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■ Special focus: 27th AU Summit, Kigali

African leaders meeting in Kigali attempted to find a solution to **the conflict in South Sudan**.

Thirty states abstained in the final round of **voting for a new AU Commission** chairperson, resulting in a deadlock.

African leaders unanimously accepted a new proposal to **make the AU self-funded**.

Heads of state reiterated their call for **the International Criminal Court** to withdraw charges against Sudan's Omar al-Bashir.

■ Situation Analysis

The AU is increasingly concerned about **the situation in Libya** and wants to start a national dialogue to foster reconciliation.

■ PSC Interview

The AU facilitator in the DRC, **Edem Kodjo**, tells the *PSC Report* that everything is ready for a national dialogue to start soon.



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“The South Sudanese president refused for such a force to be deployed

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On the Agenda

The quest for incentives to make peace in South Sudan

The renewed fighting in South Sudan was at the top of the peace and security agenda for heads of state at the 27th AU summit in Kigali. The summit endorsed a decision to strengthen the United Nations Mission in South Sudan (UNMISS) to increase its effectiveness faced with the new realities on the ground. An intervention brigade similar to the United Nations' Force Intervention Brigade in the Democratic Republic of the Congo (DRC) was also mooted at the summit, but the government of South Sudan rejected such an option.

Barely three months after the transitional government of national unity came into effect in South Sudan, following a peace agreement in August 2015, fighting erupted on 7 July between the ruling Sudanese People's Liberation Movement (SPLM) and the SPLM-IO (SPLM In Opposition) in the South Sudanese capital Juba. After several days of fighting, in which several hundred people died, most of the SPLM-IO troops left Juba. According to reports, SPLM-IO leader Riek Machar went into hiding in an unknown location outside the capital. Apparently he will only return if an international force is deployed to protect him and his troops.

The renewed fighting took place amid persistent disagreements within the transitional government

This option was opposed by President Salva Kiir. Kiir appointed Minister of Mining Taban Deng as vice president in the absence of Machar, who was yet again stripped of this title. Machar was also sacked as vice-president in mid-2013 – one of the reasons for the outbreak of war in South Sudan.

The renewed fighting that ended the fragile ceasefire took place amid persistent disagreements within the transitional government on many issues, including the disputed decision by Kiir's government to divide the country into 28 new states.

Call for an Africa-led brigade to protect civilians

Following the latest outbreak of violence, the Intergovernmental Authority on Development's (IGAD) Council of Ministers convened an extraordinary meeting on 11 July. In its communiqué the body called for 'an immediate ceasefire; the re-opening of the Juba international airport [which is] to be protected by UNMISS; the immediate return of all armed forces and weapons to their barracks; [the] opening of a humanitarian corridor; an urgent revision of the UNMISS mandate to establish an intervention brigade and an increase in

PSC Chairperson

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Current members of the PSC

Algeria, Botswana, Burundi, Chad, Egypt, Kenya, Niger, Nigeria, Republic of Congo, Rwanda, South Africa, Sierra Leone, Togo, Uganda, Zambia

the number of troops from the region to inter alia secure Juba; ensure the accountability of those responsible for the breakdown of law and order; [and the] immediate implementation of the security arrangements as enshrined in the ARCSS [the Agreement on the Resolution of the Conflict in the Republic of South Sudan]’.

There is no mention of an African-led brigade in the IGAD-Plus communiqué

On the same date, the PSC endorsed this decision, including the recommendation to revise UNMISS’s mandate. However, its endorsement was nuanced in that it called for the establishment of ‘an African-led intervention and for increasing the number of troops to inter alia provide protection for civilians, security in Juba and in the whole country’.

On the eve of the AU Assembly in Kigali, IGAD convened a meeting that included its members as well as UN Secretary General Ban Ki-moon, Chad’s President Idriss Déby as chair of the AU, Nigeria’s Vice-President Osinbajo Gcon, Rwandan President Paul Kagame, South African President Jacob Zuma, AU Commission Chairperson Nkosazana Dlamini Zuma, AU High Representative for South Sudan Alpha Oumar Konare, and Chairperson of the Joint Monitoring and Evaluation Commission for South Sudan Festus Mogae.

