Situation Report

The proposed AU Authority: Hybridisation, balancing intergovernmentalism and supranationalism

Background

The African Union (AU) is an institutional expression of the imperative of integration as a policy strategy to address Africa's myriad problems of poverty, underdevelopment and conflict. In an attempt to achieve its objectives,[1] the AU created the AU Commission. The Commission is the secretariat of the AU and is charged with, among others, initiating proposals for consideration by other organs of the AU; implementing decisions taken by other organs of the AU; coordinating and monitoring implementation of AU decisions; and representing the AU.[2] There is little doubt that the AU Commission can play a critical role in helping the AU to achieve the development and integration of the continent. However, there seems to be consensus that the Commission (as well as other organs of the AU) has not lived up to expectations. The low implementation rate of just over 10 per cent of its decisions by certain departments of the Commission could be seen as evidence of the validity of this assertion.[3] The question is, however, whether the low implementation rate points to the ineffectiveness of the Commission or to its weakness. Regardless of the reason, there seems to be a need for change.

It is against this backdrop that the General Assembly of the African Union decided in January 2009 to transform the African Union Commission into the African Union Authority (AU Authority).[4] This outcome was a consensual decision based on a compromise between the proponents of different schools of thought and diverging streams of opinion on how to move forward with continental integration. While there is consensus regarding the rationale for the transformation of a commission into an authority, the competence, mandate and function of the proposed Authority are still open to debate.

This paper is a contribution to the ongoing reflection on the proposed AU Authority. It contends that while the AU Commission might have failed to deliver in certain areas, the reasons for non-delivery are a combination of technical and political constraints. The proposed Authority could play a vital role (in coordination, implementation and advocacy and as an institutional driver) in the integration process, provided its technical and political capacity is improved and some changes are made to the institutional configuration of the AU.[5] How the proposed Authority is going to achieve this is contingent on how it balances intergovernmentalism and supranationalism. Specifically with regard to the decision-making and implementation processes of the AU, this paper proposes that the AU Authority should have exclusive policy initiation and implementation capacity in certain domains, while other domains should remain the preserve of

the intergovernmental set-up in terms of decision-making and directives. To move forward, AU member states will have to think creatively about how to strike a balance between their preserved areas of competence and those in which powers will devolve to the proposed Authority.

The rationale for the transformation of the Commission into the Authority is the need to reform and refine the existing governance structure of the AU as a tool for accelerating the economic and political integration of the continent and to ensure that AU policies, positions and decisions are translated into action and implemented fully. Thus the Authority is conceived of as an institutional enhancement for achieving the primary objective of the AU, namely development and integration.

Although there seems to be consensus that the AU Commission has not achieved the desired results - thus the need to transform it into an Authority - there is little consensus as to why the Commission has not achieved the desired results. Answering this question is as important as engaging in the debate on the approach to continental integration. It is no surprise that the reasons advanced so far reflect the ideological divide which animates the integration debate in Africa, namely between proponents of a gradualist and a maximalist approach.[6]

Gradualists argue that the reasons for the Commission's non-delivery are purely technical in nature and pertain to – for example - managerial problems, a lack of resources and competence, internal institutional incoherence, and a lack of coordination. Some AU member states argue that the AU Commission has not really failed to do what it was designed to do, namely play an advocacy and coordinating role. Rather, it has failed in its objective of accelerating development and integration because of its design, mandate and function. The weakness of the AUC is also a symptom of the weakness of the AU. These states favour a more powerful Authority, supranational in nature and modelled along the lines of a national cabinet. They contend that an Authority with supranational status is a more appropriate policy instrument for addressing Africa's myriad political and socioeconomic problems and that the current Commission does not have the mandate to deliver on African integration. They contend that the debate on a union government or union authority is a question of semantics and that the important aspects are the function, power and areas of competence of the Authority. Advocates of the maximalist approach to African integration conceive of the proposed Authority as a policy instrument or an institutional motor to fast-track the continent to its final destination - a United States of Africa.

Other AU member states argue that although the AU Commission has not entirely failed to deliver on its mandate and function, there is a need to enhance and improve the capacity of the Commission by transforming it into an Authority. While these states do acknowledge the need for such transformation as a measure to deliver on the process of integration, they argue that transformation would be purely aimed at addressing the technical difficulties referred to above. These states contend that the Commission's failure to deliver cannot be solely blamed on its design, mandate or function.

Because the AU is an intergovernmental organisation, the Authority must and should be intergovernmental in nature, too. However, the proposed Authority will have to respect the principle of subsidiarity, for it will be an agent of member states and not their principal. Accordingly, any attempt to extend the powers and functions of the Authority beyond the realm of intergovernmentalism will defeat the very purpose and nature of the AU. The political and economic asymmetry characteristic of the continent demands a gradual and incrementalist approach to ceding sovereignty to the continental level.

