

SPECIAL RESEARCH REPORT

MAPPING THE ROLES OF THE AFRICAN UNION COMMISSION IN THE DECISION-MAKING PROCESSES OF THE AFRICAN UNION

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Abbreviations and Acronyms

ACHPR: African Commission on Human and Peoples' Rights

AfCFTA: African Continental Free Trade Area

AGA: African Governance Architecture

AGP: African Governance Platform

ACDEG: African Charter on Democracy, Elections and Governance

Amani Africa: Amani Africa Media and Research Services

Assembly: African Union Assembly of Heads of State and Government

AU: African Union

AUC Statutes: Statutes of the Commission of the African Union

AUC: African Union Commission

AUTJP: African Union Transitional Justice Policy

Constitutive Act: Constitutive Act of the African Union

ECOSOCC: Economic, Social and Cultural Council

EOMs: election observation missions

EU: European Union

Executive Council: African Union Executive Council

ICC: International Criminal Court

Maputo Protocol: Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa

OAU: Organisation of African Unity

OLC: Office of Legal Counsel

PRC: Permanent Representatives Committee of the African Union

PSC: African Union Peace and Security Council

RECs: Regional Economic Communities

STC: Specialised Technical Committee

1. INTRODUCTION

1.1 Background

In 2022, Amani Africa Media and Research Services (Amani Africa) published a special research report providing an overview on the decision-making institutions of the African Union (AU).¹ The special research report identified and typified AU decision-making actors and their respective roles and it outlined the decision-making processes of the AU. The report identified the need for Amani Africa to undertake further in-depth studies examining the attributes and roles of each of the AU's key actors and how they fit into the AU's decision-making processes. Such further studies would also explore the nuance between statutory functions and the actual practices of relevant actors.²

This special research report builds on the above body of work by exploring how decision-making undertaken by one organ, the African Union Commission (AUC), influences the realisation of the goals and strategies of the AU.³ The report maps the roles of the AUC in the decision-making processes of the Union, drawing both from the AUC's statutes as well as from practice.

The specific objectives of the report are:

1. To describe and analyse the decision-making attributes and roles of the AUC, as established by various relevant instruments of the AU;
2. To explore how the practice of the AUC influences implementation of its statutory roles; and
3. To explore how the AUC's engagements with various relevant actors, including other AU organs, member states of the AU, civil society organisations and development

¹ Amani Africa, *Mapping of AU Decision-Making Actors and Processes*, Report No. 12, (2022), <https://amaniafrica-et.org/wp-content/uploads/2022/04/Mapping-of-AU-decision-making-actors-and-processes.pdf> (*Mapping of AU Decision-Making*).

² *Ibid.*

³ Analogous studies assessing decision-making have been undertaken, for example, in respect of the European Union. See European Institute of Public Administration, *Best E., Understanding EU Decision-Making* (Springer, 2016).

partners, contribute to the decision-making processes of the AU.

This report, therefore, draws from sources, including AU documents and instruments, as well as academic writings, press releases and in-person knowledge to establish its narrative and conclusions. It employs qualitative analysis guided by the following three overriding benchmarks:

1. What legal instruments of the AU mandate the AUC to do; or, in other words, the functions of the AUC as established by statutes.
2. How the AUC actually performs those functions; or, in other words, the infrastructure of departments, offices and stakeholder engagements that the AUC uses to perform its functions.
3. The salient features or takeaways on the AUC's decision-making that may be gleaned from illustrative case studies. In this regard, the report uses a number of case studies to illustrate how the AUC has understood and implemented its decision-making functions.

1.2 Meaning and essence of decision-making

Decision-making addresses what an institution can do or decides or adopts policy on, which is determined by the mandate and powers bestowed on it. The AUC is the executive arm of, and acts as the secretariat that implements, the AU's decisions.

⁴ By contrast, AU member states convene under various statutory designations to make substantive decisions on the AU's affairs.⁵ In particular, member states gather as the AU Assembly of Heads of State and Government (Assembly) which, as the Union's supreme organ, takes decisions either by consensus or by vote.⁶ The decisions the Assembly takes are

⁴ African Union, *Constitutive Act of the African Union*, (2000), Art 5 (e), Art 20, <https://au.int/sites/default/files/pages/34873-file-constitutiveact-en.pdf>

⁵ Amani Africa, *Mapping of AU Decision-Making Processes*, (n 1).

⁶ *Ibid.* Member States also sit as the Executive Council and as the Permanent Representatives Committee (PRC), and they also constitute Specialised Technical Committees (STCs). Member States are also represented on the AU's Peace and Security Council

established in the Constitutive Act of the African Union (Constitutive Act), and include determining the Union's common policies, taking decisions on recommendations from other Union organs, and monitoring implementation of decisions of the Union.⁷

Despite the fact that the AUC's main role is to implement the decisions of other AU organs, this report shows that the AUC has significant decision-making mandates and powers which are found in AU statutes but which are also gleaned from the practice of the AUC.

Generally speaking, decision-making in international organisations is arrived at by laying alternatives before a committee which chooses (by consensus or vote) from a set of policy alternatives.⁸ Decisions may also be made by expert panels with advisory functions, '... or organizational subunits that make recommendations or submit proposals to some superordinate organization.'⁹ In the instance of the AU, its Executive Council and ultimately the Assembly take decisions after Member States have debated and sought support for winning coalitions in what one may refer to as a 'bargaining committee'.¹⁰ As we pointed out in our founding study, the decision-making in the AU may involve legislative decision-making, executive decision-making and judicial decision-making. As such, decision-making is not confined to the Assembly and the Executive Council.

On its part, the AUC, in the AU decision-making process, quite often plays the role of agenda setting, drafting and convening. In these different roles, it makes proposals which relevant organs of the AU, such as the Executive Council or Assembly, may accept, vary or reject. Decision-making also involves a fair amount of delegated and discretionary functions, and the Constitutive Act indeed anticipates that the Assembly may

delegate its powers and functions to any organ of the AU,¹¹ including to the AUC.

As the first special research report in this series noted, the influence of bureaucratic bodies (such as the AUC) is dependent on the technical capacities of member states, the diplomatic culture of the organisation (such as the AU), and relevant decision-making legal thresholds (such as those established in the Constitutive Act). That report understands decision-making as '... the "how" and "who" of the adoption of policies, laws, resolutions, regulations, recommendations and guidelines.'¹² In that regard, while the AUC, strictly speaking, does not bear the primary decision-making function of adopting the AU's policies, laws and resolutions, it plays critical roles entailing a level of what may be deemed secondary decision-making in initiating/proposing, processing and implementing such policies, laws and resolutions. At the same time, the AUC initiates and implements certain categories of regulations, recommendations and guidelines. In either instances, and as we shall show in this report, the AUC exercises a level of discretion that amounts to decision-making and that influences the adoption of AU instruments by statutorily-mandated organs. We shall show that ultimately, even where the AUC may not have substantive decision-making powers, it uses administrative, execution and advisory roles to influence the AU's decision-making.

This is the context within which decision-making, as an aspect of the functions of the AUC, should be understood.

(PSC).

7 African Union Constitutive Act of the African Union, Art 9, (n 4).

8 Maaser N., Frederike. *Decision-Making in Committees: Game-Theoretic Analysis*. Springer, 2010, chapter 1.

9 *Ibid.*

10 *Ibid.*

11 African Union, Constitutive Act of the African Union, Art 9, (n 4).

12 Amani Africa, *Mapping of AU Decision-Making Processes*, (n 1).

1.3 Functions of the African Union Commission

The AUC is established under Article 5 of the Constitutive Act as one of the 9 principal organs of the Union.¹³ The AUC is designated as the secretariat of the AU, and as such it is responsible for undertaking the operational and administrative measures that enable effective decision making within the AU system and facilitating the implementation of those decisions.

Article 3 of the Statutes of the Commission of the African Union (AUC Statutes)¹⁴ provides that the AUC's functions include:

1. Initiating proposals for consideration by other organs;
2. Implementing the decisions taken by other organs;
3. Organising and managing the meetings of the Union;
4. Acting as the custodian of the Constitutive Act, its protocols, the treaties, legal instruments, decisions adopted by the Union and those inherited from the Organisation of African Unity (OAU);
5. Establishing, on the basis of approved programmes, such operational units as it may deem necessary;
6. Coordinating and monitoring the implementation of the decisions of the other organs of the Union in close collaboration with the Permanent Representatives Committee (PRC) and reporting regularly to the Executive Council;
7. Assisting member states in implementing the Union's programmes and policies;
8. Working out draft common positions of the Union and coordinating the actions of member states in international negotiations;
9. Preparing the Union's programme and budget for approval by the policy organs;
10. Managing the budgetary and financial resources including collecting approved revenue from various sources, establishing fiduciary, reserve and special funds with the appropriate approvals, and accepting donations and grants that are compatible with the objectives and principles of the Union;
11. Managing the assets and liabilities of the Union according to laid down regulations and procedures;
12. Preparing strategic plans and studies for the consideration of the Executive Council;
13. Taking action in domains of responsibility as delegated by the Assembly and the Executive Council;
14. Mobilising resources and devising appropriate strategies for self-financing, income generating activities and investment for the Union;
15. Promoting integration and socio-economic development;
16. Strengthening cooperation and coordination of activities between member states in fields of common interest;
17. Ensuring the promotion of peace, democracy, security and stability;
18. Providing operational support to the Peace and Security Council (PSC);
19. Elaborating, promoting, coordinating and harmonising the programmes and policies of the Union with those of the Regional Economic Communities (RECs);
20. Preparing and submitting an annual report on the activities of the Union to the Assembly, the Executive Council and the Pan African Parliament;
21. Preparing staff rules and regulations for approval by the Assembly;
22. Implementing the decisions of the Assembly regarding the opening and closing down of sections, administrative or technical offices;
23. Following up and ensuring the application of the rules of procedure and statutes of the organs of the Union;
24. Negotiating the host agreements of the

¹³ Other organs are: the Assembly of the Union; the Executive Council; the Pan-African Parliament; the Court of Justice; the Permanent Representatives Committee; the Specialized Technical Committees; the Economic, Social and Cultural Council; and the Financial Institutions.

