COUNTING GAINS, FILLING GAPS

STRENGTHENING AFRICAN UNION’S RESPONSE TO HUMAN RIGHTS VIOLATIONS COMMITTED IN CONFLICT SITUATIONS
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<tr>
<td>ACERWC</td>
<td>African Committee of Experts on the Rights and Welfare of the Child</td>
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<td>ACHPR</td>
<td>African Commission on Human and Peoples’ Rights</td>
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<td>ACJHR</td>
<td>African Court of Justice and Human Rights</td>
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<td>ACLED</td>
<td>Armed Conflict Location and Event Data</td>
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<td>AFISMA</td>
<td>African-led International Support Mission in Mali</td>
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<td>AGA</td>
<td>African Governance Architecture</td>
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<td>AMIB</td>
<td>African Union Mission in Burundi</td>
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<td>African Union Mission in Sudan</td>
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<td>AMISOM</td>
<td>African Union Mission in Somalia</td>
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<td>ANT</td>
<td>Chadian National Army</td>
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<td>APF</td>
<td>African Peace Facility</td>
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<td>APSA</td>
<td>African Peace and Security Architecture</td>
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<td>ASF</td>
<td>African Standby Force</td>
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<td>AU</td>
<td>African Union</td>
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<td>AUC</td>
<td>African Union Commission</td>
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<td>AUCISS</td>
<td>African Union Commission of Inquiry on South Sudan</td>
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<td>CAR</td>
<td>Central African Republic</td>
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<td>CCTARC</td>
<td>Civilian Causalities Tracking, Analysis and Response Cell</td>
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<td>CEWS</td>
<td>Continental Early Warning System</td>
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<td>CMPCRD</td>
<td>Crisis Management and Post Conflict Reconstruction Division</td>
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<td>Abbreviation</td>
<td>Description</td>
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<td>CONOPS</td>
<td>Concept of Operations Document</td>
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<td>CSO</td>
<td>Civil Society Organization</td>
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<td>CTSAMM</td>
<td>Ceasefire and Transitional Security Arrangements Monitoring Mechanism</td>
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<tr>
<td>DPA</td>
<td>Department of Political Affairs, African Union Commission</td>
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<td>DRC</td>
<td>Democratic Republic of Congo</td>
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<tr>
<td>ECCAS</td>
<td>Economic Community of Central African States</td>
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<tr>
<td>ECOSOCC</td>
<td>Economic, Social and Cultural Council</td>
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<tr>
<td>ECOWAS</td>
<td>Economic Community of West African States</td>
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<td>EU</td>
<td>European Union</td>
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<td>EUFOR-CAR</td>
<td>European Union Military Operation in Central African Republic</td>
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<td>HCSS</td>
<td>Hybrid Court for South Sudan</td>
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<td>HRW</td>
<td>Human Rights Watch</td>
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<td>ICC</td>
<td>International Criminal Court</td>
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<td>ICISS</td>
<td>International Commission on Intervention and State Sovereignty</td>
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<td>ICTR</td>
<td>International Criminal Tribunal for Rwanda</td>
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<td>ICTY</td>
<td>International Criminal Tribunal for the Former Yugoslavia</td>
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<td>IDP</td>
<td>Internally Displaced Person</td>
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<td>LRA</td>
<td>Lord's Resistance Army</td>
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<td>MAES</td>
<td>African Union Electoral and Security Assistance Mission to the Comoros</td>
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<td>MAPROBU</td>
<td>African Prevention and Protection Mission in Burundi</td>
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<td>MCPMRS</td>
<td>Mechanism for Conflict Prevention, Management and Resolution</td>
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<td>MFDC</td>
<td>Mouvement des Forces Democratique de la Casamance</td>
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<tr>
<td>MICOPAX</td>
<td>Mission for the Consolidation of Peace in Central African Republic</td>
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<tr>
<td>MINUSCA</td>
<td>United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic</td>
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<td>MINUSMA</td>
<td>United Nations Multidimensional Integrated Stabilization Mission in Mali</td>
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<td>Acronym</td>
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<tr>
<td>MIOC</td>
<td>African Union Observer Mission in the Comoros</td>
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<td>MISCA</td>
<td>African-led International Support Mission to the Central African Republic</td>
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<td>MNJTF</td>
<td>Multinational Joint Task Force</td>
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<tr>
<td>MSU</td>
<td>Mediation Support Unit</td>
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<tr>
<td>OAU</td>
<td>Organization of African Unity</td>
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<td>OHCHR</td>
<td>Office of the High Commissioner for Human Rights</td>
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<td>OIOS</td>
<td>Office of Internal Oversight Services</td>
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<td>PSD</td>
<td>Peace and Security Department</td>
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<tr>
<td>REC</td>
<td>Regional Economic Community</td>
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<tr>
<td>ROE</td>
<td>Rules of Engagement</td>
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<td>UNAMID</td>
<td>African Union-United Nations Mission in Darfur</td>
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<td>UNMISS</td>
<td>United Nations Mission in South Sudan</td>
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<td>UNSC</td>
<td>United Nations Security Council</td>
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EXECUTIVE SUMMARY

The nature and intensity of conflicts and crises in Africa vary considerably. However, they are generally characterized by gross human rights violations, including acts that constitute crimes under international law. For instance, the African Union Commission of Inquiry on South Sudan (AUCISS), established following the eruption of conflict in South Sudan in November 2013, found that parties to the conflict had committed crimes against humanity and war crimes. In December 2016, the UN Commission on Human Rights in South Sudan further reported that a steady process of ethnic cleansing was underway in the country. In Nigeria, several human rights groups, including Amnesty International, have in the recent past gathered evidence which suggests that both sides to the conflicts, Boko Haram and government forces, have committed war crimes. In addition to war crimes, the catalogue of crimes committed by Boko Haram may also constitute crimes against humanity. A similar pattern of violations has been reported in Cameroon where government forces are equally fighting the armed group Boko Haram. In Sudan, Amnesty International has collected evidence which suggest possible use of chemical weapons in the Jebel Marra region.

The scale of atrocities in recent and ongoing conflicts has prompted the African Union (AU) in general and its Peace and Security Council (PSC) in particular to recognize the intimate link between peace and security and human rights, and perhaps more importantly, to begin to take measures to address human rights violations that lead to and/or committed in conflict situations. For instance, the AU has deployed human rights monitors to Burundi, Central African Republic (CAR), and Mali, and established a commission of inquiry to investigate human rights violations and abuses in South Sudan. It has also begun to recognize the role of AU human rights institutions, such as the African Commission on Human and Peoples’ rights (ACHPR) and the African Committee of Experts on the Rights and Welfare of the Child (ACERWC), in responding to conflict and crisis situations. For instance, the PSC has on a number of occasions requested the ACHPR to investigate human rights violations and abuses committed in the context of conflict or crisis.

The AU human rights institutions have also sought to respond to human rights violations committed in conflict through a relatively rich catalogue of approaches. The ACHPR has generated a burgeoning body of jurisprudence on the right to peace, undertaken fact-finding missions to countries experiencing conflict, and adopted country-specific resolutions condemning conflict-related human rights violations. In addition to conducting country visits to South Sudan and CAR, the ACERWC has also recently published a study on the impact of conflict on children, urging AU member states to demonstrate real political commitment to end conflicts.

However, despite the increasing number of interventions, the increasing recognition of the nexus between conflict management and human rights protection, advances in normative development as well as institutional reforms, major gaps remain in AU’s efforts to integrate respect, promotion, and protection of human rights in its peace and security processes. This report has identified many gaps which could be classified into six major gaps.

First, there are major gaps in the mechanisms for the prevention of conflicts. The AU recognizes that responding to conflict situations which have already erupted is a very expensive venture, and as such, investment and focus should be on the prevention of conflicts. For this reason, the core mandate of three out of the five components of the African Peace and Security Architecture (APSA) relates to conflict prevention. Prevention of conflicts is a primary function of the PSC, the Continental Early Warning System (CEWS) and the Panel of the Wise. Through the collection of early warning data and the deployment of preventive diplomacy, the AU has in the past successfully prevented certain crises from escalating to full-blown conflicts. In 2015, the APSA Impact Report indicates that AU preventive measures contributed to successful de-escalation of crises in four countries (Burkina Faso, Guinea-Bissau, Guinea and Nigeria). Partial success was registered in two countries (Tanzania and Togo) while failure was registered in one country (Burundi).
But there is more that can and should be done in strengthening AU’s conflict prevention measures. In particular, there is dire need to fill gaps in the collection of data on human rights violations as part of the early warning system. The CEWS is linked to and receives information on a routine basis from the early warning mechanisms of the Regional Economic Communities (RECs). However, no similar structure exists for the CEWS to receive and process information from the regional human rights treaty bodies and in particular from the ACHPR and the ACERWC. As the primary regional human rights body, the ACHPR specifically receives and holds a rich body of information on patterns of human rights violations. This valuable information which could significantly contribute to early detection of conflicts, needs to be injected into the CEWS.

Another related challenge lies in the capacity and determination of ACHPR itself to respond to conflict situations before they escalate. Primarily, its response to human rights issues in conflict-affected countries is generally activated too late in the day when the conflicts have reached their peak. Therefore, while its public statements on the deterioration of the human rights situation in a country may serve as a warning of potential conflict, ACHPR’s contribution to conflict prevention processes is limited. Moreover, the ACHPR has generally left its mandate under Article 58 of the African Charter on Human and Peoples’ Rights to go into disuse. Article 58(1) specifically mandates the ACHPR to notify the AU Assembly of cases which reveal the existence of a series of serious or massive human rights violations while Article 58(3) mandates it to notify the AU Assembly of emergency situations that it has duly noticed. The ACHPR has rarely invoked these provisions.

Second, while the practice of deploying human rights observers, undertaking fact-finding missions or establishing commissions of inquiry is growing, there is a consistent pattern of failures to consider, publish and implement the recommendations of the reports emanating from these processes. There is little doubt that the ACHPR fact-finding missions deployed on the instruction of the PSC to Darfur (2004), Mali (2013), and Burundi (2015), contributed towards efforts of documenting conflict-related human rights violations committed in those countries. Similarly, the report of the AU Commission of Inquiry on South Sudan (AUCISS) remains one of the authoritative official reports on the nature and gravity of violations committed in South Sudan. The challenge in all instances where the PSC has authorized investigations into conflict-related human rights violations lies in considering, publishing and implementing the final outcomes of these missions. Delays in considering and publishing have resulted in situations in which reports of fact-finding missions have little practical use or policy implications.

The report of the July 2004 ACHPR mission to Darfur for instance was not made public for close to three years. Even more concerning is the fact that there is no record to show that the PSC considered the report. A similar fate met the report of the 2013 ACHPR fact-finding mission to Mali. The report of the ACHPR mission to Burundi (2015) was considered by the PSC but long after its contents had been, in the view of the PSC itself, overtaken by other relevant developments. A similar situation occurred in respect to the AUCISS report which was finalized in November 2014 but only released to the public close to a year later. Similarly, reports of investigations into human rights violations committed by AU peacekeepers are often released to the public either partially or not at all. The AU must seek to fill this gap and ensure that the reports it commissions are promptly considered and published. The AU must also commit to implement recommendations of fact-finding missions or commissions of inquiry. Thus far, the bulk, if not all, of recommendations contained in PSC authorized fact-finding missions or inquiries remain unimplemented and ignored.

Third, there are consistent gaps in following up and enforcing decisions by the regional human rights treaty bodies on conflict-related human rights violations. The regional human rights treaty bodies have all made several decisions (either in the form of recommendations or orders) relating to conflict-related human rights violations. These decisions require that the respondent states in those specific cases take specific measures to address particular violations identified by the treaty bodies, including by providing reparation to victims of violations. All of these decisions have been met by a deafening silence from the respondent states. While the ACHPR and the African Human Rights Court have repeatedly brought cases of non-compliance to the attention of the AU Executive Council, respondent states have not been held to account. At the very least, the AU Assembly should demand that respondent states submit reports to it indicating the steps they have taken to implement those recommendations or orders.

Fourth, there remains major challenges in ensuring accountability for serious human rights violations committed in the context of conflicts. Related to delays in considering and publishing human rights reports is AU's apparent lack of political will to bring to justice perpetrators of conflict-related violations. In simply taking note of the ACHPR report of its fact-finding mission to Burundi, the PSC failed to consider and take measures to implement an important recommendation contained in the report, that is, the recommendation for the establishment of an accountability mechanism that would hold perpetrators of gross human rights violations to account. In relation to South Sudan, the establishment of the AU’s Hybrid Court for South
Sudan (HCSS) is yet to be a reality more than a year since the release of the AUCISS report and the signing of the peace agreement.

The accountability gap is also evident in peace support operations. On a number of occasions, AU peacekeepers have been accused of serious abuses and violations of the rights of the civilians they have been deployed to protect. AMISOM troops for instance have been implicated in killings of civilians as well as in acts of sexual exploitation and abuse. Similarly, MISCA troops were implicated in allegations of killings, enforced disappearances, torture and sexual violence. In a number of cases, the response of the AU to alleged violations committed by its peacekeepers has been seriously flawed. For example, the AU did not institute independent investigations into allegations that the soldiers of the Chadian contingent of MISCA had killed civilians in 29th March 2014 incident in Central African Republic (CAR). Moreover, mechanisms for holding AU troops accountable for their acts and misconduct are generally not strong enough. The responsibility of peacekeepers accountability so far lies with troop-contributing countries, with the AU and the peacekeeping mission playing no significant role in the process. The AU lacks a mechanism to follow-up the outcomes of disciplinary or criminal proceedings initiated by troop-contributing countries. Where the AU has indicated that investigations have been initiated to determine whether specific peacekeepers committed alleged violations, the outcome of these processes have been rarely released to the public. In other instances, measures taken by peacekeeping missions to address human rights violations committed by peacekeeping forces have been inadequate.

Fifth, efforts by the AU to ensure protection of civilians and respond to human rights violations being committed in conflict situations are seriously impeded by logistical and resource challenges. While the AU has commendably advanced in ensuring its peacekeeping missions have specific mandates to protect civilians, in most cases these missions are not resourced adequately to enable them discharge their mandate. Similarly, the deployment of human rights observers has been delayed in certain cases (e.g. Burundi) partly for lack of funding to operationalize the deployment.

Gaps in logistical support and resources reflect a larger and more complex capacity challenge facing the AU - heavy dependence on donor funding for its peace and security operations. Development partners and other international actors are responsible for footing close to 100% of the AU peace and security budget. In particular, the AU covers only 2% of its peace and security budget while development partners and other international actors, such as the UN, cover the remaining 98% of the budget. In July 2016 during the 27th ordinary session of the AU Assembly, member states committed to remit to the AU monies collected from the imposition of a levy of 0.2% on eligible imports into their respective countries. This decision was taken with a view to ensuring that by 2020 the AU will be capable of footing at least 25% of its peace and security activities. As far as Amnesty International is aware, by the end of March 2017 it was only Rwanda that had commenced the domestic process for collecting the 0.2% levy on eligible imports. To overcome its funding challenges, all AU member states need to fulfill their respective financial commitments to ensure effective protection of civilians and response to human rights violations in AU’s peace and security operations.

Sixth, there are deep-rooted challenges in the area of institutional coordination and synergy. The lack of a coordinated response hampers AU’s capacity to take effective measures towards protection and promotion of human rights in its peace and security processes. For instance, while the Protocol Relating to the Establishment of the Peace and Security Council of the African Union (PSC Protocol) specifically requires the PSC to seek close cooperation with the ACHPR, the two institutions have had very little interaction. Article 19 of the PSC Protocol envisages a two-way relationship between the PSC and the ACHPR but this provision is yet to be implemented. Similarly, there seems to be gaps in PSC’s interactions with the CEWS, including as a result of the lack of established formal avenues for CEWS to directly feed information into the PSC decision-making process. There are thus growing calls for the CEWS to channel information directly to the PSC. The PSC is gradually moving towards institutionalizing its annual session with the ACERWC, although it has not constantly afforded the ACERWC the opportunity to address it during relevant ad hoc sessions such as the recent one on “Protecting Children from conflicts: highlighting the case of child soldiers in Africa” held in February 2017.

The above challenges are not insurmountable nor are they particularly unique to the AU. This report concludes with a set of recommendations aimed at supplementing the measures already taken or being considered by the AU. Amnesty International believes that the implementation of the recommendations will contribute to greater integration of human rights in the peace and security processes of the AU.
KEY RECOMMENDATIONS TO THE PEACE AND SECURITY COUNCIL

- Pursuant to Article 8(5) of the PSC Protocol, establish within its structure a committee on human rights charged with ensuring that respect, protection and promotion of human rights are incorporated or integrated in all policies and actions of the PSC.

- Ensure prompt consideration and publication of reports of fact-finding missions or commissions of inquiry established pursuant to its decisions.

- Ensure follow-up and implementation of recommendations from fact-finding missions and commissions of inquiry. In this regard, the PSC should in particular take steps to implement the recommendations contained in ACHPR report of its fact-finding mission to Burundi.

- Institutionalize the emerging practice of deployment of human rights observers to countries affected by conflict and call on the AUC to develop policy guidelines for the deployment of human rights observers.

- Ensure AU peace-keeping missions have clear, specific and strong mandates on the protection of civilians. Such mandates should be accompanied with sufficient resource and logistical support for effective implementation.

- Clarify, operationalize and institutionalize modalities for regular interaction or meetings with the ACHPR and ACERWC as envisaged under Article 19 of the PSC Protocol.

- Encourage the ACHPR to revive the use its mandate under Article 58 of the African Charter by, inter alia, developing guidelines for receiving and considering Article 58 referrals.

- Institutionalize the emerging practice of receiving regular briefings from the CEWS and develop, in consultation with the AUC Chairperson, a channel for the direct flow of information from the CEWS to the PSC.

KEY RECOMMENDATIONS TO THE AFRICAN UNION COMMISSION CHAIRPERSON

- Implement the recommendations contained in the August 2016 Report of the High Representative on the Peace Fund and in particular, the recommendation relating to the development of an AU integrated human rights compliance framework and the finalization of the AU conduct and discipline policy.

- Develop policy guidelines on the mandate, design, organization and the working methods of human rights observers deployed to monitor human rights violations in conflict and crisis situations.

- Promptly publish reports of human rights observers deployed to monitor human rights violations committed in conflict or crisis situations.

- Expedite the development of a comprehensive and transparent database of human rights experts who may on short notice be deployed as human rights observers to conflict and crisis situations.

- Take urgent measures to address impunity for gross human rights violations committed by parties to conflicts as well as by AU peacekeeping forces. In this regard, the AUC Chairperson should:
  - establish the Hybrid Court of South Sudan without further delay;
  - establish a standing and independent oversight mechanism responsible for investigating alleged human rights violations by AU peacekeepers as recommended by the AU High Representative on the Peace Fund as well as by the 2014 team tasked to investigate allegations of sexual exploitation and abuse by AMISOM troops.

- Ensure AU peace-keeping missions have clear, specific and strong mandates on the protection of civilians. Such mandates should be reflected in all mission documents (e.g. Rules of Engagement, Concept of Operations, and Mission Strategy) and accompanied with sufficient resource and logistical support for effective execution.

- Develop a human rights compliance framework for AU peacekeeping operations as proposed in the August 2016 report of the AU High Representative on the Peace Fund, and ensure that the AUC, peacekeeping missions and troop contributing countries implement the framework. This framework should cover areas selection, screening and training of peacekeeping troops as well as the establishment of effective accountability mechanisms.
RECOMMENDATIONS TO THE AFRICAN COMMISSION ON HUMAN AND PEOPLES’ RIGHTS

 Revive and effectively utilize its mandate under Article 58 of the African Charter to notify the AU Assembly of the existence of a series of serious or massive violations of human rights as well as cases of emergency.

 Urge member states to extend an open and standing invitation to it to conduct fact-findings missions and ensure consistent follow-up of pending requests through the AU Assembly;

 Follow-up on the implementation of its decisions emanating from the communications procedure as well as recommendations contained in reports of fact-finding missions and in country-specific and thematic resolutions. This follow-up may be undertaken through a variety of mechanisms including during promotional missions and during the process of examining state party reports.

 Expedite the preparation of the study on human rights in conflict situations in Africa and the development of a compressive strategy and framework for responding to human rights violations committed in conflict situations as envisaged under Resolution 332. This process should ensure proper consultation with all relevant stakeholders including civil society;

 Ensure systematic, institutionalized and regular engagement with the PSC and in particular bring to the attention of the PSC information relating to patterns of human rights violations that potentially lead to or committed in conflict situations. In this regard, work out, as a matter of urgency, modalities for giving effect to Article 19 of the PSC protocol that provided for cooperation with the PSC.

 Establish within its secretariat a research unit for gathering and analyzing information on gross human rights violations that could lead to or committed in conflict and crisis situations. The research unit should be equipped with necessary resources and capacity to undertake research and investigations in conflict situations;
INTRODUCTION

The African Union (AU) is increasingly demonstrating readiness to take the lead in the formulation and deployment of policy and practical responses to conflict and crisis situations in Africa. A 2015 impact assessment of the conflict-related interventions of the AU reports that the organization responded to 51% of violent conflicts on the continent. The report describes the AU, and African Regional Economic Communities (RECs), as “irreplaceable actors for assuring peace and security in Africa”.

The determination of the AU to take lead in responding to conflict situations in Africa is rooted in the idea that Africa should craft solutions to the problems it faces; it should take the fate and future of its people in its own hands. It is a determination that is articulated in the mantra “African solutions to African problems”. Before the establishment of the AU in 2000, the United Nations (UN) was the predominant if not the sole player on matters of peace and security in Africa. Efforts by the Organization of African Unity (OAU) during the 1990s to respond to conflict situations were limited and overshadowed by those of the UN. Indeed, the deployment of peace-keeping operations during the existence of the OAU was the sole preserve of the UN. With three-quarters of its current peacekeeping operations situated in Africa, the UN still plays a leading and active role on matters of peace and security in Africa. However, the UN plays this role not in exclusion of but in partnership with the AU.

Since its founding, the AU has expressed a commitment to rid the continent of conflicts and asserted that it should take the lead role in the pursuit of this endeavor. It has taken a number of steps in order to translate this commitment into reality. In particular, the AU has established a relatively comprehensive normative and institutional framework known as the African Peace and Security Architecture (APSA). APSA builds on and improves the structures that the Organization of African Unity (OAU) – AU’s predecessor - had begun to establish in the twilight years of its existence. In the face of the high prevalence of civil wars in many parts of Africa in the late 1980s and early 1990s, the OAU began to pay attention, albeit reluctantly, to violent conflicts and their devastating effects. The 1993 Cairo Declaration constitutes OAU’s perspective on the subject. Through the Declaration, it established the Mechanism for Conflict Prevention, Management and Resolution (MCPMR) as the standing structure for responding to conflicts. The mechanism was criticised for lacking ‘empirical legitimacy and functional operability’. In essence, the MCPMR and the OAU as a whole lacked the capacity to accurately predict and efficiently respond to conflict and crisis situations.

