

SPECIAL RESEARCH REPORT

THE ROLE AND PLACE OF THE EXECUTIVE COUNCIL ON AU DECISION-MAKING PROCESSES

AMANI AFRICA

Media and Research Services

DECEMBER

2 0 2 3

AMANI AFRICA REPORT NO.19



TABLE OF CONTENTS

I – INTRODUCTION.....	1
II – THE DECISION-MAKING STRUCTURES, PROCESSES AND DYNAMICS OF THE EXECUTIVE COUNCIL.....	2
2.1 Composition of the Council.....	2
2.2 Mandates and Functions.....	2
2.3 Organization of the Council's Sessions.....	3
2.4 Organization and Operation.....	3
2.5 Subsidiary Bodies of the Council.....	5
2.6 Agenda-setting.....	8
2.7 Decision-making.....	8
III – THE EXECUTIVE COUNCIL DECISIONS.....	9
IV – REVIEW OF THE ROLE OF THE EXECUTIVE COUNCIL IN AU DECISION-MAKING	11
4.1 On Peace, Security and Humanitarian issues.....	12
4.2 On Economic Development, Trade and mobility.....	12
4.3 On International cooperation.....	12
4.4 On the functioning of other AU Organs.....	13
4.5 On Women, Gender and Youth.....	13
V – KEY CHALLENGES OF THE EXECUTIVE COUNCIL.....	14
VII – CONCLUSION.....	16

I INTRODUCTION

Launched in July 2002, with the vision of ‘an Integrated, Prosperous and Peaceful Africa, driven by its citizens and representing a dynamic force in the global arena’,¹ the African Union (AU) aims to promote development, socio-economic advancement, peace and security, human rights and democracy, and regional integration. The AU is organized as an international organization that strives to execute and fulfil its mandate through policies and decisions that it adopts. In the landmark special research report on AU decision-making actors and processes, AU decisions and decision-making actors are classified into legislative, executive and judicial/quasi-judicial.² One of the key policy and decision-making bodies of the AU is the Executive Council.

Together with the Assembly and the Specialized Technical Committees (STCs),³ the Executive Council is one of the decision-making organs of the continental organization. It consists of the ‘Ministers of Foreign Affairs or such other Ministers or Authorities as are designated by the Governments of Member States’ as stipulated in its Rule 10(1). The Executive Council supports the AU Assembly and is accountable before this supreme Organ. This Council has the authority to make decisions on the policy areas assigned to it under the Constitutive Act and its Rules of Procedures.⁴

¹ Vision and Mission of the African Union, Available at: <https://au.int/en/about/vision>

² Amani Africa Media and Research, ‘Mapping the Role of the African Union Commission in the Decision-Making of the African Union’, Special Research Report No. 12 (October 2023). (hereafter Amani Africa Special Research Report No. 12) Available at: <https://amaniafrica-et.org/wp-content/uploads/2023/10/MAPPING-THE-ROLES-OF-THE-AFRICAN-UNION-COMMISSION.pdf> ‘Mapping the Role of the African Union Commission in the Decision-Making of the African Union’ (October 2023), Special Research Report No. 12.

³ The AU Assembly is the highest decision-making body. In 2015, it elevated the status of the Specialized Technical Committees (STCs), enabling them to take decisions in their respective areas of responsibilities and making them part of the primary legislative bodies.

⁴ African Union, ‘Rules of Procedures of the Executive Council: was first adopted in July 2002 vide Decisions Ass/AU/Dec. 1

Given the crucial role of the Executive Council in the decision-making process of the AU, this report aims to provide a comprehensive mapping of the Executive Council’s involvement in the decision and policy-making processes. This report builds upon existing works and studies. In this regard, this work draws, among others, on the AU Handbook⁵ and Amani Africa’s research on the mapping of decision-making process of the AU.⁶ However, the primary objective of this report is to enhance knowledge and understanding of decision-making processes within the AU and shed light on the specific role played by the Executive Council.

Furthermore, the report aims to assess the role and contributions of the Executive Council and determine the areas of its mandates covered by decisions and recommendations adopted from 2002 to 2022. As such, the present report seeks to examine the following:

- Mandate and decision-making processes of the Executive Council,
- The areas covered under the Executive Council’s decisions,
- The status of the Executive Council’s Decisions from 2002 to 2023,
- Extended role and contribution of the Executive Council, and
- Key challenges of the Executive Council.

(I) and EX.CL/AU/Dec.1 (I)’. In January 2007, they were amended vide Assembly/AU/Dec.146 (VIII). In line with Decisions Ext/Assembly/AU/Dec.1 and 3(XI) on the Institutional reform, Assembly/AU/Dec. 582 (XXV) and Assembly/AU/Dec. 597 (XXVI) on the streamlining of the summit and the working methods of the AU, the legal instruments were further aligned in July 2020.

⁵ African Union, ‘African Union Handbook 2022: A Guide for Those Working With and Within the African Union’. 9th ed. African Union Commission and New Zealand Crown.

⁶ Amani Africa Media and Research (n.2).

II THE DECISION-MAKING STRUCTURES, PROCESSES AND DYNAMICS OF THE EXECUTIVE COUNCIL

As a decision-making organ of the AU, the Executive Council took over in 2002 from the Council of Ministers of the Organization of African Unity (OAU). The Executive Council derives its legitimacy from the Constitutive Act of the AU and its Rules of Procedure. The composition, functions, powers, voting, and procedures of the Executive Council are outlined in Articles 10-13 of the Constitutive Act. This section provides a detailed illustration of those aspects and the practical implementation of the rules.

2.1 Composition of the Council

In the Executive Council all 55 Member States of the AU are represented through their Ministers of Foreign Affairs or other ministers or representatives designated by their member States.⁷ As of December 2023, the six countries suspended for unconstitutional changes of government during 2021-2023 are excluded from representation in the Executive Council. The representation of member states at the Assembly level is regulated by Assembly decision AU/Dec.635(XXVIII), which states that Heads of State will be represented by officials at a level no lower than Vice President, Prime Minister, or an equivalent position.⁸ However, Rule 3 of the Rules of Procedure of the Executive Council is vague, stating that member states will be represented by 'representatives designated by their member states'. This vagueness has also influenced the practice, as Member States are represented by their Ministers of Foreign Affairs, other ministers, or Permanent Representatives to the AU during the Council's sessions.

7 African Union, *Constitutive Act (2002)*, Article 10. Available at: https://au.int/sites/default/files/pages/34873-file-constitutiveact_en.pdf; and *Rules of Procedures of the Executive Council*, Rule 3.

8 African Union, 'Decision on the outcome of the retreat of the Assembly of the African Union on the institutional reform of the AU', (January 2017). Available at: https://au.int/sites/default/files/documents/33271-doc-assembly_au_dec_621_-_641_xxviii_e_reform_decision.pdf

2.2 Mandates and Functions

The Executive Council is empowered with the coordination and decision-making of policies in areas of common interest to Member states.⁹ These areas on which the Executive Council has decision/policy-making power subsidiary to the AU Assembly include 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 people with disabilities and people with disabilities), and the establishment of a system of African awards, medals and prizes.

Furthermore, the Executive Council considers issues referred to it by the Assembly¹⁰ and monitors the implementation of the Assembly decisions. A recent example where the Assembly delegated a task to the Executive Council was on the amendment of Article 5(1) of the Protocol Relating to the Establishment of the Peace and Security Council.¹¹ The Council also receives reports from various AU bodies, such as the STCs, or report to it by delegated authority from the AU Assembly and makes decisions accordingly or endorse the work done by those Organs.¹²

The Executive Council adopts decisions either on the basis of reports and accompanying proposed decisions initiated and submitted to it by other subsidiary bodies or on agenda items initiated on its own accord.¹³ Additionally, the Executive Council

9 *Rules of Procedure of the Executive Council*, Rule 5 (African Union).

