

SPECIAL RESEARCH REPORT

**REVIEW OF THE INTEGRATION
AND IMPLEMENTATION OF IHL
IN AFRICAN UNION POLICIES
AND ACTIVITIES**

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INTRODUCTION

In Africa and the world at large, conflict continues to be a major driver of humanitarian crises and human suffering. As a research report published early in 2022 showed, the factors that account for this phenomenon include the increase in the number of conflicts and the expansion in the geographic spread of conflicts.¹ In this context, the importance of norms that contribute to the regulation of conflicts and provide minimum standards to govern behaviour of belligerents cannot be overemphasised. While conflicts are unfortunately hard to completely avoid, International Humanitarian Law (IHL) provides rules and principles which enhance safeguards to minimise the destructive impacts of armed conflicts, particularly to civilians and civilian objects.

Taking account of the importance of this body of law and its universal relevance, this special research report aims to assess the progress the African Union (AU) has made so far in integrating principles and values of IHL into the various legal instruments, decisions, policies and activities of its constituent organs, particularly the Peace and Security Council (PSC) and the Political Affairs, Peace and Security (PAPS) Department. It seeks to evaluate the evolution in norms development and practice to demonstrate how AU has assumed its role of norms setting and guidance to Member States in the development of the law and promotion, as well as present some of the challenges of adoption and implementation in the various streams of decisions and actions of the AU Commission and Member States in the peace and security arena.

Although enforcement of IHL remains the primary responsibility of Member States and its implementation is reliant on multiple actors involved in a given conflict situation, the scope of this research is limited to assessing successes and challenges in implementation of the law by the AU, particularly in AU mandated and/or authorized Peace Support Operations (PSOs). To provide context on the evolution of IHL in the continent, the first section is dedicated to a brief discussion on the evolution of the integration of IHL during the Organization of Africa Unity (OAU) period. The second section examines integration of IHL through various AU normative frameworks and

decisions of relevant AU organs. The third section then assesses the success attained and remaining challenges in translating existing IHL norms into action, with a specific focus on the experiences of AU PSOs. The fourth and final section is dedicated to concluding observations and recommendations to address the existing gaps in the implementation of IHL in Africa.

The methodology used for the research and analysis of this report is mixed method. It involved the collection and analysis of primary policy and legal instruments. Additionally, the research draws on interview of key experts and actors engaged in policy processes.² These methods are complemented with the use of secondary sources of data and analysis.

¹ Amani Africa, *Why the AU Humanitarian Summit Matters and What it Can Do About the Concerning Humanitarian Situation in Africa*, Policy Brief, May 2022, available at: <https://bit.ly/3i3CcNe>.

² General Micheal Kabango, *Chief of Operations and Planning*, AU PSOD; Mr. Nurudeen Aziz, *Chief of Operational Planning and Advisory Section - OPAS at UNOAU*; Mr. Amadou Diongue, *ECOWAS Resident Representative in Benin and Former Expert, PSC Secretariat*; Mr. Amr A. Mokhtar, *First Secretary, Arab Republic of Egypt Mission to Ethiopia and the AU*; Mr. Dan Ochieng, *First Counsellor Legal, Republic of Kenya, Mission to Ethiopia and the AU*; and the ICRC Legal Advisors.

I. HISTORICAL CONTEXT: 'IHL IN THE TIMES OF OAU'

Africa's recognition of the principles of IHL dates back to the pre-colonial period and is argued³ that many traditions and customs across the continent had their own rules to govern the conduct of hostilities and protect persons not participating in fighting. Looking at historical accounts, there is a strong correlation of African traditional customs with international legal obligations under IHL. For instance, the Somali conventions of warfare can be cited as an example to illustrate similarities in the values of the 1949 Geneva Conventions regardless of its written existence before the convention.⁴ In addition, the correlation of African traditional customs with international legal obligations under IHL are studied in other parts of the continent including modern day Ghana, Nigeria, Kenya, Senegal, Togo, South Sudan, the Sahel region, where established traditional norms proved to regulate the conduct of hostilities and treatment of victims. This attests that rules contained in contemporary IHL are not alien to Africa.⁵ However, Vangah (1986) argues that Africa 'lost its autonomy of its own law' and integrated into the colonial literal systems. It is during this period of succession of States where majority of African countries acceded to the Geneva Convention without reservations.

Since its inception in 1963, the OAU strived to incorporate IHL and International Human Rights Law (IHRL) into its legal foundations. Despite the paucity of literature on the achievements in this respect, there is sufficient evidence that demonstrates the organization's role in incorporating IHL into its foundational norms and frameworks, thus, playing a major role in developing IHL and universalisation of IHL rules.

³ Vangah Francis Wodie, "Africa and Humanitarian Law", *International Review of the Red Cross*, Vol. 26, No. 254, 1986.

⁴ Gus Waschefort, 'Africa and International humanitarian law: the more things change, the more things they stay the same', *International Review of the Red Cross* (2016), 98 (2), Page 593-624; Musa Yusuf Hussein, Mohammed Abdilaahi Riraash and Ibrahim Jaji M. Wa'ais (eds), *Spared from the Spear: Traditional Somali Behaviour in Warfare, Somali Delegation of the International Committee of the Red Cross and Somali Red Crescent Society, February 1998*.

⁵ Mabeza, Sarah & Bolus, Tamalin. (2022). *Changing the narrative: A tool on African Transitions and the Preservation of Humanity during War*. *International Review of the Red Cross*.

Ewumbue-Monono (2003) broadly explains OAU's contribution to the redefinition of IHL in international forums. Notably, the organization ensured the participation of African liberation movements in the drafting of IHL norms. For instance, 37 OAU Member States were involved in the deliberations for the drafting of the 1977 Additional Protocols to the Geneva Conventions, pushing for the Additional Protocol to cover "armed conflict in which peoples are fighting against colonial domination, alien occupation and against racist regimes in the exercise of their right of self-determination".⁶

Furthermore, the adoption of the 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa is another prime example. The Convention houses basic rights of displaced populations and integrated humanitarian concerns into its resolutions. The OAU Convention has also been declared a progressive contribution to international refugee law, hence supplementing the international regimes and conventions on refugees.⁷

At a time when mercenarism was at its peak during the period of decolonization in Africa, OAU played a leading role in developing the first ever convention dealing with mercenaries, the OAU Convention on the Elimination of Mercenarism in Africa which was adopted in 1977. The convention is applauded for positively influencing the 1977 Additional Protocols to the Geneva Conventions⁸ in the inclusion of an article on mercenaries.⁹ In addition, African States in multilateral fora, such as at the UN, have pushed and co-sponsored various legal instruments. Most notably instruments aimed at reducing the production

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Churchill Ewumbue-Monono, "Promoting Humanitarian Public Diplomacy in Africa: A Study of Ten Years of the ICRC's Co-operation with the OAU in Disseminating International Humanitarian Law in the Addis Ababa African Diplomatic Community: 1992-2002", *the Center for Research on Democracy and Development in Africa (CEREDDA)*, 2003.

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Frans Viljoen, "Africa's Contribution to the Development of International Human Rights and Humanitarian Law", *African Human Rights Law Journal*, Vol. 1, No. 1, 2001: Pg. 27-28

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The 1977 Additional Protocols to the 1949 Geneva Conventions (Additional Protocol I and Additional Protocol II) were adopted with the purpose of making IHL more adaptable to modern conflicts as well as more universal and complete. Within this framework, Protocol I focuses on the protection of victims of international conflicts, extending to "armed conflicts in which peoples are fighting against colonial domination, alien occupation or racist regimes" whereas Protocol II exclusively addresses non-international armed conflicts.

⁹

*Ibid.*37

and use of arms; the movement for the restriction of weapons and the signing of Non -proliferation of Nuclear Weapons treaty;¹⁰ including the African nuclear weapon free zone treaty (Pelindaba treaty), which aims at the denuclearisation of Africa.