¹⁴ African Union, *Statutes of the Commission of the African Union* (2001), <https://au.int/en/documents/20190314/commission-statutes>

- Union and those of its administrative or technical offices;
25. Building capacity for scientific research and development for enhancing socio-economic development in the Member States;
 26. Striving for the promotion and popularisation of the objectives of the Union;
 27. Collecting and disseminating information on the Union and setting up and maintaining a reliable database;
 28. Ensuring the mainstreaming of gender in all programmes and activities of the Union;
 29. Undertaking research on building the Union and on the integration process;
 30. Developing capacity, infrastructure and maintenance of intra-continental information and communication technology; and
 31. Preparing and submitting to the Executive Council for approval, administrative regulations, standing orders and rules and regulations for the management of the affairs of the Union and keeping proper books of accounts.

Hence, the key roles of the AUC are fourfold: representation, diplomacy and negotiation as guided by the AU Assembly and Executive Council; coordination and cohesion among the AU's various programmes, organs and with RECs; initiation of proposals and implementation of decisions taken by AU organs including assisting with such implementation at member state level; and exercising fiscal responsibility with regard to the AU's budget and resources.

While the foregoing present the de jure authority and functions of the AUC, in practice and on account of the authority vested in it from specific legislation, it also plays a role that goes beyond that of a typical secretariat of an international organization. As we pointed out in our founding study on AU decision-making processes, 'the role of the AUC 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.'¹⁵ On such policy areas as peace and security for example, the AU Commission has not just a secretarial and administrative role. It also

¹⁵ Amani Africa, *Mapping of AU Decision-Making*, 18, (n 1).

has a substantive role. This can be gathered from the power invested in the AU Commission under Article 10 of the Protocol Establishing the AU Peace and Security Council.¹⁶

1.4 Structure of the African Union Commission

In order to undertake its functions, the AUC is organised into an elaborate structure consisting of different thematic and operational departments and offices. At the helm of the AUC are the Chairperson and Deputy Chairperson. The Chairperson of the AUC is elected by the AU Assembly for a term of four years which may be renewed once. The Chairperson presides over the AUC's bureaucracy as the Chief Executive Officer, the legal representative of the AU and the Chief Accounting Officer of the AUC.¹⁷ Hence, the Chairperson bears overall responsibility for ensuring that the AUC delivers on its key roles. The tasks the Chairperson undertakes include: chairing meetings and deliberations of the AUC; being custodian of records from the deliberations of the Assembly, Executive Council and other organs; holding overall responsibilities for the administration and the finances of the AUC (including the development of staff rules and regulations, appointment of staff, establishment of branches and offices and the preparation of the budget, audited accounts and programme of work); serving as the depository of OAU/AU treaties, legal instruments as well as copies of relevant agreements by member states; leading diplomatic representation of the AU; circulating the provisional agenda of the sessions of the Assembly, Executive Council and PRC to member states; consulting and coordinating with governments and RECs on AU activities; preparing the annual report on the activities of the AU and its organs; and coordinating all activities and programmes of the AUC related to gender issues.¹⁸

¹⁶ See for more, Amani Africa, *The African Union Peace and Security Council Handbook 2022: Guide on the Council's Procedure, Practice and Traditions* (2022), <https://amaniafrica-et.org/wp-content/uploads/2023/06/Hand-Book-2022-English.pdf>

¹⁷ Girmachew Alemu, "Introduction to the Norms and Institutions of the African Union," *GlobaLex*, 2010 https://www.nyulawglobal.org/globalex/African_Union.html.

¹⁸ African Union, *Statute of the Commission of the African Union*.

The Chairperson receives advisory support from a cabinet headed by a Chief of Staff and consisting of directorates and offices addressing issues such as: strategic planning and delivery; internal oversight; quality assurance and control; ethics, integrity and standards; the Office of the Secretary to the Commission; the Office of the Legal Counsel; the Office of Protocol; Partnerships and Resource Mobilisation; Women, Gender and Youth; Information and Communication; the Peace Fund Secretariat; and the AUDA/NEPAD unit. Further support is provided by the Office of the Director General which is tasked with ensuring that the AUC's implementation bureaucracy works optimally to deliver on the AUC's annual programme.

The Chairperson is assisted by the Deputy-Chairperson who is in charge of administration and finance of the AUC bureaucracy. The Deputy Chairperson presides over a number of directorates and offices relating to matters such as human resource management, management of information systems, finance, citizens and diaspora relations and medical and health services.

The AUC structure also provides for Commissioners who are elected by the AU Executive Council and assume thematic responsibilities to support the AUC Chairperson in implementing the decisions, policies and programmes which fall within their respective thematic areas of focus. In line with the AU Assembly's November 2018 decision on AU institutional reforms, the AUC currently has the following six Commissioner portfolios: Agriculture, Rural Development, Blue Economy and Sustainable Environment (ARBE); Economic Development, Trade, Industry and Mining (ETIM); Education, Science, Technology and Innovation (ESTI); Infrastructure and Energy; Political Affairs, Peace & Security (PAPS); and Health, Humanitarian Affairs and Social Development (HHS).¹⁹

Union, Art 8 (Functions of the Chairperson).

¹⁹ African Union, Decisions of the 11th Extraordinary Session of the Assembly, <https://au.int/en/decisions/decisions-11th-extraordinary-session-assembly>

The AUC also facilitates the AU to engage with non-state actors. Indeed, the functions of the AUC are underpinned by the AU's vision of 'An integrated, prosperous and peaceful Africa, driven by its own citizens, representing a dynamic force in the international arena'.²⁰ This emphasis on a people-driven Africa requires the AUC in its functions, to establish spaces for dialogue and input from citizens, CSOs and other non-state entities. To this end, the Citizens and Diaspora Organisations Directorate (CIDO) is responsible for establishing effective partnerships that link citizens and diaspora organisations to AU organs and the governments of member states. The African diaspora is defined by the AU to consist of '...peoples of African origin living outside the continent, irrespective of their citizenship and nationality and who are willing to contribute to the development of the continent and building of the African Union'.²¹

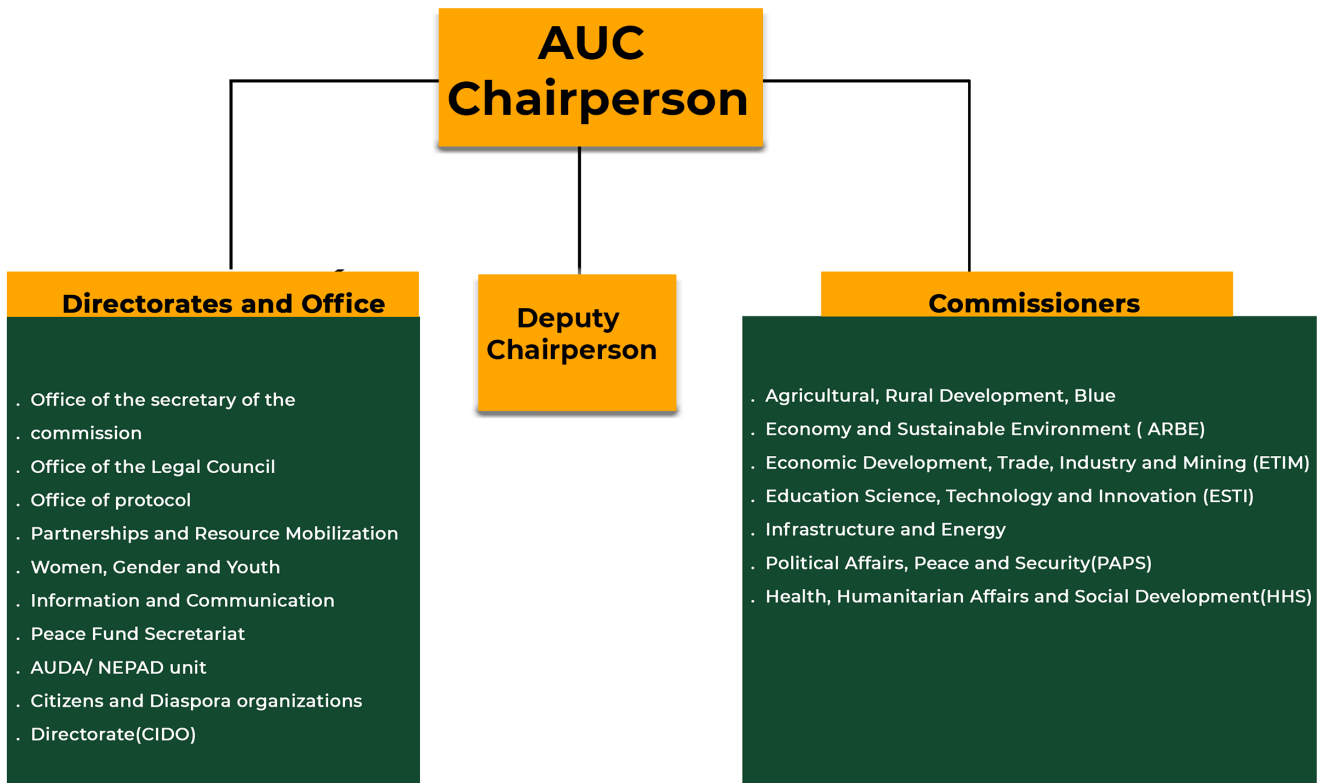
The AUC has also furthered engagement with non-state actors by establishing offices, platforms and frameworks to advance certain thematic priorities. One such initiative is the office of the AU Youth Envoy who is appointed by the AUC Chairperson. The AU Youth Envoy is tasked with coordinating AU efforts for the youth, and reconciling the various AU initiatives to the expectations and needs of the youth, with an emphasis on the pillars of inclusive participation, advocacy, partnerships and harmonisation.²² The AUC Chairperson has also appointed a Special Envoy for Women, Peace and Security with the mandate to: promote the protection and advancement of the rights of women and children, in particular those affected by violent conflicts in Africa; and ensure gender mainstreaming and equal participation of women in peace processes, including in conflict prevention, management, resolution and peace building.²³

