# THE REFORM OF THE AU: TOWARDS THE PEACE AND SECURITY COUNCIL 'WE WANT'

## AMANI AFRICA
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## INTRODUCTION

The point of departure for the reform of the Peace and Security Council (PSC) is President Paul Kagame's report on the reform of the AU.[1] The report lamented that '[d]espite its strong legal framework and enhanced powers and functions, the quality of the Peace and Security (Council)'s decision-making, engagement, and impact do not meet the ambition envisaged in the PSC Protocol.' [2] Underscoring that 'thorough reform' of the PSC was required, the report recommended '(a) reviewing the PSC's membership, in line with Article 5(2) of the PSC Protocol, (b) strengthening the PSC's working methods, and (c) strengthening the PSC's role in prevention and crisis management.'[3]

After considering the report, the January 2017 African Union (AU) Assembly decided that the PSC 'should be reformed to ensure that it meets the ambition foreseen in its Protocol, by strengthening its working methods and its role in conflict prevention and crisis management'.[4] As with other areas of the agenda for the reform of the AU, the exact details of the changes to be introduced were not spelt out. Indeed, the specific contents of the PSC reform have as yet to be formulated.

This is the first reform initiative to visit the PSC since its inauguration in 2004. Depending on

its scope, this reform may entail important substantive changes in how the PSC organizes its work and delivers on its mandate. There is indeed huge room for improvement in the work of the PSC. After almost a decade and half of leading the implementation of the peace and security agenda of the AU, it is also good time to assess the performance of the PSC and introduce relevant changes for strengthening its delivery on the mandate given to it under the PSC Protocol.

Substantive discussions are under way within the PSC and between the PSC and the Institutional Reform Unit (IRU) of the AU in the Office of the Chairperson of the AU towards clarifying the details of the contents of the PSC reform. This policy brief is prepared not only to provide input into the on-going discussions on the reform of the PSC but also enrich the process by infusing it with additional viewpoints on the reform.

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[1] *The Imperative to Strengthen our Union: Proposed Recommendations for the Institutional Reform of the African Union available on https:// au.int/sites/default/files/pages/32777-file-report-20institutional20refor m20of20the20au- 2.pdf*

[2] *Ibid, 9.*

[3] *Ibid.*

[4] *Annex to Assembly decision on the outcome of the retreat of the Assembly of the African Union on the institutional reform of the AU, 28th ordinary session of the Assembly, 30-31 January 2017, AU Doc Assembly/AU/Dec.635(XXVIII) para. B(vi)*

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# II THE PROCESS ON THE REFORM OF THE PSC

The discussion on the reform of the PSC started in the context of the establishment of the IRU in late 2017. Like the reform of other organs of the AU, this process involves internal review of the work of the PSC within the PSC and consultative exchange with the IRU. The entities that form part of the process for the reform of the PSC are the members of the PSC, the Peace and Security Department (PSD) and the IRU. The purpose of this process is to specifically elaborate the specific areas of the reform of the PSC. The terms that guide the process are the formulations used in the decision of the AU Assembly with respect to the PSC reform, noted above.

Since its establishment in the last quarter of 2017, the IRU held two consultations with the PSC. The most recent consultation was held at the 25 April 2018 session of the PSC, which was convened under the theme 'AU Reform – Review of the Peace and Security Council'. During this session, the PSC was briefed by Pierre MouKoko Mbonjou, Head of the IRU. Apart from explaining the mandate and role of the IRU, this exchange covered the approach for reporting on the nature and type of the proposed reforms. It was agreed from the meeting that the specific details of the PSC reform are to be drawn from the conclusions of the various retreats of the PSC reviewing its working methods and the PSC related components of the internal study that has been initiated within PSD on the African Peace and Security Architecture (APSA).[5]

Internally within the PSC, the process on the reform of the PSC involves the elaboration of a technical paper with inputs from the PSD. The Committee of Experts of the PSC, the experts of the member states of the PSC, consider the technical paper with a view to solicit and enlist the input of PSC members in the development of the proposals for the reform of the PSC. The first meeting of the PSC Committee of experts was held on 31 May 2018.

After a draft outlining the proposed specific contents of the PSC reform has been agreed at the level of Experts, the PSC will convene a retreat for deliberating on the proposed areas of reform. The conclusions of the PSC retreat on the proposed areas of reform will be submitted as input of the PSC and the final outcome is expected to be submitted to the January 2019 AU Assembly as part of the overall submission on the reform of the organs of the AU to be presented in the updated report on the implementation of the AU reform.

During the January 2018 summit, the progress report on the implementation of Assembly's decision on the institutional reform of the AU[6] noted that the PSC was already in the process of reviewing its working methods with a view to increasing its efficiency, effectiveness and impact in line with its mandate. Significantly, it stated that initial findings on the reform of the PSC were to be developed in the months following the January summit. Instead of these initial findings, the progress report submitted to the July 2018 summit limited itself to the ongoing process in the PSC for formulating the areas of reform. The progress report anticipated that a final report on the reform of the PSC will be presented to the PSC for discussion in November 2018.[7]

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[5] *Progress report of the Chairperson of the Commission on the reform of the African Union, July 2018, AU Doc. Assembly/AU/2(XXXI) para. 54. (Assembly/AU/2(XXXI))*

[6] *AU Doc. Assembly/AU/3(XXX).*

[7] *Assembly/AU/2(XXXI) para. 58.*

# III THE OPERATIONALIZATION OF THE PSC

The establishment of the AU PSC and the nature of its mandate are framed to give effect to the recognition of the African Union (AU) Constitutive Act that 'the scourge of armed conflict constitutes a major impediment to the socio-economic development of Africa.' 8 Accordingly, it identifies as the primary objective of the AU 'the need to promote peace, security and stability as a prerequisite for the implementation of our development and integration agenda.' The preamble posits that this is to be achieved through common institutions that are provided 'with the necessary powers and resources to enable them discharge their respective mandates effectively.' To this end, the Protocol Establishing the PSC was adopted in 2002 in accordance with Article 5 of the Constitutive Act 'to address the scourge of conflicts on the Continent and to ensure that Africa, through the African Union, plays a central role in bringing about peace, security and stability on the continent'. (own emphasis)

The AU PSC Protocol states that the PSC is a standing decision-making authority and serves as 'a collective security and early-warning arrangement to facilitate timely and efficient response to conflict and crisis situations in Africa.' The PSC is structured to operate as the highest standing decision-making body on matters of peace and security in Africa.

