

# Consultative meeting between the PSC and the African Commission on Human and Peoples' Rights

Automatic Heading TextDate | 8 August, 2019

Tomorrow (8 August) the African Union (AU) Peace and Security Council (PSC) will held its 866th session. This session involves a consultative meeting between the PSC and the African Commission on Human and Peoples' Rights (African (Banjul) Commission). With its Secretariat based in Banjul the Gambia for which it is also known as the Banjul Commission, the Commission is the oldest and premier human rights body of the AU.

It is expected that a member of the African (Banjul) Commission will deliver a briefing on the theme of the session. As the department of the AU Commission responsible for human rights and governance, a representative of the Department of Political Affairs is also expected to brief the PSC.

There are at least three legal bases for the convening of this session. The first of this relates to the mandate that the PSC has been explicitly assigned under the PSC Protocol for upholding human and peoples' rights as part of its conflict prevention, management, resolution and post-conflict reconstruction mandate. It is envisaged that this is to be done in accordance with the 1981 African Charter on Human and Peoples' Rights, the founding treaty of the African human rights system that has near universal ratification by AU member states.

The second foundation for the convening of this session is the

overlap in the mandate of the PSC and that of the African (Banjul) Commission. Given that the African (Banjul) Commission is the body with the expertise for the interpretation and application of the human and peoples' rights of the African Charter, it is best placed to provide the requisite technical advice to enable the PSC in the implementation of the human rights dimension of its mandate including its role relating to Article 4(h) of the Constitutive Act. It is worth noting in this regard that the African (Banjul) Commission has also established a thematic focus on human rights in conflict situations under its Resolution 332.

Finally, and crucially, tomorrow's session is convened within the framework of Article 19 of the PSC Protocol. This article provides for the establishment of close working relationship between the PSC and the African (Banjul) Commission.

While Article 19 of the PSC Protocol provided for the establishment of close working relationship between the PSC and the African (Banjul) Commission and the Conclusions of the 2007 Dakar retreat of the PSC on its working methods stipulated annual consultative meeting between the two as one avenue for operationalizing Article 19, no meeting has been held between the PSC and the African (Banjul) Commission neither prior to the 2007 Dakar retreat of the PSC since the latter's establishment in 2004 nor since that retreat. Tomorrow's session thus presents a good opportunity not only to activate the consultative meeting envisaged in the Dakar retreat conclusions but also take stock of the nature of the relationship between the two bodies thus far.

Despite the fact that there was no institutionalized interaction and the PSC, the African (Banjul) Commission have had working interactions on various occasions. There have been various instances in which the PSC requested the African (Banjul) Commission. From recent experiences, one good example is the African (Banjul) Commission in early December 2015

undertook an investigation mission into human rights violations in Burundi in the context of the 2015 crisis in Burundi on the request of the PSC. Most recently, the PSC made reference to the role of the African (Banjul) Commission with respect to the investigation missions it called for in relation to the situation in Sudan and that of Libya. Admittedly, the working relationship is characterized by ad hocism. As such even when a request is made by the PSC for the Commission to undertake such investigation, there are no established modalities for follow up in terms of both enabling the African (Banjul) Commission execute such task in pursuit of the mandate of the PSC and inscribing a session for the receipt and processing of the findings of the Commission after the African (Banjul) Commission undertook the investigation mission.

In the briefing, the representative of the African (Banjul) Commission is expected to inform the PSC both on the relevant work of the Commission that are of material interest to the mandate of the PSC and on the various modalities (in addition to the annual consultative meeting as per the Dakar retreat conclusions) for the full operationalization of Article 19 of the PSC Protocol. In this respect, the work of the African (Banjul) Commission that would deserve particular mention for being of interest to the PSC include the work in relation to women rights under the Maputo Protocol, its Guideline on protecting human rights while countering terrorism, transitional justice under its Resolution 235 and human rights in conflict situations under its Resolution 332.

In terms of the modalities for the operationalization of Article 19, some of the approaches that may feature in the briefing include: informal consultations; institutionalizing PSC requested investigation missions by the African (Banjul) Commission through a more clear arrangement for follow up on the conduct and outcome of such mission; information sharing including through an established arrangement for incorporating

relevant work of the African (Banjul) Commission into the Continental Early Warning system (CEWS); provision of briefings to the PSC in between the annual sessions on the human rights dimension of conflict situations on the agenda of the PSC or on themes of interest for the PSC such as protection of human rights in countering terrorism or transitional justice in post-conflict countries; establishment of a standing thematic agenda of the PSC on human rights and peace and security in Africa; and joint filed missions.

The intervention from the Department of Political affairs (DPA) is expected to highlight existing practices and work undertaken with the active role of the Department that are of direct relevance to the theme of the session. One such area of work of the Department which commonly feature on the agenda of the PSC concerns elections. Another one relates to the work of the DPA on the African Governance Architecture (AGA) including that relating to unconstitutional changes of government. And in this respect the institutionalization of the annual consultative meeting under Article 19 offers an opportunity for enhancing the synergy between the AGA and the African Peace and Security Architecture (APSA). Also, of interest for highlighting in the intervention by the DPA include the work done on transitional justice – particularly the adoption during the February 2019 summit of the AU of the AU Transitional Justice Policy – a key instrument for implementing the accountability dimension of the mandate of the AU broadly and the PSC specifically. From the perspective of PSC's mandate, also worth mentioning is the emerging practice of deployment of human rights experts (monitors) as part of an AU mission and in collaboration with the African (Banjul) Commission has been done in Mali and Central African Republic or as a standalone deployment as has been the case since 2015 in Burundi.

The expected outcome of the session is a communique. It is expected that the PSC would welcome the work of the Commission

and the opportunity for full operationalization of Article 19 of the PSC Protocol. In this respect, one major expected outcome is the establishment of the annual consultative meeting as standing agenda of the PSC to be inscribed into the annual indicative plan of work of the PSC. The PSC may also decide to establish a thematic agenda on human rights and peace and security as an avenue for receiving briefing by the African (Banjul) Commission both on the human rights dimension of situations on the agenda of the PSC and on other ways of full implementation of the human rights related mandate of the PSC. The outcome document may also stipulate arrangements for sharing of information of early warning value, for effective implementation of PSC requests for human rights investigation mission by the African (Banjul) Commission and for undertaking joint field visits.