²⁰ African Union, Agenda 2063: The Africa We Want, <https://au.int/en/agenda2063/overview>

²¹ African Union, Diaspora and Civil Society Engagement, <https://au.int/en/diaspora-civil-society-engagement>

²² African Union, African Union Commission Chairperson Announces Ms Chido Mpemba as the AU Youth Envoy, <https://au.int/en/articles/african-union-commission-chairperson-announces-ms-chido-mpemba-au-youth-envoy>

²³ African Union, Office of the Special Envoy on Women, Peace and Security at a glance, <https://www.peaceau.org/>



1.5 African Union Institutional Reforms

In 2016, Africa's leaders resolved to reform the AU as part of advancing the implementation of Agenda 2063, with its vision of inclusive economic growth and development for the continent.²⁴ President Paul Kagame of Rwanda was appointed by his peers in the Assembly to lead the process, and he in turn appointed a Pan-African advisory team consisting of experts (known as the Kagame Taskforce) to assist him with this task.²⁵ In 2017, the Kagame Taskforce submitted 20 recommendations to the AU Assembly geared to reform the AU.²⁶

These recommendations hold particular significance for the content and process of AUC decision-making. Recommendations particular to the AUC called on the AU to:

1. Focus its agenda on a fewer number of priority areas;
2. Clarify division of labour between itself, RECs, regional mechanisms, member states and continental institutions;
3. Conduct an audit of the Union's bureaucratic bottlenecks and inefficiencies;
4. Re-evaluate the size and capabilities of AUC structures;
5. Establish a lean, and performance-oriented senior leadership team at the AUC;
6. Establish a troika of the outgoing, current and incoming AU Chairpersons;
7. Enhance the process for selecting the Commission Chairperson;
8. Recruit the AUC's Deputy Chairperson and Commissioners competitively; and
9. Review structure, staffing needs and conditions of service of the Commission.²⁷

Many of these recommendations were concretised and made operational through Assembly and Executive Council decisions,²⁸ and their implementation is being spearheaded by the

[uploads/01-ose-at-a-glance-booklet-modified.pdf](#)

²⁴ African Union, *Overview of Institutional Reforms*, <https://au.int/en/aureforms/overview>

²⁵ African Union, *AU Reform Advisory Committee*, <https://au.int/en/AUReforms/advisory>

²⁶ African Union, *Building a More Relevant African Union*, (January 2017), https://au.int/sites/default/files/documents/35998-doc-20170117_draft_technical_au_reform_report_v23.pdf

²⁷ *Ibid.*

²⁸ African Union, *Progress Report on the Institutional Reform of the AU*, (2021), <https://archives.au.int/handle/123456789/9510>

Chairperson of the AUC through the AU Reform Implementation Unit.²⁹ Still, it is significant that at the 2022 Summit, the AUC Chairperson noted that the AU institutional reforms had not addressed the limiting powers and competencies of the AUC and its Chairperson. In particular, he noted that the AUC was constrained by the unclear relationship of subsidiarity and complementarity between the AU and Regional Mechanisms. He was for example concerned by the implication that decisions of an AU organ like the PSC should defer to the decision of a REC. He also highlighted state sovereignty which some member states used to impede interventions by the AUC against abuses perpetrated in member states which in that sense treated the AUC ‘... like a simple secretariat of the states’.³⁰

2. DECISION-MAKING ROLES OF THE AUC

This section of the report provides considered perspectives on the functions of the AUC and its decision-making roles under the following four function clusters:

1. Implementation, coordination and monitoring;
2. Integration and cooperation;
3. Promotion and popularisation; and
4. Financing and resourcing.

2.1 Implementation, Coordination and Monitoring

2.1.1 Representing the AU: defending its interests, drafting common positions and coordinating the actions of member states in international negotiations

29 African Union, AU Institutional Reform Unit, <https://au.int/en/AUReforms/unit>

30 African Union, Address by the Chairperson of the African Union Commission, Moussa Faki Mahamat at the Thirty-fifth Ordinary Conference of Heads of State and Government of the African Union, February 5, 2022, <https://au.int/en/videos/20220205/chairperson-african-union-commission-statement-35th-au-summit>

As already highlighted, the vision of the AU involves enhancing integration among its member states and representing an Africa that is a dynamic force in the international arena. The AUC plays an integral role in this respect informed by aspirations 2 and 7 of Agenda 2063, i.e. an integrated continent, politically united and based on the ideals of pan-Africanism and the vision of Africa’s renaissance; and Africa as a strong, united, resilient and influential global player and partner.³¹

The AUC, on the basis of guidance from the Assembly and Executive Council, plays the role of securing the AU’s interests within various partnerships and in negotiating the establishment of international frameworks and treaties. In this regard, the AUC provides guidance to the Assembly on the Union’s collective interests and engages in the daily negotiations that secure these interests. As the legal representative of the AU, the AUC Chairperson has presided over the negotiation and conclusion of partnerships between the AU and various stakeholders.

Illustratively:

1. The AUC Chairperson in July 2018 appointed a High Representative for AU-EU Relations Post 2020 to help conclude the negotiations that would define the partnership between the AU and European Union (EU) once the prevailing agreements lapsed in 2020.³²
2. In March 2022, U.S. Secretary of State Antony J. Blinken and AUC Chairperson Moussa Faki Mahamat signed a Memorandum of Cooperation centred on public health. The Memorandum consolidated a partnership to strengthen and establish national public health institutes, enhance pub-

31 African Union, Taking Stock, Charting the Future: African Union Commission End of Term Report 2017-2021, <https://au.int/en/documents/20210203/african-union-commission-end-term-report-2017-2021>

32 African Union: Political Affairs and Peace and Security Department, Appointment of AU High Representative on Negotiations of European Union Post 2020 Agreement, <https://www.peaceau.org/443/en/article/comm-1>

lic health research, expand public health workforce development, enable private sector engagement, and build capacity in manufacturing vaccines and other health security commodities. These areas were in line with the AU's call for a New Public Health Order for Africa.³³

The AUC also leads and participates in partnership meetings with other global regional and national players. In November 2021, the Chairperson of the AUC along with 53 member states and China adopted the Forum on China-Africa Cooperation Dakar Action Plan.³⁴ Another case in point is the EU-AU partnership, epitomised by the Sixth EU-AU Summit held on 17-18 February 2022 in Brussels, Belgium. The Summit resolved to promote common priorities and preserve interests and common public goods, including the protection of human rights, gender equality and women's empowerment, the rule of law, actions to preserve the climate, environment and biodiversity, and sustainable and inclusive economic growth and the fight against inequalities, support for children's rights, and the inclusion of women, the youth and the most disadvantaged.³⁵ This is the context within which the EU continues to support the AU, such as under the European Peace Facility which is providing the AU with 600 million euros for the period of 2022-2024.³⁶

The AUC also plays a pivotal role in assessing the impact of the AU's partnerships and its participation in international frameworks. In

33 United States Department of State, *The United States and the African Union Commission Sign Memorandum of Cooperation*, <https://www.state.gov/the-united-states-and-the-african-union-commission-sign-memorandum-of-cooperation/>

34 African Union: Africa Center for Disease Control, *Africa Calls for New Public Health Order*, September 29, 2022, <https://africacdc.org/news-item/africa-calls-for-new-public-health-order/>

35 European Union: Council of European Union, *6th European Union - African Union Summit: A Joint Vision for 2030*, (February 2022) <https://www.consilium.europa.eu/en/press/press-releases/2022/02/18/sixth-european-union-african-union-summit-a-joint-vision-for-2030/>

36 African Union, *The Chairperson of the AU Commission welcomes EU support to the African Union*, April 21, 2022, <https://au.int/en/pressreleases/20220421/chairperson-au-commission-welcomes-eu-support-african-union>

the End of Term Report for the period 2017-2021, the AUC Chairperson reported that the Commission had undertaken an evaluation of the AU's partnerships towards ensuring alignment of future engagements with the continent's needs and priorities. Lessons drawn from the evaluation included the needs to: base the AU's strategic partnerships on equity, mutual respect, and shared interests driven by the priorities of Agenda 2063; adopt better models for country-to-continent partnerships; ensure that summits for negotiations yield tangible outcomes; and avoid duplication of efforts at the regional and continental levels.³⁷

Illustrations of the AUC playing a representation role on the international stage:

1. In September 2022, the AUC Chairperson joined the Chairperson of the AU in meeting the President of the International Criminal Court (ICC) to discuss 'the shared values and goals of the ICC and the African Union, notably the objective of ending impunity for the gravest crimes under international law and providing justice to victims. Perspectives for developing the relations between the two organisations were also discussed, particularly through closer communication. The objective of promoting universal ratification of the Rome Statute also featured in the discussions.'³⁸
2. In November 2022, Ambassador Minata Samate Cessouma, the Special Envoy of the AU Commission Chairperson and Commissioner of Health, Humanitarian Affairs and Social Development, chaired a meeting to revitalise the work of an AU-EU-UN taskforce to enhance the protection of stranded migrants and refugees in Libya. The Special Envoy 'expressed the commitment