Since it has become operational in 2004, the PSC has registered notable achievements both in terms of operationalization of its institutional set up and its mandate. Although the PSC Protocol envisages that the PSC meets at least twice a month, the PSC meets on average at least six times a month. Indeed, the regularity

of the meetings of the PSC has increased by many folds from what it was in the initial years of operationalization of the PSC. As at the end of May 2018, the PSC has held over 770 sessions. While it held only 21 sessions in 2004, in 2017 the PSC held close to 150 sessions. With respect to the program of work of the PSC, the process for drawing up the monthly program of work of the PSC has been articulated in the 2007 Conclusions of the Dakar Retreat of the PSC. The PSC started producing its monthly program of work in August 2010. Since then, the adoption of the program of work has been fully institutionalized and is now a regular feature of the work of the PSC, despite volatility in following the monthly schedule as set out in the program.

Through the various policy measures that it has initiated in pursuit of its mandate, the PSC has established the AU to be at the forefront of the efforts for addressing the peace and security challenges facing the continent. Over the years, the PSC has deployed over a dozen peace support operations, numerous mediation and peace-making processes. The PSC has also established relatively consistent practice in enforcing the AU norm on unconstitutional changes of government. Accordingly, it has applied the various measures envisaged in this norm with respect to more than a dozen member states of the AU and contributed to the return of constitutional order in countries affected by coups or other forms of unconstitutional changes of government including Guinea, Niger, Togo, Mauritania, Madagascar, Mali and Guinea Bissau. [9]

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[8] *Constitutive Act of the AU, preamble.*

[9] *For a recent analysis on this see Solomon A. Dersso, Defending Constitutional Rule as a Peacemaking Enterprise: The Case of the AU's Ban of Unconstitutional Changes of Government, 24(4) International Peacekeeping (2017) 639-660.*

# IV GAPS AND CHALLENGES IN THE OPERATIONALIZATION OF THE PSC PROTOCOL

Despite these remarkable achievements that the PSC has registered since its establishment, there are gaps in the implementation of the PSC protocol. Additionally, various challenges have come to the surface in the work of the PSC over the years. These gaps and challenges relate not only to how the PSC is organized, its working methods and the capacities and resources at its disposal but also to the various institutional and political dynamics that directly shape the work of the PSC.

As a body in which states are represented, the PSC increasingly faces the challenge of negotiating its attribute as intergovernmental platform and its role as an actor with supranational authority. Similarly, it also struggles in striking the balance between the interests of states and the demands for delivering peace and security on the continent. Additionally, the PSC has been unable (and/or failed) to implement key provisions of the PSC Protocol. Its practice has also come to deviate from what the PSC Protocol provided for in various respects, thereby creating an increasing credibility and legitimacy gap.

Full implementation of the criteria for PSC membership While the PSC Protocol envisages an egalitarian framework for membership in the PSC whereby all states parties to the PSC protocol are made eligible to be members of the PSC,[10] it has stipulated two sets of criteria for PSC membership. First, Article 5 (1) of the PSC Protocol

stipulates that the Council's membership is to be decided according to the principle of 'equitable regional representation and rotation'. The second set of criteria as stipulated under Article 5(2) include the commitment to uphold the principles of the Union; contribution to the promotion and maintenance of peace and security in Africa; provision of capacity and commitment to shoulder the responsibilities entailed in membership; respect for constitutional governance, the rule of law and human rights; and possession of a sufficiently staffed and equipped Permanent Mission at the AU Head Quarters (HQ) in Addis Ababa and the UN in New York.

In terms of implementation of the above criteria, the practice thus far shows that elections of member states of the PSC are conducted largely on the basis of regional representation and rotation[11] and with no regard to the second set of criteria under Article 5(2) of the PSC Protocol. The result has been the PSC ends up having member states that not only lack the qualifications relating to constitutional governance and respect for human rights but also are themselves caught up in major peace and security challenges. Not all members of the PSC have sufficiently staffed missions at the AU Headquarters in Addis Ababa.[12] These gaps have at times presented major challenges for the PSC in terms of effectively discharging its responsibilities.

Recognizing these issues, the conclusions of the 2012 Yaoundé retreat of the PSC stressed 'the need for effective membership in the Council, including satisfying its obligations as elaborated in Article 5(2) of the PSC Protocol'. It further stipulated 'the need for periodic review by the Assembly of the Union with a view to assessing

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[10] As of the January 2018 election of the new members of the PSC, the number of states parties to the PSC Protocol that served in the PSC has reached 40.

[11] Even in terms of the first set of criteria particularly on rotation, Nigeria has emerged to be a de facto permanent member of the PSC serving on the three year-term slot for West Africa.

[12] While all 15 members of the PSC are expected to have defence attachés, at various points the membership of the military staff committee made up of the defence attachés of member states has not been more than 12.

compliance by members of the PSC' with those obligations.