Following this meeting in Kigali a joint communiqué of IGAD-Plus was released. It called upon ‘the UN Security Council to extend the mission of UNMISS with a revised mandate to inter alia serve as a protection force to separate the warring parties, protect major installations and the civilian population, as well as the pacification of Juba’.

The difference between the two decisions – that of IGAD-Plus and of the IGAD Council of Ministers on 11 July – reflected the fact that the former took into account Kiir’s opposition to an intervention brigade. There is no mention in the IGAD-Plus communiqué of such an African-led brigade.

To complicate things, Peace and Security Commissioner Smaïl Chergui said during a press conference following the summit in Kigali that the AU wished to send an intervention brigade to South Sudan that was similar to the African-led brigade deployed in the DRC in 2013. At

the time of writing, the South Sudanese president was still refusing to allow the deployment of such a force despite pleas by his closest ally in the region, Ugandan President Yoweri Museveni.

Clearly, while the various communiqués on South Sudan seem to be headed in the same direction, there are subtle differences regarding the issue of an African-led brigade to be deployed in Juba and the strengthening of UNMISS. There are also differences between the PSC and IGAD-Plus on the issue of accountability.

More offensive troops in UNMISS could improve the protection of civilians

The option set out by IGAD-Plus and adopted by the AU Assembly at the Kigali summit, which prioritises strengthening UNMISS and extending its mandate, has the advantage that such a move does not require the explicit consent of the government of South Sudan. It rather focuses on adapting the current mission to the deteriorating security situation.

Strengthening UNMISS does not require the explicit consent of the government

The option of an intervention brigade favoured by the AU and IGAD in its first communiqué of 11 July (and mooted by Chergui at the summit) is likely to delay the protection of civilians because of the government’s opposition. It is also unlikely that the PSC would allow such a deployment without the consent of the concerned state after its failed experience in Burundi in early 2016.

Moreover, it is questionable whether the deployment of an intervention force based on the model of the DRC brigade is appropriate in the current situation. The Force Intervention Brigade in the DRC, composed of troops from South Africa, Tanzania and Malawi, has ‘the responsibility of neutralizing armed groups ... and the objective of contributing to reducing the threat posed by armed groups to state authority and civilian security in eastern DRC and to make space for stabilization activities’.

To carry out this mandate it has the support of the host government and of neighbouring states. An intervention brigade in South Sudan would be faced with a very different situation characterised by a sharp division between the warring parties, which include the army of

the host state. In this configuration, the main challenge would be to form a buffer without ending up at war with both parties.

In both options the challenge lies in matching an already robust mandate with adequate capabilities. One of the weaknesses of UNMISS is the reluctance of many troop-contributing countries to allow their troops to engage in offensive action related to the protection of civilians (POC). Additional troops from African states willing to engage pro-actively would improve the ability of UNMISS to protect civilians. A surplus of troops would allow UNMISS not only to assure the security of POC sites but also to extend this protection outside these facilities.

At the same time, the limitations often imposed on UNMISS's mobility by the government will also have to be addressed.

Sovereignty vs the responsibility to protect

Despite the differences between them, both options set out above would face the same challenges regarding POC. While this is already a major part of UNMISS's mandate, it does not have the resources to do it: there is a lack of helicopters, troops are unwilling to engage in risky activities and there are internal disagreements regarding the interpretation of the mandate. The main challenge is how to protect civilians when both the government and the opposition constitute a threat to their well-being. There is thus a tension between the principles of sovereignty and the responsibility to protect.

How can civilians be protected when both the government and the opposition constitute a threat to their well-being?

Given the current divide within the UN Security Council (UNSC) on this issue, it is uncertain whether priority will be given to POC through a strengthened UNMISS dedicated to peace enforcement if it clashes with the sovereignty of the host state.

Furthermore, the emphasis placed by IGAD on the 'protection of major installations', the 'securitization' or 'pacification' of Juba and the protection of civilians could give the impression that the international community intends to take over the maintenance of law and order in South Sudan. Such an evolution would require unity inside the PSC and the will to overcome the potential divisions inside the UNSC.