Thus advocates of the gradualist approach conceive the proposed Authority as an institutional bulwark against the maximalist approach to continental integration.

	A perusal of the conclusions of the 12th extraordinary session of the Executive Council would suggest that the Executive Council emphasised a change in structure rather than substance with regard to the decision-making and implementation processes of the AU. In fact, the debate on the Authority is about the nature of the African state and African politics. The proposed Authority is more than just an institution - it is a policy instrument aimed at national and international engagement. The structure, design, mandate and function of the proposed Authority are political in nature and are dealing with control of political and economic spaces. The question is how much political and economic space African states are prepared to cede or pool. Consequently, the politics of resource distribution and accumulation are important for understanding what is at stake.

If politics and the need to deliver on human security are at the heart of the current Authority debate, then the position adopted by the two approaches is flawed. It is unrealistic to expect that some of the African states would be prepared to cede their sovereignty regarding highly sensitive political issues.[7] Losing or pooling your sovereignty goes beyond democracy and the quest for political survival. Attachment to sovereignty is born out of a fear of the unknown. Establishing structures that would take away national sovereignty might expose Africa to chaos and disintegration if such arrangements fail to work. Thus some authors point to the debacle of the East African Community integration arrangements in 1967 and their long-lasting consequences as an experience not to be repeated.[8] It is important to investigate what binds some African countries together beyond the normative clique of pan-Africanism and to determine the level and impact of interconnectedness between African states. Even in one of the most advanced democratic spaces in the world, the European Union, states have not given up their sovereignty on sensitive issues such as foreign policy and security.

Despite its deficiencies, the AU Commission has had some achievements. It has raised the profile of the AU; has properly articulated the African agenda on the world stage (for example with regard to the Ezulwini Consensus); has worked tirelessly to implement the African Peace and Security Architecture; and has developed comprehensive policies such as the African Union Policy on Post-Conflict Reconstruction and Development and the African Charter on Democracy, Elections and Governance. The challenge is how to design an AU Authority which speaks to contemporary African political realities, the need to address the limited state capacity and to deliver on human security.

Policy options and considerations	The policy options proposed here for the AU Authority are not exhaustive. Rather, the aim is to stimulate reflection on how the proposed Authority could strike a balance between intergovernmentalism and supranationalism. We accept that the technical problems need to be addressed, but we have confined our discussion to policy options that are political in nature.
Nature of the Authority	The AU Authority should be a hybrid of an intergovernmental and supranational institution. Since the AU is an intergovernmental organisation, the Authority should principally assume the nature of an intergovernmental organisation. However, should the Authority be entirely intergovernmental in nature, there is a greater likelihood

of its internal decision processes being permeated and influenced by national interests. While this cannot be avoided entirely, it is important that the proposed Authority ground its work in the common interest of member states and Africans. It should not only be the agent of member states, but rather an agent of Africans, in line with the concept that the AU is a union of African people. The proposed Authority can achieve this balance by exercising some degree of independence in its operations. In essence, the Authority should be the leading African institution on the continent, mandated to think African and to promote development and integration. This would result in the Authority having some traits of a supranational institution, especially with regard to influencing the policy-making and implementation processes in certain areas of its jurisdiction.

Areas of jurisdiction

In its conclusions, the 12th extraordinary session of the Executive Council set out the areas of jurisdiction of the proposed AU Authority. These areas can be divided into two main pillars. The first pillar would constitute issues that are not politically sensitive and where member states would be prepared to pool their sovereignty. The second pillar would be made up of areas that are politically sensitive and where member states would be protective of their sovereignty. This division is important because of its implications for the mandate and functions of the proposed AU Authority.

First pillar	Second pillar
Continent-wide poverty reduction	Free movement of people
Inter-regional and continental infrastructure	Foreign and defence policy
Global warming, desertification and coastal erosion	International trade and negotiations
Epidemics and pandemics	Transnational crime
Research/university centres of excellence	Peace and security
Food security	

Function of the Authority

With regard to the right to initiate policy for consideration by other organs, the proposed AU Authority should have the exclusive right to agenda setting or policy initiation in areas constituting the first pillar. The argument is that this will enhance the coordination, coherence and convergence of AU policies. Moreover, it will allow the Authority to act as an institutional driver for instilling confidence in member states. Technical cooperation in these areas might provide the accelerators and multiplier effect which would spur even more integration. Robust and sustainable integration should not be measured by how fast the continent wants to move forward, but should rather be informed by a combination of gradual/cumulative sectoral successes and anti-retrogression checks or benchmarks.