10 *Ibid.*

11 African Union, 'Decision on the appointment of fifteen (15) members of the PSC', Assembly/AU/Dec. 823(XXXV), (February 2022). Available at: https://au.int/sites/default/files/decisions/42725-Assembly_AU_Dec_813-838_XXXV_E.pdf

12 *Amani Africa Special Research Report*; P.14 (n.2).

13 *Ibid.*

may delegate any of its powers and functions to the STCs, instruct the Permanent Representatives Committee (PRC) and assign tasks to the AU Commission.¹⁴ For instance, in its decision EX.CL/Dec.1108(XXXVIII), the Council directed ‘the PRC to re-examine the outcomes of the 5th Ordinary Session of the STC on Gender Equality and Women’s Empowerment specifically on: Implementing the decisions of the African Union Peace and Security Council in its 803rd, 887th and 951st meetings to institutionalise the Office of the Special Envoy on Women, Peace and Security.’¹⁵ In practice, given that the PRC is an advisory organ of the Union, almost all of the reports submitted to the Executive Council pass through the PRC. Sometimes the Executive Council, even delegate its decision-making power to the PRC. This was observed in the recent decision of the Executive Council Ex.CL/Dec. 1217(XLIII) in which the Council delegated the PRC the mandate to authorize the utilization of the ring-fenced budget allocation subsequent to opening full disclosure from the secretariate regarding the Skills Audit and Competency Assessment (SACA) process.¹⁶

2.3 Organization of the Council’s Sessions

In undertaking its tasks, the Executive Council convenes at least twice a year in an ordinary session, usually in early February and July. In addition, extraordinary sessions can be held upon the request of the Assembly, the Chairperson, any Member State, or the Chairperson of the AU Commission. These requests must be made in consultation with the Chairperson of the Executive Council and approved by two-thirds of all Member States.¹⁷ Extraordinary sessions are usually held at

¹⁴ Rules of procedures of the Executive Council, Rules 5 (2 & 3).

¹⁵ African Union, ‘Decision on the Report of the Specialized Committee, EX.CL/Dec.1108(XXXVIII)’, Para. 16. (February 2021). Available at: https://au.int/sites/default/files/decisions/41232-EX_CL_DEC_1107_-_1125_XXXVIII_E.pdf

¹⁶ African Union, Decision on the Report of the sub-committee of the Permanent Representative Committee (PRC), Assembly/AU/Dec.635 (XXVIII), Para. 27, (July 2023) Available at: https://au.int/sites/default/files/decisions/43077-EX_CL_Dec_1217-1232_XLIII_E.pdf

¹⁷ Constitutive Act of the African Union, Article 10 (n. 7); and

AU Headquarters in Addis Ababa, Ethiopia unless a Member State invites the Council to convene the session in its country.

The Assembly and Executive Council meetings are held consecutively, except during the June/July Summit. The 2017 Assembly decision on the reform of the AU¹⁸ has changed the Assembly meetings from two ordinary sessions per year to one meeting per year and a Mid-year coordination meeting with the Regional Economic Communities (RECs) to be held in June/July.

In principle, all sessions of the Council are closed to the public, unless the Council decides otherwise by a simple majority vote.¹⁹ However, the opening ceremony of the Council’s sessions is always open to accredited organizations, observers, and invited media organizations for ceremonial purposes.²⁰ Apart from the opening ceremonies, there have been no instances where the Council voted to open its sessions when considering agenda items.

2.4 Organization and Operation

The actors that play a vital role in the Executive Council’s decision-making process include a) the Chairperson, b) the Bureau, c) the Ministerial Committees of the Council, c) the Permanent Representative Committee (PRC), d) the Specialized Technical Committees (STCs) and e) the AU Commission.²¹

These actors play a crucial role in shaping and influencing the decisions of the Executive Council. They have the ability to set the draft agenda and prepare the reports and working documents including the draft decisions of the Council. They input into and influence the Council’s decisions, mostly before the Council’s meeting takes place. Besides, members of the Executive Council can intervene and contribute during deliberations.²²

¹⁸ Rules of Procedure of the Executive Council, Rule 12.

¹⁹ Assembly/AU/Dec.635 (XXVIII), (n. 22).

²⁰ Rules of Procedure of the Executive Council, Rule 14.

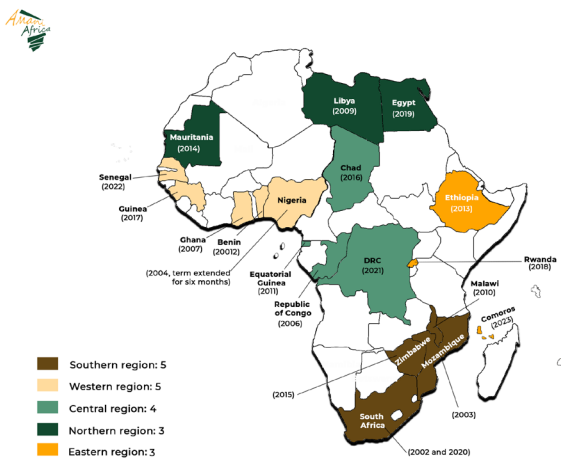
²¹ Ibid.

²² Amani Africa Special Research Report, P.14 (n. 2)

²³ Ibid.

The Bureau of the Executive Council takes the leadership role. It comprises of a chairperson, along with three vice-chairpersons and a rapporteur. The Minister of Foreign Affairs (or any competent authority) from the country holding the Chairmanship of the Assembly shall preside over the sessions of the Executive Council.²³

Prior to the institutional reform, the Chairperson of the Assembly, was elected by the Ordinary Session of the Assembly during the January Summit composed of Heads of States and Government. However, as part of the institutional reform initiative, the Assembly has determined that a troika arrangement will be established among the outgoing, current, and incoming Chairpersons.²⁴ This arrangement aims to ensure continuity and effective implementation of decisions. In line with this, it was determined to elect the incoming Chairperson one year in advance.²⁵ As such, by extension, this mechanism also applies to the Bureau of the Executive Council.



From 2002 to December 2023 the Executive Council was headed by twenty-one Foreign Ministers, including six women.

The extension of Nigeria's mandate in 2004 was due to a change in the term limits. Prior to 2004, the term limit for the Chairperson of the Union was from July to July for one year. However, after 2004 it was changed from January to January. Additionally, upon examining the map above, one can observe an imbalance in geographical representation over the past twenty-one (21) years. This raises the question: if Rule 16 (2) of the revised

Rules of Procedure of the Assembly states that the election of the Chairperson of the Assembly is based on rotation, why have the Southern and Western regions led five times while the Northern and Eastern regions have only led twice?

The Chairperson's duties include convening and presiding over Executive Council sessions, submitting session records for approval, guiding proceedings, conducting votes, ruling on points of order, and ensuring order and decorum during the proceedings.²⁶ It is also the responsibility of the Chairperson to facilitate consensus-building within the Council. As such, it plays a major role in shaping the direction of the deliberation of the Executive Council and in so doing can influence the outcome of the Council's deliberation. The Chairperson does not represent his/her national delegation and, therefore, sits separately at the high table with the Secretary General and the Chairperson of the AUC. In presiding over the deliberations of the Council, the Chairperson is assisted by the Secretary-General who introduces the agenda of each session and prepares the speaking order of the members of the Council.