37 African Union, *Progress Report on the Institutional Reform of the AU*, (n 28).

38 International Criminal Court, *ICC President Meets with Chairperson of African Union and Chairperson of African Union Commission*, September 6, 2022, <https://www.icc-cpi.int/news/icc-president-meets-chairperson-african-union-and-chairperson-african-union-commission>

of the AU to continue engagement with Libya, concerned Member States, and other relevant stakeholders, to champion African solutions to challenges faced by Libya and further reiterated a need to improve and coordinate actions to counteract activities of transnational organized criminal groups ... The Special Envoy emphasized the extreme importance of not only revitalizing but also broadening the mandate and geographical scope of the taskforce, and called for continuous engagement and cooperation, increased awareness and advocacy with all relevant actors, including concerned Regional RECs.³⁹

The AUC also takes a leading role in generating consensus among member states and helping the Assembly to arrive at common positions that embody the AU's interests. Relations with the ICC illustrate how the AUC, through the Office of the Legal Counsel (OLC), is instrumental in shaping the decisions made by the Assembly and also in their implementation. The OLC supports the AU Open-ended Committee of Ministers of Foreign Affairs on the ICC which follows up on the Assembly's decisions related to the ICC. It is in this context that the OLC helped implement the Assembly's 2018 decision to seek an advisory opinion from the International Court of Justice on the question of immunities for Heads of State and Government and other Senior Officials; an issue that had become contentious in light of ICC proceedings against some African Heads of State and Government.⁴⁰ The AUC has also played a prominent role in coordinating African states in their engagement with the United Nations (UN) system, such as in

39 *European Union: Delegation of the European Union to the African Union, AU-EU-UN Taskforce Meets to Revitalize the Tripartite Cooperation to Enhance the Protection of Stranded Migrants and Refugees in Libya, November 7, 2022, <https://www.eeas.europa.eu/delegations/african-union-au/au-eu-un-taskforce-meets-revitalize-tripartite-cooperation-enhance-en?s=43>*

40 *African Union, The AU Open-Ended Committee of Ministers of Foreign Affairs on the International Criminal Court Convene 7th Meeting on the Sidelines of the UN General Assembly, September 24, 2018, <https://au.int/en/pressreleases/20180924/au-open-ended-committee-ministers-foreign-affairs-international-criminal>*

the instance of the Committee of Ten Heads of State and Government on the UN Security Council Reforms (C-10) whose deliberations are facilitated by the AUC through the department of Political Affairs, Peace and Security.

While the role of the AUC in drafting common positions and coordinating international negotiations has been lauded, notable criticisms exist. Technical support provided by the AUC has in some cases been characterised as overbearing, with the AUC bureaucracy dominating negotiations and resulting in positions not necessarily owned by the member states.⁴¹ This in turn erodes the political will required for the implementation of these positions by member states. The AUC has also faced capacity and resource constraints that make it heavily reliant on external partners to resource the development of common positions, in turn again raising concerns regarding ownership and leadership of these processes.⁴² Another pivotal challenge that persists is the fact that despite endorsing them, some member states in their actions contradict common African positions with little consequence. It has been recommended that to improve this aspect of the AUC's work, member states should enhance their financial support so as to enable the AUC to employ thematic experts with diplomatic skills and to facilitate sufficient consultation of stakeholders in order to maintain African ownership and leadership of the common positions that emerge from AU consultative and decision-making processes.⁴³

The AUC's diplomatic skills and representative authority have on occasion been tested deeply because of interstate contestations which undermined the AUC's ability to shape policies beneficial to the Union.⁴⁴ At other times, it is on

41 *Bankole Adeoye, "Common African Positions on Global Issues: Achievements and Realities," Institute for Security Studies (ISS), December 31, 2020, <https://www.africaportal.org/publications/common-african-positions-global-issues-achievements-and-realities/>*

42 *Ibid.*

43 *Ibid.*

44 *For a compelling perspective on what constrains African agency, see Tshepo Gwatiwa, The African Union and African Agency in International Politics, Springer International Publishing,*

account of perception or concern on the part of member states of the AU that the AU Commission took measures that are not in accord with established pre-existing practice or approach of the AU. This was the case in relation to the AUC Chairperson's decision to grant Israel AU observer status in July 2021. While the AUC Chairperson maintained that he had acted within his mandate under relevant statutes, some member states which opposed this decision called for the withdraw of Israel's observer status. The seriousness of this dispute was illustrated in a February 2022 address made by the AUC Chairperson where he took exception to the criticism of his actions. Among other things, he stated as follows:

In terms of procedure, and before raising the only substantive issue, I cannot fail to stress the extent to which I find it inadmissible for Member States to go and sign petitions with other States which are not members of our Union against any decision by one of our Organs. There is undeniably a real double fault here, of those which are members of our Organisation and of those, non-members to whom we have granted Observer Status and who have arrogated to themselves the right to publicly criticize our decisions. This attitude of contempt for our Organisation is unacceptable, and truly reprehensible.⁴⁵

Despite the technical basis on which the Chairperson defended his position, it was clear from

Cham, Switzerland 2022. Gwatiwa uses international security to illustrate his argument that the AU suffers from what he refers to as 'agency slack' – the notion that an actor may minimise the effort it is capable of exerting (shirking) or that an agent may shift policy away from a preferred outcome to its own preferences (slippage). See chapter 1: 17 - 40.

⁴⁵ African Union, Remarks of the Chairperson of the African Union Commission on the Granting of Observer State to the State of Israel, February 6, 2022, <https://au.int/en/pressreleases/20220206/remarks-chairperson-granting-observer-state-israel>

the applicable rule that in cases where an action from the Chairperson is foreseen to raise concerns on the part of member states, the Chairperson was expected to engage in consultation with a view to avoid issues. Indeed, this issue, which overshadowed some of the summits of the AU, should not have been allowed to divert attention from the immediate and pressing issues facing the continent and should have been at the core of AU summit discussion. The AU Commission Chairperson should have spared the AU from being divided over a matter that is of no immediate significance in the face of the various pressing issues facing the peoples of the continent by not going ahead without consulting with member states prior to acting on a matter that was avoided for decades. This dispute between the AUC and some member states was de-escalated by a decision of the Assembly to form an 8 member state committee to build consensus on the grant of observer status to Israel, which would then be deliberated during the 2023 summit.⁴⁶ This issue has brought to the fore the question of how far the AUC can exercise discretionary interpretation of the AU's common interests as it undertakes diplomatic functions.

2.1.2 Implementing decisions taken by other AU organs

As the secretariat of the AU, the AUC plays a focal role in the implementation of decisions by other organs such as the Assembly, Executive Council, the PRC and the PSC. The AUC, through its commissioners, directorates and departments, possesses the technical expertise that other organs rely on for coordination, expert input as well as monitoring and evaluation. The AUC is tasked regularly either by the Assembly, Executive Council or PRC to exclusively implement decisions or to work together with or coordinate other organs in the implementation of decisions. The AUC is also required to track such implementation and provide reports for consideration by member states.

⁴⁶ Aljazeera, African Union Postpones Debate on Israel's Observer Status, February 7, 2022, <https://www.aljazeera.com/news/2022/2/7/african-union-postpones-debate-on-israels-observer-status>

For at least the past decade, the AU has puzzled on how to ensure more effective implementation of decisions made by policy organs, and it has from time to time sought to assess the extent to which decisions of the Assembly and the Executive Council have been implemented by the AUC and other relevant organs. For example, the AUC's assessment of a one year period from the 2013 to the 2014 January summits found that out of 62 decisions of the Assembly and Executive Council, 14 were fully implemented (representing 22.22%), 42 were partially implemented (representing 66.67%) and 6 were not implemented (representing 9.52%).⁴⁷

It is against this backdrop that the Executive Council in October 2021 requested the AUC, working closely with the PRC, to establish a Joint Task Force comprising member states and the AUC to take stock of all decisions made in the last 10 years and develop innovative ways of improving on the follow-up of implementation of policy organs' decisions. The AUC is the secretariat of this Joint Taskforce through the Office of Strategic Planning and Delivery and the Office of the Director General with the responsibilities of convening meetings and preparing reports to brief the PRC on its progress.

The AUC also implements decisions by other AU organs. Illustratively, the development of the AU Transitional Justice Policy (AUTJP) was tasked to the AUC after the Union's Panel of the Wise recommended the development of a continental policy on transitional justice. The AUC, through its Department of Political Affairs, Peace and Security (previously the Department of Political Affairs) facilitated consultations with member states, other AU organs as well as with non-state actors, and steered the drafting process until its eventual adoption.