Despite the recognition in the PSC of the need for compliance with Article 5(2) and periodic assessment by the Assembly to assess compliance, two challenges remain. First, these proposals of the Yaoundé retreat remain unimplemented. Second and related to the first is the lack of objective mechanism for operationalization of Article 5(2) of PSC Protocol. Currently, implementation of the criteria is a matter that is generally left for the discretion of the five regions of the continent. Despite the fact that the Assembly is entrusted with the power to review compliance with these criteria, it is not clear how.

As Elissa Jobson of the International Crisis Group rightly observed, of the Article 5(2) criteria, two of them 'the **capacity and commitment** to shoulder the responsibilities entailed in membership and having **sufficiently staffed and equipped Permanent Missions** in Addis and New York for the United Nations – are essential for the PSC to do its job effectively.'[13] Without possession of these qualifications, members of the PSC would not be able to take well-informed and effective policy decisions and to assume ownership and responsibility for the decisions of the PSC. The implementation of this second set of membership criteria of the PSC require not only operationalizing the conclusions of the Yaoundé retreat but also elaboration of clear scorecard of member states performance vis-à-vis the requirements of Article 5(2) 0f the PSC, which provide the framework for determining the qualification of those seeking membership in the PSC. If there is one major change that the reform process should deliver, this should certainly be one of them.

## Operationalization of the subsidiary bodies of the PSC

The PSC as part of the implementation of its mandate is vested with the power to establish subsidiary bodies. These include the committee of experts, the military staff committee, the sub-committee on terrorism, the sanctions committee and the committee on post-conflict reconstruction and development. While major progress has been made in the operationalization of the PSC committee of experts including with the elaboration of its working mechanism, other subsidiary bodies of the PSC remain dormant. It has been observed that '[o]perational matters including the irregular holding of meetings, attendance at meetings and relationship with the PSC negatively impacts the optimal efficacy of subsidiary bodies.'[14]

The Yaoundé Retreat Conclusions called on '[m]embers, in consultation with the Commission, to immediately bring into operation the subsidiary bodies'. On this score as well, this proposal is yet to be implemented. However, the issue is not simply the operationalization of this conclusion. Indeed, debates on the operationalization of the committees in the PSC show persisting doubts and lack of consensus about the committees. There is no clarity among members of the PSC on the nature and scope of responsibility of the committees and how they interface with the PSC. Given the lack of capacity at the level of the PSC Secretariat as well, there seems to be a need for clarifying how the work of the subsidiary bodies of the PSC are to be organized including in terms of the regularity of their sessions and the support they require. Equally, there is also a need to clarify not only the terms of reference of the subsidiary bodies in terms of the tasks expected of each but also the mechanism for feeding their work into the processes of the PSC.

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[12] *While all 15 members of the PSC are expected to have defence attachés, at various points the membership of the military staff committee made up of the defence attachés of member states has not been more than 12.*

[13] *Elissa Jobson, presentation at Amani Africa seminar on the reform of the PSC 7 June 2018.*

[14] *Charles Okeje & Rhuks Tomitempo Ako, The African Union Peace and Security Council (PSC): Challenges and policy options, IPSS Policy Brief Vol. 6 Issue (8) (March/April, 2017) 4.*

From the perspective of effective delivery of the mandate of the PSC, two areas that can be implemented in this context as part of the reform are the elaboration of a sanctions regime and the establishment of a procedure for the use of African experts outside of the AU system.
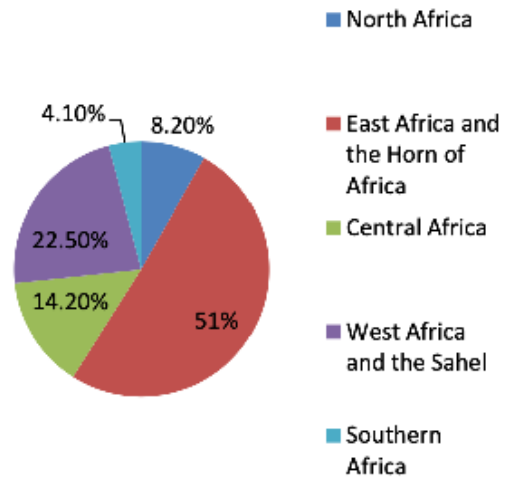
### Approaches to agenda setting

While both the PSC Protocol and the Rules of Procedure of the PSC provide for the preparation of the provisional agenda for the meetings of the PSC, it is the Conclusions of the Dakar Retreat of the PSC of July 2007 that articulated provisions on the preparation of the monthly programme of work of the PSC. It stipulates that 'within the twenty days towards the assumption of the chairmanship of the PSC, the next chairperson shall prepare a monthly program of work in consultation with the (AU) Commission'. The practice of the PSC in terms of agenda setting indicates that the drawing up of the monthly program has become institutionalized.

While the PSC agenda has covered a wide range of country situations and thematic issues, it emerges from the analysis of the sessions of the PSC that during the first decade of the PSC almost half of the sessions of the PSC focused on situations in the Horn of Africa where Somalia and the Sudans account for more than 2/3 of the activities of the PSC in the region. Equally serious situations in Central Africa region did not receive the level of attention as the situations in Horn of Africa.