The bureau assists the Chairperson in undertaking his/her duties. These positions are held by the same Member States that form the Assembly Bureau.²⁷ Previously, the practice was that in the absence of the Chairperson or any of the Vice-Chairpersons, the rapporteur assumes the role of chairing the Council's sessions. In this regard, the recently revised Rules of Procedure of the Council has adopted what has been practiced in the past, so as stipulated under Rule 17 (2) of the revised Rules of Procedure 'the rapporteur shall act as Chairperson in the absence of the Chairperson or any of the Vice-Chairpersons'.²⁸

²³ Rules of Procedure of the Executive Council, Rule 16.

²⁴ Rules of Procedure of the Executive Council, Rule 16 (4).

²⁵ Assembly/AU/Dec.635(XXVIII) (n. 22).

²⁶ Rules of Procedure of the Executive Council, Rule 16.

²⁷ Ibid.

²⁸ Rules of Procedure of the Executive Council, Rule 17(2).

2.5 Subsidiary Bodies of the Council

The work of the Executive Council is supported by the Ministerial Committees. These Committees are established by the Executive Council in accordance with the Constitutive Act and its rules of procedure. The Committees are responsible for reviewing reports and drafting decisions/recommendations. Committee members are generally selected based on rotation and geographical distribution following consultations of the regional deans and serve two-year terms, which may be renewed once. The composition of each Committee is determined by the Council, including the maximum number of members. Additionally, the Ministerial Committees can be open-ended, allowing any member state to participate and all related documents to be circulated to all member states.

The Committees convene twice a year concurrently with the ordinary sessions of the Executive Council, which are held bi-annually in February and July. Extraordinary meetings may also be convened if necessary. The Committees are as follows:²⁹

- i. **Ministerial Committee on Candidatures within the International System:** This Committee was established as per the Constitutive Act of the AU and Resolution AHG/Res. 144 (XXI).³⁰ The revised Rules of Procedure of the Committee was recently approved by the 42nd ordinary session of the Executive Council in February 2023.³¹ According to Rule 2(1) of the revised Rules of Procedure the committee shall be composed of fifteen (15) members, with a composition of three members from each of

²⁹ AU Handbook (n. 5)

³⁰ African Union, 'Resolution on the Committee for Nominating an African Candidate for the Post of UN Secretary General, Organization of African Unity', AHG/Res. 144 (XXI). (July 1985). Available at: https://archives.au.int/bitstream/handle/123456789/641/AHG%20Res%20144%20%28XXI%29%20_E.pdf?sequence=1&isAllowed=y

³¹ African Union, 'Decision on the report of the Specialized Technical Committees and Other Ministerial Meetings, EX.CL/Dec.1190(XLI). (February 2023) Available at: https://au.int/sites/default/files/decisions/42843-EXECUTIVE_COUNCIL_DECISIONS_E.pdf

the five regions. The Bureau of the Committee is composed of the Chairperson, three (3) Vice Chairpersons and a Rapporteur who shall be elected based on rotation and geographical distribution for a term of two years, renewable once.³² However, if the outgoing Chairperson served for only two years, he/she may become the Rapporteur.³³ In supporting the work of the Committee the Political Affairs, Peace and Security Department of the AU serves as the Secretariat for the Ministerial Committee.³⁴

This Committee is responsible for promoting African candidates for elective posts within the United Nations system or other International Intergovernmental Organizations.³⁵ The Committee's recommendation on a particular candidature will be binding on member states once it is decided by the Executive Council and endorsed by the Assembly.³⁶ Given that Africa constitutes nearly 1/3rd of the membership of the UN, the work of this Committee plays major role in promoting the representation of African states and individuals in decision-making structures and leadership roles in the UN and related multilateral bodies.

- ii. **Ministerial Committee on the Challenges of Ratification/Accession and Implementation of the OAU/AU Treaties:** The establishment of this Committee was in accordance with the decision Ex.CL.Dec.705(XXI).³⁷ The Committee is composed of ten (10) members with two (2) from each regions. The Bureau of the Committee is composed of the a Chairperson,

³² Rules of Procedure of the AU Ministerial Committee on African Candidatures Within the International System, Rule 10.

³³ Ibid.

³⁴ Rules of Procedure of the AU Ministerial Committee on African Candidatures Within the International System, Rule 11.

³⁵ Rules of Procedure of the Ministerial Committee on Candidatures within the International System, Rule 3.

³⁶ Rules of Procedure of the Ministerial Committee on Candidatures within the International System, Rule 14.

³⁷ African Union, 'Decision on the Status of Signature and ratification of OAU/AU Treaties, Ex.CL.Dec.705(XXI). Available at: <https://www.peaceau.org/uploads/ex-cl-dec-705-xxi-e.pdf>

three (3) Vice Chairpersons and a Rapporteur who shall be elected for a term of two years based on rotation and geographical distribution.³⁸ The work of the Committee is supported by the Office of the Legal Counsel as its Secretariat.

Its primary objective is to promote the ratification, domestication and implementation of OAU/AU treaties by all Member States. To support its work, the Committee is supported by a standing committee of experts consisting of two members from each AU region. This Committee works in tracking the ratification and implementation of OAU/AU treaties and advising on measures to be adopted for facilitating ratification and implementation.

iii. Ministerial Committee on the Scale of Assessment and Contributions: This Committee reviews the scale of assessment for Member State contributions to the AU budget. It advises the Assembly on the distribution of AU expenses among Member States, taking into account their capacity to pay, solidarity and equitable payments. Additionally, it provides recommendations on how to address Member States in arrears of their contributions. The Committee was established following an Executive Council decision in January 2016. The purpose of this decision was to restructure the ad-hoc Ministerial Committee on the Scale of Assessment into a standing committee, which was then renamed as the Ministerial Committee on the Scale of Assessment and Contributions.³⁹ Furthermore, the Council decided that the new committee would assume the responsibilities of the PRC's Sub-Committee on Contributions mandate, leading to the abolition of the

PRC Sub-Committee.⁴⁰ It is worth noting that the ad-hoc Ministerial Committee had replaced the Standing Committee on the review of the scale of assessment, which had the same membership.⁴¹

The committee is composed of ten (10) members, however in June 2018, the composition of the Ministerial Committee was further reconfigured to include the Fifteen Ministers of Finance (F15) Committee.⁴² To support this reconfigured Committee, the F15 Secretariat and Contribution Unit, under the AUC Cabinet of the Deputy Chairperson, serves as the Secretariat. The Secretariat works closely with the Directorate of Finance.

iv. Ministerial Follow-Up Committee on the Implementation of Agenda 2063: The Committee was established during the Executive Council's first ministerial retreat in Bahir Dar, Ethiopia, in January 2014. It was formally recognized during the Executive Council's 24th Session in Addis Ababa, Ethiopia, in the same year.

The Committee is composed of twenty-seven (27) members that is divided in to two categories. The first category includes fifteen (15) members, with five (5) Member States from each region, two (2) ministers for the outgoing and incoming chairpersons, and eight (8) Chairpersons of the Council of Ministers of the eight (8) RECs. The second category consists of twelve (12) non-member states, including the Chairperson of the AU Commission, the Executive Secretary of the United Nations Economic Commission for Africa (UNECA), the President of the African Development

³⁸ *Rules of Procedure of the Ministerial Committee on the Challenges of Ratification/Accession and implementation of the OAU/AU Treaties, Rule 8(1).*

³⁹ *African Union, 'Decision on the scale of assessment and implementation of alternative sources of financing the African Union', EX.CL/Dec.916(XXVIII)Rev.1 (January 2016). Available at: https://au.int/sites/default/files/decisions/29513-ex_cl_dec_898_-_918_xxviii_e.pdf*

⁴⁰ *Ibid.*

⁴¹ *African Union, "Decision on the review of the Scale of Assessment of the African Union – Doc. EX.CL.8(II)"; EX.CL/Dec.4(II), (March 2023). Available at: https://au.int/sites/default/files/decisions/9643-ex_cl_dec_2_-_19_ii_e.pdf*

⁴² *African Union, 'Decision on the draft 2019 African Union budget and 2018 supplementary budget: Doc.EX.CL/1094(XXXIII)'; EX.CL/Dec.1020(XXXIII), (June 2018). Available at: https://au.int/sites/default/files/decisions/34655-ex_cl_dec_1008_-1030_xxxiii_e.pdf*

Bank (AfDB), eight (8) Chief Executive Secretariats of the RECs, and the Chief Executive Officer of AUDA-NEPAD.