⁴⁷ African Union, *Report of the Commission on the Implementation of Previous Decisions of the Executive Council and the Assembly*, (Assembly/AU/16(XXIII)), https://archives.au.int/bitstream/handle/123456789/8166/Assembly%20AU%2016%20XXIII%20_E.pdf?sequence=1&isAllowed=y

The work on gender-mainstreaming illustrates the intricacies the AUC navigates while implementing decisions of policy organs. Aspiration 6 of Agenda 2063 foresees an Africa whose development is people-driven, relying on the potential of African people, including its women, to be realised by 'strengthening the role of Africa's women through ensuring gender equality and parity in all spheres of life (political, economic and social); eliminating all forms of discrimination and violence against women and girls ...' In conformity with this vision and in compliance with decisions of various policy organs, the AUC has spearheaded the development and implementation of many initiatives. A particularly important development in this regard was the AU Initiative on Eliminating Female Genital Mutilation (Saleema Initiative), endorsed by AU Heads of State and Government in 2019. The Saleema Initiative seeks to harness people-driven change towards effectively ending female genital mutilation (FGM) in the continent by 2030.⁴⁸ As well, the Women, Gender and Youth Directorate, which leads the AUC's work on gender equality and women's empowerment,⁴⁹ played a critical role in developing the African Union Strategy for Gender Equality and Women's Empowerment (2018-2028).⁵⁰ It is as well of note that the Chairperson of the AUC has worked well with member states to profile gender equality and women's empowerment. In 2021, the Chairperson participated in the process which resulted in the Kinshasa Declaration and Call for Action which launched the AU Campaign on Ending Violence against Women and Girls, and implementing a zero-tolerance policy on all forms of violence against women in conflict and post-conflict situations. This Campaign was launched under the aegis of the Men's Conference

⁴⁸ African Union, *African Union Initiative on Eliminating Female Genital Mutilation Programme and Plan of Action 2019-2023*, https://au.int/sites/default/files/newsevents/workingdocuments/41106-wd-Saleema_Initiative_Programme_and_Plan_of_Action-ENGLISH.pdf

⁴⁹ African Union, *African Union Priorities on Gender Equalities*, July 28, 2021, <https://au.int/en/articles/au-priorities-gender-equality-and-womens-empowerment-agenda-2063>

⁵⁰ African Union, *African Union Strategy for Gender Equality and Women's Empowerment 2018-2028*, March 20, 2019, <https://au.int/en/documents/20190320/au-strategy-gender-equality-womens-empowerment-2018-2028>

on Positive Masculinity stewarded by the then Chairperson of the AU, President Felix Tshisekedi of the Democratic Republic of Congo.⁵¹ The Kinshasa Declaration indeed directed the AUC to draft an AU Convention on Ending Violence against Women and Girls.⁵² When drafting the proposed instrument, it is expected that the OLC will keep in mind the interconnectedness in already existing instruments, since the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) includes significant provisions that protect women from violence.⁵³

With the numerous decisions directed at the AUC for implementation, a series of challenges have emerged. The financial, legal and technical implications of decisions by AU organs have not always been fully contemplated and this leads to difficulties in their implementation. As a way to address this challenge, the AUC Chairperson in a 2014 report recommended that the Assembly should seek the AUC's input on the legal, financial and technical impacts of its decisions, as they were being developed.⁵⁴ Another challenge the AUC faces is the non-responsiveness or the late replies by some AU organs whose inputs are required to enable implementation of decisions. The AUC on occasion has been directed by another organ to prepare policy proposals or reports; yet once it submits a draft to the instructing organ, feedback to the AUC is delayed or non-existent.⁵⁵ The

frequency and number of decisions emanating from different organs has also made it difficult to track decisions for effective implementation and to avoid duplication. Financial and human resource constraints have also hampered the implementation of the decisions of other organs by the AUC.

It is such a challenge that informed the establishment of the Joint Taskforce on implementation of policy organs' decisions which meets from time to time in a bid to improve coordination among AU organs and design a better framework for effective implementation. While assessing the effectiveness of the Taskforce is beyond the scope of this report, the proposals it has made include: regularising coordination meetings on implementation among the organs; designating focal points within the various AU organs to ease coordination on implementation; and establishing a comprehensive information system that can enable the tracking of decisions that are being implemented.⁵⁶ While these measures are of significance in tracking implementation, in terms of achieving substantive progress for implementation the most critical element is how the AU Commission promotes the integration of AU decisions into the national policies and programs of member states.

2.1.3 The African Governance Architecture: a mechanism to enhance coordination and implementation

In considering the implementation of decisions from various AU policy organs, it is instructive to consider the work of the African Governance Architecture (AGA). AGA is a 'platform for dialogue between the various stakeholders who are mandated to promote good governance and strengthen democracy in Africa, in addition to translating the objectives of the legal and policy

51 African Union, *Declaration and Call to Action on Positive Masculinity to End Violence Against Women and Girls in Africa*, November 25, 2021, <https://au.int/en/pressreleases/20211125/declaration-and-call-action-positive-masculinity-end-violence-against-women>

52 Ibid.

53 African Union, *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003)*, Arts 3 and 4, <https://au.int/en/treaties/protocol-african-charter-human-and-peoples-rights-rights-women-africa>

54 See *Report of the Commission on the Implementation of Previous Decisions of the Executive Council and the Assembly at the Twenty-Third Ordinary Session of the AU Assembly 26-27 June 2014* (n 47).

55 Ibid. A matrix on implementation of decisions from the Executive Council and Assembly cites non-responsiveness as a

constraint on numerous occasions.

56 African Union, *Report of the Joint Task Force Meeting on Monitoring, Evaluation and Reporting on Implementation of AU Policy Organs' Decisions' Report*, June 20, 2022, <https://archives.au.int/handle/123456789/10434>.

pronouncements in the AU Shared Values.⁵⁷ Thematically, the AGA is organised along five clusters: democracy; humanitarian assistance; constitutionalism and rule of law; governance; and human rights and transitional justice. The institutional framework for the AGA is the African Governance Platform (AGP) which is organised in a concentric circle with multiple stakeholders. The first core circle brings together AU organs, institutions and RECs with formal mandates for the promotion and sustenance of democracy, governance and human rights; and the second circle brings together continental stakeholders such as the private sector, development partners, civil society and the diaspora.⁵⁸

In addition to the AGP is the AGA Secretariat, which is housed in the AUC's Department of Political Affairs, Peace and Security. The AGA Secretariat serves as the coordination hub for the AGP and also undertakes various initiatives to boost citizen engagement and sensitise member states around critical issues pertaining to the Architecture's five thematic clusters. To this end, the AGA Secretariat has undertaken initiatives such as the development of a comprehensive citizen engagement strategy to build on previous efforts targeting the youth and women.⁵⁹ The AGA Secretariat on behalf of the AGP also organises the High-Level Dialogue on Democracy, Governance and Human Rights which is described as a 'space for annual policy discussions on issues of democratic governance, human rights and peace among different stakeholders within and outside of the African Union.'⁶⁰ This dialogue is preceded by Youth and Gender Pre-Forums

which provide opportunities for civil society to deliberate and consolidate thoughts via the outcome documents that are presented at the High-Level Dialogue. 2022 marked the 11th edition of this dialogue.

Based on its role as a coordination hub for the AGP, the AGA Secretariat is the AUC's focal point discharging the responsibility of evaluating the implementation of the African Charter on Democracy, Elections and Governance (ACDEG)⁶¹ by member states as envisaged under Article 45(c) of the Charter. In undertaking this responsibility, the AGA Secretariat enables the AUC to fulfil its obligations under Article 45 (a) of the ACDEG, which designates the AUC as the central coordination structure for the implementation of the Charter. However, the work of the AGA Secretariat is not without challenges. The Secretariat has not been provided with resources that are commensurate with its expansive role. This is evidenced by the fact that the AGA Secretariat had, for a while, consisted of seconded staff hired on contractual basis by the AUC's partners.⁶² While the AGA Secretariat now consists of permanent staff, the number of staff are far from optimal and this has undermined certain tasks such as providing technical support to states who want to report on the implementation progress for ACDEG and also to review the reports submitted by states.

Despite AGA's above record, it has been argued that its mandate is '... overtly vague ...'⁶³ and that this and AGA's seemingly uncoordinated' secretariat undermines its potential. The further contention is that AGA has not been given concrete institutional form, leading to confusion on its status and scope.⁶⁴ Even the promotional materials of the AUC on

57 African Union, *About the African Governance Structure*, <https://au.int/en/aga>.

58 African Union, *About AGA*, <https://au.int/aga/about>.

59 African Union, *A Citizen's Engagement Strategy Will Mainstream Engagement of the African Citizens in Democratic Governance Processes on the Continent*, August 25 2022, <https://au.int/en/pressreleases/20220825/citizens-engagement-strategy-will-mainstream-engagement-african-citizens>.

60 African Union, *10th High-Level Dialogue on Democracy, Human Rights and Governance in Africa: Trends, Challenges And Prospects*, December 2, 2021, <https://au.int/en/newsevents/20211202/10th-high-level-dialogue-democracy-human-rights-and-governance-africa-trends>.

61 African Union, 'African Charter on Democracy, Elections and Governance,' (2007) <https://au.int/en/treaties/african-charter-democracy-elections-and-governance>.

62 Anonymous interview; notes on file with author.

63 Kennedy Kariseb and Chairman Okaloise, "Reflections on the African Governance Architecture: Trends, Challenges and Opportunities," in *Governance, Human Rights, and Political Transformation in Africa*, eds. Michael Addaney, Michael Cuan Nyarko and Elsabé Boshoff (Springer, 2020) 41 - 68.

64 Ibid.

occasion do not distinguish between the AUC secretariat and the AGA secretariat. For example, in August 2022 when the AUC reported that it had organised a stakeholder meeting to deliberate on topical democracy and governance issues such as unconstitutional changes of governments, when in fact it is the AGA Secretariat that should have borne that accolade.⁶⁵ It is not far-fetched to conclude that the AUC in practice exerts significant influence on the day-to-day priorities and work of AGA, despite the fact that the AUC is meant to be only one of multiple entities that operate under the aegis of the AGP.⁶⁶

2.1.4 Assisting member states in implementing AU programmes and policies

A key aspect of the AUC's role in the implementation of AU decisions lies in supporting member states to implement the policies and programmes that arise from those decisions. Through various departments, the AUC offers various forms of assistance to member states either upon direct request or on instruction from an AU policy organ. Forms of assistance offered to member states include sensitisation forums or dialogues on AU policies, the embedding of technical experts in-country to work with governments on the implementation of policies and, in some instances, the establishment of implementation mechanisms.

