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**ASSEMBLY OF THE UNION**

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**PROGRESS REPORT ON THE IMPLEMENTATION OF DECISION  
Assembly/AU/Dec.635 (XXVIII) ON THE AFRICAN UNION (AU)  
INSTITUTIONAL REFORM**

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INSTITUTIONAL REFORM**

**I. BACKGROUND**

1. This report provides an overview of progress made in the implementation of Assembly Decision Assembly/AU/Dec.635(XXVIII) and a summary of the reform implementation proposals to be discussed during the January 2018 AU Assembly of Heads of State and Government.

2. The January 2017 AU Assembly Decision, Assembly/AU/Dec.635(XXVIII), on *the Institutional Reform of the African Union (AU)* sets out a comprehensive AU reform agenda. It is aimed at fundamentally re-positioning the organization to meet the evolving needs of its Member States and the continent and identifies the following core reform priorities:

- Focus on key priorities with continental scope;
- Realign African Union institutions in order to deliver against those priorities;
- Connect the African Union to its citizens;
- Manage the business of the African Union efficiently and effectively at both the political and operational levels;
- Finance the African Union sustainably and with the full ownership of the Member States.

3. The Assembly Decision on reform provides a framework for the transformation of the African Union into an effective and efficient organisation that delivers for African citizens. Based on this framework detailed implementation proposals are being developed.

4. The reform decision took into account previous reform proposals, most notably the 2007 Adedeji Audit, which made extensive and far-reaching recommendations on how to improve the overall effectiveness of the Union. Unfortunately, most of these were never implemented.

**II. MANDATE, IMPLEMENTATION APPROACH AND PRINCIPLES**

5. Based on the previous implementation challenges, and the strategic importance of the reform agenda, the AU Assembly took the decision to oversee the reform process. The reform decision designated President Paul Kagame to supervise the implementation process. It was also determined that he would work with two other Heads of State, the 2016 Chair of the Union, President Idriss Deby, and the 2017 Chair of the Union, President Alpha Conde.

6. The Assembly also requested President Kagame to report on progress made in implementing Decision Assembly/AU/Dec.635(XXVIII) at each Ordinary Session of the Assembly.

*Supervising Heads of State*

7. The Supervising Heads of State have met several times and taken forward consultations with various Member States.

*Establishment of the Reform Implementation Unit*

8. The AU Assembly also directed the AU Commission to put in place a Reform Implementation Unit within the Bureau of the Chairperson.

9. Under the supervision of the Chairperson of the AU Commission, and in close collaboration with the Deputy Chairperson, the Reform Implementation Unit is tasked with coordinating the implementation of the AU Institutional Reform Decision. The Head, Professor Pierre Moukoko Mbonjo, former Minister of External Relations of the Republic of Cameroon, and Deputy Head of the Reform Implementation Unit. Ms Ciru Mwaura, from the Republic of Kenya, took office in October 2017 and have been working closely with AU departments and directorates on the development of the reform implementation proposals that will be put to the Assembly in January 2018.

10. The recruitment of the administrative support staff is underway. The recruitment of professional staff will take place in January 2018.

*Implementation principles*

11. The reform implementation process is based on the following principles:

- Implementation of Decision Assembly/AU/Dec.635(XXVIII) within the framework of the Constitutive Act;
- Assembly-led supervision of the reform implementation process
- Timely delivery according to the timelines adopted by the July 2017 Assembly;
- Build on existing processes to drive delivery;
- Proposals developed with key stakeholders to ensure ownership.

**III. REFORM IMPLEMENTATION PROPOSALS TO BE CONSIDERED BY THE JANUARY 2018 AU ASSEMBLY OF HEADS OF STATE & GOVERNMENT**

12. In line with the July 2017 AU Assembly Decision 635, there are 8 Reform Implementation Proposals to be discussed during the January 2018 Summit. These are as follows:

- a) Henceforth the Ordinary Summit will be in January, with an AU-REC Coordination Meeting in June/July;
- b) Troika of AU Chairpersons established through election of both new Chairperson and 2019 incoming Chairperson;
- c) Framework for Partnership Summits reviewed;

- d) Proposal for a mechanism to ensure legally binding decisions are implemented ready for debate and adoption;
- e) Proposal for strengthened sanctions mechanism ready for debate and adoption (see Section V);
- f) Proposals for women and youth quotas and private sector participation ready for debate and adoption;
- g) Audit of bureaucratic bottlenecks and inefficiencies complete;
- h) Initial proposals for review of key organs, for AUC/REC/RM division of labor, and for continent-wide public goods and services, ready for discussion.

13. An additional 5 Reform Implementation Proposals focused on financing the Union have been included. These are as follows:

- a) A decision on the formal expansion of the Committee of Ten Finance Ministers to a Committee of 15 (F15).
- b) A decision on the F10+ budget oversight role and the adoption of a set of 'golden rules', establishing clear financial management and accountability principles;
- c) A decision on the use of any surplus funds from the 0.2% AU levy on eligible imports, in line with the August 2017 Ministers of Finance recommendations; and
- d) The adoption of the Peace Fund Instrument as part of the implementation of the Kigali Financing Decision.

#### **IV. REFORM IMPLEMENTATION PROPOSALS**

14. This section summarizes the key implementation issues, and where relevant, the options to be considered and decisions to be taken for each draft implementation proposal. The draft decisions can be found in Annex 1.

##### **Priority 1: FOCUS ON KEY PRIORITIES WITH CONTINENTAL SCOPE**

15. The Assembly requested initial proposals on the issue of division of labour:

*Priority 1.1: There should be a clear division of labor and effective collaboration between the African Union, the Regional Economic Communities (RECs), the Regional Mechanisms (RMs), the Member States, and other continental institutions, in line with the principle of subsidiarity*

16. In this regard, the Chairperson of the Commission has held two meetings with the Chief Executives of the Regional Economic Communities (RECs). The Reform Implementation Unit also held one working session with the Liaison Officers to the African Union.

17. Detailed proposals on division of labour will be developed during the course of 2018, but in the interim the following four observations can be made:

- a) The issue of division of labour between the AU, RECs and RMs has been the subject of numerous studies and debates over several decades;
- b) There is broad agreement that the number of RECs and RMs should be reduced, rationalized and harmonized
- c) There is consensus that the current situation of overlapping mandates, duplication and wasted resources and dispersed impact at the level of the AU, RECs and RMs is a matter of deep concern and needs to be resolved;
- d) There is consensus that the principle of subsidiarity and the Abuja Treaty should provide the basis for developing any framework for an effective division of labour.

18. There is further consensus that the AU should:

- a) Provide overall strategic leadership to the RECs and other continental institutions;
- b) Take the lead in co-ordinating the development of overall continental policies and priorities;
- c) Develop continental norms and standards;
- d) Lead on the follow up, monitoring and overall reporting of the implementation of agreed continental priorities; and
- e) Be responsible for co-ordinating the development of Common African Positions and their articulation.

19. Despite the high levels of consensus on the above issues, forging an effective division of labour has proven extremely difficult. This has led us to consider the following key question:

*What are the barriers to establishing and maintaining an effective division of labour?*

20. The absence of a system of joint planning, joint financing and joint engagement with Member States and partners at the level of the AU, RECs and RMs means that there is no practical means of enforcing any agreement on division of labour. The fact that the AU, RECs and RMs plan separately, budget separately and mobilise resources separately accounts for the high levels of overlap, duplication and wastage.

21. Given the above, some have argued that the only effective way to enforce compliance with any agreed division of labour is to agree on the following:

- a) The development of a Continental Medium Term Plan, aligning AU-REC priorities;
- b) The development of a Continental Financing Plan for the Medium Term

- Plan (including budget lines for the AU, RECs, RMs and other continental institutions);
- c) Joint Engagement with Member States and Partners;
  - d) Monitoring and reporting to be provided by the AUC at the Annual AU/REC/RM Co-ordination Meeting. Each REC/RM will also provide regular progress reports to inform the preparation of the consolidated AU-REC-RM Report.
  - e) A robust co-ordination mechanism to support the delivery of the above. In this regard, the decision to have a June/July Co-ordination Meeting dedicated to AU-REC Co-ordination issues will go a long way in improving overall co-ordination.

22. In the next phase we will engage with the RECs, and other stakeholders to explore the feasibility of these and other ideas with a view to developing proposals that address the practical barriers to establishing an effective division of labour.

### **Priority 2: REALIGN AFRICAN UNION INSTITUTIONS IN ORDER TO DELIVER AGAINST THOSE PRIORITIES**

23. The Assembly requested initial proposals for the review of key Organs and institutions.

- 2.1: *NEPAD should be fully integrated into the Commission as the African Union's development agency, aligned with the agreed priorities and underpinned by an enhanced results-monitoring framework;*
- 2.2: *The African Peer Review Mechanism (APRM) should be strengthened to track implementation and oversee monitoring and evaluation in key governance areas of the continent;*
- 2.3: *The roles and functions of the African Union judicial organs and the Pan-African Parliament should be reviewed and clarified, and their progress to date assessed;*
- 2.4: *The Peace and Security Council (PSC) should be reformed to ensure that it meets the ambition foreseen in its Protocol, by strengthening its working methods and its role in conflict prevention and crisis management;*

24. During this reporting period, initial findings have been developed with respect to NEPAD and its governance structure. An initial meeting was held with the Peace and Security Council. The PSC is already in the process of reviewing its working methods with a view to increasing its efficiency, effectiveness and impact in line with its mandate.

25. Initial findings with respect to the APRM, judicial organs, PAP and the PSC will be developed over the next three months.

**2.1: NEPAD should be fully integrated into the Commission as the African Union's development agency, aligned with the agreed priorities and underpinned by an enhanced results-monitoring framework**

26. Assembly/AU/Dec.635(XXVIII) calls for the transformation of NEPAD into the African Union Development Agency. An AU Commission and NEPAD Technical Working Group was constituted to develop options for the programmatic priorities, legal modalities, financing and governance models.

27. The following key design principles informed the process:

- Results, value for money and accountability
- Flexible and responsive delivery
- Co-ordination with RECs and other continental institutions
- Sustainable financing

28. A more detailed document outlining the Working Group's recommendations is available. This section focuses on the governance model.

### **The Governance Model**

29. There are variances in the wording of the English and French version of Decision 635. One version refers to the integration of NEPAD into the African Union Commission. The other version refers to the integration of NEPAD into the AU structures and processes.

30. The two versions have different governance implications. We have developed options for consideration based on both versions.

### **The Status Quo**

31. The NEPAD Heads of State & Government (HOSG) Orientation Committee reports annually to the Assembly on progress.

- Five founding Members with permanent seats
- 15 Members who rotate every 2 years
- Steering Committee made up of Personal Representatives of the HOSG. Also meets at Ministerial and Experts level and includes RECs, AfDB, United Nations Development Programme (UNDP), UN Office of the Special Adviser for Africa (UNOSA) and UN Economic Commission for Africa (UNECA)

### *Reporting Arrangements*

32. There are two parallel reporting processes:

- NEPAD reports to the Steering Committee which reports to the HOSG Orientation Committee which then reports to the Assembly;
- The AU Commission also reports to the Executive Council which reports to the Assembly.