Although the placing of a country situation or thematic issue has to be based on the assessment of new or ongoing conflict and crisis situations, it remains unclear on what account the PSC gets seized with a particular situation but not another conflict situation of similar gravity. As it stands, with the exception of conditions that clearly constitute unconstitutional changes of government, the (threshold) circumstances that trigger the consideration of a conflict situation



**Regional category of the total sessions held from March 2004 to November 3, 2014**

- North Africa
- East Africa and the Horn of Africa
- Central Africa
- West Africa and the Sahel
- Southern Africa

4.10%  8.20%  22.50%  14.20%  51%

for AU action by the PSC are not transparently established, making the determination of the agenda of the PSC unpredictable. As a result, there are various conflict situations that don't make it to the agenda of the PSC or don't receive the attention they deserve, giving rise **to perception of selectivity on the part of the PSC.**

As stipulated in the PSC Protocol and the Rules of Procedure of the PSC, the agenda of the PSC is to be determined by the Chairperson of the PSC in consultation with the AU Commission Chair and members of the PSC. It is further stated that the inclusion of any item in the provisional agenda may not be opposed by any member state. Gaps have emerged in terms of the extent of input from and consultation with AU commission and other members of the PSC on determining the agenda of the PSC. In the absence of clarity on the conditions that trigger the placement of a situation on the agenda of the PSC, the emerging practice is that the monthly chair of the PSC decides much of the agenda of the PSC. Increasingly, the chairs of the PSC are more disposed to place on the agenda of the PSC thematic issues than country situations. In 2017, the proportion of thematic issues and other agenda items than specific conflict situations has

increased to over 70% from about 60% in 2016.

The working methods of the PSC need to clearly state the need for ensuring that **the agenda of the PSC has to be based on the assessment of ongoing or emerging conflict situations and correspond to the prevailing peace and security situation on the continent. There is also a need for clarifying the set of conditions that constitute the threshold that triggers the placement of a conflict situation on the agenda of the PSC.** The set of conditions may include the existence of political instability involving confrontation between a government and those opposing it, occurrence of violence accompanying such instability including the intensity of such violence, the level of organization of and use of armed force by the opposition, internal displacement and refugee flows and the possibility for national resolution of the situation.

## Implementation of the conflict Prevention mandate

In terms of conflict prevention, Article 7(1) of the PSC Protocol invests the PSC with the power to anticipate and prevent disputes or conflicts. In this context, it is worth noting that priority is accorded to the anticipation and prevention of conflicts. Accordingly, Article 3 makes it one of the objectives of the PSC. Additionally, one of the principles that guide the exercise by the PSC of its mandate is 'early response to contain crisis situations to prevent them from developing into full-blown conflicts.' Article 6 of the Protocol envisages that this is to be accomplished through 'early warning and preventive diplomacy'.

It has been observed over the years that much of the approach of the PSC tends to be reactive involving a fire fighting approach after the eruption of crisis situations into full-scale conflicts. Despite the rhetoric on and the recognition at a normative level of the imperative for prevention

of conflict, these are yet to be matched by the practice of the PSC. The practice thus far leaves a lot to be desired in terms of PSC's anticipation and prevention of disputes or conflicts. Indeed, despite its success in Kenya and the current efforts of the AU to prevent the relapse back to protracted political instability of Madagascar, the PSC has struggled to prevent the outbreak and escalation of conflicts in a number of situations including Burundi, Burkina Faso, CAR, South Sudan and during the past two years in DRC.

This lack of implementation of the prevention mandate of the PSC is a result of various factors. At the institutional level, first and foremost this relates to early warning and response processes of the AU. There is lack of clearly agreed mechanism for the Continental Early Warning System to alert the PSC periodically on risks of eruption of conflicts. The practice in this regard remains ad hoc. 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.' [15] In terms of operationalization of this conclusion, no clear procedure exists in the working methods of the PSC for the CEWS to present country specific risks of conflicts in sessions of the PSC designated for that purpose. The mechanism for accessing, duly considering and deciding on the analysis of CEWS is not adequately developed. To this end, the practice of inclusion of horizon scanning session/s in the program of the PSC has to be institutionalized. It would also be useful as indicated earlier to establish benchmark on the nature and quality of early warning information that should be provided to the PSC for its early response. A further issue at institutional level is the operationalization of the conflict prevention role of the Panel of the Wise. As envisaged in the

PSC Protocol, upon request from the PSC and the Chairperson of the AUC and/or at its own initiative, the Panel shall undertake such action deemed appropriate to support the efforts of the PSC and the Chairperson of the AUC for the prevention of conflicts. As the APSA assessment report pointed out in 2010, the 'Panel's conflict prevention role is problematic as its role in this realm is not properly defined, at least in conceptual terms'.[16] The functional operation of the Panel in preventive diplomacy remains at best ad hoc, often focusing on election related cases.[17]

The fact that the Panel is not a standing body means that it is not readily available to promptly operationalize its preventive diplomacy role. Additionally, the Panel operates on the basis of pre-determined schedule and meets ordinarily only three times a year at best. Notwithstanding increased engagement between the Panel and the PSC over the years, these issues mean that the level.

The most significant challenge for preventive action is in the realm of politics. In this respect, the major difficulty arises from the tension between the preventive mandate of the PSC and the principle of sovereignty. In cases of risks of conflict or escalation of a conflict situation, considerations of sovereignty mean that the PSC has struggled to initiate its engagement with such situations. The PSC was unable to put the conflict involving Boko Haram on its agenda on account of the fact that it was treated as an internal issue that Nigeria was able to handle on its own. Currently, one emblematic example of PSC inaction for taking preventive measure on account of sovereignty is the escalating conflict situation in Anglophone parts of Cameroon.[18]

Regional politics taking the form of resistance of neighboring countries or regional conflict prevention, management and resolution mechanisms also play major role in inhibiting PSC's engagement. Thus, the fact that very few situations from Southern Africa are discussed in the PSC is not for the absence of situations warranting such PSC engagement. Accordingly, some of the crisis situations including Mozambique or Lesotho may not have been considered by the PSC owing to the argument from the region that it is up to the task for dealing with those situations.