IGAD's call for the pacification of Juba raises many questions concerning its implementation. It would clearly require a certain amount of political leverage with Kiir for him to agree to this. The question can also be asked whether the withdrawal of both armed forces facing off in Juba would not simply export the violence to other parts of the country without tackling the root causes of the current context.

August 2015

THE SIGNING OF THE AGREEMENT ON
THE RESOLUTION OF THE CONFLICT
IN THE REPUBLIC OF SOUTH SUDAN

Lack of incentives to make peace

The reaction to the renewed fighting in South Sudan has so far focused on POC and the return to law and order. The attacks on civilians and the disruption of order are, however, consequences of both parties' lack of commitment to peace. Therefore, while these issues are critical, this focus draws the attention away from the political process, addressing the root causes of the problem and developing a new military approach.

The question remains, what incentives can the international community (the AU, IGAD and the UN) employ to push the parties to implement the peace agreement?

Placing an arms embargo on South Sudan has often been mentioned as a possible avenue to reducing the conflict in the country. However, this option has been ruled out by some permanent members of the UNSC and by regional actors.

What incentives can the international community use to push the parties to implement the peace agreement?

During his press conference in Kigali, Chergui also ruled out sanctions and an embargo against the belligerents, stating that 'we are still hoping that it doesn't reach this level. We are still hoping that the ceasefire holds.' So far the PSC has not considered sanctions against South Sudan because of a general reluctance among member states to take punitive measures.

Lack of measures to ensure accountability

The first IGAD communiqué following its 11 July meeting calls for 'accountability of those responsible for the breakdown of law and order'. This was endorsed by

the IGAD-Plus heads of state and government in Kigali, who called for 'an immediate investigation of the recent violence in Juba and elsewhere in South Sudan with a view to ensuring accountability of those responsible [for] the breakdown of law and order'. No framework under which this investigation would take place was, however, mentioned.

Neither of the communiqués mentioned establishing a hybrid court to judge those alleged to have violated international humanitarian law

Also, neither of the communiqués mentioned the August 2015 peace agreement's call for the establishment of a hybrid court to judge those responsible for violations of international humanitarian law.

The AU – which is supposed to assist South Sudan in creating this hybrid court – also failed to mention it. Nor was it mentioned in the PSC communiqué of 11 July. Nowhere is the issue of accountability addressed. This silence about the hybrid court follows a joint call by Kiir and Machar not to establish such a court but to prioritise instead a truth and reconciliation commission.

The question remains how to prevent further atrocities by holding those responsible accountable when there is uncertainty around the mechanisms meant to implement it. There is an impression that stakeholders consistently raise the issue of accountability without putting anything in place to make it a reality.

In conclusion, while the AU, IGAD and the UN could help civilians by improving security, the current approach by the international community lacks any incentives to address the political causes behind the crisis in South Sudan.



On the Agenda

Elections for a new AU Commission chairperson shaped by abstentions and regional divisions

The main item on the agenda of the 27th AU summit was the election of a new AU Commission (AUC) by the AU Assembly and Executive Council. However, none of the candidates for the position of AUC chairperson managed to achieve a two-thirds majority and the elections were postponed to January 2017.

Electing a new AUC chairperson was never going to be an easy task. Even before the election itself, rumours circulated that heads of state were not happy with the candidates on the table and would like a postponement to introduce new names. At the start of the summit, three candidates for the position of chairperson had met the deadline for candidatures: Specioza Wandira Kazibwe, former executive vice president of Uganda, Agapito Mba Mokuy, minister of foreign affairs of Equatorial Guinea, and Pelonomi Venson-Moitai, minister of foreign affairs of Botswana.

Rumours circulated that heads of state were not happy with the candidates on the table

ECOWAS argues for a postponement

On the first day of the summit, the Economic Community of West African States (ECOWAS) introduced a request for a postponement in order to allow new candidates to take part in the race. Senegal stated that it would like to introduce Abdoulaye Bathily, special representative of the UN secretary-general for Central Africa, as a candidate. However, ECOWAS's request was rejected both during the meeting of the Permanent Representatives Committee and during the meeting of heads of state and government because there were no legal grounds for such a postponement.