As an institution, the OAU registered significant success in institutionalizing IHL and IHRL in its norms and principles. The enactment of the African Charter on Human and People's rights (African Charter) in 1981 by the OAU Assembly of Heads of States and Government and its subsequent enforcement since 1986 can be seen as a formal step in integrating IHRL.¹¹ Moreover, the adoption of the African Charter on the Rights and Welfare of the Child in 1999 represents another milestone in this respect. The Charter took into account IHL in strongly denouncing child recruitment and addressing the protection of child refugees and child marriage', thus setting a higher standard of protection for children in armed conflicts.

As the guardian of IHL, the International Committee of the Red Cross (ICRC) played an important role in supporting the promotion and incorporation of IHL at the OAU since the signing of a Memorandum of Understanding with the organisation in 1992, which signified a formal commitment for collaboration and provided legal basis for continued engagement when the OAU morphed into the AU. Along the lines of its elaborated 'humanitarian diplomacy' strategy, the ICRC engaged with the OAU in the promotion of IHL and ensuring the respect of the law via its established liaison delegation to the OAU based in Addis Ababa. Historically, the ICRC has been providing support to African countries in responding to humanitarian crises well before the establishment of the OAU.¹² This engagement involved several collaboration efforts notably; the signing of an agreement during the Nigerian civil war in 1968 between OAU, ICRC and Biafran authorities to allow a humanitarian corridor for the evacuation of children. The ICRC also supported

¹⁰ Churchill Ewumbue-Monono. Page 35-36.

¹¹ Frans Viljoen, "Africa's Contribution to the Development of International Human Rights and Humanitarian Law", *African Human Rights Law Journal*, Vol. 1, No. 1, 2001.

¹² The first Red Cross societies in Africa started in the 1920s and 30s in Ethiopia, Egypt and Liberia. The first ambulance was dispatched to the then Abyssinia (modern Ethiopia) during the 1935-36 crisis to help victims of conflict. *Idem* Page 19.

the OAU in negotiating agreements for the withdrawal of some mercenaries from the then Eastern Zaire in September 1968.¹³

Additionally, Ewumbue- Monono (2003)'s well-documented literature of the 10- year review (1992-2002) of the cooperation between the OAU and the ICRC clearly illustrates the success in disseminating IHL through high-level exchanges on humanitarian and protection concerns, joint seminars held since 1994 on various topics such as on protection of civilians, application of IHL, prevention of displacement and protection of Internally Displaced Persons (IDP) etc. Indeed, the ICRC was acknowledged as one of the reference organizations on issues relating to assistance and protection of IDPs during OAU's Council of Ministers in February 1998, thus recognising its operational role in places affected by conflict.¹⁴ Further to this, awareness-raising activities, and trainings on IHL and IHRL were initiated to orientate the militaries and police forces, notably contingents prior to deployment, on their obligations under both bodies of law and their applicability or otherwise to their separate operations. Although not the exhaustive list of engagements, these initiatives have continued to date in the cooperation between the now African Union and ICRC in the context of the African Standby Force (ASF) trainings.

In addition to the various activities disseminating IHL, the cooperation between the ICRC and OAU resulted in the incorporation of humanitarian principles in various peace agreements and resolutions of the OAU. For instance, Ewumbue- Monono cited:

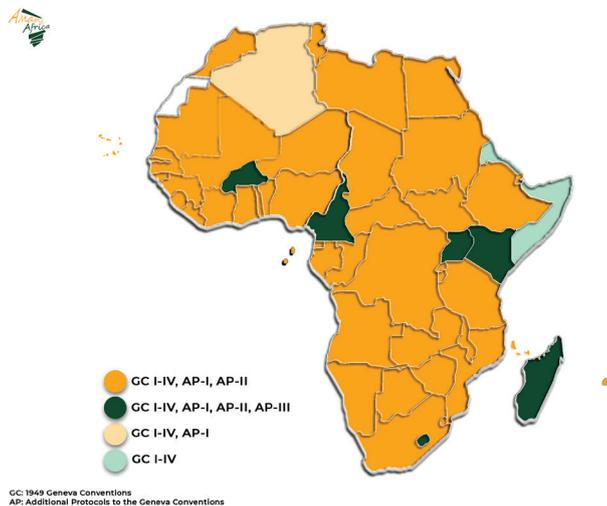
'Cotonou Agreement on Liberia, the May 1993 Kihira Agreement between the government of Rwanda and the Rwandan Patriotic Front, the August 1993 Arusha Peace Agreement on Rwanda, the July 1999 Lusaka Accord on a Ceasefire in the Democratic Republic of Congo, and the May 1999 Lomé Ceasefire Agreement between the government of Sierra Leone and the Revolutionary United Front (RUF/SL)'¹⁵

¹³ *Ibid*

¹⁴ Churchill Ewumbue-Monono and Carlo von Flüe, "Promotion of International Humanitarian Law through Cooperation between the ICRC and the African Union", *International Review of the Red Cross*, Vol. 85, No. 852, December 2003, Page 764.

¹⁵ *Ibid*. Page 756

The high level of ratification of the 1949 Geneva Conventions and their 1977 Additional Protocols in Africa should also be viewed in light of OAU's (and later AU's) contributions to advance and promote IHL in the continent. The map below presents the status of ratification of the Geneva Conventions and the Additional Protocols, as of October 2022.



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II. PROGRESS IN INTEGRATING IHL IN AU PEACE AND SECURITY ARCHITECTURE AND IN AU COMMISSION PAPS PROCESSES

Integration of IHL in key normative instruments

Following the OAU's transformation into the AU, the integration of IHL into the organisation's norms as well as its implementation at continental, regional and national levels has shown significant increase. This has been demonstrated mainly through the adoption of relevant norms and the establishment of a comprehensive IHL compliance framework as well as efforts to mainstream humanitarian concerns and IHL norms into relevant policy documents of the AU. Nevertheless, implementation, which is primarily a responsibility of respective member States, remains challenging although some significant and encouraging progresses have been noted over the years, some of which are exemplified below:

¹⁶ Data extrapolated from ICRC Database on Treaties, States Parties and Commentaries, available at: <https://bit.ly/3hUKIQJ>

AU Constitutive Act

The major socio-political and peace and security development that served as the critical catalysis for the transformation of the OAU to the AU was the atrocities and violence inflicted on civilians in the civil wars and conflicts of the 1990s, most notably the 1994 genocide against the Tutsi in Rwanda.¹⁷ This tragedy highlighted the need and urgency of expanding the normative commitment of the continental body and the mainstreaming of such normative expansion into institutional and operational frameworks. The enunciation of paradigm shifting norms into the founding treaty of the AU served as a starting point in this regard.¹⁸

Article 4(h) of the AU Constitutive Act codifies and gives the right/obligation to AU for intervention in a Member State in cases of grave circumstances, namely crimes against humanity, genocide and/or war crimes. In addition to paving the way for protection of populations from grave violations, this provision has been instrumental in establishing one of AU's major departing point from the OAU – the incorporation of the principle of non-indifference. In responding to the basic concerns of its member States at the time, the basic principles enshrined in the OAU Charter had the central purpose of ensuring non-interference in the internal/domestic affairs of member States. The introduction of the principle of non-indifference through Article 4(h) of the AU Constitutive Act is considered to be a major paradigm shift which has brought balance to the principle of State sovereignty. Although there appears to be arguments on the level of implementation of this provision as many allege that this provision remains largely theoretical and the AU is yet to fully implement it, one may argue that the establishment of the PSC to handle peace and security issues in Africa and certainly¹⁹ the incorporation of the

¹⁷ See AU, Rwanda: The Preventable Genocide, July 2000, available at: <https://bit.ly/3OmWYUe>

¹⁸ For more analysis on this, see Solomon A. Dersso, 'The quest for Pax Africana: The case of the African Union's peace and security regime', in *African Journal on Conflict Resolution*, Vol.12(2) (2012).

¹⁹ The AU, through its Peace and Security Council (PSC), has only ever invoked Article 4(h) of the Constitutive Act once. This was in response to the 2015 election related violence which evolved into a major political crisis in Burundi. At its 565th session, the AU PSC directly invoked Article 4(h). However, the PSC's decision of its 565th session could not be carried forward due to, among other reasons, absence of the required support and endorsement of the decision at the level of Heads of State and Government of PSC member States as well as the

AU Assembly.

provision within the constitutive act has on its own been a major achievement nonetheless.