The transformation of the OAU to the AU provided the opportunity to improve the regional normative and institutional mechanism for conflict prevention, management and resolution. This improvement is reflected in the norms and operations of the APSA. The AU Peace and Security Council (PSC) is the central pillar of the APSA. The other pillars of APSA are the Panel of the Wise, the Continental Early Warning System (CEWS), the African Standby Force (ASF), and the Peace Fund. The pace of development of the various components of APSA has been uneven but most of them are fairly close to being fully operationalized.

The APSA is supposed to be complemented in its work by the African Governance Architecture (AGA). The AGA is the AU’s normative and institutional framework for promoting, harmonizing and sustaining three specific ‘shared values’: democracy, good governance, and human rights. The objectives of AGA include deepening synergy, coordination and cooperation among AU organs, institutions and RECs on issues of democracy, governance, human rights and humanitarian assistance. It also seeks to facilitate joint engagements in the areas of conflict prevention and post-conflict reconstruction and development. A total of 12 institutions are members of the AGA Platform. Among the AGA Platform members are the three regional human rights treaty bodies: the African Commission on Human and Peoples’ Rights (ACHPR), the African Committee of Experts on the Rights and Welfare of the Child (ACERWC), and the African Court on Human and Peoples’ Rights (African Human Rights Court). These specific bodies often respond to human rights violations committed in conflict in the discharge of their respective mandates.

Figure 1. African Peace and Security Architecture (APSA) components.

Despite the normative and institutional advances made so far, questions still abound regarding the effectiveness, consistency and coherence of AU’s response to human rights violations and abuses that lead to and committed in conflict situations. This report examines the extent to which the respect, promotion, and protection of human rights is integrated into the peace and security processes of the AU. The report analyses four specific issues:

- The right of the AU to intervene in a member state to prevent or stop the commission of three specific crimes under international law: crimes against humanity, war crimes and genocide.

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12 These are: PSC; African Commission on Human and Peoples’ Rights (ACHPR); African Union Commission (AUC); African Court on Human and Peoples’ Rights (African Court); African Peer Review Mechanism (APRM); African Union Commission on International Law; African Union Advisory Board on Corruption; African Committee of Experts on the Rights and Welfare of the Child (ACERWC); Planning and Coordinating Agency of the New Partnership for African Development (NEPAD); Economic, Social and Cultural and Council; and RECs.
• The response of the regional human rights treaty bodies to human rights violations committed in conflict situations. On this issue, the report looks at the practices of the ACHPR, ACERWC, and the African Human Rights Court.

• The response of the PSC to human rights violations committed in conflict situations. On this aspect, the report focuses on the following response mechanisms of the PSC: early warning and prevention; peace support operations; deployment of human rights monitors; and fact-finding missions and commissions of inquiry.

• The level of synergy and coordination among AU organs and institutions involved in responding to human rights violations committed in conflict situations. In essence, the report implicitly examines the extent to which APSA relates to AGA in relation to the nexus between peace and security and human rights.

As indicated above, the AU’s mandate on peace and security is shared with the UN which bears the primary responsibility for the maintenance of international peace and security. The two institutions generally collaborate in their responses to conflict situations in Africa. This collaboration is relevant to this report. However, to allow for a narrow and well-defined focus, this report does not undertake an in-depth analysis of the intersections between the works of the AU and the UN in peace and security matters in Africa. Similarly, the report does not examine in detail the collaboration between the AU and African RECs. The RECs bear peace and security mandates within their specific sub-regional spheres of jurisdiction and have signed a memorandum of understanding on cooperation in the area of peace and security with the AU.
METHODOLOGY

Amnesty International has monitored and documented human rights violations and abuses committed in conflict and crisis situations in Africa for decades. This report builds on this vast body of research. The report also draws on review and analysis of primary documents, including reports, communiqués, and press releases of the relevant organs and institutions of the AU. This desktop research was supplemented by open-ended interviews with relevant stakeholders including AU officials, state representatives, development partners, and civil society representatives.13

Additionally, as part of gathering information and insights for the report, Amnesty International organized two roundtable discussions. On the margins of the 55th ordinary session of the ACHPR held in April 2015 in Luanda, Angola, Amnesty International organized a roundtable discussion on the theme “Conflicts in Africa and the ACHPR”. The key objective of the event was to explore the need and feasibility of establishing a special mechanism to assist the ACHPR in responding to conflict and crisis situations in Africa. Following this, Amnesty International organized another roundtable discussion on the sidelines of the 25th Summit of the AU held in June 2015 in Johannesburg, South Africa. This second roundtable focused on the performance of the AU in preventing and addressing conflict-related human rights violations and abuses. The participants were drawn from AU organs and institutions, academic, and civil society organizations.

The report also relies on a statistical analysis of public documents of the PSC and ACHPR relating to conflict situations. The statistical analysis was deployed in order to measure how the PSC and ACHPR respond to different types of conflict. The analysis examined the published documents of the two institutions, including communiqués, press releases, decisions, declarations, and resolutions. These publicly available documents are a reasonable measure of their institutional response because their content reflects the mandates and work of each institution. These documents have been regularly issued by the PSC and ACHPR since their respective founding and they thus provide broad coverage for the range of past and present actions that have been undertaken by both institutions. The scope of analysis was restricted to documents that make reference to African conflicts, either past or ongoing.

As PSC and ACHPR documents are published online, web scraping techniques was used to download and organize the textual data. The web scraping technique retrieved 575 PSC documents and 234 ACHPR documents published from 2004 through 2015. These files were merged into a summary PSC-ACHPR documents database, where each file was represented by its title, date of publication, country-subject(s), thematic issue area(s), and the text of the document in verbatim. This large text database was analyzed using natural language processing techniques. Using computer algorithms, hundreds of texts were analyzed simultaneously, allowing for large-scale semantic analysis. Specifically, the PSC-ACHPR documents database was used to discern whether and under what context specific phrases will appear in specific texts; these phrases were then used to evaluate the intensity of institutional response, ranging from rhetorical commentary to actual demands for intervention.

The data on conflicts for this analysis was drawn from the Armed Conflict Location and Event Data (ACLED). This database provides information on the type, scale, location, and timing of politically violent events for African countries beginning in the 1990s. Using this information, a universe of conflict cases that involved human rights violations was created, enabling the evaluation of the institutional response of the PSC and ACHPR. The Annex provides further details on the statistical analysis.

13 Amnesty International conducted interviews with relevant stakeholders in Addis Ababa, Ethiopia, from 16 to 20 May 2016.
1. THE AFRICAN UNION AND THE RIGHT TO INTERVENE

The adoption of the AU Constitutive Act in 2000 marked the beginning of a new dawn in Africa. Unlike the OAU Charter, the Constitutive Act contains explicit provisions on human rights. Article 3(h) of the Act provides that one of the objectives of the AU is to “promote and protect human rights and peoples’ rights in accordance with the African Charter on Human and Peoples’ Rights and other relevant human rights instruments”. Article 4 provides that the operations of the AU shall be guided by a specific set of principles which include promotion of gender equality,14 respect for human rights and rule of law,15 promotion of social justice,16 promotion of sanctity of life,17 and condemnation of impunity.18 Two other principles sets the AU apart from other international organizations. Article 4(h) provides for:

The right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity

Article 4(j) further provides that AU member states reserve the right to “request intervention from the Union in order to restore peace and security”.

Articles 4(h) and (j) symbolizes a departure from OAU’s principle of “non-interference”. The principle of “non-interference” crippled the OAU in the area of human rights and peace and security. In particular, OAU’s inability to intervene in the domestic affairs of member states to protect human rights partly inspired its replacement by the AU. The AU operates in accordance with the principle of “non-indifference” to the domestic situation of human rights in member states.19 This section examines the normative contours and practical challenges entwined in implementing Article 4(h) of the AU Constitutive Act.

1.1 THE RIGHT AND RESPONSIBILITY TO INTERVENE20

As stated above, Article 4(h) provides that the AU reserves the right to intervene in a member state in respect of three specific grave circumstances: war crimes, genocide, and crimes against humanity. If a
pending amendment to the AU Constitutive Act ever comes to force, the AU may in the future also have the right to intervene in a member state if there exist a ‘serious threat to legitimate order’.21 Such an intervention will be undertaken with a view to ‘restore peace and stability’. In addition, Article 4(j) recognizes the right of member states to request intervention from the AU for purposes of restoring peace and security.22 Neither the Constitutive Act nor the PSC Protocol define what the term “intervention” means, leaving some ambiguity on the possible range of measures that the AU can deploy in the name of Article 4(h). From a literal perspective, the term could refer to all possible kinds of measures (including but not limited to the use of force). However, practice and evolution of the concept of intervention under international law, as well as a combined reading of other relevant provisions of the AU Constitutive Act, implies that what is envisaged is strictly military intervention. Other forms of intervention are listed in separate provisions of the AU Constitutive Act. For instance, Article 23(2) stipulates that measures such as the denial of transport and communications links and other measures of a political or economic nature may be imposed by the AU against any member state that fails to comply with the decisions and policies of the organization. For the speciﬁc case of an unconstitutional change of government, Article 30 of the Constitutive Act prescribes suspension from the AU as the collective measure to be taken. In effect, Article 4(h) envisages the use of military intervention only and other measures seem to fall outside of the scope of Article 4(h).23 In this regard, the PSC Protocol provides that the functions of the ASF include “intervention in a Member State in grave circumstances or at the request of a Member State in order to restore peace and security, in accordance with Article 4(h) and (j) of the Constitutive Act”.24 In essence, the term ‘intervention’ as used in Article 4(h) corresponds to the term ‘enforcement action or measures’ as used in the UN Charter. The UN Security Council has long held that ‘enforcement action or measures’ strictly refers to military actions.25 Notwithstanding the debate on the legitimacy of humanitarian intervention in international law, Article 4(h) represents the only international treaty containing an explicit legal basis for external military intervention to prevent or stop grave violations and abuses of international human rights and humanitarian law. The very essence of Article 4(h) is to empower the AU to take a unilateral decision when it deems that the stipulated threshold has been met. As highlighted above, the failures of OAU to intervene in order to stop the gross and massive human rights violations witnessed in Rwanda have provided the AU with the necessary powers to intervene if ever another atrocity like the Rwandan genocide loomed on the horizon.26 As such, some experts argue that Article 4(h) is an embodiment of what has come to be described as the ‘growing tendency to recognize that the principle of state sovereignty finds its limits in the protection of human rights’.27 There is little precedent to draw from on how the power to intervene under Art 4(h) is to be implemented in practice. However, there are some practical, legal and procedural diﬃculties likely to arise if and when Article (h) exercised by the AU Assembly. While Amnesty International does not take a position on these issues, due to its internal policy of neutrality on the use of force and military interventions, the sections below outline two major points of dilemma that continue to pose challenges to possible implementation of Article 4(h). These are:

a) Does the AU require the authorization of the UN Security Council (UNSC) before it can deploy an Article 4(h) intervention?

22 In 2007, faced with instability ahead of elections, Comoros requested for AU’s intervention in the country. In response, the AU deployed the AU Electoral and Security Assistance Mission to the Comoros (MAES) with an initial mandate of two and a half months (13 May to 31 July 2007). Even with the deployment of MAES, the situation in Comoros did not improve and the President requested for more robust action. This resulted in the deployment of military intervention in Comoros which effectively stabilized the country. See E Svensson ‘The African Union’s operations in the Comoros’ available at https://www.foi.se/download/18.792098/91592e195708810e71148402807303103/for_2659.pdf (accessed 3 April 2017).
23 A group of interdisciplinary academics, policymakers and practitioners in the areas of international peace and security with a special focus on Africa have also deﬁned intervention is a more restricted manner. They Pretoria clarify that ‘it is coercive measures, in particular military force, that require the decision of the AU Assembly under Article 4(h)’. They also assert that Article 4(h) recognizes that there are limits to non-violent means in stopping mass atrocities, and the only realistic means can be military intervention’. See Pretoria Principles on Ending Mass Atrocities Pursuant to Article 4(h) of the Constitutive Act of the African Union available at http://www.chr.up.ac.za/index.php/centre-news-2013/1218-pretoria-principles-on-ending-mass-atrocities-pursuant-to-article-4h-of-the-constitutive-act-of-the-african-union.html (accessed 3 April 2017).
b) At what stage of a situation should the powers of the AU to intervene under Article 4(h) be invoked?

1.2 REQUIREMENT FOR AUTHORIZATION

The first issue relates to the role of the UNSC – the only international body with the primary responsibility for the maintenance of international peace and security and with specific mandate to authorize intervention under international law. This question is relevant because Article 4(h) potentially conflicts with at least two provisions of the UN Charter: Articles 2(4) and 53. Article 2(4) prohibits UN member states from the use of force ‘against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations’. This prohibition is a recognized peremptory norm of international law. There are two exceptions to the prohibition under the UN Charter. Force may be deployed in self-defense24 or pursuant to a Chapter VII decision of the UNSC.25 Article 53 expressly prohibits regional organizations such as the AU from collectively or unilaterally deploying the use of force or military intervention without the prior authorization of the UNSC. It reads as follows:

The Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority. But no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council.

The 2005 World Summit Outcome also recognizes the primacy of the UN Security Council in authorizing and executing military interventions “on a case-by-case basis and in cooperation with relevant regional organizations as appropriate”.30

The inclusion of Article 4(h) in the Constitutive Act was partly a reaction to the failure of the international community, and the UNSC in particular, to pay closer attention or swiftly intervene to prevent or resolve conflicts in Africa. At the time of its adoption, Article 4(h) symbolized AU member states’ disdain for “legal niceties” such as UN authorization and a desire or resolve to deploy military intervention outside the framework of Article 53.31 Accordingly some analysts have argued that the AU may implement Article 4(h) without the necessary authorization in instances where the UNSC does not respond in a timely fashion to a request for authorization. In other words, analysts assert that the lack of reaction from the UNSC could be a valid reason for the AU to unilaterally proceed with military intervention.32

If the [UN Security] Council does nothing, and people are dying on the ground, the AU could legally intervene without prior authorization by the Security Council. This would be the appropriate thing to do, since the AU would be stopping violations against peremptory norms of general international law, namely, genocide, war crimes and crimes against humanity.

A group of interdisciplinary academics, policymakers and practitioners in the areas of international peace and security with a special focus on Africa have similarly argued that the AU may intervene without authorization if the UNSC is ‘unwilling or indecisive in authorizing intervention’.33

But the AU’s position on interpretation of Article 4(h) seems to have shifted with time. Indeed, Article 4 of the PSC Protocol requires the PSC to be guided in its work by the principles enshrined both in the AU Constitutive and the UN Charter. In what has come to be popularly known as the Ezulwini Consensus, the AU acknowledged that it requires UNSC approval before deploying an Article 4(h) intervention.34 In August 2016 and in the context of clarifying AU’s decision-making process for the deployment of peace support operations, the AU High Representative for the Peace Fund also observed that the where peace support operations will entail the use of force, the PSC should formally request UNSC authorization.35

In the Ezulwini Consensus, the AU also expressed the wish to see a flexible application of Article 53 in urgent cases. In particular, the AU notes in the Ezulwini Consensus that in circumstances requiring urgent action,

24 UN Charter, Article 51.
25 UN Charter, Article 42.
26 2005 World Summit Outcome, A/RES/60/1, 24 October 2005, para. 139.
30 Pretoria Principles, Principle 11.
the requisite authorization “could be granted after the fact”, that is, after the deployment has already taken place.

Practice also suggests that the UNSC is open to approve the use of force by regional organizations “after the fact” where the circumstances so warrant. For instance, the UNSC gave a tacit post facto approval in November 1992 to the deployment of military force in Liberia by ECOWAS. Prior to this endorsement, ECOWAS had without UNSC authorization deployed troops to Liberia to prevent the security situation in the country from further deteriorating. It also sought to resolve the conflict through mediation. In Resolution 788 adopted on 19 November 1992, the UNSC commended ECOWAS for “its efforts to restore peace, security and stability in Liberia”. In the Resolution, the UNSC neither explicitly approved the use of force nor condemned it. However, as military action was an integral and important part of the intervention of ECOWAS in Liberia, Resolution 788 is seen as a tacit post facto authorization under Article 53 of the UN Charter.

In conclusion, it is important to note that analysts assert that the concept of ‘responsibility to protect’ as set out in the 2005 World Summit Outcome has the same objective as the right of intervention under Article 4(h). Indeed, the inclusion of Article 4(h) in the Constitutive Act was informed or inspired by the notion of ‘responsibility to protect’. As such, Article 4(h) should be understood not only as a right but also as a responsibility to prevent crimes under international law.

1.3 THRESHOLD FOR AND TIMING OF INTERVENTIONS

The AU Assembly’s powers under Article 4(h) appears to be focused on assessing the existence of legally defined situations as specified in Article 7(1)(e) of the PSC Protocol, as opposed to making broader political and security determinations as the UNSC does when establishing a threat to international peace and security. Therefore, the exercise of this mandate by the AU poses an implementation challenge related to making a coherent and politically-neutral determination on when an Article 4(h) intervention can be justified and invoked. This issue raises two ancillary questions: what is the threshold criteria and when is the appropriate time to intervene?

Article 7(1)(e) of the PSC Protocol provides that the PSC shall recommend intervention in a member state in respect of “grave circumstances” under article 4(h) as “defined in relevant international conventions and instruments”. This implies that the AU, and the PSC specifically, will have to adopt the definitions of “war crimes”, “crimes against humanity” and “genocide”, as enshrined in a number of international instruments, including the following: the Rome Statute of the International Criminal Court (ICC); the Genocide Convention; the 1949 Geneva Conventions; the Statute of the International Criminal Tribunal for the Former Yugoslavia (ICTY); and the Statute of the International Criminal Tribunal for Rwanda. If it ever enters into force, the definition of these crimes under the Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights (Malabo Protocol) will also become relevant.

The above instruments adopt slightly different definitions of the three crimes that constitute grave circumstances under Article 4(h). The determination of whether specific acts constitute any of the grave circumstances requires a rigorous legal determination. This raises the question whether the PSC has the competence to make such a determination.

Some analysts, including the former AU Legal Counsel, suggest that when determining whether the threshold for Article 4(h) exists in a particular case, the PSC should consider adopting the criteria proposed by the International Commission on Intervention and State Sovereignty (ICISS). According to the ICISS,

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20 Euruwini Consensus, p. 6.
25 Rome Statute of the International Criminal Court, Articles 6, 7 & 8.
26 Convention on the Prevention and Punishment of the Crime of Genocide, Article II.
28 Statute of the International Criminal Tribunal for the Former Yugoslavia, Articles 3, 4 & 5.
29 Statute of the International Criminal Tribunal for Rwanda, Articles 2, 3 & 4.
30 See Statute of the African Court of Justice and Human Rights (As amended), Articles 28B, 28C, and 28D.
intervention would be justified where there are “conscience-shocking situations” such as the following: threat or occurrence of large-scale loss of life; diverse manifestations of ethnic cleansing; and crimes against humanity and violations of the laws of war. Nonetheless, the decisions under Article 4(h) inevitably risk being politicized as defining when violations are ‘grave’, ‘large-scale’, or amount to crimes under international law remains highly subjective.

Beyond the challenge of establishing a coherent threshold criteria for intervention, there is also the question of when the AU should intervene under Article 4(h). Should military action be deployed only when hard evidence is available to show that a population is already the subject of a grave circumstance listed under Article 4(h)? Or could deployment be justified on the basis of a reasonable fear that a population’s exposure to a grave circumstance is imminent? While the text of Article 4(h) seems to suggest that intervention will occur only upon the commission of war crimes, genocide and crimes against humanity, such an interpretation is inconsistent with the objectives Constitutive Act and the PSC Protocol. As such, there seems to be room for an expansive interpretation of AU’s mandate under Article 4(h) to justify the deployment of military action not only to stop a grave circumstance that is already underway but also to prevent such circumstance from happening in the first place. As enunciated in the Pretoria Principles.

Considering the speed with which mass atrocities occur and that the threshold for Article 4(h) intervention is high, difficult to prove and amenable to political discretion, in deciding on Article 4(h) intervention, the AU must prioritize the imperative to save lives over the technical or overly legalistic ascertainment of the commission of war crimes, genocide and crimes against humanity.

In recent times, the PSC has had to deal with this dilemma in the context of the political crisis that engulfed Burundi for much of 2015. In December 2015 and for the first time in its history, the PSC (at the level of permanent representatives) invoked Article 4(h) of the Constitutive Act when it took a decision to authorize the use of military force in Burundi to prevent further deterioration of the security situation in the country and protect civilian populations facing imminent threat. In particular, the PSC authorized the deployment of a 5000-strong African Prevention and Protection Mission in Burundi (MAPROBU) for an initial period of six months, with the possibility of future renewals of its mandate. The PSC urged the Government of Burundi to confirm, within 96 hours, its acceptance of the deployment of MAPROBU, failing which the PSC would: recommend to the Assembly of the Union, in accordance with the powers which are conferred to Council, jointly with the Chairperson of the Commission, under article 7(e) of the Protocol Relating to the Establishment of the Peace and Security Council, the implementation of article 4(h) of the Constitutive Act relating to intervention in a Member State in certain serious circumstances. Council further decides that, in such a situation, and on the basis of a communication from the Chairperson of the Commission confirming the non-acceptance of the deployment, Council shall recommend to the Assembly to take additional measures in conformity with the Constitutive Act.

At the time of taking this decision, the PSC had formally received, including from the ACHPR, reports of gross human rights violations including arbitrary and targeted killings. In an act of open defiance, the Burundian government refused to grant its consent to the deployment of MAPROBU and indicated that it would consider the peacekeeping force to be an “invasion” into the country if deployed without its consent. On 25th December 2015, the AU Commission (AUC) Chairperson urged the Burundian government to consent to the deployment. This call was reiterated on 29th December 2015 when the AUC Chairperson expressed the AU’s readiness to engage with the Burundian government with a view to reaching a mutual agreement on the modalities of deploying MAPROBU. These efforts did not yield any positive results. The Burundian government stood its ground leaving the PSC with little choice but to recommend to the AU Assembly to invoke Article 4(h) of the AU Constitutive Act.