## **Integration into AU structures and processes**

33. This implies that the governance structure should be integrated into the African Union's overall structure and operate under the overall strategic guidance and authority of the Assembly. The governance models proposed will operate at two levels: Heads of State & Government and Ministers. The day to day management of the Agency is the responsibility of the executive management structures. The executive management arrangements are not presented here.

34. Four options are proposed, **in order of preference**, as follows:

### **Option 1: A Reduced Heads of State & Government Governing Council with REC participation**

35. The AU Assembly provides overall strategic direction and delegates oversight to:

#### **A. Governing Council**

- It is made up of 18 (2 Heads of State & Government from each region representing the AU and 8 REC Chairs)
- It reports to the Assembly annually on progress.
- The principle of rotation applies to all Member States as follows:
  - All Member States to serve for 2 years
  - 5 Founding Members to have a two-year transition period.
- Transitional Arrangements for Founding Members:
  - To ensure continuity and in order to capitalize on institutional memory, it is recommended that the five founding members of NEPAD serve on the Governing Council for the first two years. During this transitional period the Governing Council will be comprised of 23 Members. At the end of the two year transitional period, the Council will revert to 18 Members.

#### **B. Ministerial Steering Committee**

- The Ministerial Committee reports to the Governing Council;
- It is made up of 18 (2 Ministers from each AU Region and 8 including REC Executive Heads);
- It is chaired by the AUC Chairperson.

### **Option 2: Hybrid Board (Heads of State & Government, RECs and High-level professionals, civil society and private sector personalities)**

36. The AU Assembly provides overall strategic direction and delegates oversight to a Governing Council.

**A. Governing Council**

- It is made up of 18 Members (1 Heads of State & Government from each region representing the AU, 8 REC Chairs 1 High-level professional or private sector personality from each region)
- It reports to the Assembly annually on progress.
- The principle of rotation of applied to all Members as follows:
  - REC Chairs to serve in line with their REC Chair term limits
  - All other Members to serve for 2 years

**B. Ministerial Steering Committee**

- The Ministerial Committee reports to the Governing Council
- It is made up of 18 (1 Minister from each AU Region, 8 REC Executive Heads. 1 High-level professional or private sector personality from each AU Region)
- It is chaired by the AUC Chairperson

Pros: Retains Member State political involvement while harnessing professional skills at the Governing Council.

**Option 3: An Expanded Heads of State & Government Governing Council with Permanent Members and REC participation.**

37. The AU Assembly provides overall strategic direction and delegates monitoring and oversight to a Governing Council.

**A. Governing Council**

- It has 28 Members (5 Founding Members, 3 Member States from each region representing the AU and 8 REC Chairs);
- It reports annually to the Assembly on progress.
- Five founding Members retain permanent membership on the Governing Council;
- The principle of rotation applied to all other Members of the Governing Council as follows:
  - 15 Members to serve for 2 years

**B. Ministerial Steering Committee**

- The Ministerial Committee reports to the Governing Council
- It is made up of 28 (3 Ministers from each AU Region, 5 Ministers from Founding Member States, and 8 REC Executive Heads.
- It is chaired by the AUC Chairperson.

Cons: Large size and heavy layers (Heads of State Governing Council and a Ministerial Steering Committee) could lead to slow lead to overly bureaucratic decision-making process

**Integration into the AU Commission**

- A. This implies a governance structure that operates under the overall strategic guidance of the Assembly but under the authority of the Chairperson of the Commission of the African Union. Two options are proposed, **in order of preference**, as follows:

**Option 1: A Board Governors made up of RECs and high-level professionals and private sector personalities**

- No Heads of State & Government Governing Council or Ministerial Steering Committee;
- A **13 Member** Board of Governors made up of high-level professional and private sector personalities and RECs (5 Members representing each of the AU regions and 8 REC Executive Heads);
- Board Members to serve for 4 years (i.e., the same as the duration of the mandate of the AU Commission);
- An Executive Committee responsible for operational delivery and oversight, chaired by the AUC Chairperson.

Pros: Lean technocratic oversight structure that can provide in-depth programmatic and fiduciary oversight. REC participation

Cons: No Member State representation.

**Option 2: Hybrid Board (Ministers and RECs)**

- B. The AU Assembly provides overall strategic direction and delegates oversight to a **13 Member Board of Governors** which reports to the Assembly annually on progress.
- A **13 Member** Board of Governors (1 Minister from each of the five regions and 8 REC Executives
  - Board Members to serve for 4 years (i.e., the same as the duration of the mandate of the AU Commission);
  - Executive Committee responsible for operational delivery and oversight, chaired by the AUC Chairperson

Pros: Retains Member State political involvement while harnessing professional skills at the Governing Council ensures REC participation

Cons: Does not benefit from the skills and expertise that professional or private sector personalities could provide.

**Priority 3: CONNECT THE AFRICAN UNION TO ITS CITIZENS**

38. The Assembly requested proposals on the following four issues: **women's and youth quotas, strengthening private sector participation and continent-wide public goods and services**:

Priority 3.1: The Commission should establish women... quotas across its institutions".

## Background

39. Despite significant progress the AU Commission was not able to deliver on its target to ensure gender parity in all functional positions within the AU Commission by 2015. It is proposed that a new date of 2025 is set for meeting the same target.

40. The promotion of gender equality is one of the principles that guide the African Union. It is enshrined in Article 4L of the Constitutive Act and lays the foundation for the implementation of policies and actions that further gender parity in employment and equal opportunity in organizational processes.

41. Employment is governed by two important policy documents: the Modalities of Elections and the Staff Regulations and Rules (SRR). While the former clearly upholds gender parity as a precondition to the election of officials, the SRR is silent on this constitutional provision. The SRR doesn't provide for a quota for women and at most makes reference to being an equal opportunity employer. To date the promotion of gender parity has been at the discretion of, or the result of the use of the executive powers of the leadership, implementation has, therefore, not been systematic.

42. The AU SRR guides all management actions regarding the entire spectrum of staffing decisions from recruitment to separation. It is therefore the bedrock for concretizing the organizational commitment to gender equality and creating the enabling conditions for a gender responsive workplace.

43. Engendering the AU SRR is therefore the pathway *to making quotas stick*. The current version was adopted in July 2010 and was a vanguard in ensuring that recruitment practices and conditions of employment would be gender inclusive. It has been undergoing review and this process provides a unique opportunity to upgrade the policy to address current and future expectations for gender equality the AU.

44. As has been seen since 2012, the implementation of the parity principle in the recruitment of functional posts does not imply any additional financial costs or administrative transactions beyond those required to ensure geographic balance in employment or diversify the skills base.

## Existing decisions and text which provide for gender equality at the African Union

- **Article 4 of the African Union Constitutive Act:** the Promotion of Gender Equality (article 4L).
- **Modalities of the elections of the AU elected officials** which stipulate an equal representation of men and women in all such positions.
- **Article 9 of the Maputo Protocol:** *States will ensure an equal representation and participation of women in all decision-making structures.*
- **Provision 5 of the Solemn Declaration on Gender Equality in Africa:** *Expand and promote the gender parity principle that we have adopted regarding the Commission of the African Union to all the other organs of the African Union, including its NEPAD programme, to the Regional Economic*

*Communities, and to the national and local levels in collaboration with political parties and the National parliaments in our countries.*

- **Commitment 1 of the AU Gender Policy:** *Enforce AU 50/50 Gender Parity and representation in all structures, operational policies and practices, ensure gender parity targets are met and gender perspectives incorporated within strategic thinking-vision and mission of the AU. Achieve full parity by 2015.*
- **AU Staff Regulations and Rules:** *Regulations 6.4 (a,b,d- criteria for recruitment) and Rules 27.5 (condition of employment) & 28 (1&2- recruitment) and 54 (f) (Composition of Joint Advisory Committees on Administrative Committees), Rule 20.5 (housing allowance), 22.1 & 22.5 (spousal allowance), 29.1 (status following marriage with a staff member), 39.2 & 39.3 (eligibility for leave travel), 40.2 (compassionate leave), 41.4 (paternity leave), 49.2 (travel for eligible dependents), rule 50.2 (travel expenses in case of death).*
- **Articles 2 (11), 3 (6), 8 (1), 21 (2) and 29 (3) of the African Charter on Democracy, Elections and Governance:** *Promotes gender equality, gender parity as well as the full and active participation of women in governance and development processes and in private and public institutions.*

45. The following actions may be considered to *make quotas work*:

- a) **Establish a 50/50 parity target to be achieved by 2025 and design a gender parity policy to guide its implementation.** The AU 2009 Gender Policy set a target date of 2015 to achieve parity.
- b) **Upgrade the Staff Rules and Regulations** through identifying and addressing key and impactful policy gaps that limit the AU's ability to recruit and retain women. This can be done in phased manner that takes into account the realities and constraints related to the Host Country Agreement and budget opportunities.
- c) **Formulate Standard Operating Procedures** to define a clear pathway for upward mobility for women across organizational functional areas.
- d) **Implement women and talent development programme** to build capacity and gradually foster an organizational culture which is appreciative of diversity not only of culture and language but provides an equal playing field for women and breaks through sexism.
- e) **Develop an actionable strategy** to identify and recruit women, especially in middle management and specialized technical fields. This strategy should build on best practices in similar organizations, the AU's willingness to innovate based on the AU's unique realities and supported by a clear monitoring, reporting and succession plan. For example spousal employment, updating job descriptions, recruitment fairs, allowances and flexibility in working conditions are immediate wins to consider.

- f) **Strengthen the section on staffing in the annual Chairperson Report** to include a more systematic analysis of actions underway and barriers to be removed.
- g) **Quotas need to apply to Ambassadorial, Advisory, Representational and joint AU-UN representational positions** as they also play an important role in defining the organizational culture, policies and priorities. Political appointments are the prerogative of the Chairperson and therefore offer greater flexibility in the recruitment of women candidates.
- h) While such positions are at the discretion of the Chairperson, appointments and nominations should follow an open search policy to expand the pool of female **candidates** thus increasing overall chances for women to be selected.
- i) **Transformational change towards quotas.** The AU's blazed the trail by **mandating** a 50/50 parity in all elected positions. There is still some distance to go and consideration may be given to introducing "**zebra quotas**" particularly at senior leadership levels. This means that, instead of counting parity in the overall numbers, it would be applied either rotationally to positions or sequentially.