Another relevant provision of the AU Constitutive Act is Article 13(e), which grants the Executive Council of the Union the mandate to coordinate and take decisions on policies which deal with humanitarian action in the continent. Within the framework of this mandate, the Executive Council has considered at its various ordinary sessions, reports of the AU Commission on humanitarian situations in Africa and taken decisions relevant to responding to these situations.

Protocol on the Establishment of the PSC (PSC Protocol)

The protocol of the AU PSC integrates core principles of IHL and norms critical for ensuring protection of civilians.²⁰ Article 3(f) of the Protocol for instance incorporates among the main objectives of the PSC, the promotion and respect for 'sanctity of human life and international humanitarian law'. This provision serves as a key entry point for integration of IHL into the various decisions, activities and decision-making processes of the PSC. Another fundamental provision of the Protocol is Article 4(c) which enshrines respect for IHL as one of the foundational principles which shall guide the PSC throughout the discharge of its mandates.

In addition to these basic principles, the PSC Protocol also incorporates IHL principles and humanitarian considerations in a number of its operational provisions elaborating the Council's basic mandates of conflict prevention and conflict management and resolution. From the perspective of the Council's preventive role, Article 7(1)(a) is a relevant provision which mandates the PSC to anticipate and prevent disputes and conflicts as well as policies that could lead to genocide and crimes against humanity. Article 9(2) then provides entry points or modalities through which the PSC could carry out its mandate provided for under Article 7(1)(a). These entry points include: collective intervention; engagement through the Chairperson of the PSC; engagement through Chairperson of the AU Commission; intervention of the Panel of the Wise and collaboration with Regional Economic Communities

and Regional Mechanisms (RECs/RMs). Article 7(1)(a) is a broad mandate which could contribute immensely to avert major humanitarian disasters in the continent if implemented effectively. It also paves the way for the deployment of humanitarian diplomacy within the framework of the Council's preventive mandate. Article 12(4) of the Protocol which makes humanitarian concerns part of the indicators that shall inform the early warning module of the Continental Early Warning System (CEWS) further substantiates the Council's role to avert humanitarian disasters. Article 7(1)(m) is also another provision relevant for the integration of IHL. Within its conflict prevention mandate, the provision empowers the Council to follow up on member States' progress in the promotion of IHL.

Another relevant provision of the PSC Protocol is Article 6(f). Within the framework of the Council's conflict management and resolution role, this provision mandates the Council to undertake humanitarian action and disaster management functions. Article 7(1)(p) further provides the power for the PSC to exercise the roles of supporting and facilitating humanitarian action in armed conflicts and natural disasters. The realisation of these two provisions is partly reliant on the operationalisation of the African Union Humanitarian Agency (to be discussed further in following sub-sections).

Article 13(3)(f) further stipulates the need to incorporate humanitarian assistance to civilians in areas affected by armed conflicts and natural disasters, within the mandates of the ASF. Furthermore, Article 13(13) makes training on IHL and IHRL an integral part of training for both civilian and military personnel of national ASF contingents. As articulated in the Solemn Declaration on Common African Defence and Security Policy, one of the central purposes of establishing the ASF has been to enable the PSC 'perform its responsibilities with respect to the deployment of peace support missions and intervention pursuant to the provisions of the Constitutive Act'.

In addition, Article 15 of the Protocol is also a relevant provision which outlines the Council's active role in humanitarian action.

²⁰ For more detailed analysis of PSC provisions with relevant reference to IHL and humanitarian concerns, see Amani Africa's Handbook on 'The African Union Peace and Security Council – Guide on the Council's Procedure, Practice and Traditions' 2021 Edition, available at: <https://bit.ly/3V8QnPs>

AU Policy Frameworks integrating IHL

Further to the foundational Act of the AU as well as the copious provisions of the PSC Protocol, a number of policy documents and instruments have also been adopted by the AU addressing humanitarian issues and incorporating key principles and norms of IHL. Notably the following:

AU Doctrine on Peace Support Operations: the updated 2021 version of the AU PSO Doctrine, is perhaps one of the exemplary AU instruments which demonstrates the organisation's commitment to advance IHL in the continent. The updated doctrine makes reference to IHL in about 17 provisions which is a substantial improvement when compared to the earlier version which referred to IHL only in a total of three provisions. As emphasised in paragraph 16, the Doctrine provides 'common fundamental principles, concepts, practices and approaches to guide the processes and policy frameworks for mandating, deployment and management of multidimensional AU PSO aimed at preventing, managing and resolving conflicts'. One example of specific provisions of the Doctrine incorporating IHL is Paragraph 31 which prescribes the full recognition and respect for IHL and IHRL principles by AU PSO in the discharge of their mandate of protection of civilians (PoC). Elaborating further, the provision emphasises that 'all AU PSO shall take all necessary precaution to avoid loss of civilian life, injury to civilians, protection of humanitarian relief workers in armed conflicts, and damage to civilian objects, including critical civilian infrastructure, as well as the environment'. By providing thus, Paragraph 31 of the AU PSO Doctrine incorporates the core IHL rules governing conduct of hostilities – including the principle of precaution, this in addition to making a strong call to member states to continue to respect and ensure respect for IHL²¹ In the same vein, paragraphs 49-52 of the Doctrine which provide guidance on the use of force by AU PSOs further solidify the integration of IHL rules on conduct of hostilities by specifying that the employment of both lethal and non-lethal measures by personnel of AU PSOs, including the treatment of disengaged fighters and detainees in

²¹ The principle of "Precautions in Attack" was first set out in Article 2(3) of the 1907 Hague Convention (IX), Article 57(1) of Additional Protocol I to the Geneva Conventions now more clearly codifies the principle. Moreover, the principle of precautions forms part of Customary IHL Rules. See more in ICRC's "Customary International Humanitarian Law Volume I: Rules" (2009).

custody shall be guided by relevant IHL rules. Finally, a perusal of paragraphs 52- 56 of the Doctrine would evince a strong commitment from the AU to ensure that AU PSOs have a protection mandate and are bound to be compliant with their obligations under International law, including IHL.

AU Policy for Conduct and Discipline for Peace

Support Operations: the policy, considered and adopted by the PSC at its 813th meeting of 29th November 2018, clarifies the minimum standards of conduct expected of all military, police and civilian personnel of AU PSO missions. The policy is established around three core pillars: prevention, enforcement and remedial action. The prevention pillar aims to avert the occurrence of misconducts – which are defined in the policy as, among others, violations of IHL – including through stringent vetting process in the pre-deployment phases of AU PSOs. Having elaborated fundamental codes of conduct that shall guide the everyday activities of personnel of AU PSOs, the policy, in its enforcement pillar, outlines the essential procedure for the enforcement of measures that shall be taken in response to conducts contrary to the set standards. The pillar for remedial action essentially deals with protection and redress to victims of misconduct by personnel of AU PSOs, including violations of IHL.²² It is perhaps in this light that the ongoing reforms at the AU included the obligation to investigate human rights abuses as well as IHL violations in PSOs as part of the mandate of the AU office of Internal oversight.

AU Policy on Prevention and Response to Sexual Exploitation and Abuse (SEA) for Peace Support

Operations: adopted at the 813th PSC meeting of 29th November 2018, the policy on prevention and response to SEA was developed with the central purpose of preventing and addressing sexual and gender based violence (SGBV) allegedly committed by staff and mission personnel of AU PSOs. Accordingly, the policy lists out acts that constitute SEA and prohibited behaviour, the duty of personnel to prevent and report such acts as well as consequences of SEA – which can range from disciplinary measures and termination of contracts with the AU, inability to participate in future PSOs, to criminal prosecution. Throughout the policy and particularly in defining the consequence of SEA in AU PSO, acts amounting to sexual violence in violation

²² Paragraph 6 (AU's Strategy on Conduct and Discipline) of the AU Policy for Conduct of Discipline for Peace Support Operations.

of IHL form a core component.