However, instead of recommending the invocation of Article 4(h), the PSC (at the level of heads of state and government) on 29 January 2016 reversed the decision on the deployment of MAPROBU. In particular, the PSC took the decision “not to deploy MAPROBU because it considers it premature to send such a force to

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49 AU Constitutive Act, Preamble, paras. 8 & 9; PSC Protocol, Article 9.
51 PSC Communique, 565th Meeting, 17 December 2015, PSC/P/PR/COMM.(DLXV).
52 PSC Communique, 565th Meeting, 17 December 2015, PSC/P/PR/COMM.(DLXV) para. 13(c)(iiv).
This decision was primarily based on the argument that mediation efforts had not been fully exhausted. Analysts also argue that the absence of data and analysis demonstrating that the violence in Burundi could not be averted other than through the use of military force may have contributed to the decision not to deploy MAPROBU. In essence, the Burundi case demonstrates not only the complexities for the PSC in determining the timing of interventions but also the challenges of establishing whether threshold and the legal grounds for invoking Article 4(h) have been met.

56 PSC Communiqué, 571st Meeting, 29 January 2016, PSC/AHG/COMM.3(DLXXI), para. 11(a).
57 See S Dersso, To intervene or not to intervene? An inside view of the AU’s decision-making on Article 4(h) and Burundi, https://sites.tufts.edu/reinventingpeace/2016/03/01/to-intervene-or-not-to-intervene-an-inside-view-of-the-aus-decision-making-on-article-4h-and-burundi/, 1 March 2016.
2. REGIONAL HUMAN RIGHTS TREATY BODIES: CONFLICT AND RESPONSE MECHANISMS

The African human rights system is composed of three key institutions: the African Commission on Human and Peoples’ Rights (ACHPR); the African Committee of Experts on the Rights and Welfare of the Child (ACERWC); and the African Court on Human and Peoples’ Rights (African Human Rights Court). Although these institutions are not directly charged with the responsibility of conflict prevention, management and resolution, their respective mandates include responding to human rights violations committed in conflict situations. This section of the study examines the effectiveness of the responses of the ACHPR, ACERWC and the African Human Rights Court to human rights violations committed in conflict situations.

2.1 AFRICAN COMMISSION ON HUMAN AND PEOPLES’ RIGHTS

The ACHPR is established under the African Charter on Human and Peoples’ Rights (African Charter). The African Charter is the normative foundation of the African regional human rights system. It was adopted in 1981 and came into force in 1986. The African Charter and its Protocol on the Rights of Women in Africa (Maputo Protocol) are the only international human rights treaties to recognize the right to peace. Article 23 of the African Charter partly states that “[a]ll peoples shall have the right to national and international peace and security”. This right entitles any portion of the population of a country to live in peace and security and to be protected from acts of violence.

Similarly, the Maputo Protocol provides that “women have the right to a peaceful existence and the right to participate in the promotion and maintenance of peace”. It goes further to impose an obligation on state parties to protect women during situations of armed conflict. It requires state parties to ensure that rape and other forms of sexual violence or exploitation committed against women in the context of an armed conflict are considered war crimes, genocide and/or crimes against humanity and that perpetrators of such acts are held accountable.

Operational since 1987, the ACHPR is charged with the responsibility of supervising state implementation of and compliance with the African Charter and the Maputo Protocol. Although it has limited powers and

59 Maputo Protocol, Art 1.
60 Maputo Protocol, Art 11.
61 Maputo Protocol, Art 11(3).
resources, the ACHPR has in the 30 years of its existence strived to respond to human rights violations committed in conflict and crisis situations.

The ACHPR responds to human rights violations committed in conflict situations through a variety of mechanisms, including the following: adoption of country-specific or thematic resolutions; deployment of fact-finding missions; referral of situations of serious or massive violations of human rights to the AU Assembly pursuant to Article 58(3) of the African Charter; and determination of communications or complaints submitted to it for adjudication. As the discussion below will show, and for a range of reasons, these efforts by the ACHPR have had little tangible effects.

ADOPTION OF COUNTRY-SPECIFIC AND THEMATIC RESOLUTIONS

The adoption of country-specific resolutions has become the most common means by which the ACHPR responds to human rights violations and abuses committed in conflict and crisis situations. The ACHPR adopted its first set of country-specific resolutions in April 1994 in the wake of genocide in Rwanda and electoral violence in South Africa. The first resolution focused on the situation in Rwanda. The Commission urged the parties to the conflict to cease hostilities and to respect the African Charter as well as International Humanitarian Law (IHL) principles. The second resolution addressed the situation in South Africa. It equally called on the relevant parties to cease the perpetration of violence. These two resolutions laid the foundation for the Commission’s practice of responding to conflict and crisis situations through the adoption country-specific resolutions during its sessions. But they also reveal one of the main limitations of this mechanism of response. Both resolutions were adopted too late in the day when serious and massive human rights violations had already occurred. More importantly, there is no documented evidence to show that the resolutions contributed, even in small ways, to exerting pressure on the concerned parties to cease hostilities and violence.

The range of conflict or crisis-related issues that the ACHPR has responded to through the mechanism of country-specific resolutions has expanded considerably over the years and include the following: attacks on civilians; illegality of unconstitutional changes of government; implementation of peace agreements; and resolution of other issues.

64 Resolution on the Situation in Darfur, ACHPR/Res.100(XXX)06, adopted at the 40th ordinary session, Banjul, The Gambia, 15-29 November 2006).
66 Resolution on the Peace and Reconciliation Process in Somalia, ACHPR/Res.46(XXVII)00 (adopted at the 27th ordinary session, Algiers, Algeria, 27 April – 11 May 2000); Resolution on Compliance and Immediate Implementation of the Arusha Peace Agreements for Burundi, ACHPR/Res.49(XXVIII)00 (adopted at the 28th ordinary session, Cotonou, Benin, 23 October – 6 November 2000).
plight of refugees and internally displaced persons,\(^67\), prevalence of rape and sexual violence during armed conflicts,\(^68\) and accountability for perpetrators of conflict or crisis-related human rights violations and abuses.\(^69\) However, the most persistent challenge remains the huge time lapse between the occurrence of human rights violations and abuses and the adoption of a country-specific resolution by the ACHPR.

A statistical analysis of the timing of country-specific resolutions and statements by the ACHPR reveal that its response to human rights issues in conflict-affected countries is generally activated too late in the day when the conflicts have reached their peak. Figures 2-5 below reflect an increasing positive relationship between the number of total conflict events in a country and the predicted number of public statements, including country-specific resolutions, issued by the ACHPR. This indicates ACHPR responsiveness to countries with more severe conflict conditions. But on the flipside, this means that ACHPR’s contribution to conflict prevention is limited. Statements by ACHPR on the deterioration of the human rights situation in a country may serve as a warning of potential conflict. But as the country-specific graphs in Figures 2-5 show, the ACHPR is more active during a conflict situation rather than before. In relation to Burundi and Nigeria, for instance, the ACHPR was largely silent until the situations in both countries became severe. In the case of CAR, ACHPR response increased after the outbreak of violent conflict in 2012. A similar trend is recorded in the case of Mali. The ACHPR increased the number of its public statements regarding the country after 2012, as insurgent groups like the National Movement for the Liberation of Azawad (MNLA) increased their attacks.

![Figure 2: ACHPR public response to the conflict in Burundi](image1)

![Figure 3: ACHPR public response to the conflict in Nigeria](image2)


Figure 4: ACHPR public response to the conflict in Central African Republic

Figure 5: ACHPR public response to the conflict in Mali
The lack of active response by the ACHPR before the outbreak of conflicts is partly caused by the fact that it only adopts resolutions during its ordinary sessions which are held twice a year in April/May and October/November. It also adopt resolutions during extra-ordinary sessions but it is only from 2008 that the Commission started to hold such sessions more regularly, and in particular, twice a year.

Another challenge that affects the effectiveness of country resolutions relates to the fact that the ACHPR has no means at its disposal to enforce compliance with the resolutions. Unfortunately, country-specific resolutions, regardless of their subject-matter, rarely invoke a formal reaction or response from the concerned states. But there are two notable exceptional cases when country-specific resolutions relating to conflict situations prompted response from the respondent states.

At its 38th ordinary session held from 21 November to 5 December 2005, the ACHPR adopted a total of six country-specific resolutions, two of which related to the conflicts in Darfur, Sudan, and northern Uganda. The Resolution on Sudan expressed deep concern about grave violations of international human rights and humanitarian law in Darfur, including perpetration of sexual violence against women. It called on the parties to the conflict to cease attacks on civilians and to provide humanitarian organizations full access to the conflict-affected areas. In a formal response published in the ACHPR’s 20th Activity Report, the Sudanese government claimed that rebel groups were solely to blame for attacks on civilians and that government forces had only shelled civilian areas by “mistake”. On allegations of sexual violence, the government also claimed that it had already initiated criminal proceedings against perpetrators and developed a plan for the prevention of sexual violence in the Darfur region. On providing access to humanitarian organizations, the government responded that “the entire international community is witness to Sudan’s cooperation and facilitation of humanitarian work without any customs restrictions or formalities”. Unfortunately the submission of responses by the Sudanese government marked the end of the concerns raised by the Commission in its resolution. Neither the ACHPR nor the AU Executive Council formally interrogated or examined the responses by the Sudanese government.

The Resolution on Uganda called on the parties to the conflict in the northern part of the country to “immediately open negotiation with a view to a conclusion of a ceasefire and peace agreement” and support the Office of the Prosecutor of the International Criminal Court (ICC) in its investigations of violations.

For an overview of the country-specific resolutions adopted at the 38th ordinary session see F Viljoen International human rights law in Africa (2012) 380-382.


committed during the conflict.\textsuperscript{73} It also called on the armed group, Lord’s Resistance Army (LRA), to free child soldiers as well as women and girls held by the group. In its formal response to the Resolution,\textsuperscript{74} the Ugandan government welcomed those recommendations directed towards the LRA and indicated that it had taken steps to foster negotiations with the LRA but the armed group had not accepted offers for peace and ceasefire. Like in the case of Sudan, there was no further discussion or follow-up on the concerns raised by the ACHPR in its resolution.

On a few occasions, the ACHPR has adopted thematic resolutions which focus on subjects directly related to conflict and crisis. Four of such resolutions are particularly important. The first is Resolution 7 on the Promotion and Respect of International Humanitarian Law and Human Rights.\textsuperscript{75} It calls on state parties to adopt measures at the domestic level to ensure the promotion of provisions of IHL. This resolution is mainly concerned with the dissemination of IHL. According to some analysts, this resolution foregrounded the Commission’s understanding on the nexus between IHL and international human rights law.\textsuperscript{76} The second is Resolution 111 on the Right to a Remedy and Reparation for Women and Girls Victims of Sexual Violence.\textsuperscript{77}

In adopting this Resolution, the ACHPR was specifically concerned by the high levels of impunity for sexual violence perpetrated during armed conflicts and the difficulties experienced by victims of such violence in accessing the rights to truth, justice and reparation. Amongst other things, it called on state parties to criminalize all forms of sexual violence, conduct IHL training for security forces and members of the judiciary, and establish reparation programmes for victims.

The third is Resolution 17 on Strengthening Responsibility to Protect in Africa adopted in November 2007. It essentially endorsed the concept of Responsibility to Protect and called on the AU to expedite the implementation of initiatives for the protection of civilians in the Sudan and Somalia armed conflicts. The fourth is Resolution 332 on Human Rights in Conflict Situations adopted in February 2016,\textsuperscript{78} and in which the ACHPR acknowledged the urgent need for the AU to institutionalize "a human rights based approach to conflict prevention, management and resolution on the continent". Through the Resolution, the ACHPR undertook to conduct a study on human rights in conflict situations which will form the basis for developing "a comprehensive strategy and framework" for responding to human rights violations and abuses committed in conflict situations. As will be discussed below,\textsuperscript{79} this Resolution also provides the normative avenue for the ACHPR to more actively collaborate and coordinate with the PSC.

**FACT-FINDING MISSIONS AND ON-SITE INVESTIGATIONS**

The ACHPR may conduct a fact-finding mission to a country in order to ascertain the veracity or accuracy of reports or allegations of human rights violations and abuses. Where a complaint is pending before it, the Commission may undertake an on-site visit to the concerned country in order to verify the specific human rights violations alleged in the complaint.\textsuperscript{80} In its 30-year history, the ACHPR has conducted only a handful or a limited number of fact-finding missions and on-site investigations primarily because states have rarely granted the requisite consent for such visits. The Commission has visited the following countries to conduct a fact-finding or on-site investigation: Togo (1995), Mauritania (1996), Senegal (1996), Nigeria (1997), Zimbabwe (2002), Sudan (2004), Mali (2013), and Burundi (2015).\textsuperscript{81}

In recent years, the ACHPR has resorted to requesting consent for what it refers to as ‘promotion missions’.\textsuperscript{82} The purpose of a promotion mission is not to investigate any human rights issue or violation but to disseminate and raise awareness about the work of the ACHPR or particular aspects of the African Charter and its Protocol on the Rights of Women. As such, promotion missions are of little utility in responding to widespread human rights violations.

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\textsuperscript{73} Resolution on the Human Rights Situation in Uganda, ACHPR/Res.94(XXXVIII)05 (adopted at the 38th ordinary session, Banjul, The Gambia, 21 November – 5 December 2005).


\textsuperscript{75} ACHPR/Res.7(XIV)93, (adopted at the 14th ordinary session, Addis Ababa, 1-10 December 1993).


\textsuperscript{77} Adopted at the 42nd ordinary session, Brazzaville, Congo, 15-28 November 2007.

\textsuperscript{78} ACHPR/Res.332 (EXT.OS/19)2016, (adopted at the 19th extra-ordinary session, Banjul, The Gambia, 16-25 February 2016).

\textsuperscript{79} See section titled ‘PSD and African Commission’, p. 52.


\textsuperscript{82} African Commission, Rules of Procedure (2010), Rule 70.
The ACHPR first used the mechanism of an on-site investigation to respond to a conflict situation in June 1996 when it visited Senegal with a view to contributing to the amicable resolution of the conflict in the Casamance region of the country. This visit was prompted by a complaint submitted to the ACHPR which described grave and massive violations of human rights resulting from the conflict between the Senegalese army and a separatist group called Mouvement des Forces Démocratiques de la Casamance (MFDC). In its report of the mission, the Commission analyzed the positions of both the state and MFDC, and rejected the latter’s claim for independence as it lacked ‘pertinence’. Although it criticized the Senegalese state for ‘a mechanical and static conception of national unity’, the Commission recommended that the issue be addressed within the framework of ‘the cohesion and continuity of the people of the unified Senegalese state in a community of interest and destiny’. Unfortunately, the Commission neither sustained its assistance in negotiations between the state and the MFDC nor followed up on the implementation of its recommendations. Moreover, although the OAU Assembly adopted the Commission’s annual report containing the Commission’s recommendations on the Casamance conflict, it failed to seize the matter as part of its mandate to seek solutions to conflicts.

In satisfaction of a request made by the PSC in May 2004,83 the ACHPR conducted a fact-finding mission to Darfur, Sudan, in July 2004 to “investigate and establish the human rights situation affecting the people of Darfur, as a result of the conflict” in the region. In its report of the mission adopted before the end of 2004 but not released to the public until June 2007, the ACHPR concluded that there was “a pattern of gross human rights abuses, which were committed during the armed conflict, by all parties to the conflict” and that attacks on civilians during the conflict amounted to war crimes and crimes against humanity.84 Moreover, the ACHPR determined that rape and sexual violence had been committed during the conflict despite the governments’ denial of this fact.85 The ACHPR also concluded that Sudanese authorities had sometimes frustrated efforts by humanitarian agencies to reach certain parts of Darfur.86 The ACHPR recommended that the Sudanese government should accept the establishment of an international commission of inquiry to, amongst other things, identify and bring to justice those who are responsible for war crimes, crimes against humanity and violations of international human rights and humanitarian law.87

As indicated above, although it took place in July 2004, the ACHPR published the report of the Darfur fact-finding mission more than two years later (June 2007) primarily because initial attempts by the ACHPR to seek state responses to the report failed. The implication of this delay is that by the time of its publication, the contents and recommendations of the report were regrettably of little use and had largely been overtaken by events.

A similar fate met the report of the ACHPR’s 2015 fact-finding mission to Burundi. Prompted and authorized by the PSC in October 2015,88 the mission took place in December 2015 at the height of a political crisis in the country resulting from President Pierre Nkurunziza’s decision to stand for a third term in office in apparent violation of the Constitution and the Arusha Peace Agreement. The mission’s terms of reference included investigating human rights violations and abuses committed from the onset of the crisis and making recommendations on the modalities of holding perpetrators accountable.89 Although the Commission finalized its report of the mission in January 2016, in which it documented evidence of systematic and widespread violations and abuses of human rights, it only got the opportunity to present it to the PSC in April 2016. By this time, a substantive part of its contents and recommendations had been, as the PSC noted, “overtaken by many national, regional, continental and international efforts aimed at the promotion of peace, security and stability in Burundi”.90

Like the Darfur and Burundi missions, the ACHPR’s June 2013 mission to Mali was triggered by the PSC.91 In January 2012, Mali descended into conflict when an armed group, National Movement for the Liberation of Azawad, launched deadly attacks on two military camps in the northern part of the country and in which scores of soldiers were killed during the attacks.92 The conflict deepened in April 2012 when the government

83 PSC Communiqué, 10th Meeting, 25 May 2004, PSC/AHG/COMM.(X).
88 PSC Communiqué, 551st Meeting, 17 October 2015, PSC/PR/COMM.(DLVII), para. 12(iv).
89 PSC/PR/COMM.551st Meeting, 17 October 2015, PSC/PR/COMM.(DLVII), para. 12(iv).
91 PSC Communiqué, 327th Meeting, 14 July 2012, PSC/AHG/COMM.1(CCDVII), para. 15.
was toppled in a coup. In response to the conflict and amongst other measures, the PSC mandated the ACHPR to undertake a fact-finding mission to Mali with a view to investigating the human rights situation in the country in the aftermath of the attacks in the northern part of the country. The ACHPR’s mission lasted for 5 days, from 3rd to 7th June 2013. In the final report of the mission, the Commission concluded that there was “no doubt” that serious and massive violations had been committed during the conflict and that specific violations such as the rape of women and girls and the summary executions of soldiers and civilians believed to be allied to the MNLA amounted to crimes against humanity. The Commission recommended that perpetrators of these crimes should be prosecuted before the ICC “in the absence of action by the Malian Government”.

The report of the mission was submitted to the AU Executive Council. Unfortunately, there is no record to show that, apart from adopting the ACHPR’s activity report to which the mission report was annexed, the Executive Council took steps to implement its recommendations. Similarly, there is no record to show that the PSC, which requested for the mission to be conducted in the first instance, had the opportunity to consider the findings and recommendations of the report.

**COMPLAINTS OR COMMUNICATIONS PROCEDURE**

The ACHPR has had a limited number of opportunities to consider complaints or communications relating to human rights violations committed in the context of conflict and crisis. In particular, the following cases directly deal with human rights violations in conflict situations: *Commission Nationale des Droits de l’Homme et des Libertes v Chad (Chad Mass Violations Case)*, *Amnesty International & Others v Sudan (Sudan Case)*, *Democratic Republic of the Congo v Burundi, Rwanda and Uganda (DRC Case)*, and *Sudan Human Rights Organization & Another v Sudan (Darfur Case)*. In 2003, the Commission decided to suspend the consideration of a case concerning violations committed during the international armed conflict between Ethiopia and Eritrea (1998-2000) because it was of the view that the Ethio-Eritrea Claims Commission was better placed to address the complaint. This case has never been concluded.

Through the complaints procedure, the ACHPR has developed a bourgeoning jurisprudence on the right to peace and the applicability of international human rights law and specifically the African Charter during armed conflicts. In the *Chad Mass Violations Case*, the complainants alleged that the Chadian government was directly or indirectly responsible for gross human rights violations committed in the context of a civil war in the country. The violations included extrajudicial killings, disappearances, and torture. The ACHPR found that the Chadian government had failed in its duty to protect its citizens. It also emphasized that failure of Chad in its duty to investigate such violations constitutes a violation of the African Charter. The relevant part of the decision reads as follows:

> In the present case, Chad has failed to provide security and stability in the country, thereby allowing serious and massive violations of human rights. The national armed forces are participants in the civil war and there have been several instances in which the government has failed to intervene to prevent the assassination and killing of specific individuals. Even where it cannot be proven that violations were committed by government agents, the government had a responsibility to secure the safety and the liberty of its citizens, and to conduct investigations into murders. Chad therefore is responsible for the violations of the African Charter.

The ACHPR reached a similar decision in the *Sudan Case* which concerned a range of human rights violations committed by state security forces in the context of a civil war in the southern part of the country as well as in the Nuba Mountains. Thousands of individuals had been executed or otherwise killed by the time the communication was submitted to the ACHPR. The ACHPR held that “even if Sudan is going...”

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See [PSC Communiqué, 32nd Meeting, 14 July 2012. PSC/AHG/COMM(1)/CCXXXVII], para. 15.  
[2000 AHRLR 257 (ACHPR 1999).](https://www.achpr.org/publications/10018/)  
[2009 AHRLR 153 (ACHPR 2009).](https://www.achpr.org/publications/10018/)  
[Cha](https://www.achpr.org/publications/10018/)d Mass Violations Case, para. 21.
through a civil war, civilians in areas of strife are especially vulnerable and the state must take all possible measures to ensure that they are treated in accordance with international humanitarian law. It added that although the Sudanese government had opened investigations into allegations of executions, the investigations fell short of international standards.

The DRC Case was the first and, until recently, the only interstate case to be lodged at the ACHPR. In the case, DRC complained that the armed forces of Burundi, Rwanda and Uganda had committed grave and massive violations of human rights in the eastern provinces of the country where they were present and actively supporting rebel groups. The ACHPR found that the respondent states’ occupation of parts of DRC’s territory contravened the Congolese people’s right to national and international peace. It also found that the rape of women and girls, killings, indiscriminate dumping of bodies of victims of killings, and mass transfer of populations by members of the armed forces of the respondent states constituted a violation of the African Charter as well as of the relevant provisions of the 1949 Geneva Convention Relative to the Protection of Civilian Persons and the 1977 Additional Protocol I. The Commission recommended that the respondent states pay, through the DRC government, adequate reparations to victims of the human rights violations committed by the armed forces of the respondent states.

The Darfur Case is the most recent case of the ACHPR dealing with human rights violations committed in the context of an armed conflict. It dealt with numerous violations committed by Sudanese armed forces and a government-backed militia group (Janjaweed) in the Darfur region of Sudan. The violations included aerial bombing of areas occupied by civilians, forced displacement, extra-judicial executions and destruction of property. The ACHPR found that the Sudanese government had carried out a “punitive military campaign” in Darfur resulting in “a massive violation of not only the economic social and cultural rights, but [of also] other individual rights of the Darfuri people.” Its recommendations included that the government should “conduct effective official investigations into the abuses, committed by members of military forces, i.e. ground and air forces, armed groups and the Janjaweed militia for their role in the Darfur.”