Unlike the other Ministerial Committees that have five (5) bureau members (a Chairperson, 3 Vice-Chairpersons and a Rapporteur), Rule 12 (2) of the Rules of Procedure of the Ministerial Committee stipulates that the bureau shall be composed of three (3) members, elected based on rotation and geographical distribution from the core members (member states).⁴³ These three members take the role of a Chairperson, a Vice-Chairperson and a Rapporteur.

The Committee's mandate was renewed by the Executive Council's 29th Session in January 2016,⁴⁴ and its terms of reference was approved in July 2016.⁴⁵ This committee was initially established to provide political guidance for the development of Agenda 2063. Its main responsibility was to report on the implementation of Agenda 2063, the First Ten-Year Implementation Plan and successive plans to the Executive Council. Overtime, the Committee's focus has shifted to strategic direction, efficiency, financing and accountability in delivering Agenda 2063. This committee led the review of the first ten year implementation plan and the consideration of the second implementation plan of Agenda 2063.

v. **Open-ended Ministerial Committee on the International Criminal Court (ICC):**

The establishment of this Committee was mandated by the Assembly /AU/Dec. 586 (XXV) decision in June 2015. Its initial purpose is to devise strategies for implementing the Assembly's decisions regarding the ICC. Specifically, the Committee is responsible for monitoring the AU's request for

the suspension of proceedings against the former President of Sudan, Omar Al Bashir, or the withdrawal of the referral by the UNSC.⁴⁶ Additionally, it was also responsible for overseeing the termination or suspension of proceedings against former Deputy President and current President, William Samorei Ruto of Kenya. Although the Court terminated the case against Kenya's President Ruto,⁴⁷ Al Bashir was overthrown by the Sudanese Armed Forces in 2019 following popular protests.⁴⁸ Subsequently, the transitional government led by former Sudan Prime Minister Abdalla Hamdok signed an agreement with ICC in August 2021 to hand over Al Bashir to the ICC. However, his transfer to the ICC was delayed as a result of the second coup that took place on 25 October, 2021, and the recent war that broke out in April 2023.

The Committee's role also involves engaging the relevant stakeholders until the AU's concerns and proposals concerning the ICC are addressed. Although it cannot be said that the concerns of the AU are fully addressed by the ICC, it had been the constant demand of the Sudanese pro-democracy movements to handover Al Bashir to the ICC. It appears that it is due to these shifts that the Ministerial Committee have not convened meetings since 2019, however the Committee is still standing.

⁴³ Rules of Procedure of the Ministerial Committee on the Implementation of Agenda 2063, Rule 12 (2).

⁴⁴ 'Decision on the Mekele Retreat of the Executive Council', EX.CL/Dec.908(XXVIII) Rev.1 (n. 47).

⁴⁵ African Union, 'Decisions on the outcomes of the retreat of the Executive Council held in Nairobi, Kenya on 6 – 7 May, 2016', EX.CL/Dec.935(XXIX). Available at: https://au.int/sites/default/files/decisions/31275-ex_cl_dec_919_-_925_and_928_-_938_xxix_e.pdf

⁴⁶ African Union, 'Decision on the progress report of the commission on the implementation of previous decisions on the International Criminal Court (ICC)' Assembly/AU/Dec.547(XXIV) (January 2015). Available at: https://au.int/sites/default/files/decisions/9665-assembly_au_dec_546_-_568_xxiv_e.pdf

⁴⁷ International Criminal Court, 'The Prosecutor v. William Samoei Ruto and Joshua Arap Sang', ICC-01/09-01/11. <https://www.icc-cpi.int/kenya/rutosang>

⁴⁸ Aljazeera, 'Sudan's military seizes power from President Omar al-Bashir' (11 April, 2019). Available at: <https://www.aljazeera.com/news/2019/4/11/sudans-military-seizes-power-from-president-omar-al-bashir>

2.6 Agenda-setting

Following the decision of the Assembly to hold one summit and a Mid-Year Coordination Meeting, the agenda of the Executive Council for the January/February Summit includes items provided under Rule 9 (2) of its Rules of Procedure, though this rule does not provide the items exhaustively.⁴⁹ It is also important to note that the decision of the 28th Ordinary Session of the Assembly decided that 'the Assembly shall handle an agenda of no more than three (3) strategic items at each Summit'.⁵⁰ It was further decided by the session that 'other appropriate business will be delegated to the Executive Council'.⁵¹

A Provisional Agenda of the Council is prepared by the PRC.⁵² The PRC, as an advisory organ composed of Permanent Representatives of the AU and other plenipotentiaries of Member States, is responsible for the day-to-day activities of the AU on behalf of the Executive Council.⁵³ Along with preparing the provisional agenda of the Council, the PRC also submits its recommendations to the Council.

The Council's agenda for its mid-year session is similarly prepared by the PRC. The Council's engagement during mid-year also involves role relating to the Mid-year Coordination Meeting of the AU and RECs/RMs. The coordination meeting is focused on budget adoption and preparation of documents for the Mid-Year Coordination Meeting, which comprises the Bureau of the Assembly and Chairpersons of RECs. The meeting is also attended by the AU Commission Chairperson, the Chief Executives of RECs as well as Regional Mechanisms determined by the Assembly and invited organs of the Union and any other personalities.⁵⁴

For both sessions of the Council, Member States can propose items for the sessions provided that the proposal is submitted sixty (60) days before the

opening of the session/meeting.⁵⁵ The Executive Council examine such items in conjunction with the PRC's recommendations⁵⁶ and the provisional agenda gets adopted at the opening session.⁵⁷ If Member States raise agenda items at the session, those sessions can only be considered under the agenda item 'Any Other Business'.⁵⁸

2.7 Decision-making

Together with the provisional Agenda, the PRC submits the supporting documents and draft decisions for the consideration of the Executive Council. When Member States submit an agenda item sixty days before the opening session, the supporting document(s) and draft decision(s) must also be communicated to the Chairperson of the Commission at least thirty (30) days before the opening of the session.⁵⁹ When the Member State submit a proposal, it is registered by the Office of the Secretary General of the AU Commission and directed to the appropriate Department. The department then engages in several consultations and working sessions with the proposing Member States. Following these discussions, a draft decision and supporting documents are prepared and submitted to the relevant PRC Sub-Committee through the Secretary-General, ensuring compliance with the deadlines. The PRC Sub-Committee, assisted by the specialised department and the Secretariat General conducts further studies until the entire dossier, including the draft decision, the report, and additional documents, is adopted.

The PRC then presents each draft decision to the Executive Council along with a comprehensive report.⁶⁰ For those agenda items that are not submitted by Member States, before being presented to the Executive Council, most of the decisions and declarations undergo a thorough review process. This process involves the AU Commission, the STCs, the PRC Sub-committees and the PRC plenary.