AU Policy on Child Protection in AU Peace Support

Operations: the policy on child protection in AU PSOs was developed with the central purpose of curving out the preventive, responsive and remedial roles that need to be played by personnel of AU-mandated, authorised or endorsed PSOs in order to primarily prevent, protect and ensure generally the rights of children in situations of armed conflicts, as well as their overall welfare throughout the lifespan of the very PSO. As articulated in the document, the guiding norms incorporated in the policy are derived from and meant to be read in conjunction with IHL standards, among other relevant norms.

AU Policy on Mainstreaming Child Protection in African Peace and Security Architecture (APSA):

the decision to establish a child protection architecture within APSA was essentially influenced by the apparent need for better complementarity among the various AU normative frameworks, institutions and mechanisms essential for ensuring the protection, promotion and fulfilment of children's rights and welfare, particularly in times of armed conflicts. The policy on mainstreaming child protection within APSA therefore has the central purpose of outlining the process through which child protection should be integrated into the various policies, procedures and practices of APSA Pillars and how it should be implemented throughout all stages of APSA, from conflict prevention, to management and resolution and post-conflict recovery and reconstruction. Similar to the above discussed policies, this policy is also informed by basic IHL standards.

AU Humanitarian Policy Framework: the 2015 humanitarian policy framework was adopted with the central purpose of establishing 'a strategic approach and guidelines in support of the core aims of humanitarian action: to preserve, protect and save lives, alleviate suffering and enhance physical security and human dignity'.²³ With the aim of ensuring timely, well-coordinated and effective humanitarian action by the AU, RECs/RMs, member States and other relevant actors, the policy provides guidelines for enhanced capacity in the prevention, preparedness, mitigation and response to humanitarian situations. The integration of IHL norms in the policy framework can

²³ AU Humanitarian Policy Framework, Section I, Paragraph 3 (2015).

be gauged from some of its key provisions including Paragraph 19 which specifies that the foundation of the policy is anchored in IHL and Paragraph 48 which stipulates that humanitarian assistance in situations of armed conflicts shall be guided by IHL norms which set up the framework for negotiating humanitarian access with all parties to the conflict.

Further to these instruments "which specifically address humanitarian concerns, other key AU instruments also incorporate IHL standards such as the African Charter on the Rights and Welfare of the Child (ACRWC). Particularly, Article 22 of ACRWC which binds States parties to the Charter to adhere to IHL and take necessary measures to protect civilian populations including children, in times of armed conflicts.

In addition, the AU is also in the process of developing other relevant instruments addressing specific IHL concerns including a Model Law on Protection of Cultural Property and Heritage; Policy on the Selection and Screening of PSO Personnel; and a review of the Guidelines for the Protection of Civilians (PoC) in PSOs, to mention a few.

AU efforts to ensure implementation of these and other relevant IHL norms have also been significant. Within the structure of the Compliance and Accountability Framework for AU PSOs, various assessments and trainings have been conducted which have contributed significantly to the promotion and advancement of implementing IHL norms within AU PSOs. Another progressive step that has been taken by the AU is the establishment of various mechanisms for the conduct of monitoring and reporting instances of alleged civilian harm and violations of IHL. One example of such mechanisms is the Office of Internal Oversight (OIO) which as part of the Commission wide reform, is mandated to investigate allegations of violations of IHL, IHRL and misconduct in AU PSOs.

Integration of IHL through key decisions of relevant AU organs

Decisions of the PSC

Since its operationalisation in 2004, the PSC has dedicated roughly about 30 sessions to the theme of 'Humanitarian Issues'. Although the Council commenced deliberating on humanitarian issues as

far back as 2007, it was at its 469th session held on 25 November 2014 that it agreed to 'convene a yearly meeting devoted to humanitarian emergencies on the continent'. These yearly sessions mainly serve the Council to be briefed by various relevant organisations including the ICRC and UN High Commissioner for Refugees (UNHCR), on the state of humanitarian situations on the continent and status of efforts in responding to them. Not only do these sessions present the opportunity for the PSC to be apprised of challenges and progress in responding to humanitarian crises in Africa, they have also been essential to bring to the attention of the Council, emerging trends and changing dynamics both in the nature of humanitarian emergencies faced and level of response by relevant actors. For instance, an emerging concern that has received much of Council's attention in its more recent deliberations on humanitarian issues has been the increasing trend of denial of access for humanitarian actors to deliver essential and lifesaving assistance to civilian populations affected by armed conflicts.²⁴ The Communiqué of the Council's 1081st session of 04 May 2022 for example draws attention to the increasing challenge faced by humanitarian agencies due to denial of access and shrinking humanitarian spaces among others. Similarly, at the 1083rd session convened on 09 May 2022, Council condemned the 'conditionality for food access and the use of starvation as instruments of war and/or access to humanitarian assistance'.

In addition, the various sessions have also been fundamental for the Council to assume its role of promoting and advancing IHL in line with the relevant provisions of the PSC Protocol. Further to its calls for conflicting parties to respect and adhere to the principles of IHL, Council has also been playing the instrumental role of determining relevant initiatives for the promotion and better integration of IHL. These usually take the form of Council's requests to the AU Commission to undertake specific tasks. For instance, at the 1044th session held on 5 November 2021 where Council addressed the issue of 'protection of medical facilities and personnel in armed conflicts', it tasked the AU Commission to develop actions necessary for addressing the prevalent attacks and targeting of humanitarian workers in various conflict situations

²⁴ For more analysis on PSC sessions addressing emerging humanitarian concerns, see Amani Africa's 'Insights on the PSC' on Food security and conflict in Africa, 09 May 2022, available at <https://bit.ly/3ghvROS> and on Briefing on the state of humanitarian actions in Africa, 04 May 2022, available at: <https://bit.ly/3VidCax>

across the continent. One of the key requests in this regard was for the AU Commission to ensure inclusion of 'protection of healthcare and humanitarian assistance providers as an indicator on the Monitoring and Evaluation Mechanism of the AU Master Roadmap of Practical Steps to Silence the Guns in Africa by the Year 2030'. As observed by the Council, this would be important not only to have clarity and proper account of the extent of such incidents,²⁵ but also to inform appropriate responses. This is one instance of how the PSC contributes to the adoption of measures and concrete actions to address humanitarian concerns, thereby reinforcing adherence to IHL.

Further to its dedicated sessions on humanitarian issues, humanitarian concerns and implementation of IHL principles and norms are also addressed through Council's meetings on various country specific conflict and crisis situations as well as some of its thematic sessions. While considering specific country or region situations, one of the key areas of development the Council reflects on is the humanitarian situation in the particular country or region. Condemnation of violation of and the call for adherence to IHL norms also forms part of all relevant decisions of the Council on country or region-specific conflicts. Thematic sessions of the Council committed to issues such as proliferation of small arms and light weapons (SALW), terrorism and violent extremism in Africa, and protection of children affected by armed conflicts are some of the thematic agenda items of the PSC which usually make reference to and advance implementation of IHL norms.

In addition to the PSC and in line with its mandate provided under Article 13(1)(e) of the AU Constitutive Act, decisions of the Executive Council also play an essential role in advancing IHL and ensuring sufficient response to humanitarian needs in the continent.

AU Agencies dealing with Humanitarian Issues

The African Humanitarian Agency (AUHA), which is to be 'anchored on regional and national mechanisms and funded with Africa's own resources' is to be established pursuant to Decision Assembly/AU/Dec.604 (XXVI) of 30 January 2016. Once operationalised, the

²⁵ For further analysis on the extent of prevalence of attacks against medical personnel and facilities in Africa, see Amani Africa's 'Insights on the PSC' on Protection of Medical Personnel and Facilities in Armed Conflicts, 05 November 2021, available at: <https://bit.ly/3US-fN4I>

AUHA is expected to play a critical role in effectively coordinating responses to humanitarian emergencies in the continent, through enhancing coordination among relevant actors including various RECs/RMs. Indicating the criticality of IHL norms for the operation of AUHA, the Draft Statutes under section 5.3, specify that the functions of the Agency including in the areas of advocacy, coordination and collaboration with relevant actors shall leverage on IHL.