## Recommendations

- a) The Commission will ensure that gender parity or the equal representation of women and men in all functional positions (regular, short term and fixed term) and at all levels of that hierarchy at the African Union Commission (Commission and Organs) will be achieved by 2025
- b) The Commission will develop proposals for the amendment of Staff Regulations and Rules to embed a commitment to the equal representation of women and men in all functional positions and a policy to operationalize its implementation by 2025
- c) The Commission will ensure that parity is maintained at Director and Heads of Division.
- d) Annually, progress in achieving the parity target will be presented in the Chairperson's report and will include measures to address challenges
  - The Assembly adopts the draft Decision, included in Annex 1, to: Set a new gender parity target date; ensure these recommendations become a policy upon which the Staff Regulations and Rules are amended to concretize the targets, timelines and actions required to further women's equal access to employment and create a gender sensitive work environment, and provide for regular monitoring and reporting.

Priority 3.2: The Commission should establish youth... quotas across its institutions”.

## Background

46. Despite some reported increases youth representation at the AUC remains low. This is evidenced by the fact that **less than 15% of staff within the commission are currently under the age of 35 and only 7% of staff in the professional categories are under 35 years**. Unlike the case of women, **there are no specific youth representation targets in place**.

47. Existing decisions and text which provide for youth representation at the African Union

- Article 11 of the African Youth Charter emphasises unguaranteed participation of young people in all spheres of society, and further mandates the institution of policies and programmes of youth volunteerism at all levels as an important form of youth participation and as a means of peer-to-peer training.
- AU Assembly Decision, 2011 - Assembly/AU/Dec.363 (XVII) - on "Accelerating Youth Empowerment for Sustainable Development in Africa" mandates the Commission to work to improve structures that ensure ***the Commission is able to effectively address challenges of Africa's young people***.
- AU Assembly Decision (Assembly/AU/Dec.601 (XXVI) of January 2016 on the theme of the year 2017 ***“Harnessing the Demographic Dividend through investments in Youth”*** as well as the roadmap for implementation of the 2017 theme of the year.
- African Youth Decade Plan of Action calls for a continental youth mainstreaming agenda within development targets and programs on promoting youth empowerment.
- The AUC Youth Mainstreaming Guideline – is an AUC system-wide guideline to ensure a coordinated approach to guide AUC departments on mainstreaming youth at the level of people, policy, programmes and institutions.

## Institutional Context

48. There have been deliberate measures to increase youth representation at the AUC, which have had minimal impact due to the absence of a dedicated planning and follow-up mechanism.

49. The AUC Human Resource and Youth Development Division is the main force driving forward the youth empowerment agenda for the continent. Established in 2004 in order to bring attention and resources to the unmet need for strategic investment in youth, the Division was conceived as a crosscutting office driving youth development and empowerment within the AUC.

50. The Youth Division is responsible for coordinating the implementation of the African Youth Charter, a continental policy document that supports policies, programs and actions for youth development in Africa. African Heads of State endorsed the Youth charter in 2006 and in 2008 a programme of action; the Youth Decade Plan of Action (2009-2018) was developed and further endorsed by the African Heads of State.

51. It is estimated that over 65% of the African population are below the ages of 35; making it more imperative for continental focus to shift towards identifying and implementing concrete actions to harness this youth potential. Cognizant of this need, the AUC Youth Division has begun to amplify its youth engagement strategies through direct approaches. As a result, the Africa Union Youth Volunteer Corps (AUYVC) 2017 call for applications turned in more than 37,000 young professionals applying to join the program, a 500% increase from the previous years. The exponentially leap in numbers from year to year is evidence that more African Youth are demonstrating their eagerness to contribute to realising the 'Africa We Want' as called for by Agenda 2063.

#### *Key institutional challenges*

52. Responses to youth development in the Commission are often tokenistic and activity-based, rather than results-based. This calls for a more holistic approach to ensuring youth contribution beyond sporadic participation, which requires a structural shift in order to optimize Youth mainstreaming.

53. There is insufficient coordination across offices, departments and mandates with a considerable amount of resources wasted due to poor linkages within the Commission. Similarly, there is no systemic coordination and follow up on Commission-wide response on youth development. This highlights the dire necessity for bolstering of coordination mechanisms.

54. The mandate and structure of the Human Resources and Youth Division, should be enhanced in order to strengthen the co-ordination of a system-wide continental response on youth. The current disposition entails that the Division's mandate is confined to HRST mandate, consequently restricting the reach to the other essential cross-cutting areas. This matter was highlighted in the Adedeji Report.

#### **Implementation Proposals**

55. In order to leverage existing structures and ongoing work, and; recognizing the three key Youth Development reform areas (youth quotas, African Youth Corps and exchanges), the following actions are proposed:

- a) **AU Staff Rules and Regulation:** The AU Staff Rules and Regulation and human resources processes need to be reviewed to address the challenges in recruiting younger staff. The AU should endeavour to achieve a 35% youth quota target by 2025. Given that demographic realities of Africa as a youthful continent, the current statistics demonstrate gross underrepresentation in decision-making processes. This also has far-reaching consequences in the long term with the

creation of a deficit of human resources to enable continuity of agendas and demonstrate leadership in the years to come. This will require an amendment to staff regulations through the introduction of structures and mechanisms to guide recruitment and staff retention, which will boost the youth quota.

- b) **Accelerate the implementation of AU Junior Professional Programme:** The proposed Junior Professional Programme will provide a platform to provide young professionals with hands-on experience as well as training necessary for their interest in the work of the AU. Not only will it bring fresh energy and ideas to the AU, it will provide training for future staff members. One of the primary roadblocks to implementing a Junior Professional Programme is budgetary allocation. An estimated \$1.1m per annum will run a 2 year, 15-cohort Junior Professional Programme for the first year and estimated \$1.8m for subsequent years<sup>1</sup>.
- c) **Institutionalization of the AU-YVC Program:** The reform Decision calls for the establishment of an Africa Youth Corps; however the existing African Union Youth Volunteer Corps programme has served as a platform for promoting youth participation, capacity building and empowerment through service and skills exchange both within the Commission and across the continent. It is envisaged that the AUYVC program will serve as an umbrella for continent-wide youth volunteer programs. This is already been piloted with Africa CDC deploying volunteers to serve in Africa CDC Regional Collaborating Centres (RCC) across Africa through the AUYVC. It would be helpful, therefore, should be on institutionalising and financing the AUYVC, as the program is still exclusively financed through partner funds placing constraint on its growth and independence. Concrete steps for consideration include:
- i) The AUYVC program is currently able to deploy 53 volunteers in 2017 with an additional 35 through the Africa CDC program. Increasing the annual deployments to at least 500 volunteers per year will ensure that the impact of the program to African citizens is substantial. This is from a baseline of 23 deployments in 2011.
- ii) Allocation of Member States fund to support at least 100% of the cost of the program. With current structures, it costs approximately \$15,000 to recruit, train and deploy one volunteer with an additional cost of 7% of the total program cost to manage the program. The proposed introduction of national. WHAT IS THE ANNUAL COST OF THE PROGRAMME? \$1.7m for 150.

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<sup>1</sup> This is estimated on total personnel cost of \$4000/month (living costs, health insurance etc.) for young professionals, \$90,000 to maintain the program management unit as well as an estimated \$8000/year available for learning and development needs of each young professional

- d) **Strengthening the AUC to adopt a Commission-wide response to youth:** Strengthening the mandate of the Division responsible for youth development will provide the structure necessary to effectively coordinate youth development within the Commission. It is proposed that the Youth Division becomes a directorate.

*Priority 3.3: The Commission should establish ... and identify appropriate ways and means to ensure the private sector's participation”.*

## **Background**

56. As part of the continental effort to meet the challenges of limited economic and structural transformation, African leaders and other stakeholders now agree on the vital role that the private sector has to play in promoting more inclusive and sustainable growth consistent with the objectives of decent employment creation and poverty reduction.

57. During the last decade, largely due to the reform programs undertaken in countries to improve the regulatory and institutional environment for businesses, private sector contribution to economic development has increased in Africa. The private sector is responsible for 70% of the continent's production, 70% of investment and 90% of employment.

58. Despite this, Africa has not been able to leverage the private sector as an engine for the structural change that is needed to make up for its delay in development, and expand economic opportunities for its youth.

59. This paradoxical situation is a major challenge for the African Union Commission (AUC), which in its 2014-2017 Strategic Plan and its Agenda 2063 identifies the private sector as a catalyst for economic transformation toward inclusive and sustainable growth – the engine for the economic emergence of the continent.

60. Therefore, the expansion of a network of dynamic and competitive enterprises as an engine for creating decent and better paying jobs is one of the goals of the African Union Commission 2016-2020 Private Sector Development Strategy.

### **A. Existing initiatives within the AUC on Private sector engagement**

61. The Department of Economic Affairs organizes an annual Private Sector Forum, in line with the AU Executive Council Decision Number EX/CL/Dec.183 (VI), which institutionalized the organization of annual African Union Private Sector Forum. The objective of the Forum is to bring together African Small and Medium Enterprises (SMEs), policy makers from African Governments, investment promotion agencies, Young Entrepreneurs and Major financing institutions to discuss the challenges that the Private Sector is facing and to make recommendations on the way forward.

62. The African Economic Platform (AEP) was established through Decision EX.CL/Dec. 807 (XXIV) adopted during the 24th Ordinary Session of the Executive Council in January 2014, in Addis Ababa, Ethiopia. The AEP is a new annual platform/space aimed to create an avenue for dialogue between the African Leaders,

Top Ranked African Businessmen/Businesswomen and Academia on African economic transformation Agenda.

63. The African Union Foundation (AUF) was established in May 2013 by the African Union (AU) Assembly Decision Assembly/AU/Dec. 487(XXI). The goals of the AUF include connecting people, ideas and resources for Africa's development; advocating for the AU and supporting its programmes; facilitating the implementation of priority development programmes and strengthening partnerships with the African private sector.

64. Each department within the African Union Commission has its own modalities of engaging/consulting the Private sector. For example, within the Trade and Industry Department, an Afro-Champions initiative, which is co-chaired former President of the Republic of South Africa, Thabo Mbeki, and Aliko Dangote, brings together African Enterprises which hold investments in over 13 African countries and has representatives in each African capital. The department is also working on the revival of the Intra-African Trade Fair. The first Trade Fair will be held in November 2018 in Cairo.

## **B. African Union Commission Positioning**

65. The comparative advantage of the Commission in supporting private sector development in Africa stems from a number of factors, namely:

- a) The AUC is a Pan-African institution, and therefore has access to and is a trusted partner in discussions on sensitive issues related to private sector development on the continent;
- b) The AUC has the legitimacy to act as a mobilizer and partner on issues affecting Africa. This strong mobilizing power is increasingly recognized by African leaders and stakeholders at the global level and therefore makes the AU a preferred partner for many stakeholders;
- c) The AUC has a special mandate from African leaders on economic issues;
- d) The AUC is a partner in a wide range of regional initiatives, such as Programme for Infrastructure Development in Africa (PIDA), Comprehensive Africa Agriculture Development Programme (CAADP), Accelerated Industrial Development for Africa (AIDA) etc.;
- e) The AUC has experience implementing and supporting the implementation of Public-Private Dialogues (PPD) conducive to private sector engagement at the continental level; and it is a credible and independent advisor in many economic agreement negotiations as well as other issues related to the economic development agenda of Africa. This provides numerous avenues for the AU to implement its mandate on supporting inclusive growth and the structural transformation of Africa.