Apart from generating jurisprudence, the ACHPR’s communications procedure has not yielded much in terms of either stopping or deterring the commission of human rights violations during conflict situations. By its very nature, the communications procedure is reactive rather than proactive. More importantly, implementation of and compliance with the Commission’s recommendations is low at the very best. Indeed, it has been argued that the communications procedure is generally not suited and designed to address cases of massive and serious human rights violations like those witnessed during conflict or crisis situations.

ARTICLE 58 REFERRAL

Article 58 of the African Charter provides the clearest basis and framework for the ACHPR to directly respond to conflict-related human rights violations. It mandates the Commission to notify or draw the attention of the AU Assembly to cases of “serious or massive” violations of human rights as well as to emergency situations. Article 58(1) states that where there are “special cases which reveal the existence of a series of serious or massive violations of human and peoples’ rights, the Commission shall draw the attention of the Assembly of Heads of State and Government to these special cases”. Similarly, Article 58(3) stipulates that cases of emergency duly noticed by the ACHPR shall be communicated to the AU Assembly. Upon receipt of notification submitted to it pursuant to Article 58(1) or (3), the AU Assembly may request an in-depth study to be conducted by the ACHPR.

106 Sudan Case, para. 50.
107 In 2014, South Africa filed a case against DRC. This case (South Africa v. DRC, Communication 502/14) is still pending before the ACHPR.
108 DRC Case, para. 2.
109 DRC Case, para. 76.
110 DRC Case, paras. 79-81 & 86.
111 Darfur Case, para. 254.
112 Darfur Case, para 229(1).
Early in its life, the ACHPR considered the requirements and modalities of operationalizing Article 58(3) when it drafted a nine-point framework document outlining the various mechanisms that it could use in response to emergency situations.\(^{115}\) It listed the following mechanisms: on-site visits; diplomatic initiatives; compilation of reports; involvement of AU Assembly or its chairperson; and consideration of ‘emergency situations’ during the sessions of the ACHPR.\(^{116}\) This document was however not formally adopted. This has in part contributed to the lack of consistent use of the provisions of Article 58. The instances in which the ACHPR has invoked Article 58 in its 30 years of existence are few and far between.\(^{117}\) In those few instances, the AU Assembly has not requested for an in-depth study to be conducted nor has the Commission followed up on its notifications.\(^{118}\)

With the passing of time, the ACHPR has become somehow reluctant to invoke Article 58 and the provision is nearly gone into a state of disuse. In the Darfur Case cited above, the complainants urged the ACHPR to invoke the provisions of Article 58. The ACHPR declined to do so arguing that there were numerous steps already taken to address the conflict and referring the situation to the AU Assembly was not necessary. The Commission framed its argument as follows:

In Conclusion, the Commission would like to address the Complainant’s prayer that the Commission draws the attention of the Assembly of the Africa Union to the serious and massive violations of human and peoples’ rights in the Darfur, so that the Assembly may request an in-depth study of the situation. The Commission wishes to state that it undertook a fact-finding mission to the Darfur suo motu, in July 2004. Its findings and recommendations were sent to the Respondent State and the African Union. The Commission has continued to monitor the human rights situation in the Darfur through its country and thematic rapporteurs and has presented reports on the same to each Ordinary Session of the Commission, which are in turn presented to the Assembly of the African Union. 226. The African Union has deployed its peacekeepers together with the United Nations under the UNAMID hybrid force. In the Commission view, these measures constitute what would most likely ensue, if an in-depth study were undertaken under Article 58. The request by the Complainant would have been appropriate had no action been taken by the African Commission or the organs of the African Union.\(^{119}\)

There is an urgent need to revive the use of Article 58. In the Pretoria Principles, the ACHPR is specifically urged to more frequently invoke Article 58 by providing “authoritative reports on the existence of a series of serious or massive violation that may trigger Article 4(h) intervention, not only to the AU Assembly but also to the PSC, which can serve as the basis for deciding whether or not to intervene”.\(^{120}\) The 2010 Rules of Procedure of the ACHPR provides for the decision-making process relating to the invocation of Article 58. Rule 79(1) provides that the Commission shall deem a situation to be one of emergency when it involves serious or massive human rights violations and it presents the danger of irreparable harm or requires urgent action to avoid irreparable harm. Pursuant to Rule 79(2), the decision to invoke Article 58 shall be made by the Commission if the emergency arises during a session or by the bureau of the Commission if the emergency arises during the inter-session period. Rule 80 provides that the Commission shall “draw the attention” of both the AU Assembly and the PSC of situations of emergency while the Executive Council and the Chairperson of the AU Commission shall be “informed” of the notification.

2.2 AFRICAN COMMITTEE OF EXPERTS ON THE RIGHTS AND WELFARE OF THE CHILD

The ACERWC is established under the African Charter on the Rights and Welfare of the Child (African Children’s Charter). The Charter was adopted in July 1990 and entered into force in November 1999. The Charter has been ratified by 47 AU member states. The core mandate of the ACERWC is to promote and

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119 Darfur Case, para. 225.
protect the rights and welfare of the child through a variety of mechanisms including supervision of state implementation of the African Children’s Charter.

Article 22(1) of the African Children’s Charter requires state parties to “respect and ensure respect for rules of international humanitarian law applicable in armed conflicts which affect the child”. Article 22(2) is more specific. It provides that children must not take a direct part in hostilities. It also prohibits the recruitment of children soldiers. Article 22(3) enjoins states to put in place measures to provide protection and care to children affected by international armed conflict as well as by “internal tension and strife”.

In recent years, the ACERWC has paid close and special attention to the rights and plight of children in conflict situations. In particular, it has conducted visits to two countries affected by conflict, published a study on the impact of conflict on children, and determined a single communication relating to the rights of child in a conflict situation. However, the impact of these activities remain low. In particular, the reports of its country visits do not contain recommendations on accountability while its major recommendation in the one and only communication it has decided relating to a conflict situation has not been implemented.

COUNTRY VISITS

In 2014, the ACERWC undertook advocacy missions to Central African Republic (CAR) and South Sudan to assess the impact of the conflict in the two countries on children. In both countries, the ACERWC documented numerous violations committed against children, including killings, rape and sexual violence, forced displacement, denial of socio-economic rights, and recruitment by armed groups. Although it identified a wide range of violations in both countries, the ACERWC did not call for perpetrators of the crimes to be investigated and prosecuted. Moreover, the ACERWC did not make specific recommendations to the PSC.

In 2016, the ACERWC used the opportunity presented by the Day of the African Child (16th June) to reflect on possible mechanisms for the protection of children during armed conflicts. The Day’s theme, “Conflict and crisis in Africa: Protecting all children’s rights”, served to shed light on the plight of children during armed conflicts.

STUDY ON THE IMPACT OF CONFLICT ON CHILDREN

In addition to preparing country-specific reports, the ACERWC in February 2017 published a Continental Study on the Impact of Conflict and Crises on Children in Africa. The study documents violations of children’s rights in seven countries experiencing “active” conflict (Burundi, CAR, Kenya, Libya, Nigeria, Somalia, and South Sudan) and six countries experiencing “fragile post-conflict situations” or are in a “major humanitarian crisis” (DRC, Guinea-Bissau, Liberia, Mali, Sierra Leone, and Sudan).

Although the report documents the plight of children in conflict situations, the ACERWC notes that the actual relevance of the report is its analysis of state responses to the situation of children. In this regard, the ACERWC finds that “governments lag behind in their obligations to protect children” and that “if[rom a legal, policy and institutional viewpoint, the bulk of the problem is failure to implement human rights frameworks”.

The ACERWC’s overarching recommendation is that African states must marshal “real political commitment” to end conflicts and prevent the exacerbation of the impacts of conflict. The ACERWC is also in the process of a compiling a study on “children on the move” which will examine, amongst other issues, the role of conflict in displacing children.

COMPLAINTS PROCEDURE

The ACERWC has had only one opportunity to consider a complaint relating to conflict-related violations of children’s rights. In the case of Michelo Hansungule & Others (on behalf of children in Northern Uganda) v Uganda,\(^{128}\) the complainants asked the ACERWC to find Uganda to be in violation of the African Children’s Charter for violations against children during the 20-year old conflict (1986-2006) between the state and the LRA in the northern part of Uganda. The violations included recruitment of children into armed conflict, sexual violence, killing and maiming, abduction, and attacks on schools and hospitals. The ACERWC only found a violation in relation to the recruitment of children into the conflict and recommended that Uganda should take urgent action to criminalise the use of children in armed conflict. Uganda is yet to implement this recommendation. The ACERWC should follow-up on the implementation of this recommendation by, as a first step, requesting Uganda to report on the measures it has taken to implement the decision.

2.3 AFRICAN COURT ON HUMAN AND PEOPLES’ RIGHTS

The African Human Rights Court is established under the Protocol on the Establishment of an African Court on Human and Peoples’ Rights (African Human Rights Court Protocol). The African Human Rights Court’s main mandate is to complement the protective mandate of the ACHPR. In this regard, it adjudicates over and issues binding judgments in cases and disputes concerning the interpretation of the African Charter and “any other relevant human rights instrument ratified by the states concerned”.\(^{129}\) Adopted on 10\(^{th}\) June 1998, the African Human Rights Court Protocol has been ratified by 30 AU member states. Individuals and NGOs are allowed direct access to the Court only in respect of states that have made the declaration required under Article 34(6) of the Protocol. Article 34(6) provides that:

At the time of the ratification of this Protocol or any time thereafter, the state shall make a declaration accepting the competence of the court to receive petitions under article 5(3) of this Protocol. The Court shall not receive any petition under Article 5(3) involving a state party which has not made such a declaration.

Out of the 30 states that have ratified the Protocol, only a handful have made a declaration under Article 34(6). In particular, the following seven states, representing 23\% of the state parties, have made the declaration: Benin, Burkina Faso, Cote d’Ivoire, Ghana, Malawi, Mali, and Tanzania. This means that citizens of 47 African countries are unable to directly access the African Human Rights Court. Rwanda made the declaration in January 2013 but withdrew it in February 2016. The withdrawal took effect on 1 March 2017.

MANDATE TO ADDRESS CONFLICT-RELATED VIOLATIONS

As a judicial body, the African Human Rights Court has very limited mandate to respond to conflict and crisis situations. Unless cases relating to human rights violations committed in the context of conflict are filed before it, the Court has no means of intervening to stop such violations. Thus far, only one such case has been filed before the Court.

In March 2011, as conflict engulfed Libya, the ACHPR instituted proceedings at the African Human Rights Court against Libya for serious and massive human rights violations committed in the context of the conflict.\(^{130}\) Taking into account statements issued by the PSC and the UNSC, the Court issued an order for provisional measures against Libya in response to what it aptly described as “a situation of great gravity and urgency”.\(^{131}\) In particular, the Court ordered Libya to “refrain from any action that would result in loss of life or violation of physical integrity of persons, which could be a breach of the provisions of the Charter or of other international human rights instruments to which it is a party”.\(^{132}\) Regrettably, Libya failed to comply with the order for provisional measures while the ACHPR could not gather the relevant evidence to enable it to respond to the submissions lodged by the respondent state. In particular, due to the intensity of the conflict in Libya, the ACHPR could not safely enter the country and collect evidence and testimonies. At the expiry of the time granted to it to lodge submissions, the ACHPR had not done so and instead requested for the matter to be stood down generally. In March 2013, after the ACHPR failed to respond to

129 African Human Rights Court Protocol, Art. 3(1).
131 Libyan Provisional Measures Case, para. 22.
132 Libyan Provisional Measures Case, para. 25(1).
communications from the African Human Rights Court, the case was struck out for want of prosecution.\textsuperscript{133} The case brought to the fore the lack of ACHPR’s capacity to undertake investigations in conflict zones and by extension the limits of interventions by both the ACHPR and the African Human Rights Court.

In addition to delivering judgments in contentious cases, the African Human Rights Court has the mandate to render advisory opinions concerning “any legal matter relating to the [African] Charter or any other relevant human rights instruments, provided that the subject matter of the opinion is not related to a matter being examined by the Commission [ACHPR]”.\textsuperscript{134} This mandate of the African Human Rights Court grants relevant stakeholders, such as the PSC, the opportunity to seek an opinion on whether a specific situation amounts to a grave circumstance in the context of Article 4(h) of the Constitutive Act.\textsuperscript{135} Article 4(1) of the African Human Rights Court Protocol allows any of the AU organs to seek an advisory opinion from the African Human Rights Court. Whenever it is pondering about the possibility of recommending to the AU Assembly to invoke Article 4(h) in respect to a specific country, the PSC may consider seeking an advisory opinion from the African Human Rights Court or the ACJHR if it is ever established. But the ability of the African Human Rights Court to issue such advisory opinions as a matter of urgency remains questionable and largely depends on how quickly it can convene and whether it has the logistical support and resources (e.g. sufficient translators) to facilitate a quick turn-around.

**EXPANSION OF THE COURT**

In July 2008, the AU Assembly adopted the Protocol on the Statute of the African Court of Justice and Human Rights (Merger Protocol). The Merger Protocol establishes the legal framework for the merger of the yet-to-be established African Court of Justice with the African Court on Human and Peoples’ Rights. The merged court will be known as the African Court of Justice and Human Rights (ACJHR). In June 2014, the AU Assembly adopted the Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights (Malabo Protocol). The Malabo Protocol provides for the extension of the jurisdiction of the ACJHR to cover crimes under international law as well as transnational crimes. The expanded court will have jurisdiction over 14 different crimes, including crimes against humanity, war crimes, genocide, and the crime of unconstitutional change of government. If it ever comes into being, the ACJHR will serve as an African regional criminal court, operating in a manner akin to the ICC but within a narrowly defined geographical scope, and over a massively expanded list of crimes.

The ACJHR has the potential to ensure perpetrators of crimes under international law, most of which are committed in conflict situations, are held to account. However, as documented by Amnesty International in a January 2016 report titled “Malabo Protocol: Legal and Institutional Implications of the Merged and Expanded African Court”,\textsuperscript{136} the prospects of the ACJHR to serve as an effective regional accountability mechanism are questionable. First, The Malabo Protocol grants immunity to sitting heads of state and senior state officials. The provision on immunity will effectively prevent the investigation and prosecution of serving heads of state and senior state officials who are the ones who typically use their position or authority to order, plan, finance or otherwise mastermind crimes under international law. Second, it is doubtful whether the ACJHR will function effectively given its wide and unprecedented breadth of jurisdiction coupled with the low number of judges envisaged for the court. Other concerns relate to the ability the AU to finance the operations of the court, the lack of express recognition of the potential cooperation between the ACJHR and the ICC, and limited access to the court by individuals and NGOs.

Amnesty International believes that the ACJHR will only be an effective court if, amongst other factors, it has a strong statute. Yet, the Malabo Protocol contains an immunity clause, provides for insufficient number of judges, limits access to the court, and ignores the existence of the ICC. As these factors are most likely to undermine the legitimacy and effectiveness of the ACJHR, the AU and member states should seek to address them as a matter of urgency. The immunity clause should be repealed and replaced by a provision indicating that official capacity of a person shall not bar the ACJHR from exercising its jurisdiction over such a person.

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COUNTING GAINS, FILLING GAPS
STRENGTHENING AFRICAN UNION’S RESPONSE TO HUMAN RIGHTS VIOLATIONS COMMITTED IN CONFLICT SITUATIONS
Amnesty International
3. PEACE AND SECURITY COUNCIL: RESPONSE MECHANISMS AND HUMAN RIGHTS

Among the institutions that constitute APSA, the PSC is the ‘most visible component’. Since it was operationalized in 2004, the PSC has been engaged in efforts to address conflict and crisis situations in nearly all parts of the continent. It has registered its presence and footprint in countries such as Burundi, Central African Republic (CAR), Chad, Comoros, Cote d'Ivoire, Democratic Republic of Congo (DRC), Guinea Bissau, Kenya, Madagascar, Mali, Mauritania, Nigeria, Niger, South Sudan, Sudan, and Somalia.

This chapter examines whether the recognition of the nexus between violent conflicts and human rights has resulted into systematic and consistent consideration of the protection, promotion and respect of human rights in PSC's responses to conflict and crisis situations. In particular, it examines whether the following responses initiated or authorized by the PSC are anchored on human rights: early warning and prevention; and peace support operations. It also examines the effectiveness of the following responses that the PSC has deployed to specifically look into human rights violations committed in conflict situations: deployment of human rights monitors; and establishment of human rights fact-finding missions and commissions of inquiry.

The analysis shows that despite undeniable progress in the operationalization of the PSC and other pillars of APSA, the actual contribution of these institutions to the promotion and protection of human rights in conflict and crisis situations has thus far been generally limited.

3.1 STRUCTURE AND WORKING METHODS

At its first ordinary session in July 2002, the AU Assembly adopted the Protocol Relating to the Establishment of the Peace and Security Council (PSC Protocol). The PSC Protocol entered into force in December 2003 and the PSC begun its operations in 2004. The Protocol is the founding document of the PSC as well as the APSA. In accordance with the Protocol, the PSC is AU’s “standing decision-making organ for the prevention, management and resolutions of conflicts”.

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139 PSC Protocol, Art 2.
The PSC Protocol defines the role and place of human rights in the PSC’s peace and security processes. Under Article 3(a) of the PSC Protocol, the first objective of the PSC is to promote peace, security and stability in Africa. This objective is considered a means to an end, the end being “the protection and preservation of life and property, the well-being of the African people and their environment, as well as the creation of conditions conducive to sustainable environment”. The fact that this is the first objective of the PSC could be indicative of the weight assigned to the importance of human rights in the context of peace and security. It suggests that the concern for human rights is the linchpin for determining the value and success of any AU initiative for promoting peace and security in Africa. Further reinforcing the centrality of human rights in peace and security processes is Article 3(f), which provides that another objective of the PSC is to ‘promote and encourage democratic practices, good governance and the rule of law, protect human rights and fundamental freedoms, respect for the sanctity of human life and international humanitarian law, as part of efforts for preventing conflicts’.

The powers of the PSC are set out in Article 7 of the Protocol. For the purpose of this report, the following powers of the PSC are worth mentioning:

- anticipate and prevent disputes and conflicts;
- identify policies that may lead to genocide and crimes against humanity;
- undertake peace-making and peace-building functions to resolve conflicts where they have occurred;
- authorize the mounting and deployment of peace support operations;
- recommend to the AU Assembly when to intervene in a member state to stop war crimes, genocide and crimes against humanity;
- follow-up, within the framework of its conflict prevention responsibilities, the progress towards the promotion of democratic practices, good governance, the rule of law, protection of human rights and fundamental freedoms, respect for the sanctity of human life and international humanitarian law by member states;

Although the PSC is increasingly seized of conflict situations across the continent given its expansive mandate, its performance has fallen below expectations. According to a January 2017 report on proposed reforms of the AU, “[d]espite its strong legal framework and enhanced powers and functions, the quality of the Peace and Security Commission’s decision-making, engagement, and impact do not meet the ambition envisaged in the PSC Protocol”. As discussed in detail below, there remain key challenges, from its early warning and prevention mechanisms to peacekeeping operations, in ensuring respect, protection and promotion of human rights.

MEMBERSHIP AND REVIEW

The PSC is composed of 15 member states elected on the basis of equitable regional representation and rotation. For continuity, five of the 15 members are elected for a term of three years while the rest serve a two-year term. All members are eligible for re-election and may serve for as many terms as is feasible. This means that although the PSC Protocol does not provide for permanent membership, it is possible for a state to somehow attain the status of a quasi-permanent member through constant and uninterrupted re-election. Prospective members of the PSC must meet nine specific eligibility requirements listed under Article 5(2) of the PSC Protocol. They must, for instance, demonstrate respect for constitutional governance, rule of law, and human rights. They must also be willing and able to take up responsibility for regional and continental conflict resolution initiatives and show commitment to honour financial obligations of the AU.

However, there is little evidence to show that respect for constitutional governance, rule of law, and human rights has played any meaningful role during the elections of PSC members. The requirement for equitable regional representation and rotation has always taken precedence over all other requirements.

140 PSC Protocol, Art 3(a).
142 PSC Protocol, Article 5(1) & (2).
the Adebayo Adedeji Audit Report of the AU observed that it was "not clear how far the elections of members of the PSC have been influenced by the conditions set for eligibility, since the criteria are too broad to exclude any Member State from membership of the Organ". In the intervening years, there has been no major change in the manner in which the elections of PSC members are conducted. The result is that countries in which perennial and gross violators of human rights have been documented continue to be elected to the PSC. The re-election of Burundi to the PSC in 2016 is a prime recent example of this trend.

Burundi was re-elected to the PSC in January 2016, just a month after a PSC meeting (at the level of permanent representatives) had concluded that there were gross human rights violations happening in the country to such an extent that it was necessary to recommend to the AU Assembly to deploy MAPROBU with or without the consent of Burundi. Furthermore, the government of Burundi had openly rejected the decision of the PSC that called for the government to accept deployment of MAPROBU to the country thereby contravening express provisions of the PSC Protocol. Under Article 7(3) of the PSC Protocol, member states have committed to accept and implement the decisions of the PSC. They have further committed under Article 7(4) to extend full cooperation to the PSC.

The case of Burundi stands out particularly because of the country’s interaction with the PSC shortly before the elections for PSC membership were conducted. Yet, analysts have argued that a quick review of the human rights record of most of the other 14 members elected in January 2016 reveals that the Executive Council paid little attention, if any, to the eligibility criteria spelt out in Article 5(2) of the PSC Protocol.

Article 5(4) of the PSC Protocol provides that '[t]here shall be a periodic review by the [AU] Assembly to assess the extent to which the members of the Peace and Security Council continue to meet the requirements spelt out in Article 5(2) and to take action as appropriate'. The AU Assembly is yet to perform such an assessment - more than 12 years after the establishment of the PSC. This reluctance could be attributed to a general lack of clarity regarding when and how often the assessment should be conducted. It could also be associated with the complexity of measuring ‘respect for constitutional governance, rule of law, and human rights’, a challenge that analysts identified as soon as the PSC Protocol was adopted. In spite of these challenges, the AU Assembly must seek to fulfill its responsibility under Article 5(4) of the PSC. It cannot continue to shirk this responsibility. In this regard, the Report of the Proposed Recommendations for the Institutional Reform of the AU specifically recommends that the long-overdue review of the PSC membership should be undertaken. Amnesty International further recommends that when reviewing a specific country’s membership, the following questions must be taken into consideration:

- Has the country ratified all the regional human rights treaties?
- Has the country made the declaration required under Article 34(6) of the African Human Rights Protocol?
- Is the country up-to-date in its submission of the requisite periodic reports under the African Charter, Maputo Protocol and the African Children’s Charter?
- Has the country consented to requests for country visits addressed to it by the ACHPR and/or the ACERWC?
- Has the country, where applicable, complied with the decisions, recommendations and/or urgent appeals addressed to it by the ACHPR and/or the ACERWC?
- Has the country, where applicable, complied with the orders of the African Human Rights Court?