The use of thematic issues as agenda items of the PSC, if used innovatively, provides a useful framework for enhancing the conflict prevention mandate of the PSC. Currently, there are doubts on the value of many of the thematic agendas of the PSC. Such is the case in particular where such thematic agendas lack institutional base and framework for their follow up or are poorly related to peace and security.

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[16] *See AU Peace and Security Department, African Peace and Security Architecture (APSA) Assessment Study (2010) adopted at the Third Meeting of the Chief Executives and Senior Officials of the AU, RECs and RMs on the implementation of the MoU on cooperation in the area of Peace and Security, Zanzibar, 4-10 November 2010.*

[17] *In 2013 the PoW undertook the first joint assessment mission together with the DPA to Kenya to assess the pre-election conditions. The Panel served through its member Adem Kojo as one of the key players in the effort to resolve the political crisis in DRC and in supporting the negotiation of the Saint Sylvester's agreement of 2016.*

[18] *This is a crisis situation on which the African Commission on Human and Peoples' Rights issued press statement and resolution http://www.achpr.org/press/2018/01/d384/ and various organizations notably International Crisis Group produced early warning reports https://www.crisisgroup.org/africa/central-africa/cameroon/130-cameroon-worsening- anglophone-crisis-calls-strong-measures.*

Another avenue for operationalizing the prevention role of the PSC is to use and institutionalize informal sessions between the Chairperson of the Commission and the PSC during which they discuss where and what kind of preventive actions need to be taken. **Under the PSC Protocol, the Chairperson is explicitly mandated to put situations on the agenda of the PSC and it is crucial that the Chairperson exercises this mandate effectively based clearly established benchmarks for doing so.**

## Conflict management and resolution

When crises have erupted into full-blown conflicts, the PSC has the responsibility to deploy measures 'for the resolution of these conflicts'.[19] Accordingly the PSC Protocol stipulates that the PSC uses 'peace making, including the use of good offices, mediation, conciliation and enquiry'[20] and 'peace support operations'[21] for resolution of these conflicts. Also worthy of note to the conflict management and resolution mandate of the PSC is the power to 'support and facilitate humanitarian action',[22] although this is not limited to situations of armed conflicts but applies to 'major natural disasters' or emergencies as well. A case in point is the PSC's response to the Ebola outbreak in West Africa.

Over the years, the AU has launched mediation or peace-making processes either on its own or as is often the case in concert with or in addition to either regional mechanisms or the UN. These include the mediation or peace- making processes in many of the crises situations on the agenda of the PSC including Darfur, Sudan-South Sudan, Somalia, Comoros, Guinea, Madagascar, Kenya, Cote d'Ivoire, Mali, Libya, Egypt, DRC, CAR and South Sudan. These processes have taken different forms such as ad hoc panels

(the high level ad hoc panels for Cote d'Ivoire and Libya), high-level panels (the AU high level panels for Sudan and Egypt), chief mediators of the AU or special representatives or envoys of the Chairperson of the AU Commission (in CAR, Comoros, Cote d'Ivoire, Darfur, Madagascar, Mali, Somalia, and South Sudan). Increasingly, these mediation or peace-making frameworks are combined with and supplemented by a country specific International Contact Group.

Perhaps one of the issues that affects the mediation and peace-making intervention of the PSC is the lack of established framework for designing and implementing such intervention tailored to the conflict situation and at the level and intensity that the situation warrants. Indeed, the lack of success in addressing the situation in Burundi was in part a result of the lack of strategy and the reactive nature of AU's mediation and peace-making interventions. This situation was compounded by the lack of coordination between the mediation and peacemaking efforts of AU actors including the divergence of views between the Chairperson of the AU Commission and the PSC. As the experience of the AU High Level Panel for Sudan illustrated, the lack of a single interlocutor is a further factor undermining effective mediation and preventive action.

The **PSC's approach to mediation and peace-making** should go beyond and above the designation and deployment of mediators or special envoys. It **should be anchored on clear strategy identifying the leverage to be relied on and the tools to be used**. Similarly, rather than a touch and go approach, there is a need for a sustained and institutionalized engagement. In the effort for enhancing the effectiveness of the UN, a new High-level Advisory Board on Mediation has been launched to support UN's

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[19] *Art. 3(b).*

[20] *Art 6(c).*

[21] *Art 6(d).*

[22] *Art 7(1) (p).*

mediation efforts. The operationalization of the AU Mediation Support Unit should be used as a framework for delivering a function similar to the UN High-level Advisory Board on Mediation.

**There is also a need for institutionalizing** some of the conflict management interventions of the PSC. This is particularly notable with respect to the experience of **the deployment of human rights observers and military monitors in Burundi and investigation missions sent to South Sudan and Burundi. With respect to investigation mission, both in South Sudan and Burundi,** there was no adequate framework for follow up of the missions and the integration of the outcome of such missions into the mediation and peace- making activities of the AU.

Over the years, particularly with the surge in conflict situations on the continent after 2010, one trend that has been observed in PSC's approach has been the increased emphasis on hard security approach to peace and security leading to what is sometimes called the militarization of AU's peace and security response. This has been witnessed in the primacy given to AU's military heavy mission in Somalia and the corresponding lack of political strategy. This can also be gathered from the proliferation in the use of peace support operations as witnessed in Mali and CAR and the recent trend in the use of ad hoc coalitions of the willing, exemplified by the Multinational Joint Task Force (MNJTF) and the Group of 5 Sahel Joint Force. Admittedly, such approach, depending on the scope of its mandate and how it is organized, may, as the 2015 UN High-level Independent Panel on Peace Operations (HIPPO) noted, play a role to '(i) deter escalation; (ii) contain conflict; (iii) protect civilians; and (iv) attempt to start or revive a peace process.'[23] However, as AU's experience in Somalia has demonstrated, on its own such

approach is not and cannot be the basis for the political resolution of the conflicts.