The AUC disseminates AU policies by convening forums in which member states are briefed on policies and how they can be implemented at national levels, and also through undertaking country visits where the AUC engages directly with government officials responsible for implementation. On democratic governance, for example, the AUC through the AGA Secretariat has been engaging member states on the

⁶⁵ African Union, *Stakeholders' Seminar on the African Charter on Democracy, Elections and Governance*, August 2 2022, <https://au.int/en/pressreleases/20220727/stakeholders-seminar-african-charter-democracy-elections-and-governance>.

⁶⁶ Interview with senior official in a human rights organisation that engages with AU organs; notes on file with author.

implementation of ACDEG through a series of forums, country visits and through a toolkit to guide states on the ratification and reporting processes for the Charter. Similarly, the AUC through the Department of Political Affairs, Peace and Security provides technical assistance to states on the implementation of the AUTJP.

The AUC also provides assistance on the basis of state requests. At the request of The Gambia, for example, the AUC in September 2018 established the African Union Technical Support to The Gambia (AUSTG) to support the country in undertaking its transitional justice process as well as in the areas of security sector and rule of law reforms.⁶⁷ This assistance saw the AUC deploy a Senior Rule of Law Expert and a Human Rights Expert to work closely with the Gambian government to implement the country's reform agenda. On another occasion, on the basis of a PSC decision, the AUC offered support to South Sudan by undertaking a post-conflict needs assessment mission that identified the resources required for the country's recovery after decades of war.⁶⁸ The AUC is also involved in operationalising the Hybrid Court for South Sudan (HCSS) as a justice mechanism to address some of the violations committed during the country's cycles of war.⁶⁹

Assistance to member states also extends to

⁶⁷ African Union: Political Affairs and Peace and Security Department, *African Union Commission Concludes Mid-Term Monitoring of Its Technical Support to The Gambia*, July 11, 2019, <https://www.peaceau.org/443/en/article/press-statement-african-union-commission-concludes-mid-term-monitoring-of-its-technical-support-to-the-gambia>.

⁶⁸ African Union: Political Affairs and Peace and Security Department, *Communiqué of the 917th Meeting of the PSC Held Online on 9 April 2020, on the Situation in South Sudan*, April 9, 2020, <http://www.peaceau.org/en/article/communique-of-the-917th-meeting-of-the-psc-held-online-on-9-april-2020-on-the-situation-in-south-sudan>.

⁶⁹ African Union, *African Union Commission and the Republic of South Sudan Successfully Concluded Working Session on Draft Legal Instruments of the Hybrid Court for South Sudan*, August 14, 2017, <https://au.int/en/pressreleases/20170814/african-union-commission-and-republic-south-sudan-successfully-conclude>.

initiatives that seek to empower citizens and involve them in the implementation of AU shared values. In June 2020, for example, the AUC through the AGA Secretariat launched the Democracy and Governance in Africa Youth Innovation Challenge to 'identify, capacitate and recognize youth innovations, innovation hubs and incubation centres across the continent that are working on innovations for structural prevention of conflict through addressing issues of democracy deficit, lack of good governance and work to promote good human rights practices.'⁷⁰ Twenty young innovators were selected and benefited from an accelerator training programme to help them develop their innovations further and five from among them were selected as winners of the challenge and granted opportunities to showcase their innovations at continental and global platforms.⁷¹ The AUC has also undertaken a training programme known as African Youth for Transitional Justice (AY4TJ) in various countries with the aim of promoting youth participation in transitional justice processes and to increase the number of transitional justice experts on the continent. To this end, the programme has trained hundreds of youth across AU Member States, with an initial focus on post-conflict and post-authoritarian countries and those that are currently implementing transitional justice processes.⁷²

The ACDEG requires the AUC and State Parties to collaborate towards ensuring realisation of regular, free and fair elections. State parties may request, and the AUC may accede, to provide them with advice or assistance to develop their electoral institutions and processes. States may also invite the AUC to send missions to observe scheduled elections. ACDEG requires that Electoral Observer Missions (EOMs) are conducted in an objective, impartial and transparent manner.⁷³

⁷⁰ African Union, *Democracy and Governance in Africa – Youth Innovation Challenge*, June 25, 2022, <https://au.int/en/newsevents/20200625/democracy-and-governance-africa-youth-innovation-challenge>

⁷¹ *Ibid.*

⁷² *Ibid.*

⁷³ African Union, 'African Charter on Democracy, Elections and Governance', Arts 18-19, (n 58).

One quite apt tool developed by the AUC was the AU Guidelines on Elections during the COVID-19 and Other Public Health Emergencies.⁷⁴ The preparation of this instrument was undertaken by the Department of Political Affairs, Peace and Security in response to directions from AU organs including the PRC and the PSC. Preparation of the Guidelines also showcased the AUC's ability to leverage subject-matter actors, in this instance the Electoral Institute for Sustainable Democracy in Africa (EISA) and the International Institute for Democracy and Electoral Assistance (IDEA). Following the outbreak of the COVID-19 pandemic, AU member states had used quite divergent and sometimes conflicted approaches in the management of scheduled general elections, with some states postponing general elections (such as Ethiopia) while others proceeded with the elections under modified conditions (such as Tanzania and Uganda) such as the restriction of campaign rallies. These Guidelines, therefore, filled a critical gap by providing election management bodies with practical and adaptable directives for electoral administration in contexts of public health and safety of citizens. The Guidelines, for example, state that decisions (such as whether to postpone elections or on the management of campaigns) should be premised on scientific expert advice and not political expediency,⁷⁵ and that the postponement of elections should be predictable and time-bound.⁷⁶ The preparation of tools such as this one has, however, not always been followed up with effective popularisation and implementation. It is, for example, puzzling that most of the EOMs conducted in 2022 made no substantive assessments on the extent of compliance with the COVID-19 Electoral Guidelines. For example, no such assessments were reported by the EOMs deployed to observe the 7 October 2022 Lesotho parliamentary elections,⁷⁷ and the 24

⁷⁴ African Union: Political Affairs and Peace and Security department, *African Union Guidelines for Elections During COVID-19 and Other Public Health Emergencies*, October 2020, https://www.peaceau.org/uploads/psc.976.com/elections_covid19-29.01.2021.pdf

⁷⁵ *Ibid* guideline 3.6.

⁷⁶ *Ibid* guideline 3.8.

⁷⁷ African Union, *Preliminary Statement: African Union*

August 2022 general elections in Angola.⁷⁸

It is of note that the AUC has increasingly recognised the importance of framing its missions as election monitoring rather than simply election observation ventures. In the instance of Kenya's 9 August 2022 general elections, apart from the EOM dispatched to observe the elections, the AUC deployed an election expert mission to follow up on the electoral preparations, assess the political dynamics and genuine competitiveness and fairness of the electoral campaign, and maintain regular contact with national and international stakeholders before, during and after the elections.⁷⁹

The AUC has also undertaken advocacy initiatives towards the universal ratification or accession of all AU treaties by member states. More recent advocacy campaigns undertaken by the AUC covered important matters such as ending child marriage and other harmful practices.⁸⁰

Another key challenge for the AUC in its assistance to member states remains limited resources in the face of numerous requests or needs for assistance. The AUC's resource constraints have an impact on the forms and duration of assistance it can offer to a state. Additionally, these forms of assistance require state cooperation which is not always available. In some instances, states may request for assistance but fail to maintain commitment to the

Election Observation Mission to the 7th October 2022 National Assembly Elections in the Kingdom of Lesotho, October 9, 2022, <http://www.peaceau.org/en/article/queom-preliminary-statement-7th-october-2022-national-assembly-elections-in-the-kingdom-of-lesotho>

⁷⁸ African Union, *African Union Election Observation Mission to the 24 August 2022 General Elections in the Republic of Angola, Preliminary Statement, August 26, 2022, <https://au.int/en/pressreleases/20220824/preliminary-statement-african-union-election-observation-mission-24-august>*

⁷⁹ African Union, *The African Union Deploys Election Expert Mission to Kenya, June 28, 2022, <https://au.int/en/pressreleases/20220628/african-union-deploys-election-expert-mission-kenya>*

⁸⁰ African Union, *African Union Post Country Monitoring Mission on Ending Child Marriage and other Harmful Practices, November 16, 2022, <https://au.int/en/pressreleases/20221116/african-union-post-country-monitoring-mission-ending-child-marriage-and-other>*

particular policy's implementation and as a result undermine the AUC's assistance efforts.

2.2 Integration and Cooperation

Integration and cooperation on the continent is anchored on aspiration 2 of Agenda 2063 which envisions 'an integrated continent, politically united, based on the ideals of Pan Africanism and the vision of Africa's Renaissance'. This aspiration envisions a united and integrated continent '... for sustained growth, trade, exchanges of goods, services, free movement of people and capital ...'⁸¹ In this sense, the AU exists to facilitate integration on the African continent in the same way that RECs and other RMs play similar roles at the sub-regional levels. To this end, one cluster of AUC functions focuses on integration and cooperation. Article 3 of the AUC Statutes requires the AUC to promote integration and socio-economic development, and to strengthen cooperation and coordination of activities between member states in fields of common interest. As well, it requires the AUC to undertake research on building the Union and on the integration process.

Other AU statutes also provide the AUC with specific responsibilities. Illustratively, the AUC's role under the Protocol to the Treaty establishing the African Economic Community Relating to Free Movement of Persons, Right of Residence and Right of Establishment include:

1. Following up and evaluating implementation of the Protocol by Member States and submitting periodic reports to the Executive Council on the status of implementation of the protocol; and
2. Developing in coordination with member states and applying a continental follow up and coordinating mechanism for assessing the status of implementing the Protocol.⁸²

⁸¹ African Union, *Agenda 2063: The Africa We Want, (n 20).*

⁸² African Union, 'Protocol to the Treaty establishing the African Economic Community Relating to Free Movement of Persons, Right of Residence and Right of Establishment' (2018), Article 29 https://au.int/sites/default/files/treaties/36403-treaty-protocol-on-free-movement-of-persons-in-africa_e.pdf

Statutes have increasingly sought to distinguish between the decision-making roles of the AUC and other AU entities. The Agreement Establishing the African Continental Free Area (AfCFTA) provides that the AUC is the interim secretariat of the AfCFTA; but it also specifies that once constituted, the AfCFTA Secretariat shall be a functionally autonomous institutional body within the AU system, with an independent legal personality, and that it shall be autonomous of the AUC.⁸³ This provision is welcome in its recognition of the fraught dangers inherent where functional autonomy between statutory bureaucracies is not demarcated clearly.