Answers to the above questions may be serve as a relatively accurate proxy measure of the commitment to human rights by existing or potential PSC members. The review process must be independent and transparent. In this context, the AU Assembly may consider tasking the AU Commission to undertake the review and make recommendations to it.

146 PSC Communiqué, 565th Meeting, 17 December 2015, PSC/PR/COMM.(DLXV).
DECISION-MAKING

The PSC, like the UN Security Council, is designed to operate on a full-time and continuous basis. All members of the PSC are required to have, at all times, a permanent representative at the AU headquarters. The PSC Protocol provides that decisions of the PSC “shall generally be guided by the principle of consensus”. In instances where it is not possible to reach a consensus, a simple majority vote is required for procedural matters and a two-thirds majority vote for substantive matters. The PSC has taken very few decisions by a way of a vote in its 12 years of existence. The practice has been to strive towards a consensus on each and every matter. In fact, what is often sought is unanimity rather than consensus. The principle of consensus allows for collective ownership of PSC decisions. It also arguably ensures that decisions of the PSC serve broad continental interests. But the flipside is that important details and proposals for concrete actions in response to conflict and crisis situations are often abandoned or significantly diluted in the pursuit for consensus or unanimity. It has become common for the PSC to be overly inclined towards revising the text of decisions or communiqués in order to accommodate all possible views. In many instances, PSC members who object to the inclusion of a specific language or issue in a decision have had both their say and their way. In other words, “a discording voice is more likely to be heard over an acquiescent one”.

ENGAGEMENT WITH CIVIL SOCIETY

The PSC Protocol acknowledges that external actors may bring relevant knowledge and experience into the PSC decision-making process. Article 8(10) provides that the PSC may hold open meetings or sessions to which it may invite relevant non-PSC members including international organizations and civil society organizations. In the particular case of civil society organizations (CSOs), Article 20 of the PSC Protocol further provides as follows:

The Peace and Security Council shall encourage non-governmental organizations, community-based and other civil society organizations, particularly women’s organizations, to participate actively in the efforts aimed at promoting peace, security and stability in Africa. When required, such organizations may be invited to address the Peace and Security Council.

151 PSC Protocol, Article 8(1).
152 PSC Protocol, Article 8(2).
Article 20 is significant as it potentially allows the PSC to benefit from the extensive work of CSOs in the area of peace and security. This provision is unique and unprecedented. The UN Charter, which establishes the UNSC, does not contain a similar provision. The UNSC meets and interacts with CSOs in what are called Arria-Formula Meetings. These are informal meetings which “provide interested Council members an opportunity to engage in a direct dialogue with high representatives of Governments and international organization – often at the latter’s request – as well as non-State parties, on matters with which they are concerned and which fall within the purview of responsibility of the Security Council”.157 Through Arria-Formula Meetings, the UNSC has sought the input of CSOs on many topical issues. On 24 February 2017, the UNSC held an Arria-Formula Meeting on “human rights components in peace operations”.158

In a bid to implement Article 20, the PSC has developed a set of guidelines known as the Livingstone Formula, which regulates its interaction with CSOs. In addition to providing for CSOs to be invited to address the PSC, the Livingstone Formula forms the normative basis for CSOs to submit documents to the PSC, interact with and provide technical support to PSC field missions and fact-finding missions, advice AU mediation teams, and to support AU peace support operations and post-conflict reconstruction and development.159 One setback of the Livingstone Formula is its requirement that CSOs wishing to engage with the PSC must comply with the criteria for eligibility for membership as defined in Article 6 of the Statutes of the AU Economic, Social and Cultural Council (ECOSOCC). The ECOSOCC is the AU body responsible for coordinating and fostering CSOs participation in the activities of the AU. To be a member, a CSO must show that at least 50% of its basic resources are ‘derived from contributions of the members of the organization’.160 As the majority of CSOs in Africa depend on donor funding, they find access to ECOSOCC, and by extension to other AU organs including the PSC, to be restrictive.

In 2014, the PSC acknowledged that the restrictive provisions of the ECOSOCC Statutes had hindered many CSOs from participating in its activities. In what has come to be popularly known as the Maseru Conclusions, the PSC decided to adopt a flexible approach in order to allow more CSOs to participate in its activities. It stated as follows:

The PSC may decide to engage African CSOs and determine their active participation on a regular basis for effective pursuit of the efforts for conflict prevention, management and resolution. In this regard, given the fact that in the past five years there has been little interaction between the PSC and CSOs as envisaged, there is need for a flexible application of some of the requirement for the CSO participation, in order to facilitate as a transitional measure, a dynamic implementation of article 20 of the PSC Protocol.161

In the Maseru Conclusions, the PSC also provided for additional and robust avenues for CSO participation in its activities. In particular, the PSC agreed that it would, amongst other things:

- hold at least one meeting before the last quarter of each year with the aim of consolidating inputs provided by CSOs for its consideration during the compilation of the annual report of its activities and the state of peace and security in Africa;
- establish and maintain a databank of CSOs that are credible, active and effective in the field of peace and security; and
- hold at least one session per quarter of the year to undertake a thorough assessment of the trends and dynamics of peace and security in Africa and during which CSOs will be afforded the opportunity to submit findings of their research.

These undertakings are yet to be fully implemented two years down the line. On a positive note, since the adoption of the Maseru Conclusions, CSOs, including those that are not members of the ECOSOCC, have been regularly invited to the open sessions of the PSC.162 However, the number of CSOs invited to these sessions remains relatively small and their participation is still hindered by the fact that they often do not receive the formal invitation letters until just a few days before the sessions. This makes it logistically difficult for several of the CSOs, especially those based outside Addis Ababa, Ethiopia, to attend the open sessions.

159 Conclusions on a Mechanism for Interaction between the Peace and Security Council and Civil Society Organizations in the Promotion of Peace, Security and Stability in Africa, PSC/PR(C/LX), paras. 6-18.
162 For instance, Amnesty International has since 2014 been regularly invited to the PSC open sessions.
The PSC should expand the list of CSOs that it invites to its open sessions and ensure that it sends out invitation letters early enough to allow CSOs to make logistical arrangements for their participation.

3.2 RESPONSE MECHANISMS AND HUMAN RIGHTS

The PSC has numerous response mechanisms at its disposal, including the following: early warning and prevention; preventive diplomacy and mediation; peace support operations; deployment of human rights monitors; and establishment of commissions of inquiry or deploying of fact-finding missions. This section examines the effectiveness of these mechanisms in addressing human rights violations committed in conflict situations.

EARLY WARNING AND PREVENTION

The PSC is mandated under Article 7(1)(a) to “anticipate and prevent disputes and conflicts, as well as policies that may lead to genocide and crimes against humanity”. In this context, the AU has established and operationalized an early warning framework which is officially known as the Continental Early Warning System (CEWS). Established under Article 12 of the PSC Protocol, the CEWS gathers and analyzes data from around the continent for purposes of anticipating and preventing conflicts. In particular, the PSC Protocol places an obligation on the AU Commission Chairperson to use the information gathered through the CEWS to advise the PSC on potential conflicts as well as on the best course of action.\(^163\)

The nerve centre of the CEWS is the “Situation Room” which is housed within the Conflict Prevention and Early Warning Division of the Peace and Security Department (PSD) at the AU Commission (AUC), and serves as an observation and monitoring centre. The CEWS is “technically functional” and produces a wide range of reports, including early warning reports, situation updates, flash reports, and weekly updates.\(^164\) As at the end of 2015, plans were still underway for the CEWS to produce annual structural vulnerability assessments which will predict the level of exposure of countries to conflict.\(^165\) The CEWS is linked to and collaborates with early warning mechanisms operating at sub-regional and national levels. In particular, an online portal connects the CEWS with the early systems of the RECs. The statutory basis for this online portal is Article 12(2)(b) of the PSC Protocol which provides that the CEWS shall consist of “observation and monitoring units of the Regional Mechanisms to be linked directly through the appropriate means of communications to the Situation Room, and which shall connect and process data at their level and transmit the same to the Situation Room”.

The ability of the PSC to anticipate and prevent acts of genocide and crimes against humanity, as required under Article 7(1)(a) of the PSC Protocol, partly depends on whether it receives analysis from the CEWS on early signs and the likelihood of such crimes being committed in a particular country. The capability of the CEWS to generate such analysis in turn depends on the kind of information or data that it gathers.

Data collection by the CEWS is guided by a manual on conflict indicators which defines the range of information that needs to be gathered for purposes of early warning. Unfortunately, the CEWS Indicators Manual is not publicly available, a fact that limits analysis of its inclusion of human rights issues. What is publicly available is the Issue Paper on Proposal for an Indicators Module, presented to a meeting of government experts on early warning and conflict prevention in 2006. This paper commendably includes proposals that early warning or conflict information should be matched against norms and principles enunciated in AU instruments including human rights instruments. It specifically mentions the African Charter and the Maputo Protocol, which together with other AU instruments:

represent a consolidated framework of commonly accepted norms and principles, which is reflective of a universal understanding of human rights, as laid down in the United Nations Charter and other related legal instruments such as the Universal Declaration on Human Rights (1948). These documents do not a priori provide conflict prevention relevant indicators. But they easily translate into such a framework.

\(^{163}\) PSC Protocol, Article 12(5).
when they are interpreted *ex negativo*, i.e. when they are translated into a list of attitudes / behaviour which the African leaders disapprove of.\(^{166}\)

The paper contains a list of what are deemed to be “generic early warning indicators” which are stated to include gross human rights violations in general and of particular groups such as women, children, refugees, and IDPs.\(^{167}\) Other relevant listed indicators include the following: expulsion of identity groups; suspension of a constitution; public or private hate speech; policies of socio-economic exclusion; active steps to prevent accountability; and forced displacement.

**PEACE SUPPORT OPERATIONS**

Since its founding, the AU has initiated or operationalized peace support operations in a number of countries, including Burundi, CAR, Comoros, Mali, Somalia and Sudan. In addition, the AU is overseeing two active military operations: the Lord’s Resistance Army Regional Task Force (LRA-RFI) deployed since 2011 to stabilize the regions affected by the activities of the armed group LRA; and the Multinational Joint Task Force (MNJTF) deployed since mid-2015 to fight the armed group Boko Haram. These missions have placed a heavy financial burden on the AU. The estimated cost of peace support operations in Africa is USD 1.2 billion per year, with AMISOM alone accounting for an estimated cost of USD 900 million per year.\(^{168}\)

**AFRICAN UNION PEACEKEEPING MISSIONS, 2003-2017**

<table>
<thead>
<tr>
<th>MISSION</th>
<th>STATUS</th>
<th>PERIOD</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 African Union Mission in Burundi (AMIB)</td>
<td>Inactive (replaced by UNOB)</td>
<td>2003-2004</td>
</tr>
<tr>
<td>3 African Union Mission in the Comoros (MIOC)</td>
<td>Inactive</td>
<td>2004</td>
</tr>
<tr>
<td>4 African Union Mission for Support to the Elections in Comoros (AMISEC)</td>
<td>Inactive</td>
<td>2006</td>
</tr>
<tr>
<td>5 African Union-United Nations Mission in Darfur (UNAMID)</td>
<td>Active</td>
<td>2007-present</td>
</tr>
<tr>
<td>7 African Union Mission in Somalia (AMISOM)</td>
<td>Active</td>
<td>2007-present</td>
</tr>
<tr>
<td>8 Operation Democracy in the Comoros</td>
<td>Inactive</td>
<td>2008</td>
</tr>
<tr>
<td>9 Africa-led International Support Mission in Mali (AFISMA)</td>
<td>Inactive (replaced by MINUSMA)</td>
<td>2012-2013</td>
</tr>
</tbody>
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Deployed in April 2003, the AU Mission in Burundi (AMIB) was the first peacekeeping operation to be undertaken under the auspices of the AU. Deployed following the signing of the 2000 Arusha Peace Agreement, AMIB's core mandate was to oversee the implementation of the ceasefire agreements signed between the government and rebel groups in the country. The mission was also mandated to provide protection to political leaders who were returning to the country from exile and support the process of disarming, demobilizing, and reintegrating members of the rebel groups. The mission had a maximum of 3250 uniformed personnel drawn from Ethiopia, Mozambique, and South Africa. To its credit, AMIB restored relative peace in most parts of Burundi, in effect creating a conducive environment for the deployment of a UN peacekeeping operation. In May 2005, the UN Security Council authorized the deployment of the UN Peace Keeping Operation in Burundi (UNOB) which incorporated AMIB troops.

The AU Mission to Sudan (AMIS I) was established in June 2004 with the limited mandate of monitoring violations of a ceasefire agreement signed in April 2004 between the Sudanese government and two rebel groups operating in the Darfur region. As soon as AMIS I commenced operations, it became clear that it was inadequately equipped to respond to the complexity and dynamics of the conflict. Therefore, the PSC authorized the deployment of a fully-fledged mission in October 2004, in effect transforming AMIS I to AMIS II. As will be discussed below in detail, not only did AMIS II have increased number of personnel but it also had an expanded mandate. In May 2005, AMIS II was renamed AMIS II-Enhanced after the PSC adopted a decision to strengthen several of its components. In particular, the strength of the force was increased and stood at 6964 military and civilian personnel by late December 2005. Although AMIS was for a considerable period of time the most concrete response to the Darfur conflict and the only international military presence in the region, it struggled to meet its objectives or execute its mandate due to, among

169 Communique of the 91st Ordinary Session of the Central Organ of the Mechanism for Conflict Prevention, Management and Resolution at Ambassadorial Level, 2 April 2003.
other reasons, logistical and resource constraints. In execution of a decision of the UN Security Council AMIS was replaced in 2008 by the joint AU/UN Hybrid Mission in Darfur (UNAMID). Presently operational, UNAMID has a total of 13293 military personnel, 1413 police advisers, and 13 formed police units comprising up to 140 personnel each. At different points between 2004 and 2008, Comoros experienced conflict and instability instigated by electoral disputes. The AU was actively involved in managing the conflict. The AU first deployed a mission to Comoros - AU Observer Mission in the Comoros (MIOC) – in March 2004 to monitor local and parliamentary elections. Composed of 39 military observers mandated for a four-month period, MIOC oversaw the elections which were largely peaceful. In 2006, the AU once again deployed a mission – AU Mission for Support to the Elections in Comoros (AMISEC) - to observe the presidential elections. The missions consisted of 462 military and civilian police personnel drawn mainly from South Africa. In 2007, faced with instability ahead of another round of elections, Comoros requested for AU’s intervention in the country. In response, the AU deployed the AU Electoral and Security Assistance Mission to the Comoros (MAES) with an initial mandate of two-and-a-half months (13 May to 31 July 2007). Even with the deployment of MAES, the situation in Comoros did not improve and the President requested for more robust action. This resulted in the deployment of a military intervention, Operation Democracy in the Comoros, which brought relative calm to the country.

With the authorization of the UN, the AU deployed the AU Mission to Somalia (AMISOM) in January 2007 for an initial six month period. The mission has military, police and civilian personnel drawn from several African countries. The current contingent of military personnel are drawn from Burundi, Djibouti, Ethiopia, Sierra Leone and Uganda while police officers are drawn from Burundi, Gambia, Ghana, Kenya, Nigeria, Sierra Leone, Uganda, and Zimbabwe. The total number of uniformed personnel stands at 22126. The mission is mainly financially and logistically funded by the UN and AU’s development partners and primarily the European Union. It also benefits from bilateral donations from Canada, Japan, United States of America, and United Kingdom.

The Africa-led International Support Mission in Mali (AFISMA) was authorized by the PSC in June 2012 with a three-pronged mandate: (a) ensure security of transitional authorities; (b) restructure and reorganize the Malian security and defense forces; and (c) restore State authority over the northern part of the country. In authorizing AFISMA, PSC requested the UN Security Council to endorse the deployment as a matter of urgency. However, the UN Security Council did not endorse the deployment until 20th December 2012. The PSC operationalized the mission in February 2013. The mission had a maximum of 9620 uniformed personnel from Benin, Burkina Faso, Ghana, Guinea, Nigeria, Niger, Senegal, and Togo. Due to lack of adequate logistical resources and a lukewarm reception from the UN, AFISMA largely failed to execute its mandate. On 1 July 2013, AFISMA transferred its authority to the UN Multidimensional Integrated Stabilization Mission in Mali (MINUSMA).

The PSC authorized the deployment of the African-led International Support Mission to the Central African Republic (MISCA) on 19 July 2013, taking over the peacekeeping operation from the Mission for the Consolidation of Peace in CAR (MICOPAX), which had been the ground from 2008 on authorization of the Economic Community of Central African States (ECCAS). The mission was later endorsed by UN Security Council Resolution 2127 (2013). It came into operation in December 2013 with an authorized strength of 5000 military personnel and 6000 police personnel.
3652 uniformed personnel.\textsuperscript{192} Despite its limited capacity and the alleged involvement of its troops in human rights violations, MISCA has been lauded for contributing to the protection of civilians.\textsuperscript{193} In April 2014, the UNSC authorized the deployment of the Multidimensional United Nations Peacekeeping Operation (MINUSCA).\textsuperscript{194} In September 2014, MISCA transferred its authority to MINUSCA.

This section examines the extent to which the respect, protection and promotion of human rights have been mainstreamed in AU’s peacekeeping operations. The analysis is undertaken using two specific indicators: (a) the inclusion of human rights or civilian protection in the mandate of peacekeeping missions; and (b) accountability for human rights violations committed by peacekeeping troops.

**PROTECTION OF CIVILIANS**

The AU Draft Guidelines for the Protection of Civilians in African Union Peace Support Operations recognizes that central to the concept of “protection of civilians” is the promotion and protection of human rights. According to the guidelines, protection of civilians “includes activities undertaken to improve the security of the population and people at risk and to ensure the full respect for the rights of groups and the individual recognized under regional instruments, including the African Charter of Human and Peoples’ Rights, the AU Convention for the Protection and Assistance of Internally Displaced Persons, and the Convention Governing the Specific Aspects of Refugee Problems in Africa, and international law, including humanitarian, human rights and refugee law”.\textsuperscript{195} It defines a “protection mandate” as “the sum of all aspects of protection concerned reflected in a mandate, including physical, legal, and other protection tasks aimed at enhancing the level of protection afforded to civilians in the area of operations”.\textsuperscript{196}

AU peace support operations deployed between 2003 and 2012 predominantly focused on security and military objectives and did not have explicit protection of civilians at the time of their conceptualization. In particular, AMIB, AMIS, MIOC, AMISEC and AMISOM and MAES had limited or no explicit human rights or...
protection of civilians mandate at the time of their establishment. For AMIS and AMISOM, protection of civilians was made part of their respective mandates after they had been operationalized.

As mentioned earlier, AMIS I was deployed mainly to monitor, verify, investigate and report violations of the ceasefire agreement. The PSC decision authorising the deployment of AMIS I also mandated the AU CHPR to undertake a fact-finding mission in order to “investigate reports of on human rights violations in Darfur”. On 8 July 2004, the AU Assembly authorised the deployment of more military observers as well as a “peacekeeping force”. The mandate to protect civilians was not expressly stated in the decision of the AU Assembly. On 27 July 2004, the PSC clarified that the mandate given to AMIS I by the AU Assembly should be understood to include “the protection, within the capacity of the Force, of the civilian population”. Partly because of the confusion related to its protection of civilian mandate, AMIS I dealt neither with the wider dynamics of the conflict nor with human rights violations and abuses. Its mandate was extremely inadequate given the magnitude of the crisis in Darfur and the nature of the human rights violations and abuses committed.

On its part, AMIS II had both an expanded mandate and a bigger team of personnel. The revised mandate included two important functions: protection of civilians; and ensuring a secure environment for the delivery of humanitarian relief and the return of internally displaced persons and refugees. However, the mission's protection of civilians mandate was framed in very narrow terms. The framing reflected that the concept of state sovereignty had a strong influence in the manner in which the PSC understood its intervention, and more specifically its peacekeeping role, in Darfur. In particular, AMIS II was authorized to:

- Protect civilians whom it encounters under imminent threat and in the immediate vicinity, within resources and capability, it being understood that the protection of the civilian population is the responsibility of the GoS [Government of Sudan].

Despite the limitations it faced, AMIS I served as the only line of defence between the notorious Janjaweed militia and Darfur civilians, in effect preventing some further human rights abuses and destruction. In his report to the UN Security Council in 2005, former Secretary-General Kofi Annan observed that “in the areas where AMIS had deployed, it was doing an outstanding job under very difficult circumstances, greatly contributing to an improved security situation”.

In the long term, however, the capacity of AMIS II (and later AMIS II-Enhanced) to effectively execute its protection of civilian mandate was impeded by the lack of adequate infrastructure and personnel.

Like AMIS, AMISOM did not initially have the explicit mandate nor the capacity to protect civilians. This is partly because of the circumstances that led to the decision for the deployment of AMISOM. In particular, AMISOM was deployed to execute military operations against the armed group Al-Shabaab. It engaged in active combat against the group. The fighting has had grave consequences for the civilian population in Somalia. On several occasions, evidence has emerged that AMISOM has been committing serious abuses, including the killing of civilians. Killings by AMISOM have been caused by the use of mortars and artillery weapons in densely populated areas.

Failures in the protection of civilians in the early years of AMIS and AMISOM attracted a considerable amount of criticism. The AU responded by initiating a process of developing guidelines for the protection

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198 See PSC Communiqué, 10th Meeting, PSC/AHG/Comm.(X), para 8.
203 See J Ahere et al, Recounting the African Union's efforts to protect civilians in Darfur: From AMIS to UNAMID” in J Okeke & P Williams (eds), Protecting civilians in African Union peace support operations: Key cases and lessons learned, 2017, p 34.
207 In October 2010, the AUC chairperson acknowledged that AMISOM in particular had come under severe criticism for failing to protect civilians. In her report to the PSC, she observed that “[t]he humanitarian community has increasingly raised concern about the high number of civilian casualties from the fighting in Mogadishu between insurgents and TFG forces. Some humanitarian agencies and human rights
of civilians in AU-mandated peace support operations. This process culminated in the formulation of the 2010 Draft Guidelines for the Protection of Civilians in AU Peace Support Operations. The document provides guidelines for mainstreaming protection of civilians in all peace support operations. It also contains guidelines for developing mission-specific protection strategies. Some of the most salient guidelines are reflected in the Box below.

**EXTRACT: DRAFT GUIDELINES FOR THE PROTECTION OF CIVILIANS IN AFRICAN UNION PEACE SUPPORT OPERATIONS**

Guideline 6: The analysis undertaken within APSA’s pillars should consider the threats to, and protection needs of, civilians, including groups with special needs, such women, children, the elderly, persons with disabilities, internally displaced persons and refugees.