49 *Rules of Procedure of the Executive Council, Rule 9(2).*

50 *Assembly/AU/Dec.635(XXVIII), P.2 (n. 22).*

51 *Ibid.*

52 *Ibid.*

53 *Rules of Procedures of the Permanent Representative Committee, Rule 4.*

54 *Rules of Procedure of the Mid-Year Coordination Meeting, Rule 4.*

55 *Rules of Procedure of the Executive Council, Rule 9 (2) (g).*

56 *Ibid.*

57 *Rules of Procedure of the Executive Council, Rule 9 (1).*

58 *Rules of Procedure of the Executive Council, Rule 10.*

59 *Ibid.*

60 *AU Handbook P. 50-63. (n.5)*

Following the adoption of the agenda, the decision-making dynamic and the relative weight of influence of the various actors' changes across agenda items, the political saliency of the agenda, the confluence of the agenda with multiple fault lines among the 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.⁶¹ Where the agenda has a 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.⁶² In such cases, draft decisions would likely be adopted with significant changes unless most of the issues have been trashed out through consultations and negotiations at the PRC level and among capitals with wide consensus.⁶³

In order to proceed with the discussions and decision making, a quorum must be formed at any meeting of the Executive Council, requiring the presence of two-thirds of AU member states.⁶⁴ The Council primarily makes decisions by consensus.⁶⁵ However, reaching a consensus on all the decisions can be challenging, especially when political issues are being discussed. In such cases, decision-making becomes difficult due to conflicting State interests. In situations where consensus cannot be reached, certain States may form alliances based on configuration of the Regional Economic Communities (RECs) or the convergence of their interests. In these instances, a two-thirds majority of Member States eligible to vote is required.⁶⁶

A Member State may be ineligible to vote in the Executive Council when the said Member State is under sanction. The Executive Council shall apply the sanctions imposed by the Assembly related to:

- a) arrears of contributions;

- b) non-compliance with decisions and policies; and
- c) unconstitutional changes of government, as specified in Rules 35, 36, and 37 of the Rules of Procedure of the Assembly.⁶⁷

According to the Constitutive Act, such Member State could be denied of the right to speak at meetings, to vote, to nominate candidate for any position or post within the Union.⁶⁸

On the other hand, matters of procedure, including the determination of whether a matter is one of procedure or not, are decided by a simple majority of Member States eligible to vote. Procedural matters could include, the procedures that were implemented in the process of submitting a report (whether it has passed through the proper validation process or not) or a debate amongst member states over the closing of an agenda item.

III THE EXECUTIVE COUNCIL DECISIONS

The Decisions, Declarations, Recommendations and Roadmap of the Executive Council cover a wide range of areas as described in its Rules of Procedure and mandates. But it should be noted that in the revised version of its Rules of Procedure the Executive Council has been given an additional mandate of conducting the procedure for the termination of the AU Commissioners. It's overall mandates are summarized as follows:

- Prepare the Assembly session agendas and draft decisions for its consideration;
- Elect the Members of the AUC for appointment by the Assembly;
- Promoting cooperation and coordination with the RECs, African Development Bank (AfDB), other African Institutions and the UN Economic Commission for Africa (ECA);
- Determining policies for cooperation between the AU and Africa's partners;
- Considering and recommending to the Assembly the AU Commission's structure,

⁶¹ *Ibid.*

⁶² *Ibid.*

⁶³ *Ibid.*

⁶⁴ *Rules of Procedure of the Executive Council, Rule 7.*

⁶⁵ *Rules of Procedure of the Executive Council, Rule 19.*

⁶⁶ *Ibid.*

⁶⁷ *Rules of procedures of the Executive Council; Rules 36.*

⁶⁸ *The Constitutive Act of the African Union; Article 23(1)*

- functions and statutes;
- Ensuring the promotion of gender equality in all AU programmes;
- Determine the issues to be submitted to the Assembly for decision;
- Coordinate and harmonise the policies, activities and initiatives of the Union in areas of common interest to Member States;
- Monitor the implementation of the policies, decisions and Agreements adopted by the Assembly;
- Elect the six Commissioners to be appointed by the Assembly;
- Conduct the procedure for the termination of the Commissioners; and
- Elect members of the eligible organs.

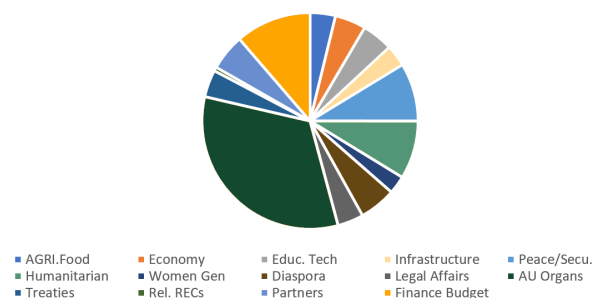
For the sake of this report, the Decisions of the Executive Council Declarations and Roadmap are thematically aligned with the new structure of the African Union Commission’s Departments created by the institutional reforms adopted but with slight adjustments. An in-depth examination and analysis of each Decision, Declaration and Roadmap adopted from 2002 to 2023 reveals the following:⁶⁹

- a) Forty-five (45) Decisions on Agriculture and Food Security, Rural Development, Sustainable Environment and Blue Economy represent 3.82% of the total.
- b) Fifty-five (55) decisions on Economic development, Natural resources, Trade and Industry and mining represent 4.67 % of the total.
- c) Fifty-five (55) decisions on Education, Technology, Culture and Sport, Telecommunication, and innovation represent 4.67 % of the total.
- d) Thirty-eight (38) decisions on Infrastructure and Energy, Information society, Transport and Mobility represent 3.22% of the total.
- e) One hundred and three (103) Political Affairs/Peace and Security decisions represent 8.75% of the total.
- f) One hundred and three (103) decisions on Health, Humanitarian Affairs and Social

- Development, representing 8.75% of the total.
- g) Thirty-two (32) decisions on Women, Gender and Youth represent 2.71% of the total.
- h) Sixty-five (65) decisions Civil society, Diaspora, Integration, and Candidature within the International system, representing 5.52% of the total.
- i) Forty-six (46) decisions on Legal Affairs, Rules of procedures, AU Symbols and Accreditation represent 3.9% of the total.
- j) Three hundred and ninety (390) decisions on AU Organs and its Structures, Elections of Organs members, Specialized Technical Committees Agreements for hosting Organs and office Headquarters representing 33.13% of the total.
- k) Forty-eight (48) decisions on AU Treaties represent 4.07 % of the total. – Out of which Seven (7) decisions on relations with RECs representing 0.59% of the total.
- l) Sixty-four (64) decisions on cooperation with partners representing 5.43% of the total.
- m) Thirty-four (134) decisions on Programming, Finance, Budget, Accounting, Audit matters, Strategic planning, Monitoring Evaluation and Reporting, representing 11.3% of the total.

The pictorial diagram that may also depict the distribution of areas covered by the Executive Council Decisions, Recommendations, and Roadmap adopted from 2002 to 2023 is shown below:

Distribution of Decisions by Thematic Areas



The above chart indicate that the majority of the Executive Council’s decisions pertain to administrative and financial management of the AU Organs. Approximately 45% of these decisions

⁶⁹ Calculations based on data available on <https://au.int/fr/decisions/council>

involve matters such as the organizational structure, appointment of members, budget approval, strategic planning and audit of their management. The Executive Council plays central role in the functioning of the AU,⁷⁰ being responsible for validating the rules of procedure and budgets of all organs. In many ways, the Executive Council functions like a company's board of directors. It is, therefore, expected that a significant portion of its decisions are related to the management and financing of the Union.