66. All these advantages make the Commission a resource in terms of knowledge generation and dissemination, as well as an ideal platform for peer learning and the identification of best practices to tailor solutions to the specific needs of the continent.

67. That said, the Commission has difficulties when it comes to effectively engaging with the private sector. This is largely due to the absence of a clear vision and strategy on how to engage the African Private Sector and what is expected from the latter.

68. There is a need to streamline the actions of the AUC in the following direction: Consulting the African Private sector in the design of the major continental programs, providing the necessary platforms for Private-Private and Public-Private Dialogues (Private sector Forum, Network of African Regional Business Councils and AEP), and contributing to the harmonization of business regulations and legislation at regional and continental level within a stable and predictable business and investment environment framework

### **C. Key Recommendations**

69. The following may be considered as preliminary recommendations:

- a) Strengthening the existing network of African Regional Business Councils. This could provide the building block to an African Business Council, taking into account the existing Pan African Chamber of Commerce Trade and Industry headquartered in Addis Ababa, Ethiopia. Such a body could be considered as the African Union Commission's consultative body on engagement with private sector
- b) Restructure the African Economic Platform (AEP) to enable it deliver on its mandate and to be the Major African Platform for high level engagement between African Heads of State and Government and top African private sector personalities and academia. A clear division of labour between the involved actors in organizing the AEP should be established.
- c) More financial resources should be provided to strengthen the African Union Private Sector Forum.
- d) Request the Commission to develop a comprehensive database of African Private Sector by region, country, sector and size. The database should also include business associations, chambers of Commerce, Employers' Associations, etc.
- e) The AUC should focus more on the technical aspects of organizing the events related to private sector engagement and outsource the logistics and practical issues to specialized event organizers, and
- f) AUC should focus on facilitating Public-Private Dialogues at regional and continental levels through strengthening the existing frameworks (Regional Business Councils) within the RECs.

Priority 3.4: Initial proposals for continent wide public goods and services.

70. Before developing new proposals for continental public goods and services, an inventory of existing continental public goods and services is currently being compiled. The inventory will be ready within two months and will inform the development of new proposals and also serve as important material for public information and communication to sensitise African citizens on what the African Union is already doing.

#### **Priority 4: MANAGING THE BUSINESS OF THE AFRICAN UNION EFFICIENTLY AT THE POLITICAL & OPERATIONAL LEVELS**

##### **Priority 4A: On the political management of the Union's business**

71. Four proposals were requested within this priority area:

Priority 4A.1: The AU Assembly shall hold one Ordinary Summit per year, and shall hold extraordinary sessions as the need arises;

Priority 4A.2: In place of the June/July Summit, the Bureau of the African Union (AU) Assembly shall hold a **coordination meeting with the Regional Economic Communities with the participation of the Chairpersons of the Regional Economic Communities, the AU Commission and Regional Mechanisms.** Ahead of this meeting, the AU Commission shall play a more active coordination and harmonization role with the Regional Economic Communities, **in line with the Treaty establishing of the African Economic Community (the Abuja Treaty);**

Priority 4A.3: Partnership Summits convened by external parties shall be reviewed with a view to providing an effective framework for African Union partnerships. Africa will be represented by the Troika, namely the current, incoming and outgoing Chairpersons of the African Union, the Chairperson of the AU Commission, and the Chairpersons of the Regional Economic Communities as well as the Chairperson of NEPAD;

Priority 4A.4: To ensure continuity and effective implementation of Assembly decisions, a troika arrangement between the outgoing, current, and incoming African Union Chairpersons shall be established. **In this regard, the incoming chairperson shall be selected one year in advance;** and

Priority 4A.1: The AU Assembly shall hold one Ordinary Summit per year, and shall hold extraordinary sessions as the need arises;

#### **Summary of Implementation Issues:**

72. There are three key implementation issues:

- a) The Assembly adopts the budget during the June/July Summit. To ensure the smooth functioning of the budget cycle, the timing of the budget adoption should be maintained. This can be achieved through a delegation of the Assembly's budget adoption powers (Article 9.2 of the Constitutive Act) to the Executive Council. The Executive Council, in line

with Article 10(2) of the Constitutive Act, shall meet at least twice a year in Ordinary Session. Following such a delegation, a new budget adoption process would be required. Options are provided below.

- b) A formula for the rotation of the January Summit and June/July Co-ordination Meeting venues will need to be agreed upon. Options are provided below.
- c) The Assembly took a decision to hold a fully Ordinary Summit in July 2018 in Mauritania. The Assembly will need to decide on the date that the move to one Ordinary Summit take effect.

### ***Options for the Budget Adoption process***

73. Following a delegation of budget adoption powers and functions from the Assembly to the Executive Council. The Executive Council will adopt the budget of the Union in a budget session during the June/July period.

74. Two options are proposed in order of preference. Both are based on Article 10(1) of the Constitutive Act, which states that the Executive Council shall be composed of Ministers of Foreign Affairs or such Ministers or authorities as are designated by the Governments of Member States.

- Option 1: Executive Council in a budget session, composed of **both Ministers of Foreign Affairs and Minister of Finance**, and adopts the budget of the Union (recommended option)
- Option 2: Executive Council in a budget session composed of **Ministers of Finance only** adopts the budget of the Union. Ministers of Foreign Affairs would handle all other relevant agenda items of the Executive Council session.

### ***Options for the Rotation of Meeting Venues in order of preference:***

#### Ordinary Summit:

- Option 1: Rotate the venue every other year. Under this option, the Summit is hosted at the AU Headquarters once every two years.
- Option 2: Assembly takes a decision on the venue at each Ordinary Summit (as per old OAU practice);
- Option 3: Ordinary Summit held at the AU headquarters every year;

#### June/July Co-ordination Meeting:

- Option 1: Co-ordination Meeting alternates between the AUC Headquarters and a REC Headquarters;

- Option 2: Co-ordination Meeting rotates across Regional Economic Community Headquarters and the AUC Headquarters every year;
- Option 3: Bureau of the Assembly and the REC Chairpersons take a decision on the venue at the end of each Co-ordination Meeting.
- Option 4: Co-ordination Meeting held at the AUC Headquarters every year.

## Recommendations

75. There are five main recommendations:

- a) In line with the Assembly Decision 635 to focus the AU Assembly's agenda on strategic issues, it is proposed that the Assembly's budget adoption powers are delegated to the Executive Council which would meet during the June/July period each year;
- b) In line with Article 10(2) of the Constitutive Act, it is proposed that a second Executive Council meeting takes place during the June/July period. One of the main agenda items for the Council would be the adoption of the budget;
- c) In line with Article 10(1) of the Constitutive Act, and Rule 3 of the Executive Council's Rules of Procedure, it is proposed that for the purpose of the budget session, the Executive Council is composed of both Ministers of Foreign Affairs and Ministers of Finance.
- d) The Summit is hosted at the AU Headquarters once every two years;
- e) Co-ordination Meeting alternates between the AUC Headquarters and a REC Headquarters;

### *Priority 4A.2: June/July Co-ordination Meeting Proposal*

## Scope and function

76. Given the explicit reference to the Abuja Treaty and the establishment of the African Economic Community, it is assumed that the primary objective of this meeting is to (a) improve co-ordination around the implementation of the continental integration agenda, (b) make progress on overall division of labour, (c) identify integration related decisions for the January Summit and (d) assess progress on various partnerships.

## Participation

77. The following participation is proposed:

- Bureau of the African Union Assembly (preparatory meetings to be undertaken by the Bureaus of the PRC and the Executive Council);
- Chairperson of the African Union Commission;
- Members of the Commission;

- Chairpersons of Regional Economic Communities;
- Executives of the Regional Economic Communities;
- The participation of the Executive Heads of the African Development Bank and United Nations Economic Commission for Africa should also be considered.

### **Mandate**

- Preparation of integration related decisions for January Summit.
- Preparation and adoption of integration related decisions to be submitted to the January Summit for ratification.

### **Standing Agenda**

78. Four standing agenda items are proposed:

- a) Follow up on the implementation of AU Assembly Decisions at the regional level;
- b) Annual Report on the Status of Economic Integration (baseline and monitoring);
- c) Rationalisation of RECs; and
- d) Annual thematic focus (e.g. assessment of progress on key infrastructure projects with a continental integration objective).

### **Preparation and Sequence of Meetings**

- a) Preparation of AU-REC Joint Report on the Status of Integration, identifying key issues and challenges and associated recommendations;
- b) Retreat of the AU Commission and REC Secretariats on the Status of Regional Integration;
- c) Chairperson's presentation of the Status of Regional Integration to the Bureau and RECs.

### **Additional June/July Meetings**

79. We propose the following additional meetings:

- a) **An Executive Council Meeting** with the following scope and function:
  - Adopt the AU Budget. This would require the Assembly to delegate the adoption of the Budget to the EC (as proposed earlier);
  - Follow up on the implementation of January Summit Decisions;
  - Consideration of Reports of the Special Technical Committees, in line with Article 13 of the Constitutive Act.
- b) **A Summit-level Meeting of the Peace & Security Council** to be convened following the Bureau-RECs Co-ordination. Given the significant amount of time spent on peace and security issues, two

Summit level meetings on this priority area would ensure that sustained high-level political engagement is maintained on key peace and security issues. This would be in line with the reform recommendations on prioritization. Such a meeting would also be an opportunity to strengthen overall co-ordination with RECs and RMs on peace and security issues. The meeting would have the following scope and function:

- Assess the Status of peace and Security in Africa
- Follow up on the implementation of PSC Decisions
- Improve co-ordination between the PSC and RECs/RMs on peace and security issues

*Priority 4A.3: Partnership Summits convened by external parties shall be reviewed with a view to providing an effective framework for African Union partnerships. Africa will be represented by the Troika, namely the current, incoming and outgoing Chairpersons of the African Union, the Chairperson of the AU Commission, and the Chairpersons of the Regional Economic Communities as well as the Chairperson of NEPAD.*

***I. Background and AU Existing Decisions:***

80. After the establishment of the AU and its Commission, AUC entered into partnerships with many parts of the world. However, these partnerships were managed across various Departments, including through a liaison office with NEPAD. Many requests from prospective partners to establish cooperation agreements with the AU prompted the Executive Council to adopt Decisions EX.CL/Dec. 397 (XII) requesting the Commission to undertake a study towards identifying criteria for new partnerships and to report back. Upon the consideration of the Report and as proposed by the Commission through the PRC, the Executive Council adopted Decision EX.CL/Dec.646 (XIX) during its nineteenth ordinary session held in Malabo, Equatorial Guinea, in July 2011; establishing a unit within the Office of the Chairperson tasked with managing and coordinating partnerships and labelled “Partnership Management and Coordination Division” (PMCD in short). This newly created Division went operational in mid-March 2012. Subsequently, EX.CL/Dec.967 (XXXI) D (17): reaffirming its Decision EX.CLI/Dec.942 (XXX) paragraph 2.vi, called for the strengthening of the institutional capacity of the Commission, specifically Partnerships Management and Coordination Division.