In terms of peace support operations, the decisions of the PSC have led to the deployment of peace support missions. These missions have undertaken peace operations in Burundi, CAR, Comoros, Mali, Sudan, Somalia, and in the Central African region against the Lord Resistance Army. These various peace support operations have registered various levels of success, although most failed to lead to the full resolution of the conflicts for which they were deployed.

From a strategic perspective, **there is a need for clarifying the conditions under which and the nature and type of operations that the PSC mandates and takes responsibility for.** Given the high cost and challenges of operationalization of large and complex operations, **there is a need for prioritizing the use of medium sized peace operations with properly crafted mandates, clearly defined command and control structures and agreed upon and sustainably deployable resources.**

## Implementation of its constitutional governance and human rights protection roles

Reflecting the broader conception of security on which the AU peace and security framework is premised, apart from the above the PSC is conferred with a rich mandate on matters of democratic governance, constitutional rule and human rights.[24] In this regard, the PSC accordingly enjoys the power: (a) to institute sanctions whenever an unconstitutional change of government takes place in a member state and (b) to follow up on the progress towards the promotion of democratic practices, good governance, the rule of law, protection of human

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[23] United Nations, General Assembly, Security Council, "Uniting Our Strengths for Peace– Politics, Partnership and People: Report of the High-level Independent Panel on Peace Operations," A/70/95–S/2015/446, June 17, 2015, p. 44.

rights and fundamental freedoms, and respect for the sanctity of human life and international humanitarian law by member states. The PSC is also the authority that is responsible for enforcing the AU norm on unconstitutional change of government (UCG) and to that end it is empowered to take various measures including the imposition of sanctions.[25]

While the PSC has established a relatively consistent practice in implementing the AU norm on UCG and in AU's engagement with election related threats to peace and stability, its mandate in this area is facing various challenges. Once again sovereignty is a major issue that affects the role of the PSC. As the experiences in Burundi, South Sudan, Sudan or DRC shows, often the approach of member states in terms of how the PSC deals with conflict situations reflects a bias towards the government of the day. The response both from the AU and ECOWAS to the post-election crisis in The Gambia remains largely an exception.

The PSC has not been as effective in its role in relation to human rights and democratic governance as it has been in enforcing the AU norm on UCG. Even with respect to UCG, despite the relative effectiveness of PSC's actions, various developments that erode constitutional governance are circumventing the core values and spirit of the AU norm on UCG. One manifestation of this is the phenomenon of third termism or extension of term limits. In at least two instances, disputes over this phenomenon have led to major crisis. Such has been the case in Burkina Faso in 2014 and in Burundi since 2015. Currently, the PSC is faced with major issues with the situation in DRC owing to the uncertainty of the president respecting the constitutional term limit. There is thus a need for the PSC to develop strategy for addressing the challenges

that these developments pose to democratic governance and political stability. Additionally, there is need for enhanced interface with the African Governance Architecture (AGA) and the use in particular of the work of the African Commission on Human and Peoples' rights as envisaged under Article 19 of the PSC Protocol and the African Peer Review Mechanism.

## Dealing with grave circumstances

Regarding 'grave circumstances' identified under Article 4 (h) of the Constitutive Act, the PSC is vested with the power: (a) to anticipate and prevent policies that may lead to genocide and crimes against humanity and (b) to recommend to the AU Assembly intervention in a member state in respect of grave circumstances. Similarly, the PSC is responsible for initiating and operationalizing intervention of the AU on the request of a member state to restore peace and security within the framework of Article 4(j) of the Constitutive Act.[26] Taken together, what these responsibilities suggest is that 'the PSC may recommend an intervention with or without the consent of the member state in which a conflict takes place and approve the modalities of such interventions.'

The PSC has generally been reluctant to invoke its mandate in relation to Article 4(h) of the Constitutive Act. Even in situations involving the conditions envisaged under Article 4(h) as has been the case in Darfur and recently in South Sudan, the PSC avoided the direct reference to Article 4(h). Instead it opted for using other peace and security instruments (a peace support operation and mediation for Darfur and a Commission of Inquiry and deployment of a mediator for South Sudan).

When for the very fist time the PSC invoked its mandate in relation to grave circumstances,

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[24] *See Articles 3(f) and 4(c).*

[25] *Art 7(g).*

[26] *See Articles 4 (k) and 7 (1) (f).*

it did not succeed. Accordingly, its decision of 17 December 2015 authorizing a 5,000-strong African Prevention and Protection Mission (MAPROBU) to Burundi failed to take off the ground. Various miscalculations in invoking Article 4(h), Burundi's fierce resistance and the concern of some states with the precedent that this sets and its ramifications meant that the decision failed to attract the support of the AU Assembly. The experience has dealt a major blow on the role of the PSC vis-à-vis the implementation of Article 4(h) of the Constitutive Act. **The concern since the AU Assembly's rejection of the deployment of MAPROBU is that the PSC is unlikely to resort to the use of Article 4(h) any time soon.** This obviously casts doubt on the credibility and effectiveness of the PSC in this area. As such, there is a need for the PSC to engage in a lessons learned process for developing a workable framework for the transparent and predictable operationalization of its mandate on Article 4(h).

## Post Conflict Reconstruction and development

For countries in transition, 'in order to consolidate peace and prevent the resurgence of violence', the PSC is mandated to promote and implement peace building and post- conflict reconstruction. While a policy on Post Conflict Reconstruction and Development has been put in place since 2006, until recently this has been one of the mandate areas of the PSC that has been poorly operationalized. As a result, some of the resurgence of conflicts witnessed in recent years including in Burundi, CAR, DRC and South Sudan have been as a result of the collapse or poor implementation of peace agreements and post-conflict peace- building.