In addition, it is worth noting that the decisions of the Executive Council contribute to the advancement of the AU's mandate and objectives. These decisions encompass the Institution's core areas of intervention, addressing various thematic areas of concern that impact the African continent, including political affairs, peace and security. This is evident in the workload of the Executive Council with 8.75% of its decisions dedicated to this area. Therefore, it is important to analyze this in light of the dedicated mandate of the Peace and Security Council. Additionally, 8.75% decisions also pertain to other thematic areas, such as humanitarian affairs, health, and social development. The significant number of decisions related to agriculture and economic development further underscores the importance of these sectors within the AU. Consequently, we can conclude that the Executive Council significantly contributes to the Union's agenda through its decisions. Based on the aforementioned points, it can be supposed that the Executive Council holds a critical position within AU decision-making process and is highly relevant. However, while appreciating the contributions made by the Council thus far, it is pertinent to question whether its performance meets the required expectations in terms of translating the ambition of the AU into reality. Of course, this is not an issue specific to the Executive Council and pervades the entire AU but it bears particular role as a body that plays key role both in policy making and overseeing implementation of the policies and decisions of the AU.

⁷⁰ Interview with Dr. Sarjoh BA, Director Political Affairs and Peace and Security Department of the AU.

IV – REVIEW OF THE ROLE OF THE EXECUTIVE COUNCIL IN AU DECISION-MAKING

The importance of the Executive Council is accentuated by its wide-ranging competence in multiple sectors. Unlike specific organs such as the PSC and the African Court on Human and Peoples' Rights (AfCHPR), whose mandate is limited to specific fields (peace and security for the PSC and justice and human rights for AfCHPR), the Executive Council has the mandate to make decisions and formulate policies on all matters. This lack of exclusivity means that the Executive Council is involved upstream and downstream of all the organisation's achievements. It is accountable for both the failures and successes of the AU in the implementation of its mandate as a whole.⁷¹

The Executive Council plays an important role in decision-making regarding policies in areas of common interest to Member States. It is also accountable to the Assembly and provides leadership on various important issues. Through its efforts, the Executive Council had achieved some notable successes in addressing human rights, peace and security, economic development, and global health issues. In 2018, the Executive Council endorsed the Global Compact on Refugees, which seeks to strengthen international cooperation for better responses to refugee situations.⁷² This decision was an essential step towards improving the lives of refugees worldwide. In addition, the Executive Council has also made strides in promoting economic growth and development throughout Africa through initiatives such as the African Continental Free Trade Area (AfCFTA). This agreement seeks to create a single continental market for goods and services across Africa and will have far-reaching implications for trade within

⁷¹ Interview with OG, a researcher in Cotonou, Benin, 2023.

⁷² For example, the Pact on Security, Stability and Development in the Great Lakes Region, committed to finding lasting solutions to guarantee protection and assistance to populations, assistance, and search for durable solutions for refugees and internally displaced persons as well as their environment.

the continent.

The following examples are selected, among others, to illustrate the critical role played by the Executive Council at sectorial levels:

4.1 On Peace, Security and Humanitarian issues

The role of the Executive Council in the management of peace and security issues within the AU is limited. This role is specifically entrusted to the AU's Peace and Security Council, which reports directly to the Assembly. The Executive Council is not vested to decide on such matters. However, it may be invited by the Assembly to play a role in crisis management.

According to Article 9 (g), of the AU Constitutive Act, the Assembly can "give directives to the Executive Council on managing conflicts, war and other emergencies and restoring peace".⁷³ The Executive Council has rarely taken decisions in relation to conflict management and war situations. This is in part due to the fact that decision-making on peace and security is vested in the PSC and the PSC submits its reports directly to the Assembly. However, the Executive Council has made decisions and directives concerning humanitarian situations.

Furthermore, the executive Council has passed various decisions on budgetary matters related to peace and security. These include the Peace Fund and Peace Support Operations, and election of the members of the Peace and Security Council. For example, the Council decided on the Hissene Habre victims' compensation fund. This decision instructed the AU Commission 'to put at the disposal of the Fund the five million US dollar contribution from Member States agreed upon in 2019 following the adoption of the Statute of the Trust Fund on reparations for victims of Hissène Habré's crimes.'⁷⁴

⁷³ African Union's Constitutive Act, Article 9 (g).

⁷⁴ African Union, 'Decision on the twenty ninth, thirtieth and thirty first activity reports of the African Commission on Human and Peoples' Rights, EX.CL/Dec.689(XX)', (January 2012). Available at: https://au.int/sites/default/files/decisions/9650-ex_cl_dec_668-695_xx_e.pdf

4.2 On Economic Development, Trade and mobility

The Executive Council is responsible for establishing and implementing the AU Economic Development Policy, promoting economic and trade cooperation among AU Member States and setting up programs to promote economic development. Various examples illustrate the dynamism of the Executive Council on these matters, including the Decisions of the Ministerial Follow-Up Committee on the Implementation of Agenda 2063, the 2nd Continental Report on the Implementation of Agenda 2063⁷⁵ and the Decision on the Draft Agreement Establishing the African Continental free trade area (AfCFTA).⁷⁶ The Agenda 2063 has become the compass of the African Union to free the continent from conflicts and underdevelopment and promote its economic and industrial development.

4.3 On International cooperation

The AU Executive Council is responsible for setting up and implementing the AU's international cooperation policy.⁷⁷ It's also responsible for promoting cooperation between the AU and other international and regional organisations, as well as setting up programs to strengthen diplomatic relations between the AU and other countries. Several cooperation agreements have been signed between the Union and International Institutions,⁷⁸ regional organisations and especially

⁷⁵ Decision of the Ministerial Follow-up Committee on the Implementation of Agenda 2063 and on the 2nd continental report on the implementation of Agenda 2063. EX.CL/Dec.1164 (XL), (02 – 03 February 2022). Available at: https://au.int/sites/default/files/decisions/41584-EX_CL_Dec_1143-1167_XL_E.pdf

⁷⁶ Decision on the draft agreement establishing the African Continental Free Trade Area (AfCFTA); Ext/EX.CL/Dec.1(XVIII), (19 March 2018) – This Agreement's implementation is effective with its Headquarter established in Accra, Ghana. Even the Senior officers of the AfCFTA were recruited by a panel constituted by an Ad Hoc Ministerial Committee.

⁷⁷ Rule 5, (c)

⁷⁸ African Union, Decision on the report of the Commission on cooperation with some countries and some international organizations, EX.CL/Dec.557(XVII), (July 2015). Available at: https://au.int/sites/default/files/decisions/9631-council_en_26_30_january_2009_executive_council_fourteenth_ordinary_session.pdf

with Strategic partner⁷⁹ countries such as China,⁸⁰ Japan⁸¹ and the European Union.⁸²

4.4 On the functioning of other AU Organs

The Executive Council is responsible for overseeing the work of the various Organs and institutions of the AU, including the AU Commission, the quasi-legislative bodies in charge of the development of soft-law instruments and the drafting of legal instruments in their areas of responsibilities which include the Pan-African Parliament (PAP),⁸³ the African Commission on Human and Peoples' Rights (ACHPR)⁸⁴ and the African Committee of

79 African Union, *Decision on progress report on the various strategic partnerships of the African Union with Japan (TICAD IV), china, south America, India, Turkey and Iran doc.ex.cl.421 (xiii), EX.CL/Dec.428 (XIII), (June 2008)*. Available at: https://au.int/sites/default/files/decisions/9634-council_en_24_28_june_2008_executive_council_thirteenth_ordinary_session.pdf