81. Partnerships used to cover a large scope of issues related to development and integration of the continent such as acceleration of industrialization, infrastructure development, technology transfer, and human capital. These areas were formally agreed upon through Memoranda of Understanding, Declarations, and Frameworks of Cooperation among other instruments.

82. As of today, the AU has entered into nine strategic partnerships (detailed below), for which an evaluation was conducted based on Executive Council decision, and put forward recommendations for enhancement, especially with regards to optimizing impact of those partnerships on AU programs and objectives. In fulfilment of Decision EX.CL/Dec.942 (XXX), the Permanent Representatives Committee (PRC)

recently held a retreat in Cairo, Egypt, in December 2017, to consider all aspects of strategic partnerships based on the evaluation conducted.

#### *Previous Decisions on Partnership Representation*

83. Summits and other high-level events are mechanisms for strategic follow up on each partnership. Most such fora were initiated by partners, however, the AU has become a co-organizer and coordinator of most such fora, and Executive Council Decision EX.CL/Dec.942 (XXX) has ruled that the AU should be the coordinator on behalf of Africa for all partnership summits.

84. Participation in partnership summits has been the subject of discussion over the past years, mainly because it is considered an indicator of coherence of Africa's regional integration, and of Africa's ability to focus its negotiations of partnership scopes. Several policy organ decisions have been issued in that area. More specifically, Executive Council Decision EX.CL/Dec.942 (XXX) reaffirmed the "rights of all Member States without distinction to participate in all meetings, activities, and events organized within the context of partnerships of which the AU is part. In so doing, the Decision stressed Executive Council Decision EX.CL/Dec. 877(XXVII) of June 2015 and Decision EX.CL/Dec. 899 (XXVII) of January 2016.

85. These Decisions were predated by the decision adopting the "Banjul formula", which recommended that for country-to-continent meetings, Africa is represented by the current and outgoing AU Chairs; the Chairperson of the AU Commission; the current Chairs AU-recognized Regional Economic Communities (RECs) and the five founding Member States of NEPAD

## **II. AU Reform Decision**

86. Assembly Decision on the Outcome of the Retreat of the Assembly of the African Union on the AU Institutional Reform (Assembly/AU/Dec. 635 (XXVIII)) rules on all aspects of partnership management mentioned above. There are two key parts to this decision:

- Part 1: *Partnership Summits convened by external parties shall be reviewed with a view to providing an effective framework for African Union partnerships: Improving the effectiveness of the AU's partnerships function means that Summit outcome will contribute to higher level results under Agenda 2063, and the meetings will add to the tools and means available to heads of states to address current issues facing them on the Continent and in the world, as well as help to resolve any bottlenecks in the partnership. In addition, an effective partnership is one whose scope is defined in SMART terms (specific, measurable, attainable, relevant and time-bound); adequately capitalizes on the comparative advantage of the partner; and has an adequate monitoring, evaluation and reporting functions.*
- Part 2: *Africa will be represented by the Troika, namely the current, incoming and outgoing Chairpersons of the African Union, the Chairperson of the AU Commission, and the Chairpersons of the Regional Economic Communities as well as the Chairperson of the NEPAD.*

87. There are several implications to this revised formula:

- The incoming Chairperson of the Union should be identified one year in advance. Therefore, the Summit of January 2018 should identify the incoming Chair in 2019. Failure to do so would hamper the ability of the Commission to implement the decision on participation in Summits.
- RECs Chairs' representational responsibilities come with an obligation to conduct analysis and consultations with member states of RECs in preparation for Summits and high-level events. Therefore, REC Chairs will be expected to carry out the following responsibilities:
  - RECs would adopt together with the AU a common results framework for partnerships aligned with that of resource mobilization.
  - RECs send inputs into AUC yearly report to the Executive Council. This report covers progress made on the various partnerships, and plans for the next year.
  - One year in advance of each Summit, REC Chairs should send individual reports covering progress made and proposed plans with the partners in question at their level. Those eight reports would be integrated in a full report for presentation to AU policy organs in Addis Ababa. The Chair of the African Group attached to each REC would participate to present and defend their report to the PRC.
- The AU policy organs should identify on a case-by-case basis any exceptions to the rule of participation, including for example continent-to-continent or region-to-region partnerships, where the partner participates with their full set of member states, in which case Africa would make an exception.

**III. *Application of the Reform Decision and Evaluation Recommendations to Existing Strategic Partnerships:***

**China-Africa Strategic Partnership**

88. The main follow-up mechanism has been the Forum for China-Africa Cooperation (FOCAC) held at the Heads of States level every three years. Established in 2000, FOCAC is a forum for south-south cooperation, where African countries champion their individual interests in a bilateral manner.

89. Progress in AU role: AUC became a member of FOCAC in 2012, where the AU Chair gives an opening speech. In 2017, AUC hosted the China-Africa think-tank which was held at its premises for the first time, and which followed a bilateral high level dialogue (HLD) between AUC Chairperson and Chinese Foreign Minister. The HLD will be reciprocated by AUC Chairperson in Beijing in February 2018. HLDs aim to bring China closer to Agenda 2063 and agree on higher level commitments in that regard. They also address partnership bottlenecks, and means of enhancing working methods, including opening an AU office in Beijing.

90. Successes and challenges of this partnership to date: Despite lack of hard data on progress, this partnership has shown visible impacts, where Chinese investments have reportedly significantly increased since 2015 when the government pumped USD 60 billion to support investments mostly in sectors with a high multiplier effect such as infrastructure. Training opportunities were provided to thousands of Africans. In partnership with the AU, China pledged to build premises for the African Centre for Disease Control; constructed AUC premises; and contributed to other Agenda 2063 flagships. This is in addition to a yearly budget contribution to AUC of USD 2 million.

91. Current challenges in this partnership include that most action plans are Chinese-driven based on their knowledge of local conditions and needs. The partnership has reportedly not reached its potential in terms of job creation and technology transfer on the Continent especially in areas of industrialization. Some areas of Chinese investment have reportedly had some negative impacts on African small and wholesale traders and businesses. It also creates new debt on member states due to the nature of bilateral instruments used.

92. Options for enhancing effectiveness: FOCAC has been co-chaired by China and an African government (Ethiopia 2000-2006; Egypt 2006-2012; and South Africa 2012-2018). As South Africa prepares to handover co-chairmanship, there are two options for FOCAC management:

- *Option one* (preferred by China and some member states): Maintain FOCAC existing structure, where South Africa would handover co-chairmanship to another African government; at the same time make HLDs between AUC Chairperson and the Chinese Foreign Minister a regular (e.g. annual) activity, where it would provide intellectual guidance to China-Africa cooperation in general and FOCAC in specific, while developing a more rigorous joint monitoring and reporting mechanism on China's involvement in Africa.

This option is acceptable to China as well as several Member States. It provides an opportunity for the AU to focus on substance without the logistical burden of co-organizing FOCAC. Option one is still more effective than the status quo as it will result in Chinese contribution to higher level results under Agenda 2063; stronger political and economic cooperation between the AU and China; and a more robust monitoring and evaluation framework.

- *Option two*: AU takes over coordination of FOCAC from South Africa at the September Summit. This would be implemented through a decision of the Assembly of Heads of States in January, which would sanction any African country that decides to accept co-chairmanship. While option two puts the AU at the heart of the main forum for China-Africa cooperation, it has downsides. For example, it would be difficult to apply the AU Reform participation formula considering the highly bilateral nature of FOCAC, which necessitate presence of countries in question. Furthermore, much of the bilateral relations do not concern the scope of work of the AU. Focusing on format of participation will detract from the substance of the partnership, and in China's view will weaken FOCAC, which has been an advantageous platform for Africa.

## **African Union – European Union Partnership**

93. The African Union-EU partnership was initiated through the 1st Africa-EU Summit in Cairo in 2000. However, the strategic partnership became structured and fully operational after the 2nd Summit of Lisbon in 2007 with the articulation of the Joint Africa-EU Strategy (JAES). Funding for JAES has been mostly allocated from the Economic Development Fund (EDF), approved by EU member states under the Africa, Caribbean and Pacific partnership signed in Cotonou (Benin), in 2000. Implementation has been followed upon through a series of Summits every three years, supported by Joint Expert Groups (JEGs) and college-to-college meetings.

94. Progress in AU role: AU coordinated a number of summits, the latest of which was in 2017, and was labelled “AU-EU Summit” in lieu of the usual “EU-Africa Summit.” Communication messages and tools were redone to reflect the new nomenclature. Substantively, the AU has introduced improvements into partnership scopes as the latest action plan was built around Agenda 2063 flagship projects, and was more “SMART”. The evolving role of the AU has positioned it to become the primary negotiator and coordinator of a post-Cotonou agreement.

95. Successes and challenges of this partnership to date: the partnership displays depth and maturity in terms of institutional, governance, and follow-up mechanisms; the partnership is articulated and grounded on meaningful and “SMART” results, with clear contributions to Agenda 2063 flagships. Furthermore, the EU has made significant contributions to the AU start-up where it had funded more than 50% of AU programme budget, a ratio that is now dropping gradually thanks to success of “Financing the Union” initiative.

96. Challenges: The current structure of the ACP Partnership agreement does not treat the Continent holistically and ties its decisions to that of the Caribbean and Pacific. The AU is striving to correct those issues in the post-Cotonou framework.

### Recommendations for enhancing partnership effectiveness:

- Technical recommendations: Improving monitoring and reporting systems by the AU on action plans. Some areas need to be better aligned to Agenda 2063, such as education. It has been proposed to make the summits more interactive; and JEG meetings more focused and effective.
- Political recommendations: Improving governance of Africa’s participation in the partnership with the EU through an improved post-Cotonou agreement.

## **Africa-Arab Partnership**

97. Launched in 1977 as the oldest cooperation arrangement Africa had with the external world, the day to day activity of Africa-Arab Partnership is coordinated at Commission- Secretariat level, under the guidance of the Coordination Committee of the Africa-Arab Partnership at Ministerial and Senior Officials levels.

98. Progress in AU role: the cooperation arrangement between Africa and the Arab world has evolved into a formal Strategic Partnership in 2010 at the Africa-Arab Summit in Libya, following the adoption of the Africa-Arab Partnership Strategy. The AU has played a coordinating role for this partnership since then.

99. Successes and challenges of this partnership to date: While successful in political dialogue, the partnership is yet to reach scale and depth in terms of economic and social cooperation. There are potentially important project ideas, but have not materialized, and financing mechanisms for them have not been mobilized.

100. Also, partnership summits have faced difficulties in applying adopted formats of participation, due to Arab insistence on inviting only countries that are UN recognized.