In terms of preventing a relapse of post- conflict countries back to conflict and preventing crisis resulting from constitutional and electoral disputes, **the AU should adopt a proactive approach, focusing on major changes in political systems and practices of**

**member states.** It should accordingly enhance the role of the African Governance Architecture (AGA) in general and the African Peer Review Mechanism (APRM) process in particular to encourage and support such changes. In particular, **the AU should** in coordination with relevant REC/s and with the support of partners **increase its focus on initiating discrete structural reforms within member states based on proactive assessment of vulnerable member states and within the framework of its structural conflict prevention strategy, PCRD policy and the AGA and APRM processes.**

## PSC-REC/RMs coordination

One of the unique features of the peace and security landscape of Africa is that both the AU and the regional mechanisms for conflict prevention, management and resolution (regional mechanisms) are simultaneously mandated to maintain peace and security. Accordingly, apart from the AU, many African regional organisations, from the Economic Community of West African States (ECOW AS) and the Southern Africa Development Community (SADC) to the Inter-Governmental Authority on Development (IGAD), the Economic Community of Central African States (ECCAS) and the International Conference of the Great Lakes Region (ICGLR), have in the past few years showed increasing willingness and interest to manage and resolve conflicts in their own regions.

As the role of regions increases and the capacity of the AU expands, the two have experienced increasing interaction punctuated by tension over the leadership of, and division of responsibility in the management of various crises. This is notwithstanding the fact that mechanisms for coordination have been put in place. Notably, Article 16 of the PSC Protocol stipulates that the RECs/RMs are part of the overall security architecture of the AU, which has the primary responsibility for peace in Africa. Additionally, in 2008 a Memorandum of Understanding has been signed between the AU and RECs/RMs and the principle of subsidiarity is often cited as offering the basis for coordination.

In terms of the relationship between the AU and RECs, it has become clear that applying the principle of subsidiarity does not produce clear answers. If anything, as the case of Burundi and South Sudan shows it can become an impediment to a flexible but more effective mobilisation of AU-REC joint action. It appears that there is also tension between the principle of subsidiarity and the primary responsibility that the PSC protocol assigns to the PSC.

Experience thus far shows that regional mechanisms and the AU rely more on comparative advantage and complementarity, thereby the need for both to recognize each other's role and to show a willingness to work together. This calls for a flexible model of coordination that facilitates consultative collective decision-making that reinforces the role of both RECs and the AU. In this context, it is of paramount importance that the PSC fully operationalizes the conclusions of its 2015 Swakopmund and the 2016 Abuja retreats relating to coordination between itself and RECs/RMs including the participation of RECs/RMs in PSC sessions including the closed sessions and the establishment of the use of periodic consultative meetings and joint missions

## Policy and operational coordination with the UN

Despite the deepening relationship between the AU and the UN on peace and security issues, there remain persisting challenges. After ten years of annual consultative meetings, the UN Security Council (UNSC) and the PSC have as yet to settle for mutually agreed formula on agenda setting, the outcome of the annual consultative meeting and follow up of the outcome of their meetings. The communiqué from the 2017 annual consultative meeting is as yet to be finalized and made public for lack of consensus over the language to be used with respect to some agenda items. Similarly, notwithstanding the adoption of various resolutions and recent movements within the AU, the issue of the use of UN assessed contributions for AU peace operations authorized by the UNSC remain a major area of disagreement.

Another challenge in harmonizing the work of the PSC and the UNSC is lack of coordination in agenda setting and in the consideration and treatment of issues featured on the agenda of both sessions. This is further compounded by the lack of common position within the AU, except on some agenda items. Additionally, while it has improved over the years, there remain major challenges in terms of the role of the three African members of the UNSC (A3) in representing PSC positions in the UNSC. PSC positions do not receive united support from the A3 members of the UNSC where a member of the A3 has a policy position that is at variance with the position adopted in the PSC. There is thus a need for mechanism for accountability and for limiting the impact of the divergent policy of any of the A3 members of the UNSC. In terms of effective use of the A3, there is a need for the inclusion of the A3 as observers in the closed sessions of the PSC, which is key for enabling members of the A3 to fully understand the background for PSC

decisions for the effective representation these decisions within the UNSC.

One useful point of departure in improving coordination with the UN and addressing some of the challenges is the recommendation of the HIPPO that '[t}he United Nations and the African Union must strive for common approaches through shared assessments, sound consultative mechanisms for decision-making and tools for collaborative planning and operations across the conflict cycle'.[27] In this respect apart from the need for the UNSC and the PSC to settle for mutually agreed approach to their annual consultative meetings, it is important to institutionalize mechanisms for consultation between the monthly president of the UNSC and that of the chairperson of the PSC when drafting their respective monthly program. The creation of informal consultation opportunities between the monthly chairperson of the PSC and representatives of members of the UNSC in Addis Ababa and similar arrangements in New York serves as another useful mechanism for policy coordination between the UNSC and the PSC. Another mechanism for implementing the HIPPO recommendation and indeed the joint declaration of the annual consultative meeting of the PSC and members of the UNSC is emulating the best practice of the PSC and the European Union Peace and Security Committee in undertaking joint filed missions.

Addressing the challenge that sovereignty and national interest considerations pose for effective implementation of the PSC's mandate

Finally, an issue that has increasingly become a challenge for the effective functioning of the PSC is the heavy influence of national interest and sovereignty considerations in the work of the PSC. This has been an issue in various situations including Burundi, South Sudan and Cameroon, thereby limiting effective policy action by the PSC. There is a need for a mechanism that limits the impact of national interest and sovereignty considerations on policy decisions of the PSC. One key way of doing this is the implementation of transparent and accountable decision-making process. In this regard, the use of voting should be regularized. As Jobson pointed out, it would be helpful if the PSC, like the UNSC voted publicly on every decision.