80 African Union, *Decision on the venue of the Fourth Ministerial Conference of the China-Africa cooperation forum in 2009-Doc. EX.CL/165 (VI), EX.CL/Dec.182 (VI), (January 2005)*. Available at: https://au.int/sites/default/files/decisions/9627-council_en_24_28_january_2005_executive_council_sixth_ordinary_session_session.pdf

81 African Union, *'Decision on the strengthening of cooperation between Africa and the Tokyo international conference on African development (TICAD) in the implementation of the Yokohama action plan', EX.CL/Dec.608(XVIII), 24 – 28 (January 2011)*. Available at: https://au.int/sites/default/files/decisions/9646-council_en_24_28_january_2011_executive_council_eighteenth_ordinary_session.pdf

82 'Decision on the African Common Position for negotiations for a new cooperation agreement with the European Union', *Ext/ex.cl/dec.2 (xviii), (n. 78)*. Available at: https://au.int/sites/default/files/decisions/34054-ext_ex_cl_dec_1-2xviii_e26_march.pdf

83 African union, *'Decision on the improvement of the operations of the Pan-African Parliament, EX.CL/Dec.235(VII), June/July 2005*. Available at: https://au.int/sites/default/files/decisions/9629-council_en_28_june_2_july_2005_council_executive_council_seventh_ordinary_session.pdf

84 African Union, *'Decision on the report on the joint retreat of the Permanent Representatives Committee (PRC) and the African commission on human and peoples' rights (ACHPR) doc.ex.cl/1089(XXXIII); EX.CL/1015 (XXXIII), (June 2018)* Available at: https://au.int/sites/default/files/decisions/34717-ex_cl_dec_1008_1030_xxxiii_e.pdf

Experts on the Rights and Welfare of the Child (ACERWC)⁸⁵ the AU Advisory Board on Corruption (AUABC),⁸⁶ the African Court on People and Human Right (AfCHPR) and the AU Commission on International Law (AUCIL). The dynamism of the Executive Council is essential in the functioning of the above Organs as it periodically elects its members by a secret ballot in line with its governing rules. Statutorily, the Constitutive Act and the Executive Council Rules and Procedure exclusively empowered it to elect members of the ACHPR, AFCHPR, AUCIL, ACERWC, AUABC and the Commissioners of the AUC.⁸⁷

4.5 On Women, Gender and Youth

Across the Continent, women, girls and boys pay a heavy price during armed conflicts and domestic and ethnic violence. To tackle this scourge, the Executive Council has created a Ministerial conference which deals exclusively with these matters.⁸⁸ A Solemn Declaration on Gender Equality in Africa was adopted, and the Council often consider its implementation report. There was also the establishment of the Trust Fund for African Women.⁸⁹ Similarly, the Executive Council adopted a Decision on the Modalities for the Implementation of the Criteria of Equitable Geographical and Gender Representation in AU Organs and Institutions⁹⁰ to increase the

85 *Decision on the report of the African committee of experts on the rights and welfare of the child (ACERWC)Doc. EX.CL/447(XIII), EX.CL/Dec.441 (XIII), (n.81)*

86 *Decision on the African Union Advisory Board on Corruption doc. ex.cl/603(xvii), EX.CL/Dec.570 (XVII), (n. 80)*

87 *Rules of Procedure of the Executive Council, 15 (1) (g).*

88 *Decision on the Report of the Conference of Ministers in Charge of Gender and Women's Affairs. - EX.CL/ Dec.723 (XXI), (July 2012)*. Available at: https://au.int/sites/default/files/decisions/9652-ex_cl_dec_696-725_xxi_e_final.pdf

89 *Decision on the establishment of the trust fund for African women Doc.EX.CL/511(XV), EX.CL/Dec.506 (XV) Rev1, (24 - 30 June, 2009)*. Available at: https://au.int/sites/default/files/decisions/9633-council_en_24_30_june_2009_executive_council_fifteenth_ordinary_session.pdf

90 *Decision on the modalities on implementation of criteria for equitable geographical and gender representation in the African Union organs Doc. EX.CL/953(XXVIII), EX.CL/Dec.907 (XXVIII), (n. 22)*

participation of girls and women in AU decision-making Organs.

V – STATUS OF THE EXECUTIVE COUNCIL’S DECISIONS

To assess the role and importance of an organ of any national or international organisation, it is necessary to revisit its actions and outputs in line with its mandate and functions. Regarding the Executive Council, its decisions, declaration and recommendations are adopted during ordinary and extraordinary sessions, either at the headquarters in Addis Ababa, Ethiopia or in other member States hosting AU Summits or meetings.

As of July 2022, the Executive Council has adopted 1222 decisions distributed in all the areas mentioned in Rule 5.⁹¹ Forty-three (43) sessions were held at the Headquarter and in different Member States as detailed in Annex 1.

According to Rule 34 of the Executive Council Rules of Procedure, the organ can take three forms of decisions: Regulations, Directives and Recommendations. The Regulations ‘are binding and applicable in all Member States; where appropriate, national laws shall be aligned accordingly’.⁹² This means that these decisions are enforceable. Once taken, Member States, Organs of the Union, and the Regional Economic Communities must comply with them. The directives have the same force. They ‘are addressed to all Member States, undertakings or individuals. They bind Member States to the objectives to be achieved while leaving national authorities with the power to determine the form and the means to be used for their implementation’. Regulations and Directives become automatically enforceable Thirty (30) days after they are published in the Official Journal of the Union.⁹³ But the decision may specify a time limit, after which it becomes enforceable.⁹⁴ The last form of decision is not binding. It may be a recommendation, a declaration,

a resolution, or an opinion.⁹⁵ Those are ‘intended to guide and harmonise the viewpoints of Member States’.⁹⁶

The Assembly may sanction non-compliance with the Regulations and Directives of the Executive Council. Those sanctions may be ‘the denial of transport and communications links with other Member States, and other measures of a political and economic nature to be determined by the Assembly’.⁹⁷

Some of the Executive Council’s decisions are enforceable without necessarily being Regulations or Directives. Those are related to the direct prerogatives of the Executive Council. Among them, there are the decisions on the African Union’s budget. The Executive Council approves the annual budget of the Union, including the budget distribution and the sources of funds. Once the budget is approved, the other organs must implement it as the Executive Council adopts. We can also notice some decisions on election and appointment of members of many institutions or organs of the Union, like, for example, the African Commission/Court on Human and People Rights, the African Union Advisory Board against Corruption, the African Committee of Experts on the Rights and Welfare of the Child, the African Union Commission on International Law. As the Executive Council is responsible for electing and appointing those people, those decisions cannot be qualified as regulations or directives.

VI – KEY CHALLENGES OF THE EXECUTIVE COUNCIL

The Executive Council faces several challenges that can impede its ability to fulfil its mandate. One of the significant challenges facing the Council is partly linked to the African Union’s (as a whole) challenge of adopting a financing model capable of curbing the dependence of its budget, which is over 85% dependent on external contributions⁹⁸. Indeed, for an organ that designs programs on

91 Executive Council Rule of Procedures, Rule 5.

92 Executive Council Rule of procedures, Rule 34.

93 Executive Council Rule of Procedures, Rule 35.

94 Ibid.

95 Executive Council Rule of Procedures, Rule 34.

96 Ibid.

97 African Union Constitutive Act, Rule 23.

98 Key Informant Interview

significant issues affecting the continent's future, its limited capacity to implement these actions is a real weakness in achieving the objectives. The work carried out by the Executive Council is quite impressive. Still, the implementation of the Institution's activities is undermined by the inability of Member States to respond financially through the Union's budget.