101. Options for enhancing partnership effectiveness: A better action plan that realizes the potential of economic cooperation should be produced before the next Summit.

102. Agreement should be reached on participation formula. The Arab League may find solutions in the newly proposed participation formula under the AU Reform, however there are still lingering questions among the African side as to whether the AU should insist on participation of all heads of states since the partner is in this case a region not a country. Those questions should be resolved and negotiated well in advance of the next summit in 2019 in Saudi Arabia.

### **African Union-South America Cooperation Forum (ASACOF)**

103. The partnership was initiated through the commitment of former President Obasanjo of Nigeria and former President Mbeki of South Africa, on the Africa side, and Former President Lula of Brazil and Late President Chavez of Venezuela, on the South-America side (In the absence of any formal decision), Nigeria and Brazil are the (current) coordinators of the Forum. The first ASA Summit was held in Abuja, Nigeria in November, 2006.

104. Progress in AU role: AU has co-organized the most recent Summit in 2013.

105. Successes and challenges of this partnership to date: The Africa-South America Cooperation Forum (ASACOF) is relatively a new partnership that is not yet grounded on strong institutional and political commitments. Nine years after its inception in November 2006, not much has been achieved.

106. Options for enhancing partnership effectiveness: The evaluation shows that this partnership has potential considering the number of countries involved, and the common roots of the two populations. However, it needs restructuring and focused action planning, which would inform a Heads of States decision on the partnership, and whether to maintain Summits.

### **Africa - India Partnership**

107. The Africa - India strategic partnership officially started in 2008 with the Delhi Declaration.

108. Progress in AU role: Three summits have been held, all organized with the African Union. The first two followed the Banjul formula for participation from the African side, but in the latest Summit, India decided to invite all African countries to the Summit in Delhi, most of whom attended. This shift in policy is believed to reflect India's objectives in Africa, which according to the evaluation report focuses mainly on 1/ securing access to Africa's natural resources for its fast-growing economy; 2/ securing construction contracts; 3/ accessing the expanding consumer market and industrial market of the African continent.

109. Successes and challenges of this partnership to date: the partnership has yielded some highly positive benefits, especially on technical and vocational education and training; distance learning; telemedicine and other ICT development applications. However, India reportedly seems to have pledged cooperation beyond its means in a wider range of sectors, resulting in low implementation in the seven areas of cooperation in the last action plan.

110. Options for enhancing partnership effectiveness: The action plan needs to be reviewed with a view to make it more robust, SMART, and reflective of the partners' comparative advantages and means. The Action Plan would then be submitted to African heads of states to decide whether a next Summit should be organized through the African Union. Heads of States could have the option of inviting India to brief at a session of one of the AU Summits in lieu of an independent Summit.

### **Tokyo International Conference on African Development (TICAD)**

111. TICAD process started in 1993 as a multi-stakeholder policy platform on Africa's Development with a bilateral cooperation perspective to promote political dialogue between Africa and its development partners and to mobilize support for African-owned development initiatives.

112. Progress in AU role: Unlike other Africa's Strategic Partnerships, TICAD is a multi-stakeholder platform, including the Government of Japan, United Nations Office of the Special Advisor on Africa (UNOSAA), United Nations Development Programme (UNDP) and World Bank. The AU joined as a co-organizer in 2012.

113. Successes and challenges of this partnership to date: In terms of substance, TICAD is reported to be on track in implementing its ambitious targets in terms of ODA-backed programmes. However, the economic growth impact of the partnership according to the evaluation still lags behind.

114. Options for enhancing partnership effectiveness:

- *Option one*: The Evaluation report strongly recommended not disrupting the format of the TICAD process and establishing a new singular African Union-Japan partnership, which would inform dialogue and development cooperation under TICAD;

- *Option two*: The status quo, where AUC continues to be a co-organizer of TICAD, which would commit the forum to AUC formula of participation. This was implemented in the last ministerial meeting in Maputo, where experience has shown that this approach has clouded the environment and left less time and energy for AUC to influence the outcomes of the meeting.

115. In either case, AUC needs to play a more vital role in setting the agenda for policy dialogue and cooperation at TICAD summits, and in instituting rigorous monitoring and reporting to member states. This is imperative to enhancing effectiveness of Summits and of the partnership.

### **Africa-South Korea Cooperation**

116. The Africa – Korea Forum was launched in Seoul, Korea, in 2006 as a follow-up mechanism of the Korean Initiative of African Development. Since then, three Summits have been held, the latest of which was in Addis Ababa in 2016.

117. Progress in AU role: The AU has been a co-organizer of this forum with Korea since its establishment. The first 2006 Forum was entirely driven by Korea in terms of modalities of participation, invitations and the development of the plan of action adopted, the 2009 and 2012 Fora were organized according to the Banjul Formula and the African Union took the lead of the African side.

118. Successes and challenges of this partnership to date: The evaluation report indicates that this partnership has not adopted concrete outcomes. Action plans have represented a compilation of projects financially supported by Korea and implemented bilaterally. Analysis shows that the relationship does not stand to be strategic in content considering the agenda and comparative advantage of each partner.

119. Options for enhancing partnership effectiveness: The recommendation is not to hold summits until the evaluation report findings are discussed with Korea and new approaches are developed to align Korea's continental involvement in Agenda 2063. The outcome of those discussions would be presented to the AU Summit to make a decision on the Africa-Korea Forum. An alternative to the Forum could be inviting the Korean President to brief the AU Heads of States at one of the African Union Summits.

### **Africa-Turkey Cooperation**

120. The first Africa -Turkey Cooperation Summit was held in Istanbul in 2008, which adopted the Istanbul Declaration and the partnership framework agreement.

121. Progress in AU Role: The AU has been a co-organizer and coordinator of Africa-Turkey.

122. Successes and challenges of this partnership to date: the partnership has potential but action plans need to better reflect Turkey's comparative advantage, and

be SMART. In the past, action plans have experienced low level of implementation, which led one summit to be postponed.

123. Options for enhancing effectiveness: better action plans and fewer meetings.

#### **AUC-U.S. State Department High Level Dialogue (HLD)**

124. This started in 2013 based on a MOU between the two organizations. HLDs have been held yearly, the latest of which was in November 2017 in Washington, D.C.

125. Progress in AU Role: the AUC has engaged the African group in Washington in preparations for the HLD. The U.S. does not hold regular continental summits, and rarely does so, in an ad hoc manner, at both heads of states and ministerial levels.

126. Successes and challenges of this partnership to date: The partnership is not member-state led. Most of the U.S. involvement in Africa remains bilateral, although they were the first partner to open a representational office to the African Union. The U.S. has expanded its engagement at the REC level. They have reauthorized AGOA for ten years.

127. Options for enhancing effectiveness: Maintain HLD, while engaging member states in preparation for it. One option is to invite the U.S. to brief one of the AU Summits.

128. It is important to encourage the U.S. Administration to tie partnership and development cooperation scopes of AU and RECs in order to serve regional integration.

*Priority 4A.4: To ensure continuity and effective implementation of Assembly decisions, a troika arrangement between the outgoing, current, and incoming African Union Chairpersons shall be established. In this regard, the incoming chairperson shall be selected one year in advance;*

#### **Status of Implementation**

129. The Troika of Outgoing, Current and Incoming Chairs of the Union was established in 2017. This has ensured the smooth handover across the Chairs of the Union and ensured institutional memory is preserved.

#### **Decisions to be taken**

130. To ensure continuity of the Troika of Chairpersons during the next period, the nomination of the Incoming Chairperson should take place at the January 2018 Summit.

#### **Priority 4B: On Operational Management**

*Priority 4B.1: The Commission should initiate, without delay, a professional audit of bureaucratic bottlenecks and inefficiencies that impede service delivery.*

### Summary of Implementation Issues:

131. Over the years a significant amount of diagnostic work has been undertaken. All of which have identified a common set of key institutional challenges:

- a) **Weak accountability and management**, exacerbated by the poor delineation of roles and responsibilities and the absence of clear delegation of authorities at the political and management levels;
- b) **Poor finance and budget management accountability** resulting in a lack of credible budgets, limited value for money and results;
- c) **Limited platforms for internal co-ordination**, resulting in duplication, overlap and wastage,
- d) **Administrative inefficiency**, with the need to separate key administrative functions in line with international best practice;
- e) **Poor human resource management and staff development** which has negatively affected staff performance and effectiveness.

132. These challenges have given rise to what can be summarized as **five critical problems** which must be addressed during the reform process:

- Overall policy fragmentation and incoherence;
- The erosion of departmental performance and effectiveness;
- Limited value for money and resource wastage and
- Administrative impunity with limited scope for redress and
- A severe loss of staff morale and motivation.

### Decisions to be taken:

133. A significant part of the administrative reform agenda can be taken forward within the powers and functions of the Chairperson and Deputy Chairperson of the AU Commission. No specific decisions are required by any of the Policy Organs at this stage. An Administrative Reform Action Plan to address the issues identified in the above summary is being developed.

### Recommendation

134. Develop an Administrative Reform Action Plan to address the issues identified in the above summary. Monthly updates to be provided to the Chairperson and Deputy Chairperson of the AU Commission.

### Priority 5: FINANCE THE AFRICAN UNION SUSTAINABLY WITH THE FULL OWNERSHIP OF THE MEMBER STATES

135. There are six main proposals. A Draft Decision is contained in Annex 1 covering the issues on which an Assembly Decision is required:

*Priority 5.1: The Committee of Ten Finance Ministers will assume responsibility for oversight of the African Union budget and Reserve Fund*

### **Summary of Implementation Issues**

136. Three key implementation issues arise from this decision:

- What is the scope and content of the F10+ budget oversight role and function?
- How should the F10+ envisaged role be harmonized with that of the existing PRC Sub-committees which currently play a budget oversight role?

#### *An enhanced budget oversight function*

137. An evaluation of the current budget process has led to the identification of 6 primary oversight duties for the F10+. These are fall under two main components:

1. Component 1: A retrospective evaluation of the past financial year's performance. This will assess the effectiveness of the budget implementation through the following oversight duties:
  - Determining variance between forecasts and actuals;
  - Comparing the expenditure and the rate of results achievement; and
  - Establishing a baseline for the following financial year's budget.
2. Component 2: This will be forward-looking to ensure that the budgeting process is credible. It will comprise the following oversight duties:
  - Ensuring alignment between the budget and results achieved;
  - Ensuring the link between revenue forecasts and affordability; and
  - Ensuring that the proposed budget does not pose any unsustainable risk over the long term.

#### **Decisions to be taken:**

- Assembly to expand F10+ to F15 to allow for three Member States from each of the five regions
- Assembly to endorse the F10+ budget oversight proposal harmonizing the role of the F10+ with that of the statutory budget oversight organs.