Other relevant AU institutions and agencies which also play fundamental role in preventing humanitarian disasters in the continent and which would be essential for collaborated response to Africa's often complex and overlapping humanitarian emergencies include the Africa Centres for Disease Control (Africa CDC), Africa Risk Capacity (ARC) and Special Emergency Assistance Fund (SEAF). While these institutions may not have a direct link with IHL, compliance with IHL standards is essential at all levels of undertaking their activities and implementing their mandates, especially in humanitarian settings (protection of health services, humanitarian workers).

Apart from these, AU treaty bodies 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) also play a critical role in advancing IHL. The ACHPR has for instance articulated in its General Comments and specific cases, the obligation of member States to respect applicable rules of human rights law and IHL.²⁶ Similarly, ACERWC's General Comment on Article 22 of the African Charter on the Rights and Welfare of the Child – which deals with protection of children affected by armed conflicts – provides guidance on the prevention of violation of children's rights in conflict settings including elaboration on the nexus between IHL and human rights law in the protection of children in conflict situations.²⁷ The African Commission on Nuclear Energy (AFCON) which oversees implementation of the African Nuclear Weapon Free-Zone Treaty (Pelindaba Treaty) is also an important AU organ for ensuring nuclear non-proliferation and disarmament,

²⁶

See for example, ACHPR, General Comment No. 3 on the African Charter on Human and Peoples' Rights: The Right to Life (Article 4) para. 14, November 2015 and ACHPR, Communication 227/99, Democratic Republic of Congo v. Burundi, Rwanda and Uganda, May 2003.

²⁷

ACERWC, General Comment on Article 22 of the African Charter on the Rights and Welfare of the Child, September 2020.

an integral part of restrictions on the use of certain means and methods of warfare under IHL.

Another AU agency relevant for the advancement of IHL is the AU Commission on International Law (AUCIL). As envisaged under Article 4 of the AUCIL Statute, the Commission's main activities aim to extend the codification and progressive development of international law in Africa, with particular attention to the laws of the AU; revision of existing treaties and identification of areas in which new treaties are required; and promotion of teaching, study, publication and dissemination of literature on international law. Within this broad mandate, the AUCIL is in a position not only to promote knowledge of AU and international treaties and norms on IHL, but also to propose revision of IHL norms as well as adoption of new rules in order to more effectively respond to emerging threats.

Specialised AU agencies and institutions such as the African Centre for the Study and Research on Terrorism (ACSRT) and AU Mechanism for Police Cooperation (AFRIPOL) are also important for the furtherance of IHL. Within its function as a research centre on matters relating to prevention and combating of terrorism and violent extremism, the works of the ACSRT are very essential to closely examine trends in IHL violation and to identify best approaches to advance implementation of the law, particularly in settings involving counterterrorism operations. AFRIPOL on its part facilitates police cooperation among member States based on fundamental norms and principles recognised in the Constitutive Act, and other relevant international instruments. Within this framework, AFRIPOL's activities significantly contribute to promoting IHL implementation.

AU Partnerships for Integration of IHL

Through partnerships with key actors on IHL such as the ICRC, the AU has also made significant strides in the integration of IHL in its peace and security architecture. Similarly, through the AU's partnership with other stakeholders such as various offices of the United Nations (UN) including the Office of the United Nations High Commissioner for Human Rights (OHCHR) and United Nations Office to the African Union (UNOAU), the European Union (EU), Norwegian Refugee Council (NRC) to mention a few the AU has achieved major milestones in mainstreaming IHL

and IHRL standards in AU PSOs. This has essentially taken the form of provision of technical guidance and advice, sharing of best practices and trainings for AU PSOs – particularly with a focus on mainstreaming the AU Compliance Framework on IHL within the various PSOs – and in the long term, working towards the full operationalisation of the ASF. Indeed, more recently, the AU in collaboration with the OHCHR and the EU have launched a tripartite partnership which seeks to reinforce and operationalize the AU's compliance and accountability framework with an aim to ensure compliance with IHL, IHRL and standards of conduct and discipline by AU PSOs, but also within the organs of the AU.

The ICRC also continues to support the AU in integrating and operationalizing IHL over the years. Notably, the ICRC has seconded a legal advisor to the Peace Support Operations Division (PSOD) since 2009 to support in the normative and policy development, as well as to systematically mainstream IHL and IHRL obligations into relevant AU guiding documents and largely in its compliance framework for PSOs.

Additionally, as part of the efforts to strengthen the integration of IHL, ICRC and the AU have jointly organised five successive roundtables on the operationalization of the Common Article 1 of the Geneva Conventions which articulates the obligation to ensure respect for IHL through amongst others, sharing best practices and challenges at AU PSOs with the overall objective to promote compliance with IHL, prevent IHL violations and ensure accountability in the context of multinational operations on the African continent. These roundtables have fed into the AU's efforts to enhance its comprehensive framework of compliance with IHL, human rights, conduct and discipline and standards in PSOs.

Further to this, the strong humanitarian diplomacy engagement between the two organisations has instituted an annual briefing by the ICRC President to the PSC on humanitarian and IHL concerns since 2007 which has resulted in the adoption of key decisions and recommendations by the PSC reflecting compliance with IHL in its outcome documents.

Indeed, among many other notable examples, the ICRC has played a critical role in the integration of IHL in the drafting and negotiation process to the adoption of the Kampala Convention in 2009 and

provided support to the development and adoption of the General Comment on Article 22 of the African Charter on the Rights and Welfare of the Child.

Also, worthy of mention is the support provided by the ICRC through its several military training programs²⁸ which are attended yearly by relevant members of PSOs, members of AU planning and operations units, as well as the support provided by the ICRC in relevant pre-deployment trainings on IHL/IHRL for AU PSO contingents through its Military and Police Advisers across the continent.

III. FROM INTEGRATION TO IMPLEMENTATION

Progress in Implementation

Integration of IHL norms has clearly been well advanced by the AU as the above section demonstrates. Not only has the organisation sought to promote IHL through the adoption of various policies and incorporation of IHL norms in relevant AU instruments, but it has also taken necessary steps to ensure that these normative standards are implemented. According to interviewed experts, the realisation of IHL norms on the ground can be drawn for instance from the shift observed in the way that soldiers and fighters in various armed conflicts across Africa treat detainees. Compared to how captured soldiers/fighters were treated in the past while in the hands of the enemy, there has been a positive change observed over more recent years in how belligerents accord minimum standards of treatment to captured and surrendering members of the opposing army.²⁹ Another development which indicates the success attained in the implementation of IHL is the establishment and use of court-martial/military courts by various AU Troop Contributing Countries to determine charges brought against members of their armed groups and those under their jurisdiction, for violations of military codes or for allegations of violations of IHL/IHRL.

²⁸ Such as SWIRMO – an annual event hosted by the ICRC in partnership with States' national defence forces, targeting senior military officers, ranking from colonel to brigadier-general with the central purpose of exchanging views and experiences on international legal framework applicable to modern military operations.

²⁹ ICRC, *IHL in Action: Respect for the Law on the Battlefield – Combatants and POWs*, available at: <https://bit.ly/3F7laWm>

For the most part, the implementation of IHL can be gauged from the experiences of various PSOs. On its part, the AU Commission continues to play a critical role in ensuring that IHL compliance is a fundamental component of the processes involved in the deployment of AU PSOs. This can be assessed from the reference made to IHL in various mission documents prepared by the Commission including Concepts of Operations (CONOPs) Rules of Engagement (ROE), Force commanders' directives and Memorandum of Understanding (MoU) with Police/Troop Contributing Countries (P/TCCs).

Further to making IHL an integral part of key mission documents, there have also been efforts made at institutionalising mechanisms that are critical for the implementation of IHL. As a preventive approach to avert violation of IHL standards, pre-deployment and in-mission training are delivered to AU PSO personnel. Despite their own limitations, these trainings have been essential in securing overall respect for IHL norms.