Guideline 7: PoC issues should be taken into account in decision-making in relation to the establishment of PSOs and the development and monitoring of implementation of their mandates by the Peace and Security Council (PSC).

Guideline 9: The threats to, and vulnerabilities of, civilian populations should inform the scope of protection mandates. Once a protection mandate is provided to a PSO, the operation must be appropriately resourced, configured and equipped to ensure it has the capacity to fulfill that mandate. To assist resourcing, a percentage of funds from the African Peace Facility (APF) should be made available for the protection of civilians as a matter of priority, and additional resources should be sought from the international community.

Guideline 10: The drafting of all strategic documents, including concepts of operations, use of force directives, directives to the head of mission, status of forces agreements, memoranda of understanding between the African Union and Regional Standby Forces or Member States must reflect the peace support operation’s PoC mandate.

Guideline 11: All personnel require appropriate core individual and collective training aimed at heightening their awareness of, and responsiveness to, protection threats and needs, particularly the protection concerns of special needs groups. Training should also address the roles, responsibilities and coordination mechanisms with external protection actors, awareness of cultural and political dynamics and appropriate codes of conduct governing the behavior of PSO personnel.

In addition to developing the 2010 Draft Guidelines, the PSC in October 2010 indicated that the AU was committed to ensuring that AMISOM fully adhered to and respected International Humanitarian Law (IHL) in its operations. Most importantly, the PSC encouraged the AU Commission to mainstream the Draft AU Guidelines for the Protection of Civilians in Peace Support Operations in its operations.

In May 2011, the PSC further urged the AU Commission to develop an “AMISOM approach” for the protection of civilians. The major outcomes of this push was AMISOM’s revision in 2010 of its Rules of Engagement (RoE) and the adoption in 2011 of the Indirect Fire Policy. The 2010 RoE was revised again in 2012. The relevant sections stipulate that “when force is used, all necessary measures would be taken to avoid collateral damage” and that protection would be afforded to “civilians under imminent threat of harm.”

**COUNTING GAINS, FILLING GAPS**

**STRENGTHENING AFRICAN UNION’S RESPONSE TO HUMAN RIGHTS VIOLATIONS COMMITTED IN CONFLICT SITUATIONS**

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physical violence”. The Indirect Fire Policy provides for a strict chain of command for the use of mortar and artillery fire and the designation of “no fire zones”. Implementation of these sets of guidelines, though hampered by a lack of adequate resources, began to bear fruits and by the end of September 2011, the UN Security Council and other actors noted that AMISOM had made some progress in reducing civilian casualties during its operations but that there was still more to be done. In February 2012, the UN Security Council called on AMISOM to expedite the establishment of a Civilian Casualty Tracking, Analysis and Response Cell (CCTARC), which would enable the mission to assess the impact of its operations on civilians. After subsequent repeated calls by the UN Security Council, AMISOM eventually established the CCTARC in 2015.

The CCTARC remains severely under-utilized partly because of concerns within AMISOM that its full operationalization may open up floodgates of compensation claims. There is also a lack of experience of the use of the CCTARC in other peacekeeping missions and from which lessons and expertise could be drawn. Moreover, the lack of a standard operating procedure specifically relating to the CCTARC has delayed its full implementation. The ongoing process of developing the procedure should thus be expedited.

Peace support operations deployed by the AU after 2012 have had, from the outset, explicit mandates to protect civilians. UN Security Council Resolution 2085 authorizing the deployment of AFISMA listed providing “support to the Malian authorities in their primary responsibility to protect the population” as one of the tasks of the mission. It also tasked the mission to support Mali in recovering areas under the control of terrorist, extremist and armed groups “while taking appropriate measures to reduce the impact of military action upon the civilian population”. At a general level, UN Security Council Resolution 2085 required AFISMA to ensure that the discharge of all of its designated tasks are in compliance with applicable international humanitarian law and human rights law. In CAR, MISCA equally had a protection of civilian mandate from inception. The PSC communiqué authorizing the mission stipulated that its first role was the “the protection of civilians and the restoration of security and public order, through the implementation of appropriate measures.”

Despite the fact that they had a clear mandate and were on the ground at the same time as the 2000 French soldiers of the Sangaris military operation and 700 soldiers of the European Union Military Operation in CAR (EUFOR-RCA), the 5800 MISCA peacekeepers were unable to fully protect civilians from violent attacks by various armed forces and groups. In essence, MISCA failed to stop the Anti-Balaka and the Seleka forces and their respective allies from continuing to commit abuses in many parts of the country, including in the capital Bangui. Research conducted by Amnesty International found that between December 2013 and May 2014 war crimes and crimes against humanity were committed by armed groups in CAR. During this period, members of the Anti-Balaka carried out ethnic cleansing of Muslims in the western part of the country while the Seleka forces, which retreated in January 2014 to the country’s central and eastern regions, were responsible for killing large numbers of Christians. Although the pattern of attacks was predictable, MISCA and the other two international forces were unable to fully protect civilians from violent attacks. This and other reasons led to the eventual replacement of MISCA by MINUSCA.

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213 AMISOM, Rules of Engagement (RoE) for the Military Component of the African Union Mission in Somalia, April 2012, Rule 7(h) & Annex E.
214 See generally Campaign for Innocent Victims in Conflict, Civilian harm in Somalia: Creating an appropriate response, 2011.
217 Amnesty International email communication with former AMISOM personnel, 23 March 2017.
218 Amnesty International email communication with former AMISOM personnel, 23 March 2017.
219 UN Security Council Resolution 2085, paras. 9(d).
220 UN Security Council Resolution 2085, para. 9(b).
221 UN Security Council Resolution 2085, para. 9.
222 PSC Communiqué, 385th Meeting, PSC/PR/Comm.2 (CCCLXXXV), 19 July 2013, para. 6.
Accountability for Human Rights and Other Violations

In Africa, as in other parts of the world, it is not uncommon for peacekeeping troops to violate the rights of the civilians they have been deployed to protect. This section examines the extent to which the AU has pursued accountability or established mechanisms for monitoring and investigating human rights violations and abuses committed by AU-mandate peacekeepers. In the recent past, the human rights records of two specific AU-mandated peacekeeping missions – AMISOM and MISCA - have come under sharp scrutiny.
As discussed above, AMISOM troops have been routinely accused of killing or injuring civilians during military operations involving mortars and artillery weapons. In a few selected cases, disciplinary actions have been initiated against individual AMISOM military personnel suspected of committing such violations. The typical procedure has been to repatriate such personnel to their home countries where the disciplinary process takes place. For example, AMISOM announced in September 2011 that four Burundian soldiers who were responsible for the killing of a Malaysian TV cameraman and injuring his colleague would be tried in their own country.226 The major setback of this procedure is that it lacked a follow-up mechanism. Both the AU and AMISOM have no system of establishing the outcomes of disciplinary processes initiated by troop-contributing countries.227

Instead of sending members of its contingent back home for trial or disciplinary proceedings, Uganda has periodically stationed a court martial in Somalia. For instance, a court martial remained stationed in Mogadishu between January and October 2013.

In recent times, AMISOM has established board of inquiries to investigate specific cases of alleged violations. In 2015, when it was alleged that Ugandan troops had killed six civilians in the port town of Marka,228 AMISOM denied and refuted the allegations in the first instance,229 but later announced that “the officer in charge of the troop detachment in Marka has been recalled for questioning as a prelude to a possible further investigation”.230 One year later, AMISOM initiated investigations into the alleged killing in July 2016 of 14 civilians by forces attached to the Ethiopian contingent of AMISOM.231 The report and findings of the investigations are yet to be released.232 Research shows that investigations into human rights violations by AMISOM have “significant limitations” including apparent unwillingness to gather evidence from a wide section of witnesses to specific incidents.233 Another major flaw of the investigations is the harassment and intimidation of victims and witnesses.234

AMISOM soldiers have also been implicated in sexual exploitation and abuse. On 8 September 2014, Human Rights Watch (HRW) released a report entitled “The power these men have over us: Sexual exploitation and abuse by African Union forces in Somalia”. The report documented 21 incidents of sexual exploitation and abuse committed by AMISOM soldiers. According to the report, these cases suggested the existence of “a relatively organized system” of sexual exploitation especially at the AMISOM base camp and at the base of the Burundian contingent in Mogadishu.235 On the same day the report was released, the AUC issued a press statement indicating that it will initiate “thorough” investigations into the allegations and take “appropriate measures” against perpetrators.236 At the same time, the AUC rejected the conclusions of the report. It stated that the allegations were a “misrepresentation of the sacrifices, achievements and genuine management of the mission.

In fulfilment of its commitment, the AUC established on 17 October 2014 an independent team to conduct investigations into the allegations contained in the report of Human Rights Watch. The investigations were conducted between November 2014 and February 2015. The full report of the investigations has never been released to the public because it was reportedly of "a poor standard".237 Instead, the AUC Chairperson released a summary of the report in April 2015.238 According to the summary, the investigation established

235 Human Rights Watch The power these men have over us: Sexual exploitation and abuse by African Union forces in Somalia (2014).
that there was evidence to conclude that two of the 21 incidents of sexual exploitation and abuse documented in the report of Human Rights Watch had indeed happened. The investigation team also observed that “more cases could have been unearthed by the investigation team, if not for the unwillingness and reluctance of some individuals to assist the investigation team with credible evidence”. The investigation team made a total of 12 recommendations including that the AMISOM Mission headquarters should establish a Force Provost Unit with a Special Investigative Section. The team also recommended the establishment by the AUC of the Office of Internal Oversight Services (OIOS) with similar responsibilities to that of the UN.

In CAR, peace keepers who operated under the auspices of the now defunct MISCA were repeatedly accused of human rights violations including killings, enforced disappearances, torture, and sexual violence. In June 2014, it emerged through a report published by Human Rights Watch that Congolese peacekeepers had been implicated in the detention and enforced disappearance of 12 people in Boali town, 80 kilometers north of Bangui, in March 2014. The findings of the report were later confirmed by investigations carried out by the office of the UN High Commissioner for Human Rights. Upon the discovery of a mass grave near a peacekeeping base in Boali in February 2016, it became clear that Congolese peacekeepers had killed and buried the 12 individuals they detained in March 2014. Other documented human rights violations by members of the Congolese contingent of MISCA include the torturing to death of two Anti-Balaka leaders in December 2013, and the public execution of two suspected members of the Anti-Balaka in February 2014.

For the violations that came into limelight such as those described above, MISCA’s typical response was to temporarily suspend the relevant commanders, transfer the suspected violators to other parts of CAR or repatriate them to their countries, and/or announce the commencement of investigations. In June 2014 when Congolese soldiers were accused of engaging in acts of enforced disappearance, the AU announced that MISCA had initiated investigations into the allegations and that the “required action” would be taken. The outcome of this exercise has never been made public.

On 29 March 2014, members of MISCA’s Chadian contingent were involved in an incident in which a number of civilians were killed and hundreds injured in the PK12 neighbourhood (at the northern edge of Bangui). Five days after this fateful incident, and amidst pressure and criticisms from the international community and the population in CAR, the Chadian authorities unilaterally decided to withdraw their contingent of 850 troops from MISCA. In its preliminary investigation into this incident, the United Nations High Commission for Human Rights (OHCHR) stated that at least 30 people were killed, including children, pregnant women and disabled people, and that about 300 others were injured. Human rights violations by peacekeepers did not stop with the transformation of MISCA into MINUSCA. Reports of sexual abuse, implicating French Sangaris Forces and UN peacekeepers emerged in 2014 prompting the UN to initiate an independent investigation.

In response to the incident, Chad and MISCA claimed that its troops acted in self-defense after MISCA trucks ran into an armed ambush staged by the Anti-Balaka at PK 12. Investigations by a team of MISCA human rights observers corroborated Chad’s official position and placed the estimates of fatalities arising


from the incident at a maximum of 13. However, the OHCHR reported that its investigations had revealed that the Chadian troops had opened fire in a crowded market without any provocation. Due to the confusion at the time, it remains unclear if the attack followed a provocation from the Anti-Balaka. It is also still not clear if Chadian soldiers on the MISCA trucks belonged to the Chadian contingent of the MISCA or to the Chadian National Army (ANT). It was not easy, especially between December 2013 and March 2014, to distinguish Chadians from the MISCA, the soldiers of the Chadian national army and Chadians members of the Séloka.

Despite the confusion, the reaction of MISCA and the AU to this incident was seriously flawed. The AU lent support to Chad and MISCA’s version of events. The only investigation done was by MISCA’s own observers and as such the AU did not conduct independent investigations into the circumstances surrounding the incident or whether there was disproportionate use of force. The AU’s position was first framed by the Commission Chairperson who issued a press statement on 4 April 2014 lamenting that the Chadian contingent had been the target of unfounded accusations and stigmatization. In a more comprehensive information note submitted to the PSC on 9 April 2014, the AUC Chairperson specifically criticized the UN human rights observers for “sensational and inaccurate reporting”. Taking its cue from the AUC Chairperson, the PSC in a press statement issued on 9 April 2014 “deplored the haste with which false and misleading information on this incident was disseminated by some international media houses, thus contributing to the worsening of the climate of hostility created by spoilers in the CAR against the Muslim community, in general, and Chadian nationals, in particular”.

In July 2014, Amnesty International recommended that instead of rejecting out of hand accusations against Chadian troops, the AU and the Chadian government should immediately launch independent investigations. This recommendation proceeded from the premise that MISCA commanders must be able to identify members of the Chadian MISCA contingent responsible for killings of civilians and other human rights violations. Amnesty International is not aware if such investigations have ever been initiated. At a general level, impunity for crimes under international law committed in CAR remains rife.

In a major positive development, the AU High Representative on the Peace Fund proposed in August 2016 in a report titled “Securing predictable and sustainable financing for peace in Africa” that the AU should ensure that all its missions “are compliant with international human rights and humanitarian law as well as accepted international norms of conduct and discipline”. The High Representative noted that AU efforts to integrate human rights in its peace support operations remain “ad hoc and must be institutionalized.” In this regard, the High Representative recommended that the AU should develop an integrated human rights compliance framework in addition to finalizing the AU conduct and discipline policy. It is envisaged that the human rights compliance framework will cover issues relating to seven key areas: capacity; selection and screening; policies; accountability; selection and screening; training; and monitoring and reporting. On accountability, it is expected that the framework will require the following actions in respect of all AU missions:

- institutionalized investigations and the initiation of response mechanisms depending on the type of allegations and violations;

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249 African Union, Securing predictable and sustainable financing for peace in Africa, August 2016, para. 54.
• reinforcement of Memorandum of Understanding between the AU and troop contributing countries on issues relating to compliance to international human rights and humanitarian law and on the consequences of non-compliance;
• development of a communications strategy on responding to allegations of violations;
• development of a policy or guidelines on compensation to victims of violations;
• review of complementary legislative measures at national level to address violations of international human rights and humanitarian law;
• development of a model law on violations of international human rights law and humanitarian law and integration of the model law in domestic legal systems;

The High Representative also recommended the establishment of a compliance office attached to the AUC Chairperson’s office that would consist of a monitoring and reporting unit as well as an accountability unit. This recommendation is more or less the same as the recommendation discussed above on the establishment of the OIOS. The High Representative also proposed the establishment of a compliance unit in each peace support mission. Amnesty International believes that implementation of these concrete recommendations could go a long way in addressing the persistent accountability gap in AU’s peacekeeping operations.

HUMAN RIGHTS OBSERVERS

The practice of deploying AU human rights monitors to conflict situations is currently at its nascent stages of evolution. The AU has deployed human rights monitors to three countries: Mali, CAR, and Burundi. The AU has also deployed a small number of human rights observers to the DRC, South Sudan and Somalia. This section examines the effectiveness of the deployments to Mali, CAR and Burundi. The emerging trend of deploying human rights observers/monitors is a welcome development. However, as the analysis below will show, the experience thus far reveals numerous gaps in deployment and monitoring, including the lack of policy guidelines on the mandate, design, organization, and the working methods of human rights monitors. It is crucial that such policy guidelines are promptly developed and that AU-mandated human rights monitoring is more transparent and duly provided with the requisite material, financial and human resources.

MALI

The AU deployed its first ever batch of human rights monitors to Mali. The decision to do so was taken by the PSC during its 353rd meeting held in January 2013.263 Concerned by the scale of abuses committed against the civilian population by Malian armed groups as well as by the destruction of monuments of historical, cultural and religious significance, the PSC mandated the AU Commission to work in conjunction with the ECOWAS and the ACHPR with a view to deploying civilian human rights observers who would operate “as part of AFISMA”.264 Although it was expected that the observers would be deployed “as quickly as possible”,265 it took two months before they arrived in Bamako, Mali’s capital, and six months before they actually began the monitoring work in the north of Mali.266

The first group of four observers were deployed to Gao on 8th June 2013. On the same day, the head of AFISMA announced that six more observers would be deployed to Timbuktu soon thereafter.267 The two-month delay between the observers’ arrival in Bamako and their deployment to the conflict-affected areas was justified as being the need for them to be briefed of the political, security, and human rights situation in Mali.268

263 PSC Communiqué, 353rd Meeting, 25th January 2013, PSC/ACHG/COMM/2.(CCCLIII), para. 7(d).
264 PSC Communiqué, 353rd Meeting, 25th January 2013, PSC/ACHG/COMM/2.(CCCLIII), para. 7(d).
265 PSC Communiqué, 353rd Meeting, 25th January 2013, PSC/ACHG/COMM/2.(CCCLIII), para. 7(d).
The AU Commission had initially expected that it would deploy 50 human rights observers to Mali. However, only 10 observers were present in Mali by the time AFISMA had to transform to MINUSMA. Nevertheless, the decision to deploy human rights observers to Mali marked an important development in the evolution of AU’s peace support operations. The deployment allowed for the establishment of a dedicated human rights monitoring unit within AFISMA. Such a unit had hitherto lacked in AU missions. However, there were major problems of coordination because the relationship between the observers and AFISMA was never clarified. For instance, lines of reporting and communication were undefined and obscure. There were also disagreements over the use of facilities and equipment.

Perhaps more importantly, it remains unclear to what extent the presence of the human rights observers helped in the documentation and reporting of abuses and violations committed in the Mali conflict. As discussed above, at least in one instance, the findings of investigations conducted by the AFISMA human rights observers conflicted with those of UN observers. It is equally not clear whether the observers enhanced AFISMA’s abilities to respect international human rights and humanitarian law or to implement its mandate on protection of civilians.

CENTRAL AFRICAN REPUBLIC

After Mali, the AU deployed human rights observers to CAR. The deployment was an independent initiative of the AU Commission that was later endorsed by the PSC. The observers were deployed so as to enable MISCA “investigate and better document violations of human rights, within the framework of overall efforts to fight impunity.” Unlike the ones deployed to Mali, the human rights observers in Mali were part of the civilian component of MISCA from the onset. However, they were fewer in number. Only 5 observers were present in CAR during the entire existence of MISCA.

In spite of its small size, the team of MISCA human rights observers contributed to the documentation of human rights abuses and violations in the country. In her first progress report on the activities of MISCA, the Chairperson of the AUC noted that the human rights observers had been informed by a variety of actors of the commission of serious human rights abuses and violations by the main armed groups operating in CAR. However, the activities of the observers were seriously limited due to security reasons.

BURUNDI

More recently, the PSC authorized the deployment of human rights observers to Burundi. At its 507th meeting held on 14 May 2015, the PSC instructed the AUC “to expedite its consultations with the Government of Burundi towards the early deployment of human rights observers and other civilian personnel, to monitor the human rights situation on the ground, report violations of human rights and international humanitarian law, and undertake local conflict prevention and resolution activities.” The PSC also asked the Burundian government to facilitate the deployment and offer security to the observers. Acting on the instructions of the PSC, the AU Commission prepared terms of reference, which indicated that the observers would be expected to:

• submit regular reports of human rights law and International humanitarian law violations to the leadership of the AU Commission for onward transmission to the PSC;
• contribute to the protection of the civilian population and property;
• contribute to the improvement of conditions of detention through visits to prisons and detention centers;
• work closely with judicial authorities and law enforcement officers in order to ensure better administration of justice;

269 Interview with a senior AU official, 14 May 2015.
270 Interview with a senior AU official, 14 May 2015.
271 PSC Communiqué, 416th Meeting, 29 January 2014, PSC/AHG/COMM.2(CDVII), para. 7.
275 See PSC Communiqué, 507th Meeting, 14 May 2015, PSCPR/COMM(DVII), para. 12.
support the efforts of local authorities with advice for strengthening the promotion and protection of human rights and respect for the rule of law; 
organize training sessions on human rights; and 
develop and maintain excellent working relationships with local NGOs and partners on issues related to human rights.

The AUC initially hoped to deploy 80 human rights and military observers to Burundi.276 However, the intransigence of the Burundian government, coupled with the lack of funding, resulted in a two-month delay and the eventual deployment of a significantly lower number of observers. The first batch of nine observers arrived in Bujumbura on 22 July 2015.277 By the end of September 2015, the number of observers had only increased to 15. In October 2015, the PSC decided to increase the number of human rights observers to 100,278 a decision that the Burundian government consented to later in February 2016.279 However, only 45 observers were present in Burundi by the end of February 2017.280 As of 13 March 2017, the government was yet to sign a memorandum of understanding with the AU to define the parameters of the deployment.281 In essence, months of negotiations on the memorandum of understanding have not yielded positive results.

In the absence of a memorandum of understanding, the work of AU human rights observers has been limited. For instance, they have not been able to conduct any meaningful monitoring work outside of the capital Bujumbura.282 Their work is also impeded by the lack of adequate resources and funding. A proposal for operation support from the UN, which will comprise of funding for or provision of, amongst other things, office premises, transportation, and information and communication technology equipment, is still under consideration.283

FACT-FINDING MISSIONS AND COMMISSIONS OF INQUIRY

The PSC has on several occasions authorized a fact-finding mission to be deployed to a country in conflict. It has specifically asked the ACHPR to undertake fact-finding missions to Burundi, Cote d’Ivoire, Guinea, Mali, and Sudan. Only the missions to Burundi, Mali, and Sudan have actually materialized and resulted in the preparation of a report. As discussed in Chapter 2 above, the PSC has consistently not taken any meaningful steps to implement the recommendations contained in these reports. As a result, the missions have largely been little more than fruitless ventures.

Outside of the above, the PSC has established a commission of inquiry only once. Following the eruption of conflict in South Sudan in December 2013, the PSC immediately established the AU Commission of Inquiry on South Sudan (AUCISS) to, inter alia, “investigate the human rights violations and other abuses committed during the armed conflict in South Sudan and make recommendations on the best ways and means to ensure accountability, reconciliation and healing among all South Sudanese communities”. 284

The AUCISS started work in March 2014. Its membership was drawn from within the AU as well as from outside the organization. In particular, it was composed of a representative each from the ACHPR and the African Court. The Special Envoy of the Chairperson of the AU Commission on Women, Peace and Security was also part of the team. Two more individuals were drawn from outside the AU. Former Nigerian President, Olusegun Obasanjo, served as its chairperson, while a Tanzanian scholar was the fifth member. The composition of the AUCISS allowed for a rich blend of expertise that possibly influenced the depth of its investigation and quality of the final report.