#### **F10+ Recommendation on how to undertake its budget oversight role in collaboration with Organs with budget oversight functions**

138. The recommended approach is based on the assumption that the Assembly endorses the proposal to delegate its budget adoption powers and functions to the

Executive Council which will hold an annual budget session to adopt the budget. During this budget session, the Council would also be composed of Ministers of Finance. . The F10+ Ministers recommended the following:

- That the PRC sub-committees should have a joint sitting with the Technical Committee of the F10+ before submitting its recommendations to the PRC. The PRC would then submit its recommendations to the F10+ Ministers for consideration and onward transmission to the Executive Council.

Priority 5.2: Use of any surplus funds from the 0.2% AU levy on eligible imports

139. Assembly Decision Assembly/AU/Dec.605(XXVII) stated the following: That the amounts collected from the Levy shall be automatically paid by the national administration, into an account opened for the African Union with the Central Banks of each Member State for transmission to the African Union **in accordance with each Member State's assessed contribution**;

140. Assembly Decision Assembly/AU/Dec.635(XXVIII) stated the following: After funding of the budget of the African Union and the Peace Fund, the balance of the proceeds of the 0.2% AU levy on eligible imports, **the Committee of Ten Finance Ministers will look into placing surplus in a Reserve Fund for continental priorities as decided by the Assembly.**

141. In line with Decision Assembly/AU/Dec.635(XXVIII), F10+ Committee of Ministers of Finance and the AU Ministers of Finance met in August 2017 and assessed the proposal on the use of any surplus funds arising from Member States to be transferred to the African Union for continental priorities.

**F10+ Recommendations on the surplus:**

- The transfer of any surpluses arising from the collection of the levy to the African Union would be premature at this stage. The F10+ highlighted the need to accelerate the finance and budget reforms outlined in Decision 605 and 635 and made several recommendations in this regard.
- Any surplus arising from the collection of the 0.2% levy should be used to Member State's assessed contributions in line with the AU Assembly Decision 605 with **any surpluses arising to be retained by AU Member States.**

**Decision to be taken**

- AU Member States to retain any surplus funds arising from the collection of the levy in line with AU Assembly Decision 605

Priority 5.3: The Committee of Ten Finance Ministers will...develop a set of 'Golden Rules', establishing clear financial management and accountability principles

142. The F10+, has reviewed and adopted Golden Rules at its 13 January 2018 meeting in Kigali, Rwanda.

## Summary of Implementation Issues

143. The 'golden rules' are the basic principles that need to be adhered to for the AU to ensure credible budgeting and effective financial management. The Golden Rules define the role of Member States, Co-operation Partners and the African Union Commission (AUC). The rules will address a number of the existing finance and budget accountability challenges the Union faces. These include: The absence of credible budgets, expenditure ceilings and predictable revenues; weak reporting and expenditure authorization practices, lack of reliability and efficiency in resource flows and transactions; and the need for coordinated partner management and oversight.

### Decisions to be taken:

- F10+ Experts and Ministers adopted draft golden rules for endorsement by the AU Assembly;
- Assembly to adopt golden rules based on F10+ recommendation;
- Assembly to direct that AU Financial Rules and Regulations are reviewed and revised to incorporate golden rules by July 2018.

*Priority 5.4: Proposal for strengthened sanctions for non-payment of contributions ready for debate and adoption*

144. The Ministerial Committee on the Scale of Assessment and Contributions is mandated to propose a new sanctions regime to the AU Assembly in January 2018. The PRC Sub-Committee on Budget has made recommendations on the revision of the sanctions regime to feed into the Committee's deliberations. The Committee will meet on 25 January 2018 to look into these issues.

### Summary of Implementation Issues:

145. The current sanctions regime is ineffective as evidenced by the fact that AU Member States contributions are routinely not made on time. Under the current sanctions regime, Member States' non-payments are classified to be in default only if they are in arrears for two full years. This has led to a trend where about 33% of annual assessed contributions are regularly held in arrears.

146. The June 2017, Report of the Ministerial Committee on the Scale of Assessment and Contributions:

- Expressed concern that some Member States do not fulfil their obligation by paying their statutory contributions on time with a persistent trend of arrears, a situation that has a negative impact on the Union's financial situation.
- Explained that the aim of the Committee's approach should be to contribute to a more credible dynamic for the recovery of Member States contributions, due to the fact that the success of the on-going AU institutional reform depends on the realization of the objective on ensuring the AU financial independence and autonomy.

- Decided that the above would require the Committee to conduct a deep analysis of the situation through large consultation, and taking into account members States concerns, and make recommendations to the policy organs **during the AU Summit, in January 2018**, suggested the adoption of a roadmap for the work of the Committee for the next six months.

#### **Decisions to be taken:**

- The Assembly, in line with its powers under Article 23 of the Constitutive Act, adopts proposals, put forward by the Ministerial Committee, to strengthen the current sanctions regime for non-payment of contributions.

#### **Legal Provisions on Sanctions**

147. Article 23 of the Constitutive Act of the African Union (AU) sets out the relevant AU's sanctions provisions as follows:

- Article 23 (i): The Assembly shall determine the appropriate sanctions to be imposed on any Member State that defaults in the payment of its contributions to the budget of the Union in the following manner: denial of the right to speak at meetings, to vote, to present candidates for any position or post within the Union or to benefit from any activity or commitments therefrom;

#### **Current Sanctions regime related to the non-payment of Member State contributions**

148. Rule 35 (1) Mandate and process provisions: The Assembly determines on the basis of recommendations of the Executive Council and the Permanent Representatives Committee (PRC), as well as information provided by the Commission the sanctions to be imposed under Article 23 (1) of the Constitutive Act.

#### *Current sanctions provisions*

Rule 35 (2) states the following:

- (a) When in arrears of payments amounting to two (2) years, but not exceeding five (5) years of its assessed contributions, suspension of the Member State's right to:
  - Speak, vote and receive documentation at meetings of the Union;
  - Offer to host sessions of the Assembly or of the Executive Council or any other meetings of the Union; and
  - Present a candidate for any position or post within the Union;
- (b) When in arrears of payment of contributions amounting to five (5) years or more, in addition to the sanctions in paragraph 2 (a) of this Rule, suspension of the Member State's right to:

- Have the contracts of employment of its nationals renewed; and
  - Provision, by the Union, of funds for new projects in the Member State.
- (c) When a Member State is under sanctions for non-payment of its contributions as described in the preceding paragraphs, the sanctions may be lifted temporarily if the Member State pays at least 50% of its outstanding arrears, provided that such payment is made thirty (30) days before the commencement of the session of the Executive Council preceding that of the Assembly.

Rule 35 (3) states the following:

- (a) When a Member State is under sanctions for non-payment of its contributions, as described in the preceding paragraphs, the sanctions may be lifted temporarily if the Member State pays at least 50% of its outstanding arrears, provided that such payment is made at least thirty (30) days before the commencement of the session of the Executive Council preceding the Assembly.

#### *Way Forward*

149. The Ministerial Committee concluded that: *it would undertake a review of the sanctions regime with a view to its consideration and adoption by the January 2018 AU Summit, after a large consultation process through a series of meetings, and with the support of the required expertise.*

150. The Ministerial Committee will meet on 25 January 2018, in the margins of the January 2018 Executive Council Meeting. The AU Commission, in its capacity as Secretariat to the Committee, has developed proposals for the Ministerial Committee's review.

Priority 5.5: *The current scale of assessment should be revised based on the principles of ability to pay, solidarity and equitable burden-sharing to avoid risk concentration.*

151. The Ministerial Committee on the Scale of Assessment and Contributions is mandated to propose a new Scale of Assessment for the period 2019-2021 to the AU Assembly in January 2018. The Committee met in July 2017 and is scheduled to meet to consider proposals for a new scale on 25 January 2018, in the margins of the January 2018 Executive Council meeting. Ministers of Finance met in August 2017 and made recommendations on the introduction of 'caps' and 'minima' to develop the new scale in line with the principles of ensuring more equitable burden-sharing and reducing overall risk.

#### **Summary of Implementation Issues:**

152. The current scale of assessment is problematic because it is reliant on a few Member States to contribute the majority of the financing of the Union. Currently, Algeria, Egypt, Morocco, Nigeria and South Africa individually contribute 9.6 percent of the budget, followed by Angola at 8 percent. In essence, 6 countries are responsible for 56 percent of the budget of the Union. The heavy dependence on these few countries

means that failure on the part of one or two of them to honour their commitments can result in serious financial trouble for the Union, as previous experience has demonstrated.

153. To address this challenge, the development of the new scale of assessment is exploring how to distribute the burden more broadly and equitably through the introduction of 'caps' and 'minima' while maintaining the principles of fairness, capacity to pay, solidarity and ownership.

**Decisions to be taken:**

154. Assembly to adopt a new Scale of Assessment for 2019 – 2021 based on the introduction of:

- a) 'caps' for Tier 1 contributors to ensure that they do not bear a disproportionate share of the financing burden; and
- b) 'minima' to ensure that there is a minimum threshold for Member State assessed contributions to the AU Budget.

**Recommendations:** Ministerial Committee will put forward recommendations to the Assembly.

*Priority 5.6: Peace Fund Instrument adopted and Board of Trustees appointed*

155. The Peace Fund (PF) was established in June 1993 as the principal financing instrument for the peace and security activities of the Organization of African Unity. As one of the five pillars of APSA, the PF's legal basis is set out in Article 21 of the PSC Protocol.

*Key Decisions taken by the AU Assembly*

- During the 25<sup>th</sup> AU Assembly of Heads of State and Government, in Johannesburg, 2015, the AU Member States decided to take financial responsibility for 25% of peace support operations by 2020.
- During the 27<sup>th</sup> AU Assembly of Heads of State and Government, in Kigali, 2016, AU Member States decided:
  - The Peace Fund shall be endowed from the 0.2% levy...with an amount of \$325m rising to \$400m in 2020. This total amount shall be raised from equal contributions from each of the five (5) AU Regions as defined in the relevant instruments.
  - To adopt the recommendations contained in the report of the High Representative for the Peace Fund to have three thematic windows, namely Mediation & Preventive Diplomacy; Institutional Capacity; and Peace Support Operations, as well as clear governance structures and independent fund management.

*Progress to date*

156. The July 2016 Assembly endorsed the proposals of the AU High Representative for the revitalization of the Peace Fund including governance structures and directed the Chairperson of the Commission to take forward implementation. The detailed proposals for enhancing governance and accountability arrangements for the AU Peace Fund were developed and presented to the Peace and Security Council (PSC) in May 2017. The proposal was endorsed by the PSC in May 2017, followed by the Executive Council and Assembly in July 2017. A Peace Fund Instrument codifying the enhanced governance and management arrangements was developed and reviewed by AU Legal Counsel in August 2017 and is ready for adoption.

157. The Chairperson of the Commission initiated consultations with Regional Deans on the identification of African Members of the Board of Trustees. There are no new financial implications associated to the adoption of the Instrument since the financial costs of the management structure will be drawn from the \$400m that was already approved by the Assembly in July 2016. Structural proposals for the establishment of the Peace Fund Secretariat will be considered as part of the reform process in 2018.