Another mechanism that continues to play a significant role is the process of selection, vetting and screening of PSO troops in order to ensure that deployed forces have a clean record when it comes to violations of IHL. A Draft Policy on the Selection and Screening of PSO Personnel has been developed and is currently undergoing review process. Where IHL violations do take place, response mechanisms exist within the various missions which typically involve investigation of alleged violations and the conduct of proceedings to determine responsibility of accused personnel/s. As TCCs retain exclusive criminal jurisdiction over the troops they contribute, it ultimately rests upon them to conduct investigations into alleged violations of IHL by their respective troops and to take appropriate measures to ensure accountability with regards to those violations that are verified through in-mission proceedings such as Board of Inquiry (BOI). To do this, TCCs may institute Court Martial proceedings against their accused troop member/s and determine the appropriate punishment in line with their relevant laws and regulations.

The Case of AMISOM³⁰

When it comes to the actualisation of IHL norms in the mission areas, the experiences of the AU Mission in Somalia (AMISOM), now renamed ATMIS, could be taken as a good example.³¹ A number of practices within the mission can be highlighted which have contributed towards the implementation of IHL norms. The development of AMISOM's Indirect Fire Policy³² and the resulting reduction of civilian harm is perhaps one of the most empirical experiences that can be mentioned in this regard. AMISOM's Indirect Fire Policy was developed in 2011 with the purpose of ensuring that the mission could better meet its obligations under IHL to reduce and minimise civilian casualties resulting from its operations. Developed around three basic steps – avoid, attribute, amend – the policy aimed to first ensure that AMISOM's uniformed personnel avoids as much as possible, the use of indirect fire which can cause civilian casualty, takes necessary steps to attribute responsibility where indirect fire is used and finally, make amends for civilian harm caused unintentionally by AMISOM personnel. To realise the objectives of the Indirect Fire Policy, AMISOM took concrete measures including the establishment of no fire zones (around protected places such as hospitals, religious institutions, residential areas, IDP camps and markets) and setting up restrictions on the modalities of use of specific weapons. As a result, the mission was able to record improvement in the number of civilian casualties reported from its operations.

Another exemplary practice within AMISOM which had enhanced compliance with IHL was the launch of 'Radio-In-A-box (RIAB)', a radio broadcasting initiative which had the main purpose of facilitating communication between AMISOM and the Somali population. In addition to serving as a tool for disseminating vital information to the population, the

³⁰ This mission has effectually transitioned to African Union Transition mission in Somalia (ATMIS) from the 1st of April 2022 pursuant to PSC 1068th meeting communique and UNSC resolution 2628, (<https://bit.ly/3UZ0nev>).

³¹ For more discussion on AMISOM's experience with IHL and IHRL implementation, see report submitted by Solomon A. Dersso to AU PSOD on 'Comprehensive Assessment of AU Mandated and Authorized Peace Support Operations (PSOs) Approaches to Compliance with Human Rights, International Humanitarian Law and Conduct and Discipline Standards: Towards a System Wide AU PSOs Compliance Framework'.

³² *Ibid.*

radio station was also used as a platform for individuals' reporting of IHL and IHRL violations. These reports were not made in vain. They would occasionally trigger investigations by the BOI, charged with the duty of investigating allegations of breach of AMISOM's Rules of Engagement.³³

AMISOM BOI proceedings and its ultimate findings have also had solid impacts. For example, allegations were made against AMISOM troops for causing civilian casualties on 10 August 2021, in Golweyn. The incident was brought to the attention of the BOI which found the implicated soldiers responsible for the unlawful acts.³⁴ Such a comprehensive mechanism which aims to ensure accountability for infractions against IHL not only boosts future compliance with the rules (having a deterrence effect), but also serves as a best practice that needs to be replicated by other AU PSOs.

The Civilian Casualty Tracking Analysis and Response Cell (CCTARC) is another significant tool developed by AMISOM for the purpose of tracking harm to civilians caused by AMISOM operations including death, injury, sexual exploitation and abuse as well as damage to property. This has also been a significant step that has enhanced compliance with IHL rules on protection of civilians and civilian objects.³⁵

Implementation Challenges

Although some encouraging success has been attained in translating IHL norms into action, the AU continues to be faced with challenges in its efforts to ensure implementation of IHL. Particularly having regard to the progress made in integrating the law at the normative level, its implementation is still falling behind. The following illustrates some of the main challenges hindering the effective implementation of IHL by the AU.

Limited implementation/ operationalisation of preventive measures: there is limitation in the availability of preventive tools that aim to avert violations of IHL. The nature of circumstances in a number of AU PSOs makes unintended and collateral

³³ *Ibid.*

³⁴ Joint AU-AMISOM Press Release (2021). Court Martial finds AMISOM Soldiers guilty of killing civilians in Golweyn. AMISOM PR/24/2021.

³⁵ *Supra* Note 26.

damage to civilian life and property an unfortunate reality. However, if maximum care is not taken, incidents of collateral damage will become systemic, defeating the core purpose of IHL which is to avoid and minimise as much as possible unintended civilian impact of hostilities. This magnifies the importance of investing more on preventive approaches such as extensive and all-inclusive IHL education, not only in the context of conflicts but also during peacetime. Other preventive measures include the identification of risk factors in the specific conflict setting, the designation of strategies of compliance tailored to limit the risks, the integration of IHL and HR expertise in the planning of combat operations and undertaking the conduct of such operations based on thorough planning and ensuring monitoring, oversight and reporting in the conduct of such operations as critical measures for more effective prevention.

Insufficient post-training evaluation and non-contextualised training: Although multiple pre-deployment trainings continue to be conducted for AU PSOs, experts observe the absence of effective and adequate pre-deployment evaluation to assess how well-trained and ready troops are to undertake their duties in a manner that adheres to IHL obligations. The absence of context-specific orientation in pre-deployment training is another limitation experts highlight. This basically relates to incorporating in pre-deployment training, cultural and religious considerations as well as ethical and moral codes adhered to in the area of deployment, and which could be relevant to implementation of IHL. Not only will sensitisation on these contexts be instrumental for enhancing the relationship between deployed troops and the community in their area of deployment, it can also assist in mobilising native values to the advancement of compliance with IHL among civilians and fighters alike.

Political sensitivities in pre-deployment procedures: the political nature of the selection, vetting and screening process of PSO troops is another area of challenge. The practice in various missions has been for vetting to be done at the national/TCC level, while selection and screening is conducted by the AU (or UN), which is at times difficult as it involves review of personnel recommended by TCCs. The absence of reliability and verifiability of existing databases at TCC/PCC level on IHL violations adds to this challenge.

Limitations in in-mission investigative capacity:

investigations and BOI proceedings have also had their own shortcomings. First, there is the issue of limited resources. Although ideally meant to undertake administrative tasks, BOIs in AU missions have been extended to also carrying out investigations of violations of IHL and IHRL. This was the case for instance with the BOI of AMISOM. Second, there is limited coordination between the AU, host Country and TCCs in the conduct of investigations. There is for instance no clear mechanism for TCCs to report back to the AU on measures taken against member/s of their troops for violations committed in mission area even though the obligation to do so is well enshrined in bilateral agreements between the AU and TCC as well as established in policies of the AU for PSOs. This creates accountability gap in the reporting and follow up of cases of misconduct. The lack of adequate tools and structures for conducting effective investigations – particularly tools relevant for addressing language barriers – the absence of timely reporting of violations, and reluctance of victims to come forward due to fear of victimisation are also challenges faced in investigation of violations of IHL. Moreover, the existing in-mission approaches for accountability do face challenges with respect to making witnesses and victims available at Court Martials of TCCs.

Budgetary limitations: a major challenge which is in one way or another related to all other challenges faced in the implementation of IHL is the lack of sufficient resource allocation to operationalise the various tools developed for the realisation of compliance. As observed above for instance, in AU missions, mechanisms such as BOI and investigations which aim to ensure implementation of IHL standards are ineffective due to inadequacy of resources. Despite the development of remedial approaches by missions such as AMISOM which aim to redress harms done to civilians, such mechanisms have also failed to be fully impactful due to the lack of funds to compensate victims of violations.

Limited capacity at AU Commission level: the shortage of financial, material and human resources at the AU Commission level has also been a major factor constraining implementation of norms and frameworks on IHL. For instance, many policy documents remain at the draft level due to capacity constraints faced in the necessary review process. Similarly, the implementation of adopted policies lacks the commitment of necessary human and

material resources as can be exemplified in the absence of sufficient experts to develop curricula and facilitate training for AU PSOs on the various policies integrating IHL norms.

