, the Assembly adopted the draft Revised Protocol on Relations between the AU and the RECs, and delegated its authority to consider and adopt draft legal instruments to the Executive Council.⁹⁰

4.6 OTHER ACTORS

Although they are not integral to the AU, there are various actors that also play a role in the AU decision making process. These are non-state actors and partners.

⁸⁸ This decision was taken within the framework of Assembly/AU/Dec.635(XXVIII) of January 2017.

⁸⁹ AU Handbook, 152. See also Assembly/AU/Dec.767(XXXIII).

⁹⁰ AU Handbook, 153.

NON-STATE ACTORS

The non-state actors cover influential personalities and experts, CSOs in their various formations, the media and private sector. These are part of what Teiku in his 3D approach to international organizations calls the third dimension, which is composed of transnational networks such as think tanks, academics, consultants, experts, transnational civil society groups, and independent commissions, whose ideas and views shape practices, directions, priorities, and policies of these organizations.

Depending on the nature of their engagement, these actors in the wider ecosystem but formally external to the AU can play critical role even in the formal decision-making process. Such is the case when these actors are assigned to undertake certain tasks to feed into the decision-making process or are formally engaged to serve as resource persons with respect to specific decision-making. In other cases, their role may not be as direct. In such cases, their role would be in the formation of opinions, the production of ideas, advocacy and informing and shaping policy debate and discourse geared to influencing AU decision-making.

Depending on the timing, strategy and level of soft leverage they are able to mobilize, these non-state actors can impact AU decision-making processes. The more they organize the timing of their interventions targeting various stages of the decision-making process from agenda setting, planning, drafting, consultation, and convening of the decision-making meetings, the more lucid and richer their technical work and communication of such work and the stronger their soft leverages (in terms of networks, access and convening of informal or semi-informal meetings), the higher the influence of these actors would be.

PARTNERS

Similar to non-state actors, while partners are not part of the AU decision-making process and do not have formal role in AU decision-making, they exercise significant and sometimes substantial

influence in AU decision-making processes. The sources of their influence arises from both the formal partnership that they establish with the AU and by how they affect the context of AU decision-making and through various informal networks they use. Their influence does not extend to all areas of AU decision making. It is generally related to those areas of AU decision which are tied mainly to humanitarian, peace and security and development cooperation.

Partners as actors with influence in AU decisions take different forms. There are the multilateral organizations. Most notable of these is the UN and the influence of the UN arises from both its international legal standing as a body in which almost all AU member states are represented and having global mandate and the formal partnership mechanisms.⁹¹ The formal partnerships entail both political dialogue and technical and policy exchanges based on established platforms and the provision of support of various forms including diplomatic, technical and other resources. The engagements of AU actors in these processes filters into and informs the various decisions of the AU on whose effective follow up the role of the UN has bearings.

Another multilateral body is the European Union. The influence of the EU in relevant AU decisions arises from the model that it has set for the AU, its financial contribution, support for implementation of programs agreed in the AU-EU summit decisions and the formal partnership agreements with the AU. The AU also exercises influence via various informal networks. Other multilateral partnerships of the AU but with much limited influence include AU-League of Arab States and AU-South America Cooperation Forum. With their role confined to formal partnership platforms with no cooperation involving resources, these partners exercise limited to no influence except political cooperation in areas of common interest in regional and global governance.

The other form partners take is that of individual non-African states. The most notable of these include the partnerships with China, Japan, US,

India, Turkey and Korea. These partners exercise their influence through not only the political dialogues and the summit meetings but also the programs of development, peace and security and humanitarian support that are implemented on the basis of formal decisions in partnership forums such as summits and bilateral support to the AU but also through various informal networks as well.

V CONCLUSIONS

As it can be gathered from the foregoing mapping of actors in AU decision-making and the decision-making processes, broadly speaking four types of actors have been identified. From these the three types of AU institutions are involved in legislative, executive and judicial decision-making with the RECs also participating in legislative role through the mid-year coordination meeting and executive role by serving as building blocks for implementation of programs under Agenda 2063.