The AUC is a critical spearhead of the AU's integration and cooperation agenda. Integration was one of the priorities established in the AU's development blueprint, Agenda 2063. In the past few years, the AUC's decision-making priorities on integration have focused on targets such as boosting intra-African trade. By its own self-assessment, the AUC's accomplishments in integration and cooperation include negotiating and implementing an Africa-wide trade agreement, the AfCFTA. The AUC also reports that it facilitated the free movement of persons by establishing and implementing the Single African Air Transport Market, and adopting the Free Movement Protocol and the African passport.⁸⁴

The AUC has been steadfast in reiterating regional AU positions that also resonate with the positions of RECs, as illustrated by the October 2022 statement made by the AUC Chairperson in support of the statement by the Southern African Development Community calling on the immediate lifting of sanctions against certain Zimbabwean institutions and individuals.⁸⁵

⁸³ African Union, 'Agreement Establishing the African Continental Free Trade Area' (2018). Art 13, https://au.int/sites/default/files/treaties/36437-treaty-consolidated_text_on_cfta_-_en.pdf

⁸⁴ African Union, *Progress Report on the Institutional Reform of the AU*, (n 28).

⁸⁵ African Union, AUC Chairperson's statement in Support of End of Sanctions against Zimbabwe, October 26, 2022, <https://au.int/en/pressreleases/20221026/auc-chairpersons-statement-support-end-sanctions-against-zimbabwe>

A number of dynamics influence the AUC's decision-making in this area. First, it is significant that the AUC claimed successes which, in fact, are attributable to multiple AU organs rather than the AUC as a single actor. It is likely that these claims are borne out of presentational style and do not entail a usurpation by the AUC of the roles of other organs.

Another dynamic that influences the integration and cooperation agenda of the AUC relates to whether and when the Commission uses its discretion to calibrate broader directions issued to it by mandated statutory organs. AU policy organs such as the Assembly and the Executive Council commonly specify by resolution the roles which the AUC should undertake to fulfil policy or programmatic goals. Such resolutions may either be quite specific and detailed or they may be overly generic. Where resolutions are overly general, the AUC may not always be relied upon to act proactively to implement them. In some instances, it is apparent that the AUC often does not take steps to proactively interpret its remit to include bureaucratic roles not specifically ceded to it by primary decision-making organs. A case in point is the Plan of Action on Ending Attacks and Discrimination against People with Albinism⁸⁶ which the Executive Council adopted in 2019 as part of the Union's efforts to implement its Disability Strategic Framework. While the Plan of Action establishes the activities which actors, including member states and development partners should undertake towards its realisation, no implementation roles were designated for the AUC. This is the type of circumstance where the AUC could conceivably have proactively interpreted the Executive Council's decision to give its bureaucracy specific roles towards implementation of the Plan of Action. This being said, though, the AUC, through its Department of Social Affairs, plays important roles in promoting the rights of persons with disabilities. The high-point of the AUC's work on the rights of persons with disabilities was the adoption in 2018 by the Assembly of the Protocol to

⁸⁶ African Union, *Implementation matrix of the plan of action to end attacks and other human rights violations targeting persons with albinism in africa (2021-2031)*, <https://africaalbinismnetwork.org/what-we-do/plan-of-action/>.

the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa. Once the Department of Social Affairs received the draft Protocol from the African Commission on Human and Peoples' Rights (ACHPR), it undertook a series of consultation workshops in Africa's five regions, before submitting the Protocol for adoption by the Assembly.⁸⁷

Sometimes decision-making takes place on the basis of horizontal rather than vertical engagements, and its exercise, therefore, is best realised when designated entities operate jointly. The AUC Chairperson and the AU Chairperson now commonly issue joint statements on matters of significance to the AU, for example, as witnessed in October 2022 in relation to the AU's response to the conflict between the Democratic Republic of Congo and Rwanda.⁸⁸

2.3 Promotion and Popularisation

The AUC undertakes promotion and popularisation initiatives to increase public ownership and support for AU norms and values, and to harness the political support required for the successful realisation of those norms and values at the country and regional levels. The AUC has deployed various advocacy and communication strategies with the aim of demystifying the AU to ordinary citizens, popularising Agenda 2063 priorities and enlightening the public on the implementation mechanisms of the continental vision.⁸⁹

A key aspect of this strategy has been the AUC Chairperson's appointments of Special Envoys and High Representatives. Special Envoys and High Representatives support key initiatives championed by the AU through the Office of the Chairperson of the AUC. They undertake consultations and public-facing engagements with member states and other stakeholders towards consolidating support

and commitments for implementation on the issues they champion. In illustration:

1. On 20 October 2018, the AUC Chairperson appointed Raila Odinga from Kenya as the High Representative for Infrastructure Development in Africa. In this role, Odinga is mandated to 'support and strengthen the efforts of the Commission's relevant Departments and those of the NEPAD Agency, within the framework of the Programme for Infrastructure Development in Africa (PIDA), which was endorsed by the Assembly of the Union in January 2012.'⁹⁰ Some of the activities undertaken in this role include mobilising political support and commitment from member states and RECs, engaging various stakeholders to enhance public ownership of the agenda and supporting the NEPAD Agency in resource mobilisation from development partners.
2. In January 2014, The AUC Chairperson established the Office of the Special Envoy on Women, Peace and Security, and appointed Senegalese Bineta Diop to the Office with the mandate to 'ensure that the voices of women and the vulnerable are heard much more clearly in peacebuilding and in conflict resolution'.⁹¹ This Office has undertaken various interventions, including: solidarity visits to conflict-affected countries to emphasise the effective inclusion of women in peacebuilding and reconstruction efforts; representation of the AU in high-level meetings such as briefings to the UN Security Council; and advancing policy implementation such as by facilitating the development of a Continental Results Framework on the women, peace and

⁸⁷ Information drawn from notes on file with author.

⁸⁸ African Union, *Joint Communiqué of the Chair of the African Union and the Chairperson of the AU Commission on the Situation in the East of DRC*, October 30, 2022, <https://au.int/en/pressreleases/20221030/joint-communicue-situation-east-drc>

⁸⁹ African Union, *Progress Report on the Institutional Reform of the AU*, (n 28).

⁹⁰ AUDA-NEPAD, *Hon. Odinga Appointed High Representative for Infrastructure Development in Africa*, October 29, 2018, <https://nepad.org/news/hon-odinga-appointed-high-representative-infrastructure-development-africa>

⁹¹ African Union: Political Affairs, Peace and Security Department, *Bineta Diop, Special Envoy on Women, Peace and Security*, July 13, 2017, <https://www.peaceau.org/443/en/page/40-5676-static-bineta-diop>

security agenda.⁹²

The AUC through its Directorate of Information and Communication has also engaged in initiatives to popularise Union organs and themes. It presided over the revamping of the AU's identity through campaigns such as the 2012 'I am African, I am the African Union' campaign which raised awareness of the AU flag, the AU colours and the vision of the AU. In 2022, the AUC supported other organs such as the Economic, Social and Cultural Council (ECOSOCC) and the ACHPR to develop new logos and to revamp their websites for better engagement with the public.⁹³

Another aspect of the AUC's popularisation and promotion efforts has been its embrace of media and digital formats for public engagement. The Office of the AUC Chairperson as well as other departments and offices within the AUC have social media accounts which they use to disseminate information as well as solicit views from the public on various issues. The AUC has also developed short thematic videos to unpack Agenda 2063 by highlighting the key features of the Agenda's flagship projects.⁹⁴ The AUC has also provided leadership in celebration of designated AU commemorative days that emphasise AU shared values and norms.⁹⁵

Despite the notable progress that such interventions have made in popularising the AU, the AUC Chairperson recognises that the current priority should be on developing 'a robust system to seek and curate citizens' opinions, inputs and ideas on how to better the Union.'⁹⁶

92 'The Office of the Special Envoy on Women, Peace and Security at a glance' <https://www.peaceau.org/uploads/01-ose-at-a-glance-booklet-modified.pdf>

93 African Union Commission, *Introducing ECOSOCC's New Brand Identity* (2016), <https://au.int/en/pressreleases/20220623/introducing-ecosoccs-new-brand-identity>. See also, African Union, *New Logo and Revamped Website: African Commission on Human and Peoples' Rights Rebrands*, October 24, 2022, <https://au.int/en/pressreleases/20221024/achpr-new-logo-and-revamped-website>

94 African Union, *Agenda 2063: The Africa We Want*, (n 20).

95 For a full list of commemorative days see 'AU Holidays' (African Union) <https://au.int/en/au-holidays>

96 African Union, *Progress Report on the Institutional*

2.4 Financing and Resourcing

Another set of AUC functions as established in its Statutes focus on financing and resourcing. Article 3 of the AUC Statutes requires the Commission to:

1. Prepare the Union's programme and budget for approval by the policy organs;
2. Manage budgetary and financial resources including collecting approved revenue from various sources, establishing fiduciary, reserve and special funds with the appropriate approvals, and accepting donations and grants that are compatible with the objectives and principles of the Union;
3. Prepare strategic plans and studies for the consideration of the Executive Council;
4. Mobilise resources and devise appropriate strategies for self-financing, income generating activities and investment for the Union; and
5. Prepare and submit to the Executive Council for approval, administrative regulations, standing orders and rules and regulations for the management of the affairs of the Union and keeping proper books of accounts.