Lack of coordination in the implementation of the IHL Compliance Framework: while it appears sufficiently clear which department is saddled with the responsibility of development of the AU compliance framework, there is however no sufficient clarity on who/which specific department of the AU Commission undertakes a specific task in the process of implementing the Compliance Framework. For instance, despite recently being charged with the role of investigating all misconducts including those committed in AU PSOs, the Office of Internal Oversight appears to have very limited involvement in the conduct of investigations of violations committed by personnel of AU PSOs.

Limited coordination among various actors involved in AU PSOs: there is also a low level of coordination between the AU and other relevant actors in ensuring the implementation of IHL in AU PSOs. The implementation of IHL, particularly in the context of PSOs, depends not only on the AU, but also the UN, RECs/RMs and other relevant partners that contribute either through deployment of troops or through provision of technical support and the mechanisms they put in place to ensure that their peace support activities in the continent adhere to IHL norms and standards. There is hence the need to strengthen coordination among the different actors involved in AU PSOs to ensure coherence in approaches and mechanisms deployed by each to secure compliance with IHL.

Absence of clarity on implementation of AU IHL frameworks in PSOs mandated by RECs/RMs and ad-hoc coalitions: although there seems to be agreement that security arrangements deployed by RECs/RMs such as the Southern African Development Community (SADC) Mission in Mozambique (SAMIM), the East African community regional force in Democratic Republic of Congo (EACRF- DRC) and ad-hoc coalitions such as the Multinational Joint Task Force (MNJTF) against the Boko Haram and the G5 Sahel Joint Force are expected to adhere to AU's purposes and principles as set out in its Constitutive Act as well as binding international law obligations on IHL, there is lack of clarity on how AU compliance and

accountability frameworks, including with relation to IHL are applied by these arrangements and coalitions.

Insufficient engagement of member States at political level: enforcement of IHL ultimately rests upon individual member States. Despite the fact that most African countries are signatory to the Geneva Conventions and its Additional Protocols, and thus already have an obligation to implement same, without the necessary buy-in among policymakers and politicians of relevant member States on the significance of IHL, any progress obtained by the AU will be stunted. The current AU-member State engagement on IHL seems to be largely limited to the military/security sector of member States that contribute troops to AU PSOs. This leaves out much-needed engagement with policymakers and high-level officials on the values of promoting and enforcing IHL. In a context where there is little buy-in among politicians regarding the importance of implementing IHL rules, the effectiveness of humanitarian diplomacy will be highly limited.

Inadequate consideration of IHL compliance in planning and mandate formulation of AU PSOs: much of IHL and IHRL compliance in AU PSOs has been done reactively, in response to emerging challenges on the ground, rather than being considered in the planning and mandate formulation stages of operations. For instance, the absence of relevant policy and operational instruments as well as guidelines and structures on IHL have constrained elaboration of guidance on IHL compliance in the deployment of missions such as AMISOM and AU Mission to Sudan (AMIS).³⁶ Although with the development of the Compliance Framework much of this challenge can be addressed, there is still a need to ensure that the framework is well mainstreamed and incorporated in the mandate formulation of future PSOs led by the AU.

³⁶ Report submitted by Solomon A. Dersso to AU PSOD on 'Comprehensive Assessment of AU Mandated and Authorized Peace Support Operations (PSOs) Approaches to Compliance with Human Rights, International Humanitarian Law and Conduct and Discipline Standards: Towards a System Wide AU PSOs Compliance Framework', Para. 47-63.

IV. CONCLUSION AND RECOMMENDATIONS

It is evident from the nature of conflicts today that IHL remains as pertinent than ever. Armed conflicts no longer follow traditional trends; armed rebel groups are increasingly adopting means and methods of warfare which are tilting the balance against States and the nature of conflicts is growingly becoming extremely violent, asymmetric and complex. Contemporary conflicts are fought not just between two disputing parties but through the involvement of multiple proxies, allies and partnerships. Added to the use of growingly sophisticated weapons, such multiplication of parties complicates matters and presents grave risks to civilians. Not only does such a context impose grave difficulty for PSOs to discharge their duties effectively, it also largely constrains negotiations for humanitarian access and leaves millions of civilians to suffer the impacts of conflicts.³⁷ Managing such situations in the absence of basic rules and standards prescribed under IHL would result in absolute devastation. In this context, neutral, impartial and independent organs such as the ICRC play a critical role in deploying humanitarian diplomacy to negotiate access to civilian populations and engage both sides of conflicts to respect and comply with IHL norms.

The AU and member States have already made considerable strides in promoting and advancing IHL through the development of various normative frameworks. However, implementing the law continues to be a major challenge as has been captured in the above section. Informed by the identified challenges, the following are proposed as key policy recommendations to enhance implementation of IHL by the AU, member States and the RECs/RMs:

Member States:

- Basic education on IHL which targets not only members of States' armed forces but also a wider circle of society – such as secondary school or university level students who will assume various future responsibilities and leadership positions – is necessary to instil the values of IHL in communities.

³⁷ For more analysis on emerging trends and concerns in armed conflicts in Africa, see Amani Africa, Major Peace and Security Issues in Africa on the 20th Anniversary of the African Union, Special Report No.11, March 2022, available at: <https://bit.ly/3Av1B8Y>

- Member States need to integrate basic IHL lessons in their curricula and the AU needs to encourage as well as support such efforts through technical and other relevant assistance, including expansion of the teaching of IHL/IHRL in academic institutions.
- Enhance domestication of IHL Instruments through necessary legislative measures to underpin doctrinal foundations of the national armed and security forces on compliance to IHL/IHRL. Strengthen the roles of national IHL Committees.
- Member States need to acknowledge the importance of political support for the implementation of the IHL Compliance Framework and do their parts by providing the necessary backing.
- Although there is already acceptance of IHL among AU member States demonstrated through the adoption, ratification and domestication of key international and regional instruments on IHL, there is still a need for continuous engagement with policymakers and high-level politicians to advance the implementation of the law. High awareness and recognition at the political level of how IHL can significantly contribute to managing conflicts on the ground will considerably increase its enforceability in the continent. Targeted training that aims to advance humanitarian diplomacy among State officials is also critical not only for ensuring the realisation of IHL but also to save millions of people from unnecessary suffering.

AU:

- To enhance implementation of IHL in AU PSOs, the AU needs to invest more on both the quality and quantity of its pre-deployment and in-mission training. It is also important to enhance pre-deployment evaluation mechanisms which can carefully examine the extent to which trained PSO personnel conceptualise and understand trainings on IHL compliance. Careful analysis of areas of deployment and contextualising of IHL training in line with applicable cultural and religious values in such areas should be taken into consideration in the planning and designing stages of training.
- The AU needs to formulate strategies to en-

hance its coordination with relevant partners such as the UN to bring coherence of mechanisms for compliance and accountability of PSOs.

- There is also a need to better define specific roles of offices within the AU Commission relevant for the implementation of the Compliance and Accountability Framework including the Office of Internal Oversight and Office of the Legal Counsel. In addition to clarifying the roles of relevant offices, it is also important to consolidate efforts and create better synergy among the various departments in order to enhance implementation of the Compliance and Accountability Framework.
- The AU, in collaboration with RECs/RMs and relevant partners, needs to design programmes and initiatives that aim to engage policymakers of member States, including through sensitisation and training campaigns, on the virtues of enforcing IHL.
- There is need to enhance collaboration and coordination between various AU organs for better implementation of IHL norms in Africa. The PSC in particular needs to enhance its engagement with various AU agencies such as the Africa CDC in order to explore how IHL could be better integrated into intersecting concerns such as health and humanitarian crisis. Better coordination between the PSC and the ACHPR as well as the ACERWC is also essential to enhance the implementation of IHL norms.
- The AU needs to prioritise the finalisation of policies and guidelines which are still in the process of drafting and review including the Policy on the Selection and Screening of PSO Personnel and the Guidelines for PoC in PSOs, which are instrumental for a comprehensive and proper implementation of existing IHL norms.
- In addition to the development of relevant policies and mainstreaming of IHL into various AU instruments, there is a need for consolidating the various policies and operational guidelines into an overarching AU document on compliance with IHL and IHRL as well as conduct and discipline. One instructive example that offers inspiration is the 1999 UN Secretary General's Bulletin on IHL Observance by UN Forces ([ST/SGB/1999/13](#)).