The AUCISS finalized its report in November 2014 but its consideration by the PSC and its public release was inordinately delayed. For close to one year, the PSC ignored calls by civil society organizations and other

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276 Interview with a senior AU official, 14 May 2015.
278 PSC Communiqué, 551st Meeting, 17 October 2015, PSC/PR/COMM. (DUL), para. 126.
284 PSC Communiqué, 408th Meeting, 31 December 2013, PSC/AGH/COMM.1 (CDXI).
actors to release the AUCISS report. On 29 January 2015, the consideration of the AUCISS report was placed on the agenda of the PSC. However, the PSC indefinitely postponed the receipt and consideration of the report. It was argued that the release of the report would frustrate the peacemaking effort that was underway at the time in Addis Ababa, Ethiopia. When the issue was revisited in June 2015, the PSC decided to convene a ministerial-level meeting to consider the report in more detail. At the meeting of PSC ministers held on 24 July 2015, the AUCISS formally submitted its report to the PSC. The ministerial meeting took note of the report and decided to designate its in-depth review to an ad hoc committee composed of Algeria, Chad, Ethiopia, Nigeria, South Africa, Tanzania and Uganda. The final decision on the report was eventually adopted at a PSC meeting held on 26 September 2015. In that decision, the PSC authorized the release of the report “for public information” purposes.

The 315-page AUCISS report extensively documents gross human rights violations and abuses committed in the South Sudan conflict. The AUCISS found that there were reasonable grounds to believe that crimes against humanity and war crimes were committed by parties to the conflict. However, it found that there were no reasonable grounds to believe that the crime of genocide had been committed. The AUCISS recommended that the AU establishes a legal mechanism to bring to justice those with the greatest responsibility for the crimes under international law committed in the country during the conflict. It also prepared a confidential list of names of perpetrators, which it handed to the PSC.

The establishment of AUCISS informed and shaped the South Sudan mediation and peacemaking efforts. For example, the Protocol on Agreed Principles on Transitional Arrangements towards the Resolution of the Crisis in South Sudan, signed by the warring parties in August 2014, stipulated that “[i]ndividuals found to have committed atrocity crimes, or other crimes against humanity, as identified by the African Union Commission of Inquiry for South Sudan, shall not be eligible for participation in the Transitional Government.” It further provided that if such individuals already held governmental positions they would be under an obligation to resign. The final peace agreement signed by the warring parties on 26 August 2015 provides that when operationalized the Hybrid Court for South Sudan (HCSS) may “use” the AUCISS report.

The HCSS, as envisaged by the August 2015 peace agreement, is to be established by the AUC. More than a year after the signing of the peace agreement, the process of establishing the HCSS still drags on. In a policy briefing published in October 2016, Amnesty International and the International Federation for Human Rights (FIDH) called upon the AUC to establish the HCSS without further delay and in consultation with relevant stakeholders including civil society. Given the weaknesses and lack of independence of the South Sudanese domestic judicial system, the current lack of ICC jurisdiction over the crimes committed, and the importance of local ownership over any accountability proceedings, the HCSS represents the most viable option for achieving justice in trials that meet international standards. Amongst other recommendations, Amnesty International and FIDH recommended that the AUC should prioritize establishing the HCSS’s investigative branch (and other aspects essential to such investigation, including witness protection). In addition, Amnesty International and FIDH recommended that the AUC should facilitate the collection and eventual transfer of documentation and relevant information from already existing regional and international mechanisms such as the UN Mission in South Sudan (UNMISS), the UN Panel of Experts on South Sudan, the AUCISS, the Ceasefire and Transitional Security Arrangements Monitoring Mechanism (CTSAMM) and civil society organizations.


284 PSC Communiqué, 515th Meeting, 13 June 2015, PSC/AHG/COMM.1 (DVX).

285 PSC Communiqué, 547th Meeting, 26 September 2015, PSC/AHG/COMM.1 (DXVII).


289 Protocol on Agreed Principles on Transitional Arrangements towards Resolution of the Crisis in South Sudan, 25 August 2014, para. 15.


4. INSTITUTIONAL SYNERGY AND COORDINATION

Institutional synergy and coordination within the AU is vital for effective response to conflict situations. As such, the APSA Roadmap, 2016-2020, envisages that the full operationalization of APSA is dependent on "collaboration and coordination (inter and intra institutional) as one of the priorities to be addressed with the utmost attention". This chapter examines the level of institutional synergy and coordination amongst AU organs and institutions involved in conflict prevention, resolution, and management.

In 2010, an AU assessment of APSA revealed that coordination amongst its various components was "limited" mainly because most of these components were yet to be fully operationalized at the time. Since then, the AU has taken numerous steps to ensure that it responds to conflict situations in a more coordinated manner. However, as the analysis below will show, gaps still exist. In particular, the interaction between institutions directly charged with conflict prevention, management and resolution, on the one hand, and those directly responsible for promotion and protection of human rights, on the other, remain ad hoc and unsustainable. This fact is not new to the AU. In the APSA Roadmap, 2016-2020, the AU Commission acknowledges that synergies within and across APSA components are generally weak. Therefore, this chapter goes beyond recounting the coordination gap. It proposes short and long-term ways of filling these gaps.

4.1 PSC AND AFRICAN COMMISSION

The PSC Protocol provides a clear statutory basis for coordination between the PSC and the ACHPR. Article 19 of the PSC provides that:

The Peace and Security Council shall seek close co-operation with the African Commission on Human and Peoples’ Rights in all matters relevant to its objectives and mandates. The Commission on Human and Peoples’ Rights shall bring to the attention of the Peace and Security Council any information relevant to the objectives and mandate of the Peace and Security Council.

Article 19 envisages a complementary or a two-way relationship between the PSC and the ACHPR. It also establishes a framework for operationalizing Article 58 of the African Charter. But in practice, coordination between the PSC and the ACHPR is generally poor. Specifically, little actual interaction has taken place beyond the PSC asking the ACHPR, through communiques, to undertake specific fact-finding missions. Indeed, in the three occasions that the ACHPR has conducted fact-missions authorized by the PSC, it is only on one occasion (Burundi) that the ACHPR has had the opportunity to present its preliminary and final findings to the PSC. In the two other occasions (Sudan and Mali), the PSC did not consider the reports of the

missions nor did it invite the ACHPR to present its findings and recommendations. It is also noteworthy that in the case of Burundi, the PSC simply noted the contents of the ACHPR report and took no action at all to implement the recommendations. Thus, apart from the fact that the preliminary findings of the ACHPR may have initially informed the decision to authorize the deployment of MAPROBU, no concrete results followed the consideration of the final report of the Burundi fact-finding mission. In other words, the cooperation between the ACHPR and the PSC in the case of Burundi, as in other cases, was in the end a fruitless venture.

Public documents issued by the two bodies also provide some measure of coordination gaps. Amnesty International conducted a statistical analysis to determine the extent to which the PSC and the ACHPR draw upon each other’s work. Figure 8 below presents summary counts of the number of times that the PSC and ACHPR make reference to each other, to African RECs, and to the UN. These reference counts were used as a proxy for the potential coordination between the PSC and the ACHPR, the logic being that institutions which are in closer contact will also be aware of, and thus make greater reference to, their common activity. As the tallies in Figure 8 demonstrate, between 2004 and the end of 2015, the PSC referenced the ACHPR in only 5 documents out of 293 documents (2%), whereas the ACHPR referenced the PSC in only 6 documents out of 167 documents (4%). This stands in stark contrast to the number of documents in which the PSC references African RECs (92 documents, 31%). The PSC makes the greatest number of outside references to the UN (276 documents, 94%). The ACHPR, by contrast, makes limited reference to African RECs (6 documents, 4%), although it does make slightly more references to the UN (36 documents, 22%).

The statistical analysis imply that the PSC and the ACHPR target different audiences. In particular, the PSC seems to target more the UN and African RECs because it actively collaborates with these organizations in the prevention, management and resolution of conflicts in Africa. However, the analysis also reveals that neither the PSC nor the ACHPR makes regular mention of the other when evaluating conflict situations or making decisions about future courses of action. The lack of a cross-talk between these two bodies as demonstrated in this statistical analysis of public documents is indicative of the considerable room for improvement with regards to institutional coordination. Greater information-sharing between the PSC and ACHPR may improve responsiveness of both institutions to human rights situations in conflict-laden countries.

On the positive side, both the PSC and ACHPR are increasingly acknowledging this challenge. In 2007, the PSC decided that “the Chairperson of the PSC will once a year invite the Chairperson of the ACHPR to brief the Council on the state of human rights in conflict areas”. There are no official records of the PSC or the ACHPR indicating that such a meeting has ever taken place. If implemented, such annual meetings could be an important step toward institutionalizing the relationship between the PSC and the ACHPR. However, annual meetings are not sufficient. Article 19 of the PSC Protocol envisages a more regularized interaction through which the work of the ACHPR directly feeds into the agenda and priorities of the PSC.

In recognition of its limited interaction with the PSC, the ACHPR in February 2016 adopted Resolution 332 on Human Rights in Conflict Situations in which it decided to “collaborate with the AU Peace and Security Council and other relevant stakeholders working on issues of peace and security, towards enhancing the role

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Figure 8: Cross-referencing between the PSC and ACHPR

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<td>AFRICAN ORGS</td>
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<td>6</td>
</tr>
<tr>
<td>UNITED NATIONS</td>
<td>276</td>
<td>36</td>
</tr>
<tr>
<td>Total documents issued</td>
<td>PSC=293</td>
<td>ACHPR=167</td>
</tr>
</tbody>
</table>

The statistical analysis imply that the PSC and the ACHPR target different audiences. In particular, the PSC seems to target more the UN and African RECs because it actively collaborates with these organizations in the prevention, management and resolution of conflicts in Africa. However, the analysis also reveals that neither the PSC nor the ACHPR makes regular mention of the other when evaluating conflict situations or making decisions about future courses of action. The lack of a cross-talk between these two bodies as demonstrated in this statistical analysis of public documents is indicative of the considerable room for improvement with regards to institutional coordination. Greater information-sharing between the PSC and ACHPR may improve responsiveness of both institutions to human rights situations in conflict-laden countries.

On the positive side, both the PSC and ACHPR are increasingly acknowledging this challenge. In 2007, the PSC decided that “the Chairperson of the PSC will once a year invite the Chairperson of the ACHPR to brief the Council on the state of human rights in conflict areas”. There are no official records of the PSC or the ACHPR indicating that such a meeting has ever taken place. If implemented, such annual meetings could be an important step toward institutionalizing the relationship between the PSC and the ACHPR. However, annual meetings are not sufficient. Article 19 of the PSC Protocol envisages a more regularized interaction through which the work of the ACHPR directly feeds into the agenda and priorities of the PSC.

In recognition of its limited interaction with the PSC, the ACHPR in February 2016 adopted Resolution 332 on Human Rights in Conflict Situations in which it decided to “collaborate with the AU Peace and Security Council and other relevant stakeholders working on issues of peace and security, towards enhancing the role...

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of the Commission, as well as its coordination with other continental processes, in addressing human rights issues in conflict situations. Plans for the implementation of this resolution are underway.

**AFRICAN COMMISSION: RESOLUTION 332 ON HUMAN RIGHTS IN CONFLICT SITUATIONS**

Deeply concerned by the on-going conflict situations affecting various parts of Africa, as well as the consistent reports of violence being faced by civilian populations and the attendant widespread violations of human and peoples’ rights and humanitarian law;

Considering that despite the existing regional normative and institutional frameworks for addressing conflicts and threats of conflicts in Africa, there seem to be limitations in coordinated responses to human rights violations arising in conflict situations;

Mindful of the role of the Commission under the African Charter, in particular, Article 58, to respond to cases of ‘series of serious or massive violations of human and peoples’ rights and to ensure that human rights issues are addressed in conflict prevention, management and resolution;

Recognizing the urgent need for institutionalizing a human rights-based approach to conflict prevention, management and resolution on the continent;

Further recognizing the need to work closely with the AU Peace and Security Council in accordance with Article 19 of the PSC Protocol and other regional and sub-regional processes, in addressing human rights in conflict situations;

The Commission:

Decides to:

1. Conduct a study on human rights in conflict situations in Africa, with a view to developing a strategy and framework on the same;

2. Collaborate with the AU Peace and Security Council in Africa and other relevant stakeholders working on issues of peace and security, towards enhancing the role of the Commission, as well as its coordination with other continental processes, in addressing human rights issues in conflict situations.

Resolution 332 points to the urgent need to clarify the modalities of implementing Article 19 of the PSC Protocol. As a step in this direction, the PSC could identify broad areas of its work, from prevention to peacebuilding, the accomplishment of which requires the involvement of the ACHPR. Building on the experience relating to the fact-finding mission undertaken by the ACHPR to Burundi, provision should be made for the regional human rights body to brief the PSC whenever it concludes a fact-finding mission to a conflict country. Beyond requesting for conduct fact-finding missions to be conducted, the PSC may also consider requesting the ACHPR to analyse whether the criteria for invoking Article 4(h) of the Constitutive Act have been met in specific conflict situations.

4.2 PSC AND AFRICAN CHILDREN’S COMMITTEE

The ACERWC considers regular and institutionalized interaction with the PSC as being essential to the fulfillment of its mandate to promote and protect the rights of children affected by conflict. It has in this regard asserted that:

> With an effective collaboration between the African Peace and Security Architecture and the African Committee of Experts on the Rights and Welfare of the Child (ACERWC), an Africa fit for children is possible. Among other things, this requires an institutionalized collaboration between the Peace and

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Security Council (PSC) and the ACERWC. While the PSC remains the nerve center for peace, security and stability in Africa, the ACERWC remains the nerve center for promoting the rights and welfare of the child in Africa. These two institutions, the PSC, being an organ of the African Union, and the ACERWC, being the treaty body responsible for promoting and protecting the rights and welfare of the child, remain critical for jointly ensuring the that African conflicts do not affect the rights and welfare of the child. 298 Yet, the PSC Protocol is silent on the question of the relationship between the PSC and the ACERWC.

Similarly, the African Children’s Charter does not have the equivalent of Article 58 of the African Charter that provides for the ACHPR to notify the AU Assembly of the existence of a series of serious or gross human rights violations in a specific country. Even with these normative gaps, the ACERWC has persuasively argued that both the PSC Protocol and the African Children’s Charter contain provisions that can serve as the statutory basis for it to interact with the PSC. 299 First, the African Children’s Charter is considered one of the “other relevant international organizations” envisaged under Article 17(4) of the PSC Protocol. Article 17(4) places an obligation on the PSC to “cooperate and work closely with other relevant international organizations on issues of peace, security and stability in Africa”. It follows that the PSC can interact with the African Children’s Charter within the framework of Article 17(4). Second, the provisions of Article 19 of the PSC Protocol may apply mutatis mutandis to the ACERWC. Third, Article 42(a)(iii) of the African Children’s Charter provides that the ACERWC should seek to “cooperate with the Africa, international and regional institutions and organizations concerned with the promotion and protection of the rights and welfare of the child”. As such, despite the silence of the PSC Protocol, the ACERWC has sufficient legal basis to seek interaction and cooperation with the PSC to the extent that the latter is concerned with the plight of children in conflict situations.

In practice, the question of the interaction between the PSC and the ACERWC did not formally enter into the agenda of the AU political organs, and that of the Executive Council in particular, until July 2012. At its 21st ordinary session held in Addis, Ethiopia, in July 2012, the Executive Council requested the PSC, amongst other institutions, to “take into account the rights of the child in their agenda and cooperate actively with the Committee”. 300 Close to two years lapsed before the request was implemented. On 18th February 2014, the PSC held a session dedicated to discussing its interaction with the ACERWC. In this meeting in which the ACERWC was represented by its Chairperson and a few other members, the PSC discussed the possibility of applying Article 19 of the PSC Protocol to its interaction with the ACERWC. 301

The 2014 February PSC consultation meeting with the ACERWC was the first step in building the relationships between the two institutions. In order to institutionalize this relationship, the ACERWC subsequently developed, with the support of a consultant, an Action Plan outlining mechanisms or modalities for increasing its collaboration with the various components of APSA in general and with the PSC in particular. 302 The Action Plan envisages a number of mechanisms that would lead to increased collaboration:

- a high level meeting devoted to peace, security and children’s rights;
- yearly open sessions of the PSC devoted to issues of children in Africa;
- ad hoc meetings dealing with specific conflicts in Africa; and
- joint missions undertaken on the basis of a Memorandum of Understanding with the PSC spelling out the modalities of undertaking such missions.

In order to ensure children’s issues are placed on the agenda of APSA institutions, the Action Plan proposed that the ACERWC would do the following:

- include in the agenda of the PSC, Panel of the Wise, and ASF an item relating to children in conflict situations;
- create a child rights office within CEWS; and

301 PSC Press Statement, 420th Meeting, 18 February 2014, PSC/PR/BR.(CDXX).
• create child rights offices within RECs’ liaison offices.

The Action Plan was developed in May 2014. Since then, only one of the objectives relating to holding PSC annual open sessions on children and armed conflict has been institutionalized.303 Every year from 2014, the PSC has held an open session in early May on a theme related to child rights in conflict situations. The ACERWC has used the opportunity presented by these open sessions to brief the PSC on its work relating to the rights and plight of children during conflicts. In 2015, the ACERWC presented the findings of its field visits to CAR and South Sudan to the PSC. As far as Amnesty International is aware, no formal PSC decision was taken on the findings and recommendations contained in the ACERWC reports of its country visits to CAR and South Sudan.

While the PSC emerging practice of receiving ACERWC briefings during the annual open sessions is commendable, there should be opportunities outside this framework for the ACERWC to brief the PSC on its work related to children and conflict. As soon as the ACERWC concludes its field visit to a conflict or crisis country, the PSC should promptly afford it the chance to present its preliminary findings. The ACERWC should also have the opportunity at a later stage to present the final report and recommendations to the PSC. More importantly, the PSC should take steps to implement the recommendations of the ACERWC.

In addition to the annual open sessions on children and conflict, the PSC has held numerous other sessions which are relevant to children’s rights. For a number of years now, the PSC has consistently held an annual session in March on “women and children in armed conflict”. However, discussion on women’s rights have always taken precedence during these open sessions and the participation of the ACERWC has been relatively minimal. The PSC has also occasionally held ad hoc sessions with a particular focus on children rights. Examples include the August 2016 open session on “the education of refugees and displaced children in Africa” and the February 2017 closed session on “Protecting children from conflicts: highlighting the case of child soldiers in Africa”. During the latter session, the PSC received briefings from the AU Commission, UN office to the AU, and the Romeo Dallaire Child Soldiers Initiative. Regrettably, the ACERWC did not have the opportunity to make a presentation during the session despite the fact that it has an express mandate on the subject of child soldiers. A major outcome of this particular session was the request to the AUC Chairperson to appoint a Special Envoy on Children, Peace and Security who is expected to work towards ensuring “more attention and action on issues of children rights, safety, health, education and protection, particularly in conflict situations in Africa”.304

**PSC OPEN SESSIONS ON CHILDREN AND ARMED CONFLICT, 2014-2017**

<table>
<thead>
<tr>
<th>YEAR</th>
<th>THEME/ACTIVITY</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Joint Meeting of the PSC and ACERWC</td>
</tr>
<tr>
<td>2</td>
<td>Presentation by the ACERWC on the findings of its advocacy missions to CAR and South Sudan</td>
</tr>
<tr>
<td>3</td>
<td>Protecting schools from attacks during armed conflicts in Africa</td>
</tr>
<tr>
<td>4</td>
<td>Children on the move</td>
</tr>
</tbody>
</table>

Beyond failing to consistently afford ACERWC the opportunity to address it during relevant ad hoc sessions, the PSC has also never extended a request to the ACERWC to conduct fact-finding missions either independently or jointly with the ACHPR. It is specifically regrettable that the membership of the AU Commission of Inquiry on South Sudan (AUCISS) drew from the other two regional human rights treaty institutions (African Commission and African Court) but not from the ACERWC. It is thus not surprising that violations of children’s rights did not receive prominent attention in the final report of the Commission of Inquiry.

### 4.3 PSC AND CONTINENTAL EARLY WARNING SYSTEM

The possibility and ability of the PSC to respond to conflict situations in a timely fashion is partly dependent on whether it has relevant information at its disposal to enable it take the requisite decision or action. In this

303 Amnesty International email communication with an AU official, 28 March 2017.
304 PSC Communiqué, 661st Meeting, 23 February 2017, PSC/MIN/COMM.2(DCLXI), para. 11.
context, the importance of a robust relationship and coordination between the PSC and the CEWS cannot be overemphasized. Such a relationship is unfortunately still lacking. While the AU Commission has established a relatively sophisticated system of data collection, the flow of information and analysis from the CEWS to the PSC is slow and inconsistent. Similarly, the CEWS is not seamlessly linked to the relevant departments of the AU Commission, the Panel of the Wise, and the early warning systems of the RECs. The ultimate outcome of this state of affairs is what the PSC itself has referred to as the “persistent gap between early warning and early response”. In the 2014 APSA Impact Report, the authors summarize the challenge as follows:

Our assessment concludes that products of the CEWS are used by the Peace and Security Department (PSD) of the AUC. There is also regular exchange between the CEWS and the Panel of the Wide (PdW) but no direct contact with the Peace and Security Council. The PSC is not known to have provided direct feedback about specific CEWS reports and policy recommendations so far.

The slow and inconsistent flow of information and analysis from the CEWS to the PSC is mainly a function of the “modest engagement” between the two institutions. The normative design of the manner in which they ought to engage coupled with AU’s institutional bureaucracy have essentially curtailed any meaningful and robust relationship between the two institutions. The PSC Protocol does not envisage a direct institutional relationship between the CEWS and the PSC. Article 12(5) of the PSC Protocol provides that:

The chairperson of the Commission shall use the information gathered through the Early Warning System timeously to advise the Peace and Security Council on potential conflicts and threats to peace and security in Africa and recommend the best course of action. The Chairperson of the Commission shall use this information for the execution of the responsibilities and functions entrusted to him/her under the present Protocol.

The implication of this provision is that the CEWS engagement with the PSC is indirect. It can only pass information and analysis to the PSC via the AU Commission Chairperson. In practice, this means that information and analysis generated by the CEWS must pass through the internal channels established within the AUC before it can reach the AU Chairperson. Since the AU Chairperson only occasionally briefs the PSC, much of the information and analysis gathered by the CEWS rarely reaches the PSC. Perhaps more importantly, whatever information and analysis reaches the PSC is generally subject to a time lag. Thus, the PSC in the conclusions of its retreat in Djibouti in February 2013 called on the AU Commission to “establish an appropriate mechanism through which information gathered is transmitted timeously to the PSC on potential conflicts, threats to peace and security, including potential humanitarian crises in Africa and recommend the best course of action”.