Other statutory instruments also establish other layers of decision-making. For example, the Instrument Relating to the African Union Peace Fund spreads functions and powers among a number of AU organs. It empowers the Chairperson of the AUC as well as the Assembly and the PSC '... in line with their mandates as contained in the Constitutive Act and the Protocol on the Establishment of the Peace and Security Council, ... to direct the use of the resources of the Fund consistent with the provisions of this Instrument.'⁹⁷ The Specialized Technical Committee (STC) on Finance, Monetary Affairs, Economic Planning and Integration, which is established under the Constitutive Act, convenes ministers from member states responsible for finance, planning, economic development and integration, and governors of

Reform of the AU, (n 28).

97 African Union, 'Instrument Relating to the African Union Peace Fund' (2018), B 2, https://au.int/sites/default/files/documents/35298-doc-aupeacefund_instruments.pdf

central banks to discuss development matters and follow-up on implementation of the integration agenda.⁹⁸ Still, the STC deliberates and makes decisions on the basis of technical reports prepared by the AUC.⁹⁹ Hence, the AUC's decision-making competencies and practices should be understood as part of the decision-making continuum contributed to it by virtually all the other organs of the Union – from the Assembly and the Executive Council and to the STCs.

How does the AUC perform these functions?

As explained earlier, Article 9 of the AUC Statutes charges the Deputy Chairperson of the AUC with the function of finance and administration. In practice, the Deputy Chairperson delegates to the Director-General of the AUC the responsibility for administrative and financial matters.¹⁰⁰ Key departments/offices in the Cabinet of the Deputy Chairperson which support the AUC's financial functions include the Human Resources Management Directorate, Finance Directorate, Operations Support Services Directorate, Financial Control Unit, Committee of Fifteen Ministers of Finance (F15) Secretariat and Contribution Unit, and the Secretariat to the Board of External Auditors.¹⁰¹

The AU's most recent priorities in financing and resourcing have focused on ensuring the Union has adequate, reliable and predictable resources for implementing its operational and continent-wide programmatic goals. These priorities have been made concrete through the initiative to reform AU institutions started in 2015, among others, with the aim of ensuring the Union attained financial sustainability. To this end, the AU Assembly Decision

on the Institutional Reform of the AU of January 2017 decided to focus on realising sustainable financing.

As has previously been pointed out in this report, accomplishments in complex institutions may not simply be ascribable to a single entity or department. This is indeed true regarding the AU's multiple organs which contribute to decision-making on financing and resourcing, including the Assembly which is tasked with adopting the AU's budget.¹⁰² Hence, accomplishments claimed by the AUC are not intended to be notches exclusive of contributions from other AU entities.

In the above context, the self-assessment undertaken by the AUC for the period 2017-2020¹⁰³ claims achievements and identifies challenges in relation to the AU's financing. Notably, the AUC:

1. Operationalised the golden rules for the proper management and accountability of the AU's finances adopted by the Assembly in January 2018. The golden rules seek to ensure financial discipline within the AU including by addressing low execution rates, identifying wastage and over-budgeting, and ensuring full compliance with AU financial rules and regulations.¹⁰⁴ The AUC reported that application of the golden rules enabled the AU budget process to generate more credible budgets considering performance metrics, execution rates and actual revenue flows.¹⁰⁵
2. Established a revitalised AU Peace Fund with enhanced governance and oversight.¹⁰⁶

98 African Union, *Specialized Technical Committees*, <https://au.int/en/stc>

99 For example it bears decision-making responsibilities to operationalise the African Continental Free Trade Area. For example, see *Specialized Technical Committee (STC) on Finance, Monetary Affairs, Economic Planning and Integration: "Developing integrated and complementary value chains for sustainable recovery and reinforcing operationalization of the AfCFTA"* (African Union), <https://au.int/en/stc-finance-2021>

100 African Union, 'African Union Handbook 2022' (2022), <https://au.int/en/handbook>

101 *Ibid.*

102 African Union Constitutive Act of the African Union, Art 9, (n 4).

103 African Union, *Progress Report on the Institutional Reform of the AU*, (n 28).

104 African Union, *Golden Rules for Financial Management and Accountability at the African Union, January 2018*, <https://au.int/sites/default/files/newsevents/workingdocuments/37814-wd-golden-rules-revised-english.pdf>

105 African Union, *Progress Report on the Institutional Reform of the AU*, (n 28).

106 African Union, *Speech of the Chairperson of the Commission at the Launch of the AU Peace Fund, November*

3. Implemented a new scale of assessment for member state contributions to the Union budget (2020-2022). This scale of assessment is guided by the principles of the ability to pay, solidarity, and equitable burden-sharing among members to avoid risk concentration. The AUC reported that the new scale led to improved overall burden sharing.¹⁰⁷
4. Spearheaded the implementation of a stronger sanctions regime for non-payment of contributions to enhance predictability and timeliness. The AU had revitalised its sanctions regime for non-payment of dues in 2018 by establishing a graduated sanctions regime involving cautionary, intermediate and comprehensive sanctions on member states in arrears of their assessed contributions - respectively, for six, twelve or twenty four months.¹⁰⁸

The AUC's implementation of finance decisions made by other organs, however, faces continuing difficulties. The AUC has, for example, not been able to fully implement the Assembly's decisions on self-financing seeking to give the AU financial autonomy. The 27th AU Summit held in June 2016 had directed AU member states to implement a 0.2% levy on eligible imports to finance the Union. This would provide reliable and predictable funding for continental peace and security through the Peace Fund; provide equitable and predictable financing for the Union; reduce dependency on partner funds for implementation of continental development and integration programmes; and relieve the pressure on national treasuries with respect to meeting national obligations for payment of assessed contributions of the Union. This decision requires Member States to fund 100% of the AU's operational budget, 75% of the programme budget, and 25% of the peace

26, 2018, <https://au.int/en/speeches/20181126/speech-chairperson-commission-launch-au-peace-fund>

107 African Union, *Progress Report on the Institutional Reform of the AU*, (n 28).

108 African Union, *African Union strengthens its sanction regime for non-payment of dues*, November 27 2018, <https://au.int/en/pressreleases/20181127/african-union-strengthens-its-sanction-regime-non-payment-dues>

support operations budget.¹⁰⁹ Still, the AUC has not realised set revenue-collection targets. Prior to the decision's adoption, the AUC on average collected 67% of assessed annual contributions, and around 30 member states defaulted paying their dues either in part or wholly.¹¹⁰ The AUC reported a collection rate of an average of 76% since 2016, including the highest rate of 79% in 2019. The number of defaulting member states reduced to 15% in 2019 from an annual average of 33%.¹¹¹

3. CONCLUSION

This special report sought to map the role of the AUC in the decision-making processes of the AU. What it has revealed is that the AUC is at the heart of the AU decision making processes through its mandates as provided by various statutes and instruments which allow for some degree of discretionary decision-making, its institutional structures which provide vital advisory and operational services to other AU policy organs, and through its close collaboration with stakeholders. Over time, the AUC has developed thematic expertise and specialised mechanisms that have aided in the initiation and implementation of AU decisions. The AUC has also played a critical role in helping to track the implementation of AU decisions as well as evaluate the outcomes of these decisions. The report has also highlighted the necessarily close symbiotic relationship between the AUC and other organs holding primary or secondary decision-making mandates. It has shown that decision-making is never quite an exclusive prerogative of any one organ and that Africa is served better when decision-making is dispersed across many institutions.

Through illustrative case studies, the report has demonstrated the AUC at work, with notable

109 African Union, *Decision on the Report of Alternative Sources of Financing the African Union (Doc. Assembly/AU/6(XXIV))*, January 31, 2015, <https://africanlii.org/akn/aa-au/statement/decision-au-assembly/2015/561/eng@2015-01-31>

110 African Union, *Frequently Asked Questions about Financing of the Union*, <https://au.int/sites/default/files/pages/35739-file-faqs-on-financing-of-the-union.pdf>

111 African Union, *Progress Report on the Institutional Reform of the AU*, (n 28).

successes and challenges. The AUC has proven adept at utilising its bureaucracy to anticipate or respond to the needs of AU policy organs and, in particular, the Assembly and Executive Council. However, the recurring themes of seemingly insatiable demands for coordination, limited political will and financial support from member states as well as difficulties in forging consensus and state compliance to AU norms, remain obstacles to the AUC's capacity to fully discharge its mandates. The dominance of the AUC within decision making processes has itself become a source of concern, with criticisms of a bureaucracy that restricts ownership of decisions and allegations of mandate overreach emerging.

The success of AU Commission in advancing the AU agenda ultimately depends on the trust and confidence it earns from member states and the implementation of AU decisions by member states. The degree to which AU member states implement AU decisions also depends on the extent to which they feel that they are the authors of those decisions. There is therefore a need for striking a balance between the AU Commission exercising influence in agenda setting and drafting and being faithful in catalyzing consensus, facilitating consultation and formulating proposals that bridge divisions within member states. This is key to the AU Commission avoiding criticisms of overreach.

This report should serve as an invitation for stakeholders to debate about and achieve deeper understanding of the place of the AUC in decision-making processes of the AU. It is against this background that the performance of the AU Commission and what it can and cannot do can and needs to be evaluated. In providing such useful framework for understanding the role of the AU Commission, this special research report also helps various stakeholders to make informed programming and plans for their interaction and working relationship with the AU Commission.



MEDIA AND RESEARCH SERVICES

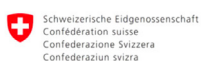
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