This does not mean that the Authority should have a free hand in policy initiation. This right should be exercised only when the Authority deems that a common position or addressing a problem at the continental level is the most effective goal-oriented approach to resolving a problem. Thus, in keeping with the principle of subsidiarity in policy initiation, the Authority must work in close collaboration with the Executive Council, regional economic communities (RECs), the Pan-African Parliament (PAP) and the Economic, Social and Social Council (ECOSOCC).

With regard to areas in the second pillar, the proposed Authority should not have the exclusive right to policy initiation. Policies would have to be initiated under the direction and guidance of the Executive Council. The Authority should play mainly a supporting and coordinating role in these areas of jurisdiction.

Implementation of decisions

In those areas where the proposed Authority has the exclusive right to policy initiation, it is important that it should have extensive powers in order to ensure implementation and monitoring. In setting community directives, the proposed AU Authority, the AU Assembly and the Pan-African Parliament should define and agree on the directives. Moreover, the proposed Authority should have the power to raise an issue with a member state that is in breach of or not complying with a directive at the African Court of Justice and Human Rights. In areas where the Authority does not have the exclusive right to policy initiation, its mandate should be one of monitoring and coordination only and it should work in close collaboration with the RECs and member states.

Size and structure

The Authority should be geared to manage political sensitivity and the need for a robust bureaucracy capable of delivering on its goals and programmes. This can be achieved by allowing political appointments in the senior hierarchy (the president and secretaries) and technocrats in the second tier. The proposed

Authority should be headed by a president, who should be appointed by the General Assembly. AU secretaries should head those areas of jurisdiction where the Authority has the exclusive right to initiate policies and should be appointed by the AU president. However, the appointment of these secretaries should be approved by the AU Assembly and the Pan-African Parliament. This will go a long way towards ensuring collective responsibility as recommended in the audit of the AU.

In those areas of jurisdiction where the Authority does not have the exclusive right to policy initiation, they should be headed by special secretaries appointed by the General Assembly. These special secretaries should be managed by a new structure, the secretariat of the Executive Council, which should work closely with the Permanent Representative Committee. This will help to ease the burden of the Authority in confronting national governments in politically sensitive areas.

Institutional framework and implications

The policy-making organs of the AU (the General Assembly and Executive Council) are still very much embedded in the domestic politics of member states. Hence, in an attempt to enhance the independence of the proposed Authority, decision-making should be decentralised. In an effort to enhance citizen participation, provision must be made for a form of co-decision-making at the AU. This can be achieved by adopting an incrementalist approach and by empowering other institutions of the AU, such as the Pan-African Parliament, by granting them full legislative powers in those areas of jurisdiction where the Authority has an exclusive right to policy initiation.

The Pan-African Parliament

The Pan-African Parliament needs to become a legislative body that represents the interests of Africans.[9] The areas of jurisdiction on which the PAP can legislate should be limited to those where the Authority has the exclusive right to policy initiation. However, the PAP does need not to legislate on the proposed policy per se – rather, it should ensure that the proposed policy does not impact negatively on the rights and freedoms of Africans. This will enhance the work of the Authority, for although the Authority's policy proposals will take into consideration political realities, these will not be entirely subject to the political exigencies of member states. The question is how differences between the PAP and the Assembly will be managed. In our opinion it should be the task of the Authority to find common ground when there are conflicting arguments and positions.

The African Court of Justice and Human Rights

This institution needs to be fully operational and have judicial powers. However, for the time being its powers to adjudicate should be limited to those areas of jurisdiction where the Authority has the exclusive right to policy initiation and where the Assembly and PAP share decision-making powers.

Committee of Regional Economic Communities

Apart from co-decision-making, there is a need to enhance, coordination and collaboration between the AU and RECs..The AU should create a committee of RECs that should be mandated to promote collaboration and coordination. The committee should be situated at the AU Authority and should function within the framework of the memorandum of understanding between the RECs and the AU.