## V Conclusions and recommendations

The PSC has become the hub for coordinating, debating and mobilizing policy actions on peace and security issues on the continent. Indeed, the emergence of the AU as a lead organization for the promotion of peace and security in Africa owes a great deal to this role of the PSC. The room for improvement and indeed even greater success still remains wide.

Despite its relative success during its first decade, in recent years the role of the PSC as the principal site of engagement with the major issues and controversies of the day on peace and security in Africa has faced serious challenges. The limited effectiveness of its actions and in some cases the PSC's failure to take action or the right action at times trigger debate within the PSC, as can be gathered from the conclusions of its various retreats and concern from observers on whether the PSC is on a path to become nothing more than a talking shop. The emphasis in the report of President Paul Kagame and the AU Assembly decision on that report for ensuring the effectiveness of the PSC is accordingly very fitting.

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[27] *United Nations, General Assembly, Security Council, "Uniting Our Strengths for Peace– Politics, Partnership and People: Report of the High-level Independent Panel on Peace Operations," A/70/95–S/2015/446, June 17, 2015, 29.*

As the foregoing analysis clearly shows the implementation of the mandate of the PSC and the adequate use of the conflict prevention, management and resolution frameworks has in various instances been ad hoc and lacking the level of coherence required. It is also evident from the foregoing that the most serious gap or challenge in the role of the PSC relates to the huge gulf between what the PSC protocol and various related frameworks provide and the actual practice of the PSC itself.

There have been increasing instances where AU member states national interests and the principle of sovereignty have been made to prevail. There have accordingly been various instances in which members of the PSC fail to support the decisions of the PSC. These remain to be perhaps the most formidable challenge facing the PSC and indeed the entire peace and security framework.

Over the years, the position of members of the PSC has increasingly become tied to sub-regional political dynamics. The authority of the PSC vis-à-vis regional mechanisms is also not firmly established and has faced resistance at various times across the various regions.

It emerges from the analysis above on the gaps and challenges relating to the PSC that the reform of the PSC does not require amendment of the PSC Protocol. Instead, it has become clear that much of the reform is in the realm of the mechanics, politics and adherence to norms in the implementation of the mandate of the PSC and indeed the PSC Protocol broadly.

First, the PSC Protocol should be adhered to as a package instead of the piecemeal approach that has emerged. In this respect, it is imperative, among others, that the criteria for PSC membership as set out in Article 5(2) are properly followed. To this end, the measures envisaged

in the various conclusions of the PSC retreats should be implemented.

Second, enhancing the ownership of peace and security in Africa and aligning the decisions of the PSC with the requisite resource and capacity requirements is critical. In this respect, the implementation of the decisions of the AU relating to the allocation of funds and the operationalization of the governance structures of the AU Peace Fund is one of the most important reform agenda of the PSC.

Third, as observed in the analysis one area that is in great need of enhanced implementation is the conflict prevention role of the PSC. The PSC should prioritize conflict prevention and to this end take steps for the proper operationalization of its conflict prevention role along the lines outlined above. Additionally, the PSC should in coordination with relevant REC/s and with the support of partners increase its focus on initiating discrete structural reforms within member states based on proactive assessment of vulnerable member states and within the framework of its structural conflict prevention strategy.

Fourth, there is a need for a mechanism that limits the impact of national interest and sovereignty considerations on policy decisions of the PSC. One way of doing this is the regular use of public voting that guarantees transparent, responsible and accountable decision-making process.

Fifth, as highlighted above there is a need for ensuring coordination and coherence of the role of various actors in conflict prevention, management and resolution in Africa. This coordination has to take place horizontally within the AU system and vertically with the RECs/RMs and the UN. Horizontally, it is imperative that the mechanisms for processing and integrating the work of relevant AU structures such as the CEWS and the Panel of the Wise into the PSC processes

should be enhanced and fully implemented. The provisions of the PSC that require close working relationship with AU organs with mandates relevant to peace and security such as the African Commission on Human and Peoples' Rights need to be operationalized. Similarly, the steps identified in the analysis for the operationalization of the PSC sub- committees should also be implemented.

On the vertical axis, coordination and coherence requires that consultative decision- making processes are put in place between the PSC and parallel bodies of RECs/RMs. Similarly, the mechanism for consultation between the PSC and the A3 members of the UNSC should be further strengthened both in Addis Ababa and New York. Apart from inviting the A3 members to relevant PSC sessions, more regular exchange of information and the maintenance of regular line of communication between the monthly

chairperson of the PSC and members of the A3 would be critical. In terms of the relationship with the UNSC, there is a need for consistent application of agreed upon frameworks for coordination and consultation. This should be supplemented by the establishment of informal mechanisms for consultation both in Addis Ababa and New York between the chairpersons of the two bodies and their respective members represented in Addis Ababa and New York respectively. Additionally, mechanisms for the coordination of the agendas of the two bodies most notably monthly consultation between the incoming chairperson/president of the two organs would be of particular importance.

Sixth, one of the most important comparative advantage of the PSC has is political legitimacy. The tendency of heavy reliance on military or security heavy tools for conflict management and resolution can undermine the role of the PSC. This is particularly the case where such tools are deployed without political strategy. The PSC should thus make its policy-making based on the

primacy of politics with emphasis on adherence to the norms and principles on which the AU is founded. To this end, enhanced attention should be given to the conflict prevention and conflict management mechanisms of the PSC including mediation and political missions.

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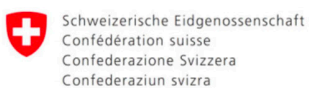
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