RECs/RMs:

- In collaboration with the AU Commission, RECs/RMs as well as ad-hoc coalitions and security arrangements in the continent need to work on establishing tools which present better clarity on adherence with the AU IHL Compliance Framework by REC/RM-mandated PSOs. Further to that, RECs/RMs and ad-hoc arrangements need to exercise more ownership of the various AU IHL policies as they represent the consensus of member States, and find ways to mainstream them into relevant documents operationalising their respective PSOs and security arrangements.

AU, RECs/RMs and Member States:

- A critical concern which rarely receives attention is the importance of psychosocial and psychological support to PSO troops. The nature of armed conflicts and the suffering involved entails a serious impact on the mental well-being of troops deployed in such contexts. If these impacts are not timely addressed, they could become a hindrance to the effective implementation of IHL. The AU, TCCs and relevant RECs/RMs should therefore invest in the provision of psychological support to PSO troops.
- To resolve challenges related to investigation and reporting in AU PSOs, both AU and TCCs need to commit the necessary resources and establish clear mechanisms for TCCs to report back to the AU on issues such as sanctions taken against IHL violations by their troops. The AU should continue strengthening the establishment of in-mission Court Martials with dedicated TCC units in order to ensure due process for victims of IHL violations.
- Resource allocation is key for the implementation of existing norms and policies on IHL. The AU, RECs/RMs as well as member States should ensure sufficient funds and human capacity is available for the effective realisation of existing frameworks on the law. This involves among others, taking steps to ensure the implementation of pledges made to mobilise resources for humanitarian action in the continent, including those made at the recent 15th Extraordinary AU Humanitarian Summit and Pledging Conference.

- Enhanced engagement with partners who champion issues of compliance and accountability will considerably contribute towards better implementation of IHL norms. Hence, the AU, RECs/RMs and member States should consider expanding and strengthening their engagement with international partners who could provide further support for the implementation of IHL policies.

ANNEX – I

PSC Decisions Database on Humanitarian Issues			
Date	Session	Level	Outcome Document
09-Nov-07	99th	Ambassadorial	Press Statement
16-Dec-08	161st	Ambassadorial	Press Statement
28-Apr-11	276th	Ambassadorial	Press Statement
18-Oct-12	338th	Ambassadorial	Press Statement
25-Nov-14	469th	Ambassadorial	Press Statement
03-Nov-15	554th	Ambassadorial	Communiqué
16-Feb-16	576th	Ambassadorial	Press Statement
14-Apr-16	590th	Ambassadorial	Communiqué
09-Aug-16	615th	Ambassadorial	Press Statement
18-Oct-16	634th	Ambassadorial	Press Statement
23-Feb-17	661st	Ministerial	Communiqué
21-Jun-17	695th	Ambassadorial	Press Statement
21-Jul-17	704th	Ambassadorial	Press Statement
18-Dec-17	740th	Ambassadorial	Press Statement
09-Apr-18	762nd	Ambassadorial	Press Statement
11-May-18	771st	Ambassadorial	Communiqué
22-May-18	775th	Ambassadorial	Press Statement
27-Jun-18	782nd	Ambassadorial	Communiqué
29-Nov-18	813th	Ambassadorial	Communiqué
17-Jul-19	859th	Ambassadorial	Press Statement
11-Sep-19	879th	Ambassadorial	Communiqué
16-Jan-20	904th	Ambassadorial	Press Statement
28-Apr-20	921st	Ambassadorial	Communiqué
02-Jun-20	929th	Ambassadorial	Communiqué
08-Jun-21	1002nd	Ambassadorial	Press Statement
24-Aug-21	1025th	Ambassadorial	Press Statement
05-Nov-21	1044th	Ambassadorial	Communiqué
04-May-22	1081st	Ambassadorial	Communiqué
09-May-22	1083rd	Ambassadorial	Communiqué

ANNEX – II

Ratification of Basic IHL Instruments in Africa				
Country	GC I-IV	AP-I	AP-II	AP-III
Algeria	20.06.1960	16.08.1989		
Angola	20.09.1984	20.09.1984	07.10.2019	
Benin	14.12.1961	28.05.1986	28.05.1986	
Botswana	29.03.1968	23.05.1979	23.05.1979	
Burkina Faso	07.11.1961	20.10.1987	20.10.1987	07.10.2016
Burundi	27.12.1971	10.06.1993	10.06.1993	
Cabo Verde	11.05.1984	16.03.1995	16.03.1995	
Cameroon	16.09.1963	16.03.1984	16.03.1984	23.09.2021
Central African Republic (CAR)	01.08.1966	17.07.1984	17.07.1984	
Chad	05.08.1970	17.01.1997	17.01.1997	
Comoros	21.11.1985	21.11.1985	21.11.1985	
Congo	04.02.1967	10.11.1983	10.11.1983	
Côte d'Ivoire	28.12.1961	20.09.1989	20.09.1989	
Democratic Republic of the Congo (DRC)	24.02.1961	03.06.1982	12.12.2002	
Djibouti	06.03.1978	08.04.1991	08.04.1991	
Egypt	10.11.1952	09.10.1992	09.10.1992	
Equatorial Guinea	24.07.1986	24.07.1986	24.07.1986	
Eritrea	14.08.2000			
Eswatini	28.06.1973	02.11.1995	02.11.1995	
Ethiopia	02.10.1969	08.04.1994	08.04.1994	
Gabon	26.02.1965	08.04.1980	08.04.1980	
Gambia	20.10.1966	12.01.1989	12.01.1989	
Ghana	02.08.1958	28.02.1978	28.02.1978	
Guinea	11.07.1984	11.07.1984	11.07.1984	
Guinea-Bissau	21.02.1974	21.10.1986	21.10.1986	
Kenya	20.09.1966	23.02.1999	23.02.1999	28.10.2013
Lesotho	20.05.1968	20.05.1994	20.05.1994	06.01.2020
Liberia	29.03.1954	30.06.1988	30.06.1988	
Libya	22.05.1956	07.06.1978	07.06.1978	
Madagascar	18.07.1963	08.05.1992	08.05.1992	10.07.2018
Malawi	05.01.1968	07.10.1991	07.10.1991	
Mali	24.05.1965	08.02.1989	08.02.1989	
Mauritania	30.10.1962	14.03.1980	14.03.1980	
Mauritius	18.08.1970	22.03.1982	22.03.1982	
Morocco	26.07.1956	03.06.2011	03.06.2011	
Mozambique	14.03.1983	14.03.1983	12.11.2002	
Namibia	22.08.1991	17.06.1994	17.06.1994	
Niger	21.04.1964	08.06.1979	08.06.1979	
Nigeria	20.06.1961	10.10.1988	10.10.1988	

Rwanda	05.05.1964	19.11.1984	19.11.1984	
Sao Tome and Principe	21.05.1976	05.07.1996	05.07.1996	
Senegal	18.05.1963	07.05.1985	07.05.1985	
Sierra Leone	10.06.1965	21.10.1986	21.10.1986	
Somalia	12.07.1962			
South Africa	31.03.1952	21.11.1995	21.11.1995	
South Sudan	25.01.2013	25.01.2013	25.01.2013	
Sudan	23.09.1957	07.03.2006	13.07.2006	
Tanzania	12.12.1962	15.02.1983	15.02.1983	
Togo	06.01.1962	21.06.1984	21.06.1984	
Tunisia	04.05.1957	09.08.1979	09.08.1979	
Uganda	18.05.1964	13.03.1991	13.03.1991	21.05.2008
Zambia	19.10.1966	04.05.1995	04.05.1995	
Zimbabwe	07.03.1983	19.10.1992	19.10.1992	



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