158. The F10+ Meeting took note of the fact that in 2017 Member States had contributed \$29.5m (45%) of the Year 1 Target for the Fund and recommended that the Assembly Peace Fund Instrument is adopted by January 2018 to ensure proper oversight and accountability structures are in place.

**Decisions to be taken:**

- Assembly to adopt the Peace Fund Instrument at the January 2018 Summit;

**V. A MECHANISM TO ENSURE THAT LEGALLY BINDING DECISIONS ARE IMPLEMENTED**

159. The current sanctions mechanism should be strengthened and enforced. This would include consideration of making participation in the African Union deliberations contingent on adherence to Summit decisions.

160. H.E President Paul Kagame shall make recommendations on a mechanism to ensure that legally binding decisions and commitments are implemented by Member States.

**Background**

161. These two reform decisions are intended to address the chronic failure to see through AU decisions that has resulted in a crisis of implementation. Resolving this crisis of implementation lies at the heart of the reform recommendations adopted by the Assembly in January 2017 and will be the acid test for the credibility of the organization.

162. In this regard, President Kagame's January 2017 Report to the AU Assembly on AU Institutional Reforms noted the following:

*The Assembly has adopted more than 1,500 resolutions. Yet there is no easy way to determine how many of those have actually been implemented. By consistently failing to follow up on the implementation of the decisions we have made, the signal has been sent that they don't matter...*

*Since many previous decisions have been taken but not implemented, it is time to look for a different mechanism that formally and legally binds us to act without delay, and holds us accountable for outcomes.*

*Whatever costs might be imposed for non-compliance are much lower than the enormous price of doing nothing, which all Africans have been paying for far too long.*

163. In line with this spirit, the outcome of the reforms should be an AU that takes fewer decisions which are fully implemented rather than continuing the current practice of taking numerous decisions that are either partially implemented or not at all.

164. Alongside this, it is widely acknowledged that the existing sanctions regime, as it relates to the payment of member state contributions and non-compliance with AU Decisions and Policies, is not robust enough to ensure compliance.

### Scope of the reform

165. The reform process will therefore focus on developing proposals to strengthen:

- The quality of AU decision-making
- Monitoring and Follow Up of AU Decisions
- Sanctions to be applied for failing to comply with the decisions and policies of the Union.

### Legal Provisions

#### *Constitutive Act*

- Article 9(1)(e): the powers and functions of the Assembly shall be to **monitor the implementation of policies and decisions of the Union** as well as to **ensure compliance by all Member States**
- Article 13(2): of the Constitutive Act, the Executive Council shall be responsible to the Assembly. It shall **consider issues referred to it** and **monitor the implementation of policies** formulated by the Assembly.
- Article 15(b): Specialised Technical Committees ensure **supervision, follow up and evaluation of the implementation of decisions** taken by the organs of the Union.

166. It is important to note the following:

- Only the Assembly has powers **to monitor the implementation of both policies and decisions and ensure compliance.**
- The Executive Council only has powers to monitor the implementation of **policies**, and
- Specialised Technical Committees (STCs) only have powers to follow up and evaluate the implementation of **decisions.**

#### *Rules of Procedure of the Permanent Representatives Committee*

- Rule 4(1)(i): Consider reports on the implementation of the budget of the Union
- Rule 4(1)(l): Consider reports on the implementation of the policies, decisions and agreements adopted by the Executive Council.

#### *Statutes of the Commission*

- Article 3(2)(g): Co-ordinate and monitor the implementation of the decisions of the other organs of the Union, in close collaboration with the Permanent Representatives Committee and report regularly to the Executive Council;
- Article 3(2)(h): Assist Member States in implementing the Union programs and policies.

### **Legal Provisions on AU Decisions**

167. Rule 33 of the Rules of Procedure of the AU Assembly provides for two types of binding decisions:

- **Regulations:** Applicable in all Member States which shall take all necessary measures to implement them.
- **Directives:** Addressed to any or all Member States, to undertakings or to individuals. They bind Member States to the objectives to be achieved while leaving national authorities with power to determine the form and the means to be used for their implementation.

168. These decisions are binding on Member States, Organs of the Union and Regional Economic Communities.

### **Legal Provisions on Sanctions for non-compliance with Decisions and Policies**

169. Article 23 of the Constitutive Act of the African Union (AU) sets out the relevant AU's sanctions provisions as follows:

- Article 23 (2): Furthermore, any Member State that fails to comply with the decisions and policies of the Union may be subjected to other sanctions, such as 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.

### **Sanctions for non-compliance with Decisions and Policies**

*What category of decisions would fall within the sanctions regime?*

- Rule 33 of the Rules of Procedure of the AU Assembly states that: The non-implementation of **Regulations** and **Directives** shall attract appropriate sanctions in accordance with Article 23 of the Constitutive Act.
- Rule 34 (i) states that: Regulations and Directives shall be automatically enforceable thirty (30 days) after the date of publication in the Official Journal of the African Union or as specified in the decision.
- Rule 34 (ii) states that: Regulations and Directives shall be binding on Member States, Organs of the Union and RECs

Rule 36 (1-4) states the following:

- The Assembly shall approve, upon the recommendation of the Executive Council, the imposition of sanctions under Article 23 (2) of the Constitutive Act on a Member State that fails, without good and reasonable cause, to comply with the decisions and policies of the Union.
- Such sanctions may include denial of transport and communication links with other Member States and other measures of a political and economic nature to be determined by the Assembly.
- When taking any decision in this regard, the Assembly shall stipulate the time frame for compliance and indicate when the failure to comply with that decision will trigger the sanctions regime provided for under Article 23 (2) of the Constitutive Act and this Rule.
- Member States under sanctions may present their case to the Assembly.

### **Key issues and challenges**

170. With respect to the existing provisions, the Assembly rules of procedure Rule 36 (1-4) do not provide much further detail on the provision set out in Article 23 (2) of the Constitutive Act. Further supporting guidance may be required in order to give meaningful effect to the application of sanctions related to non-compliance related to AU decisions and policies.

### ***Reform Implementation Proposal***

171. Drawing on the existing legal texts, the Constitutive Act and the Rules of Procedure, a mechanism has been proposed.

172. Four specific measures are proposed:

a) *Delineate decision-making roles*

173. There appears to be very limited disaggregation of the types of decisions that are taken at Assembly, Executive Council and PRC level. The Organs routinely take the same decisions. This reduces overall efficiency and results in overloaded Summit agendas. In line with the current provisions of the Constitutive Act and the relevant Rules of Procedure, and in order to improve the overall working methods and efficiency of the Union, the following is recommended:

- The Assembly should take **policy and strategy-oriented decisions** focused on priorities with continental scope;
- Executive Council should take **operational and implementation related decisions**

b) *Ensure decisions taken are properly categorized*

174. Rule 33 of the Rules of Procedure sets out a clear categorization of the types of decisions, including providing for two types of binding decisions- directives and regulations which are enforceable within 30 days (Rule 34(I)). The Rules of Procedure actually state that the type of decision should be made explicit in any Decision that is being taken.

175. Despite these provisions, the common practice is for the Assembly and Executive Council to take 'decisions' without clarifying in advance: (i) what type of decision is being taken, and (ii) what the associated obligations are in terms of enforceability and compliance. The categorization of decisions is typically an *ex post facto* exercise undertaken after the decision has already been taken.

176. This practice makes it difficult to enforce any sanctions for non-compliance with AU decisions or policies.

177. We therefore recommend the strict enforcement of the Rule 33 to ensure that any decision to be taken by decision-making Organs (i) is properly categorized in advance with the type of decision being taken explicitly stated in the Decision itself, and (ii) includes the enforcement timelines.

178. Adopting this practice will reduce the number of decisions taken every year, and also improve the quality of decision-making as this new approach will require better up-stream preparation and consultation around decisions, particularly legally binding ones.

c) *Ensure the resource implications of decisions are articulated.*

179. The financial and other resource implications of any decision being taken should be provided as part of the decision. Where there are no resource implications, a simple statement that the decision is 'resource-neutral' should be included.

d) *Strengthen the capacity of the Office of the Legal Counsel*

180. There is a need to strengthen the capacity of the Office of the Legal Counsel to ensure that it has strong drafting skills, legal translation capacity and subject-matter expertise to cover the various issues it is required to handle. It is proposed that an Office of the Legal Counsel skills and capacity audit is undertaken within the framework of the Fundamental Staffing Review proposed by the AU Assembly in its January 2017 Reform Decision.

**A. *Enhanced monitoring and follow up capacity at the Commission level***

181. We recommend the following:

- a) *Strengthening the co-ordination and monitoring capacity within the Bureau of the Chairperson of the AU Commission with a focus on the following functions:*
- Communication and Information
  - Monitoring
  - Follow Up
  - Reporting
  - Liaison with Member States, AU Organs, and AUC departments

182. There are two options:

- i) Option 1: Strengthen the Office of the Secretary General's (already located within the Bureau of the Chairperson).
- ii) Option 2: Establish a new Monitoring and Follow-up structure within the Bureau of the Chairperson.

**B. *Enhanced implementation and reporting Capacity at Member State level***

183. For this proposal to work there will also need to be a commitment to strengthening implementation and reporting capacity at Member State level, the creation of Member State Focal Points or structures on implementation and reporting is also recommended.

**C. *Monitoring and follow up of the implementation of decisions and policies becomes a core part of the Assembly, Executive Council, PRC and AUC's business***

184. This is reflected as follows:

- AUC and PRC meet monthly on the status of implementation;
- June/July- mid-year Co-ordination meeting reviews the status of implementation;
- Executive Council mid-year review of the status of implementation of decisions and policies;
- January Summit- Reviews status of implementation and takes decisions on compliance.

***D. Strengthening the Sanctions Regime for non-implementation of AU Decisions and Policies***

185. Article 23 (2), gives the Assembly the powers to consider sanctions measures.

186. We recommend the application of sanctions measures for non-payment of contributions outlined in Article 23(1) of the Constitutive Act to the non-implementation of decisions and policies.

187. This would include the application of the following measures: Denial of the right to speak at meetings, vote, to present candidates for any position or post within the Union or to benefit from any activity or commitments therefrom.

188. If implemented this mechanism will undoubtedly address many of the challenges of compliance and implementation that the AU is facing. That said, this proposed mechanism does have its limitations.

189. In the absence of a judicial process that would assess compliance and make determinations, the proposed mechanism relies on the political processes of the Assembly, Executive Council and Specialized Technical Committees to make these assessments. It is these Organs that are mandated to monitor the implementation of decisions and policies and in the case of the Assembly to make determinations on compliance.

190. Experience from other inter-governmental bodies has shown that such Organs may not be best suited to undertake this sort of monitoring and compliance role. It is, therefore, highly recommended that the Court of Justice, whose protocol is already in force be operationalized to undertake these functions.

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2018-01-29

# Progress Report on the Implementation of Decision Assembly/AU/Dec.635 (XXVIII) on the African Union (AU) Institutional Reform

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