In terms of the decision-making process, the decision-making dynamics in the policy organs of the AU reflect the framework advanced by Reinalda and Verbeek referenced in the framework for analysis, the AU decision-making process can be identified as involving a) agenda setting, b) consultation, c) drafting, d) deliberation on options during the filtering and revision of drafts and e) the consideration and adoption.

Indubitably, there are certain constants in how the various institutions of the AU work and engage in policy and decision-making processes. Changes in AU dynamics and the level of political sensitivity and the intensity of interest of decision-making actors on the subject matter of the decision often color the particulars of the decision-making process and how the decision-making actors engage in the process. Similarly, not all decisions also follow the same process, although this is not unique to the AU. Additionally, decision-making at the level of specific AU institutions varies from one AU organ to another and as such it is of significance to understand the specific formal and non-formal decision-making dynamics at play in these AU institutions.

91 See AU Handbook, 202-205.

While decision-making in the AU is generally to be classified into legislative, executive and judicial, the way the various areas of decision-making are arranged does not follow the classical separation of powers doctrine in constitutional law. Despite the existence of these various areas of decision-making, both in law and practice their existence does not correspond to the way legislative, executive and judicial decisions are understood in a fully-fledged legal order. First, there is concentration of these three areas of decision-making in the hands of the Assembly, which apart from legislative and executive decision-making has also arrogated to itself, albeit in the interim, the authority of interpreting the founding norm of the AU and thereby holding a portion of judicial authority. Second, the nature of legislative decision that is adopted at the level of the AU lacks direct applicability within the national legal system of member states, despite the fact that treaties and other forms of decisions having legal authority are binding on states. Third, the body of the AU that is analogous to a legislative authority in domestic constitutional order or in fully supranational international organizations, namely PAP, does not possess primary legislative authority. And despite possessing quasi-judicial power particularly since 2014, PAP has not as yet taken decisions that are regarded as forming part of even the 'soft law' of the AU.

One also notes here that the fact that member states have not shown as much enthusiasm for ratification of the 2003 Protocol as they did for the PSC Protocol and continue to be reluctant to ratify since 2008 for bringing the Court of Justice and Human Rights are suggestive that member states are not ready for subjecting themselves to judicial oversight or for endowing the AU with a judicial dispute settlement authority. In some sense, this is not different from the unwillingness of member states to extend meaningful legislative authority to the PAP for it to adopt binding laws and exercise oversight on the executive decision-making actors of the AU.

Actors that play a role in AU decision-making process are not just those that are formally instituted under the AU for such purposes. The

AU and its institutions don't operate in isolation but within a continental political, social, economic context. There is an ecosystem social and political norms and expectations, interest groups, socio-economic actors, the broader African public and the international political, legal and socio-economic arena. Beyond the formal norms and modus operandi set out for their functioning, AU decision-making actors engage in various forms of interactions with the wider ecosystem both formal and informal.

Understandably, the influence of various non-state actors and other non-AU actors would vary tremendously. Some non-state actors particularly those in the private sector can exert major influence in areas of AU policy making that create the conditions for enhanced contribution of the private sector for socio-economic development and integration process of the continent. The role of other non-state actors would be in mobilizing and availing required technical expertise. For others, their role would be in shaping narratives, production of ideas, taking active part in policy discourse surrounding various aspects of AU's mandate and role, advocacy and networking.

While this mapping study identified and provided useful typology for understanding AU decision-making actors and their respective roles as well as the outline of AU decision-making process, the analysis shows that there is a need for a deeper examination of each of the actors in terms of identifying the specific attributes that play role in their engagement in AU decision-making processes. Similarly, this study also shows that apart from the overall decision-making process of the AU, there is a need for engaging how each phase of the process ordinarily operate drawing on the process followed in relation to various decisions adopted by the AU since in practice there is no linear and one size fits approach to decision-making in the AU depending on the nature of the decision, its political, economic, legal and institutional implications. It is such a deeper analysis that offers further insights why various decisions follow various processes and take different timelines in their development and adoption.



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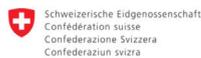
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Amani Africa is an independent African based policy research; training and consulting think tank with a specialization and primary focus on African multilateral policy processes, particularly those relating to the African union.

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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