No decision, no program designed to defend the Continent's interests in the Executive Council's areas of intervention can be sustainable unless the harsh reality of financing is sufficiently reconsidered. A closer look at several agricultural, infrastructure and health programs reveals that they are poorly implemented mainly because of lack of substantial funding.⁹⁹

The implementation of the African Continental Free Trade Area (AfCFTA) is facing the same situation. Political interests may delay the effective implementation of the Executive Council's decisions on this project and others. National interest, or lack of political will, sometimes hinders some of the Council's decisions.

There are also some decision-making challenges. Referring to the difficulty mentioned above of financing, decision-making, the other responsibility of the Executive Council, is not immune to this reality. Indeed, financial dependence on external organisations or structures does not necessarily leave sufficient room for either the organisation as a continental institution or the Executive Council in terms of decision-making. The credibility of the Executive Council is thus at stake on essential issues such as the Continent's economic development, the development of its human resources, etc., towards partners who have a kind of control over the decisions to be taken. Suppose it is a fact that decision always swings in favour of the side where the power lies, but even more to the economic power; we should then be concerned about this reality, a challenge that shackles the institution. Given the Executive Council, the means to make autonomous and independent decisions remains a real challenge.

Other challenges that need to be highlighted are political tensions between some Member States, lack of funding, and the reliance on the AUC for technical support. The fact that the Council makes consensus-based decisions, creates a challenge when considering several sensitive political issues. One such example is related to candidatures within International Organisations where multiple countries appoint candidates for the same position. In certain cases, the Executive Council has been unable to elect candidates for various AU Organs, leading to the need for the final decision to be referred to the Assembly of the Head of State.

In order to address these issues, the Executive Council could strengthen its internal processes by fostering greater collaboration between member countries. This can be achieved through dialogue and finding common ground on contentious issues. By adopting this approach, it will be better equipped to tackle its challenges and ensure that its decisions effectively impact the lives of Africans across the Continent.

In practice, the Executive Council makes many decisions and plays a strategic role in running the AU. However, the general public poorly understands this role, including researchers and intellectuals. This is because the generality of the areas it covers means that it sometimes intervenes in fields already specifically covered by other Organs. In such a context, its role receives little media coverage, and its action is unknown by the majority. Its role is to make decisions, and other bodies, like the African Union Commission, implement them. The consequence is that they are better known than the Executive Council. Therefore, seeing through the Executive Council's decisions and practical implementation level is challenging. It could give a perception of limited relevance for those with low knowledge of the AU policy organs. Based on the above, and for an effective assessment of the Executive Council's effectivity and performance, it could be considered a systematic monitoring and mainstreaming of its decisions. The decisions could also be tied to the means and resources (human and financial) of operationalisation. The rationale would be to avoid making many decisions that cannot be

⁹⁹ *Ibid*

implemented in the end. It would be better to make a few decisions for which implementation is relatively realistic and not tied to a donor agenda. The effectiveness, the efficiency and the relevance of the mandate of the Executive Council would no longer be called into question.

VII- CONCLUSION

The African Union has made significant progress since its establishment in 2002, but there is still much work to be done if it is going to reach its full potential. The Executive Council is vital in this process, providing leadership and direction for the continent's future development. During the two decades since its establishment, the Executive Council has played a vital role within the AU decision-making bodies. The 1222 Decisions, Declarations, and Roadmap adopted from 2002 to 2023 are not only part of the legal legacy of the Union but also respond to the demands and needs of African States and the continent as a whole.

However, one of the criticisms against the AU Decision-making Organs is the low implementation rate of these decisions, a fact recognized by the whole institution, including the Executive Council. For several years, efforts have been made to reduce the number of decisions considerably and to find appropriate means to increase the rate of implementation of decisions. A decision on the monitoring, evaluation, and reporting of the implementation of decisions of the AU Policy Organs was adopted to demonstrate the will of the AU Organs to curb this trend.¹⁰⁰

Despite the challenges, the Executive Council has also strengths to build on. Its members are designated from among each country's leaders, allowing them to bring their expertise and knowledge to bear on decisions made by the Council. However, when it comes to the practice there is one particular challenge that needs to

be highlighted in this regard. Given the broad representation that is adopted under the Rules of Procedure of the Council, some member states designate their Permanent Representatives to attend the Council's session, which results in the same debates that occurred at the PRC level being extended to the Executive Council.

The Executive Council can also draw on resources from across the Continent to develop plans and strategies for tackling challenges faced by the Continent. This helps ensure solutions are tailored to local needs and conditions rather than relying on a one-size-fits-all approach. Furthermore, the Executive Council can act quickly when necessary due to its streamlined decision-making process. This means that important decisions can be taken without delay, allowing for swift action in times of crisis or emergency.

In most cases, the Executive Council was able to respond to challenges and opportunities as they arose while ensuring that the interests of all AU Member States were considered. Meeting, discussing, and taking decisions on issues concerning the continent and the Union is the first stage to give a response. The decisions create a framework for the solutions to be provided. Consequently, it is worth stating that the 1222 Decisions, Declarations and Roadmap adopted to date are part of the legacy of the Union and represent, together with the abundant reports that underpin them, the intellectual production of the Executive Council. It has set up several Ministerial and Ad hoc Committees to consider reports submitted by the PRC, the STCs, the AUC and AU Organs as applicable and take decisions.

Looking ahead, it is likely that the Executive Council will continue to take steps towards greater transparency and accountability. This could include measures such as increasing public access to information about their decision-making processes or expanding opportunities for citizens from across Africa to engage with them directly. Additionally, they may explore ways to further integrate technology into their work, such as using digital tools to monitor policy implementation progress or creating more interactive platforms for dialogue

¹⁰⁰ African Union, 'Decision on Monitoring, Evaluation and Reporting on the Implementation of the Decision of the Policy', Organs-EX.CL/Dec.1171 (XLI), (July 2022). Available at: https://au.int/sites/default/files/decisions/42197-EX.CL_DEC.1168_-_1188_XLI_E.pdf

between citizens and government representatives.

Ultimately, the future success of the African Union depends on its ability to remain relevant and responsive in an ever-changing global landscape. By continuing to build upon its existing strengths while exploring new growth opportunities, there is no doubt that the Executive Council will remain an essential part of this effort in the future.

The discussion on the decision-making structures, actors and processes of the Executive Council provides useful insight for understanding both how the Council works and its pivotal place in AU's not only legislative and executive decision-making but also the judicial/quasi-judicial decision-making. Indeed, although the judicial/quasi-judicial bodies are responsible for the adoption of judicial decisions, the enforcement of their decision resides with the Executive Council. The foregoing analysis thus offers an understanding not only of the decision-making dynamics and processes of the Executive Council in AU policy making architecture but also the 'where and how' of engaging and influencing the decisions of this key policy making body of the AU.

Apart from the structures, dynamics and mechanisms of decision-making, this report also presented the various areas of decision-making of the Executive Council with rich data on its engagement and decisions in these various areas. Various stakeholders with interest in the decision-making of the AU in general and the Executive Council in particular can draw on the foregoing analysis for planning their engagement with respect to the Council's decision-making processes.



MEDIA AND RESEARCH SERVICES

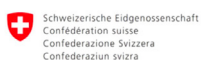
ABOUT AMANI AFRICA

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

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

ACKNOWLEDGEMENTS

Amani Africa wishes to express its gratitude to the Open Society Foundations for the support in the production of this Special Research Report. We also thank the Embassy of Ireland, the Government of Switzerland and Norwegian Ministry of Foreign Affairs for the additional support.



ADDRESS

On the Corner of Equatorial Guinea St. and ECA Road, Zequala Complex,
7th Floor, Addis Ababa
Tel: +251118678809
Mobile: +251944723204 Addis Ababa, Ethiopia