In July 2015, the CEWS for the first time directly interacted with the PSC when the latter held an open session on “Early warning capacity of the African Union and its relevance”. At the conclusion of this session, the PSC observed that there was an “imperative need of receiving regular early warning reports/briefings to enable it to take appropriate action”. A PSC practice of holding dedicated sessions on early warning is emerging but not yet institutionalized. The latest session on early warning was held on 21 March 2017 during which the PSC lamented that there are “continued cases of denials to objective/credible early warning signals of looming crises”.

As the APSA Roadmap, 2016–2020, envisages, the direct briefing of the PSC by the CEWS should be encouraged and institutionalized. Similarly, a preliminary report on peace missions submitted to the AU in March 2015 observed that “there is need for conflict analysis and early warning to be channeled directly to the PSC”. In this context, it has been suggested that updates from the CEWS should be a standing monthly agenda of the PSC and that the two institutions should hold periodic joint retreats.

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287 PSC Conclusions of its Retreat in Djibouti, 9-10 February 2013.
288 PSC Communiqué, 669th Meeting, PSC/PR/COMM.(DCLXIX), para. 4.
4.4 DEPARTMENT OF POLITICAL AFFAIRS AND PEACE AND SECURITY DEPARTMENT

The integration of human rights in AU’s response to conflict is largely dependent on the coordination and synergy between the Department of Political Affairs (DPA) and the Peace and Security Department (PSD). Within the AU Commission, the DPA takes lead on issues of human rights while the PSD takes lead on peace and security issues. Administratively, the DPA manages the AGA while the PSD manages the APSA. In essence, therefore, an assessment of the linkages between DPA and PSD dovetails into an assessment of the linkages between AGA and APSA.

Given the inherent nexus between human rights and peace and security, instances of overlap and duplicity in the mandate of the two departments are unavoidable. In particular, both departments have mandates and do execute programs in at least the following areas: early warning; preventive diplomacy; and post-conflict reconstruction and development. While the bulk of AU’s early warning work is conducted by the PSD through its Conflict Prevention and Early Warning Division which houses the CEWS, the DPA does also collect and analyse early warning data relating specifically to election-related conflicts. On preventive diplomacy, the DPA has a specific mandate to implement “sustainable solutions to humanitarian and political crises, including through preventive diplomacy”. This mandate overlaps with that of the PSD where the newly created Mediation Support Unit (MSU) is administratively located. The MSU is charged with the function of designing, supporting and conducting AU mediation activities. Similarly, both the DPA and the PSD have programs and units dealing with certain overlapping aspects of post-conflict reconstruction and development such as transitional justice.

There is an acknowledgment within the AU that its activities related to peace and security remain “compartmentalized and lack collaboration, coordination and cooperation, leading to a duplication of efforts and inefficient use of limited resources”. At least two institutional mechanisms have been established in recent years to foster intra-coordination within the AUC in general and between the DPA and the PSD in particular.

312 See [https://www.au.int/web/africa](https://www.au.int/web/africa) (accessed on 7 April 2017).
The first is the Working Group on the Protection of Civilians established in February 2011 to, amongst other functions, strengthen AU’s protection of civilians in peace support operations. This Working Group is composed of representatives of DPA, PSD, Department of Social Affairs, and the Office of the Legal Counsel. In a May 2011 report to the PSC, the AUC Chairperson explained that the Working Group was established in recognition of the fact that:

"protection of civilians in conflict zones is a matter of concern not only to the Peace and Security Department, which is responsible for the planning and conduct of peace support operations, but is also cross-cutting in nature, and is therefore of concern to, and the responsibility of, the Commission as a whole."

The second is the Inter-Departmental Taskforce on Conflict Prevention established in 2014 to “facilitate dialogue among AU departments working on conflict prevention, identifying areas of convergence and sharing comparable lessons and practices on conflict prevention in order to maximize and broaden the impact.” Co-chaired by the PSD and the DPA, the Taskforce has met several times since its establishment.

In recent times, the question regarding the overlap between the mandates of DPA and PSD has manifested itself through and revolved around the practice of deploying human rights observers to conflict countries. It is an area that requires close collaboration between the DPA and the PSD. Although there have been contestations on which of the two departments should take lead on specific aspects of the deployment, the emerging practice is for both departments to collaborate in the planning and execution of the deployment. In relation to the deployment of human rights observers to both Mali and Burundi, representatives from the twin departments, constituted as an ad hoc taskforce, were involved in the planning and design of the deployment.

Coordination between the DPA and the PSC remains a work in progress. The involvement of the two departments in the planning of the deployment of human rights observers as well as the establishment of the Working Group on the Protection of Civilians and the Inter-Departmental Taskforce on Conflict Prevention are important steps in fostering closer collaboration and synergy. However, the extent to which these initiatives have contributed to systematic integration of human rights in AUC conflict responses is yet to be assessed. In this regard, and in the context of the recent recommendation for the AU to conduct an audit of bureaucratic bottlenecks and inefficiencies that impede service delivery, Amnesty International recommends that the AUC Chairperson should commission an independent evaluation of the specific issue of the coordination and synergy between the DPA and the PSD in relation to peace and security matters.

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318 Amnesty International interview with an AU official, 14 May 2015.
CONCLUSION AND
RECOMMENDATIONS

The AU is increasingly paying attention to human rights violations committed in conflict and crisis situations. This is evident from the array of mechanisms that it has deployed in recent years with the primary aim of documenting conflict-related human rights violations. In particular, the AU has deployed human rights observers to conflict-ridden countries, established fact-finding missions and commissions of inquiry to investigate human rights violations committed by parties to conflict, and included protection of civilians in the mandates of peacekeeping operations it has authorized or deployed.

The AU human rights institutions have also sought to respond to human rights violations committed in conflict through a relatively rich catalogue of approaches. The ACHPR has generated a burgeoning body of jurisprudence on the right to peace, undertaken fact-finding missions to countries experiencing conflict, and adopted country-specific resolutions condemning conflict-related human rights violations. In addition to conducting country visits to South Sudan and CAR, the ACERWC has recently published a study on the impact of conflict on children, urging AU member states to demonstrate real political commitment to end conflicts.

However, gaps remain in AU’s efforts to integrate human rights in its peace and security processes. This report has identified many gaps. In particular, the report has identified six categories of gaps.

First, there are gaps in AU’s mechanisms for conflict prevention. In particular, information gathered by human rights treaty bodies (ACHPR and ACERWC) neither feeds into nor form the basis of analysis undertaken by the CEWS. Moreover, the human rights treaty bodies do not systematically use the tools at their disposal for conflict prevention. For instance, the ACHPR has left the mechanism envisaged in Article 58 of the African Charter to go into disuse.

Second, there are gaps in considering and publishing human rights reports. While there is increasing investment in the documentation of human rights violations committed in conflict or crisis situations, as is evident, for instance, in the deployment of fact-finding missions and human rights observers, reports of these processes are never considered or published in a timely fashion. The result is that the reports have little policy implications when they are eventually published.

Third, there are gaps in following-up and enforcing decisions and recommendations of human rights treaty bodies. All the regional human rights treaty bodies have issued various forms of decisions relating to human rights violations committed in conflict situations. Most, if not all, of these decisions remain unimplemented and not complied with.

Fourth, there are gaps in accountability for conflict-related violations. For instance, the AUC chairperson is yet to establish the Hybrid Court for South Sudan more than a year since he was mandated to do so by a peace agreement. Similarly, AU peacekeeping forces implicated in human rights violations are not always held to account. Investigations and prosecutions are few and far between.

Fifth, there are gaps in logistical support and resources. While the AU is now consistently mandating its peacekeeping operations to protect civilians from attacks, the mandates are rarely accompanied with adequate resources and logistical support. The same challenges applies to the deployment of human rights observers. Gaps in logistical support and resources reflect a larger and more complex challenge, that is, AU’s heavy dependency on donor funding of its peace and security budget. Development partners and other
international actors are responsible for footing close to 100% of the AU peace and security budget. In particular, the AU covers only 2% of its peace and security budget while development partners and other international actors, such as the UN, cover the remaining 98% of the budget.  

The PSC Protocol establishes the Peace Fund from which financial resources for AU peace and security operations are meant to be drawn. Although in 2010 AU member states committed to increase their contributions to the Peace Fund from 6% to 12% over a period of three years starting from 2011, the percentage of contribution had only reached 7% by the end of 2016. In July 2016 during the 27th ordinary session of the AU Assembly, member states committed to remit to the AU monies collected from the imposition of a levy of 0.2% on eligible imports into their respective countries. Through this system, it is expected that the Peace Fund will be endowed with $325 million in 2017. This amount will rise to $400 by 2020 against an estimated overall Peace Fund budget of $302 during that year. As at the end of March 2017, only Rwanda had commenced the domestic process for collecting the levy. To overcome its funding challenges, all AU member states should discharge their respective commitments to remit their share of contributions to the AU.

Sixth, there are gaps in ensuring a coordinate institutional response to conflict and crisis situations. In particular, both the PSC and the ACHPR are yet to operationalize the provisions of Article 19 of the PSC Protocol which demands cooperation between the two institutions. There are also weak linkages between CEWS and PSC. Good efforts have been deployed to foster collaboration between the PSC and the ACERWC, and between the PSD and DPA, but the concrete results of these efforts are yet to be comprehensively evaluated.

The above gaps are not insurmountable nor are they unique to the AU. Amnesty International makes the following recommendations with the hope that their implementation will contribute to greater integration of human rights in the peace and security processes of the AU.

**RECOMMENDATIONS TO THE AFRICAN UNION ASSEMBLY**

- Consistently demonstrate political will and determination to address human rights violations leading to and/or committed in conflict situations. In this regard the AU Assembly should ensure that its acts and pronouncements on conflict situations are at all times consistent with the international human rights and humanitarian law obligations of its member states.
- Demand that in the exercise of their respective mandates, all AU organs and institutions involved in conflict prevention do monitor and report on the existence of serious or massive violations of human rights.
- Take urgent measures to address impunity for gross violations of human rights and international humanitarian laws by parties to conflicts as well as by AU peacekeeping forces.
- Ensure enforcement of decisions and recommendations of the regional human rights treaty bodies relating to human rights violations committed in conflict situations. In this regard the AU Assembly should demand states against which decisions and recommendations have been made by the regional human rights treaty bodied should submit reports to it indicating the steps they have taken to implement those recommendations or orders.
- Ensure that the requirement for respect for human rights as a criterion for PSC membership is fulfilled. In this regard, the AU Assembly should promptly mandate the AUC to undertake the review envisaged under Article 5(4) of the PSC Protocol and make recommendations to the AU assembly. In undertaking the review, the AUC should consider, amongst others, the following questions:
  - Has the country ratified all the regional human rights treaties?

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201 PSC Protocol, Article 21.
203 Decision on the Outcome of the Retreat of the Assembly of the African Union, Assembly/AU/Dec.605 (XXVI) para. 5(a)(1).
o Has the country made the declaration required under Article 34(6) of the African Human Rights Protocol?

o Is the country up-to-date in its submission of the requisite periodic reports under the African Charter, Maputo Protocol and the African Children’s Charter?

o Has the country consented to requests for country visits addressed to it by the ACHPR and/or the ACERWC?

o Has the country, where applicable, complied with the decisions, recommendations and/or urgent appeals addressed to it by the ACHPR and/or the ACERWC?

o Has the country, where applicable, complied with the orders of the African Human Rights Court?

RECOMMENDATIONS TO THE PEACE AND SECURITY COUNCIL

ON DECISION-MAKING

- Ensure that its decisions making process does not result in compromises which undermine the international standards of protection, promotion and respect for human rights in conflict situations.
- Pursuant to Article 8(5) of the PSC Protocol, establish within its structure a committee on human rights charged with ensuring that respect, protection and promotion of human rights are incorporated or integrated in all policies and actions of the PSC.

ON DOCUMENTATION OF HUMAN RIGHTS VIOLATIONS

- Ensure prompt consideration and publication of reports of fact-finding missions or commissions of inquiry established pursuant to its decisions.
- Ensure follow-up and implementation of recommendations from fact-finding missions and commissions of inquiry. In this regard, the PSC should in particular take steps to implement the recommendations contained in ACHPR report of its fact-finding mission to Burundi.
- Institutionalize the emerging practice of deployment of human rights observers to countries affected by conflict and call on the AUC to develop policy guidelines for the deployment of human rights observers.

ON PEACE SUPPORT OPERATIONS

- Ensure AU peacekeeping missions have clear, specific and strong mandates on the protection of civilians. Such mandates should be accompanied with sufficient resource and logistical support for effective implementation.
- Request the AUC Chairperson to expedite the implementation of the recommendations contained in the August 2016 Report of the High Representative on the Peace Fund and in particular, the recommendation relating to the development of an AU integrated human rights compliance framework and the finalization of the AU conduct and discipline policy.
- Ensure accountability for human rights violations committed by AU peacekeeping forces, including by initiating independent and transparent investigations for pending cases. In this regard, the PSC should call on the AUC Chairperson to establish a standing and independent oversight mechanism for investigating human rights violations committed by peacekeeping forces.
ON SYNERGY AND COORDINATION

- Clarify, operationalize and institutionalize modalities for regular interaction or meetings with the ACHPR and ACERWC as envisaged under Article 19 of the PSC Protocol. In particular:
  - identify broad areas of its work, from prevention to peacebuilding, the accomplishment of which requires the involvement of the ACHPR and the ACERWC;
  - ensure systematic consultation and input from the ACHPR and ACERWC in the process of production of its report to the AU Assembly on the state of peace and security in Africa;
  - institutionalize the practice of requesting the ACHPR and the ACERWC to brief the PSC whenever they conclude fact-finding missions to conflict affected countries;
  - consider requesting the African Human Rights Court or the ACHPR to analyze whether the criteria for invoking Article 4(h) of the Constitutive Act have been met in specific conflict situations.

- Encourage the ACHPR to revive the use its mandate under Article 58 of the African Charter by, inter alia, developing guidelines for receiving and considering Article 58 referrals.

- Institutionalize the emerging practice of receiving regular briefings from the CEWS and develop, in consultation with the AUC Chairperson, a channel for the direct flow of information from the CEWS to the PSC.

ON ENGAGEMENT WITH CIVIL SOCIETY

- Fully implement the Maseru Conclusions regarding the enhancement of CSO participation in its activities and in particular implement the decisions to:
  - hold at least one meeting before the last quarter of each year with the aim of consolidating inputs provided by CSOs for its consideration during the compilation of the annual report of its activities and the state of peace and security in Africa;
  - establish and maintain a databank of CSOs that are credible, active and effective in the field of peace and security; and
  - hold at least one session per quarter of the year to undertake a thorough assessment of the trends and dynamics of peace and security in Africa and during which CSOs will be afforded the opportunity to submit findings of their research.

- Ensure that invitations to CSO to attend its open sessions are sent out early enough to allow CSOs to prepare for the sessions.

RECOMMENDATIONS TO THE AFRICAN UNION COMMISSION CHAIRPERSON

ON INSTITUTIONAL STRATEGY

- In conjunction with all relevant AU organs and institutions, develop a comprehensive institutional strategy for preventing and addressing human rights violations committed in conflict and crisis situations.

  In this regard, the AUC Chairperson should implement the recommendations contained in the August 2016 Report of the High Representative on the Peace Fund and in particular, the recommendation relating to the development of an AU integrated human rights compliance framework and the finalization of the AU conduct and discipline policy.

- Consistently demonstrate political will and determination to address human rights violations leading to and/or committed in conflict situations. In this context, the AUC Chairperson should ensure that acts and pronouncements by the AUC are at all times consistent with the international human rights and humanitarian law obligations of its member states.
ON DOCUMENTATION OF HUMAN RIGHTS VIOLATIONS

- Ensure that in the exercise of their respective mandates, all AUC departments involved in conflict prevention monitor and report on the existence of serious or massive violations of human rights.
- Develop policy guidelines on the mandate, design, organization and the working methods of human rights observers deployed to monitor human rights violations in conflict and crisis situations.
- Promptly publish reports of human rights observers deployed to monitor human rights violations committed in conflict or crisis situations.
- Expedite the development of a comprehensive and transparent database of human rights experts who may on short notice be deployed as human rights observers to conflict and crisis situations.
- As requested by the PSC, appoint a Special Envoy on Children, Peace and Security.

ON ACCOUNTABILITY FOR VIOLATIONS

- Take urgent measures to address impunity for gross human rights violations committed by parties to conflicts as well as by AU peacekeeping forces. In this regard, the AUC Chairperson should:
  o establish the Hybrid Court of South Sudan without further delay; and
  o establish a standing and independent oversight mechanism responsible for investigating alleged human rights violations by AU peacekeepers as recommended by the AU High Representative on the Peace Fund as well as by the 2014 team tasked to investigate allegations of sexual exploitation and abuse by AMISOM troops.

ON PEACE SUPPORT OPERATIONS

- Ensure AU peacekeeping missions have clear, specific and strong mandates on the protection of civilians. Such mandates should be reflected in all mission documents (e.g. Rules of Engagement, Concept of Operations, and Mission Strategy) and accompanied with sufficient resource and logistical support for effective execution.
- Develop a human rights compliance framework for AU peacekeeping operations as proposed in the August 2016 report of the AU High Representative on the Peace Fund, and ensure that the AUC, peacekeeping missions and troop contributing countries implement the framework. This framework should cover areas selection, screening and training of peacekeeping troops as well as the establishment of effective accountability mechanisms.

ON SYNERGY AND COORDINATION

- In consultation with the PSC, develop a channel for the direct flow of information from the CEWS to the PSC.
- Ensure that the CEWS collects and analyses data on the patterns of human rights violations in the possession of the ACHPR and the ACERWC.
- Commission an independent evaluation on whether the establishment and activities of the Working Group on Protection of Civilians and the Inter-departmental Taskforce on Conflict Prevention have resulted in coordinated response to conflict situations and integration of human rights into the response.

RECOMMENDATIONS TO THE AFRICAN COMMISSION ON HUMAN AND PEOPLES’ RIGHTS

- Revive and effectively utilize its mandate under Article 58 of the African Charter to notify the AU Assembly of the existence of a series of serious or massive violations of human rights as well as cases of emergency.
- Urge member states to extend an open and standing invitation to it to conduct fact-finding missions and ensure consistent follow-up of pending requests through the AU Assembly.
- Follow-up on the implementation of its decisions emanating from the communications procedure and recommendations contained in reports of fact-finding missions and in country-specific and thematic resolutions. The follow-up may be undertaken through a variety of mechanisms including during promotional missions and during the process of examining state party reports.
- Expedite the preparation of the study on human rights in conflict situations in Africa and the development of a comprehensive strategy and framework for responding to human rights violations committed in conflict situations as envisaged under Resolution 332. This process should ensure proper consultation with all relevant stakeholders including civil society.
- Ensure systematic, institutionalized and regular engagement with the PSC and in particular bring to the attention of the PSC information relating to patterns of human rights violations that potentially lead to or committed in conflict situations. In this regard, work out, as a matter of urgency, modalities for giving effect to Article 19 of the PSC protocol that provided for cooperation with the PSC.
- Establish within its secretariat a research unit for gathering and analyzing information on gross human rights violations that could lead to or committed in conflict and crisis situations. The research unit should be equipped with necessary resources and capacity to undertake research and investigations in conflict situations.
- Develop a practice of regularly submitting information and analysis on country-specific patterns of gross human rights violations to the CEWS as well as to the PSC. In this regard, the ACHPR should, when deemed necessary, request for opportunities to brief the PSC directly on a specific issue or country.
- Consider adopting country-specific resolutions during the inter-session period and ensure that the resolutions are formally submitted to the relevant AU organs and institutions including the PSC, AUC Chairperson, and CEWS.

RECOMMENDATIONS TO THE AFRICAN COMMITTEE OF EXPERTS ON THE RIGHTS AND WELFARE OF THE CHILD

- Follow-up the implementation of its recommendations contained in reports of country-visits as well as in decisions emanating from the communications or complaints procedure.
- Include in its reports of country visits to conflict-affected countries recommendations on accountability for perpetrators of violations and crimes committed against children.
- Request to brief the PSC as soon as it concludes a country-visit to a conflict-affected country and/or as soon as it adopts the final report of such a visit.

RECOMMENDATIONS TO DEVELOPMENT PARTNERS

- Continue to support the operationalization and activities of the APSA and in particular the deployment of AU peace support operations and human rights observers.
- Support the ACHPR to develop its capacity to contribute towards efforts of prevention of conflicts, including the establishment of a research unit within its secretariat for gathering and analyzing information on gross human rights violations that could lead to or committed in conflict and crisis situations.
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* p < 0.1; ** p < 0.05; *** p < 0.01

Model: Logistic Regression, Dependent Variable: Binary indicator for PSC references to ACH, Standard errors clustered by country
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Model: Logistic Regression, Dependent Variable: Binary indicator for ACH references to PSC, Standard errors clustered by country
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Model: Logistic Regression, Dependent Variable: Binary indicator for reference to other African organizations, Standard errors clustered by country
## Table 4: ACHPR Reference to African Regional Organisations

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Model: Logistic Regression, Dependent Variable: Binary indicator for reference to other African organizations, Standard errors clustered by country
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* p < 0.1; ** p < 0.05; *** p < 0.01

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FOR HUMAN RIGHTS.
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COUNTING GAINS, FILLING GAPS

STRENGTHENING AFRICAN UNION’S RESPONSE TO HUMAN RIGHTS VIOLATIONS COMMITTED IN CONFLICT SITUATIONS

The scale of atrocities in recent and ongoing conflicts in Africa has prompted the African Union Peace and Security Council to recognize the intimate link between peace and security and human rights. It has begun to take measures to address human rights violations that lead to and/or committed in conflict situations. The African Union human rights institutions have also sought to respond to human rights violations committed in conflict through a catalogue of approaches. In spite of these institutional advances, questions still abound regarding their effectiveness, consistency and coherence. This report examines the extent to which the respect, promotion, and protection of human rights is integrated into the peace and security processes of the African Union. The report identifies six broad gaps in these processes: gaps in the mechanisms for the prevention of conflicts; failure to consider, publish and implement reports documenting violations; gaps in following-up and enforcing decisions by the regional human rights treaty bodies; challenges in ensuring accountability for violations; logistical and resource challenges; and challenges in institutional coordination and synergy. These challenges are neither insurmountable nor unique to the African Union. The report concludes with a set of recommendations aimed at supplementing the measures already taken or being considered by the African Union.