Important considerations

In the areas of jurisdiction where the Authority has the exclusive right to policy initiation and where the Assembly and Pan-African Parliament to some extent share decision-making powers, policies should be applicable immediately, without the need for ratification, once a decision has been taken and directives issued by the Assembly.
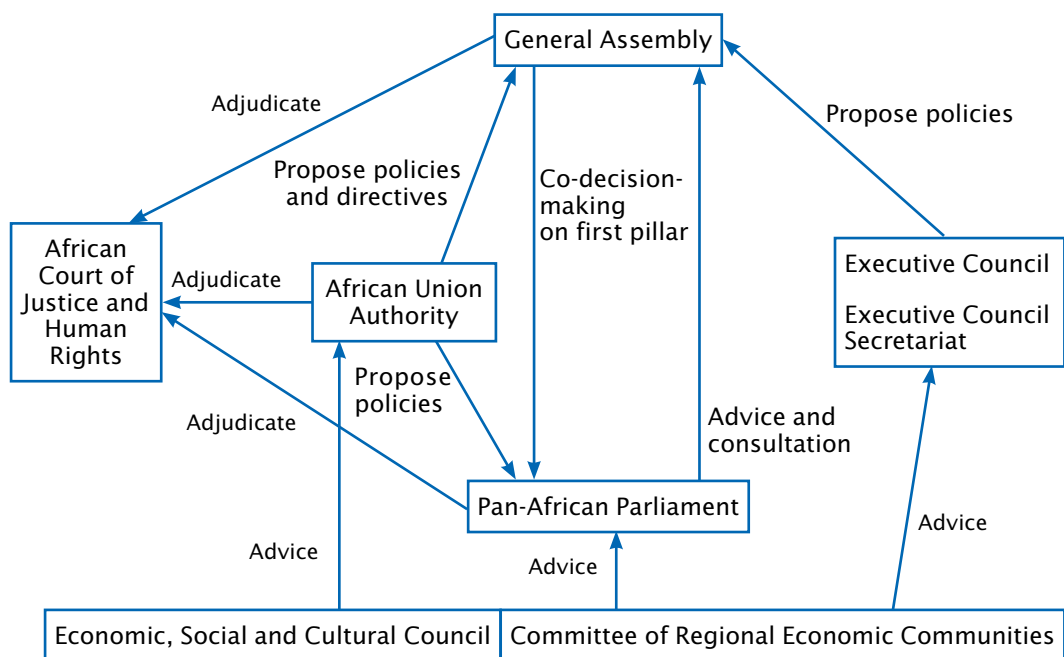
Key legal instruments of the AU will have to be revisited. This is likely to be a lengthy process unless a fast-track procedure is established and implemented. Member states will have to commit themselves to substantial funding and support for the structures of the Authority.

Concluding remarks

The establishment of a hybrid AU Authority with intergovernmental and supranational traits will not neutralise the integration debate between the two opposing camps, but when there is a good design in terms of areas of jurisdiction, the importance of these differences is likely to diminish over time. However, this is based on the premise that the Authority will deliver on the AU promise of material security and freedom, as well as peace, security, stability and progress for the people of Africa.

Important documents of the African Union
- General Assembly, Accra Declaration, adopted at the 9th ordinary session in *Accra*, Ghana, 1–3 July 2007
- General Assembly, Decision on the report of the Committee of Twelve Heads of State and Government on the union government, Sharm El Sheik, Egypt, July 2008 (Assembly/AU/11 (XI))
- General Assembly, Transformation of the African Union Commission into the African Union Authority, Addis Ababa, January 2009 (Assembly/AU/Dec.233 (XII))
- Audit report of the African Union, Addis Ababa, Ethiopia, December 2007
- Chairperson, *Report on strengthening the African Union Commission and STCs: towards a union government,* 10th ordinary session of the Executive Council, Addis Ababa, Ethiopia, 25–26 January 2007 (EX.CL/328 (X))
- Committee of Twelve Heads of State and Government on the union government, *Report*, Arusha, Tanzania, May 2008
- Constitutive Act, adopted by the 36th ordinary session of the Assembly of Heads of State and Government, Lomé, Togo, July 2000
- Executive Council, Conclusions of the 12th extraordinary session, 15–16 April 2009
- Statutes of the Commission of the African Union, adopted at the First Ordinary Session, South Africa, 9–10 July 2002
- Treaty establishing the African Economic Community, adopted at Abuja, Nigeria, 3 June 1991

1   See African Union, Constitutive Act, adopted by the 36th ordinary session of the Assembly of Heads of State and Government, Lomé, Togo, 11 July 2000.
2   See article 3 of the Statutes of the Commission of the African Union, adopted at the first ordinary session, Durban, South Africa, 9–10 July 2002.
3   See the Audit Report of the African Union, Addis Ababa, Ethiopia, December 2007.
4   4See the AU General Assembly, Transformation of the African Union Commission into the African Union Authority, Addis Ababa, January 2009 (Assembly/AU/Dec.233 (XII)).
5   Ibid.
6   For a discussion of these two opposing approaches to African integration, see T Murithi (ed), *Towards a union government for Africa – challenges and opportunities,* Monograph 140, Pretoria: Institute for Security Studies, January 2008.
7   A Kambudzi, Portrayal of a possible path to a single government for Africa, in T Murithi (ed), *Towards a union government for Africa – challenges and opportunities,* Monograph 140, Pretoria: Institute for Security Studies, January 2008.
8   Ibid.
9   For a discussion of this, see S Mpanyane, *Transformation of the Pan-African Parliament: a path to a legislative body?* Occasional Paper 181, Pretoria: Institute for Security Studies, March 2009; and G Hugo, *The Pan-African Parliament: is the glass half-full or half-empty?* Occasional Paper 168, Pretoria: Institute for Security Studies, September 2008.