Venson-Moitai fails to obtain two-thirds of the vote

The election finally took place on 18 July and was suspended after seven rounds. Kazibwe was eliminated in the third round, obtaining the fewest votes (11), behind Mokuy (12) and Venson-Moitai (16). The candidate from Equatorial Guinea was eliminated after the next three rounds, obtaining 16 votes against 17 votes for the candidate from Botswana. In the final round Venson-Moitai obtained only 23 votes, falling short of the two-thirds of the 53 votes necessary to be elected chairperson. (The only state that did not vote was Burundi, which left the summit on the eve of the vote. This was reportedly in

January 2017

ELECTIONS FOR THE NEW
AUC CHAIRPERSON WERE
POSTPONED TO THIS DATE

protest over the lack of progress in solving the issue of Burundian refugees in Rwanda.)

Abstentions shape the race

In the seventh and ultimate round of the election, 30 states abstained – the highest number of abstentions in the history of AUC elections. In the first three rounds the abstentions were around 15 and during the runoff they reached 20. In comparison, in July 2012, after the elimination of Jean Ping, despite the tensions only 17 countries abstained from the vote that resulted in the election of AUC Chairperson Nkosazana Dlamini Zuma.

The question can be asked why so many states abstained this time round. Firstly, there was clearly dissatisfaction with the stature of the candidates for chairperson. Once ECOWAS's request to postpone the polls was rejected, most West African states abstained during the first round and maintained this stance throughout the process. Their aim was to obtain a postponement of the elections in order to allow more experienced candidates to run.

Many states were opposed to a chairperson from Botswana since it disregarded calls by the AU not to act on arrest warrants issued by the ICC

Political divide

Another motive for the abstentions, especially after the elimination of Kazibwe, is the political divisions on the continent. Many states were opposed to a chairperson from Botswana because of its disregard for calls by the AU not to act on arrest warrants issued by the International Criminal Court (ICC). Therefore, the elimination of the Ugandan candidate helped to increase abstentions and votes for Mokuy. Venson-Moitai only gained a few votes from the first three rounds to the runoff.

Regional polarisation

The other notable characteristic of the election was the sharp regional divide, which took precedence over the traditional linguistic rift in AU elections. The respective scores of the candidates, as well as the abstentions, more or less reflect the number of states in each region.

During the first round there were 16 abstentions, while West Africa counts 15 states. The Southern region has 10 member states and Venson-Moitai earned 16 votes. Eastern Africa has 14 members and Kazibwe got 11 votes, while Mokuy got 12 votes with Central Africa having nine states.

From this perspective, no candidate was able to expand significantly his/her support outside his/her region of origin. After the candidate representing a region was eliminated, most of those states abstained instead of supporting one of the remaining contenders.

A comparison with the scores obtained by the two candidates in 2012 highlights the intensity of regional solidarity in 2016.

30

ABSTENTIONS DURING THE
FINAL ROUND OF ELECTIONS

53

STATES VOTED IN THE ELECTIONS

In January 2012 the incumbent Ping obtained 28 votes in the first round, benefiting from votes from West Africa and many major states. In 2016 the candidate from Central Africa suffered from the abstentions in West Africa. Venson-Moitai's relatively low score could also be explained by the fact that there was a candidate from Eastern Africa. The combined votes for Kazibwe (10) and Venson-Moitai (16) almost correspond with those for Dlamini Zuma in 2012, when she got 23 votes in the first round. That means that the bloc that elected Dlamini Zuma, consisting mainly of Southern and Eastern African states, no longer functioned in this election. Regions stuck with their candidates or abstained.

The elections were postponed to the next summit in Addis Ababa in late January 2017

No consensus around a second term for SADC

Despite the absence of Botswana's President Ian Khama, in an election characterised by strong personal lobbying among heads of state Venson-Moitai managed to lead the race with the full support of her region. Yet there was not AU-wide consensus around a new term for a SADC national. It can also be said that in 2012 it was easier for South Africa to convince states not to show regional solidarity. In 2016, however, the candidates were all from small countries and mainly relied on support from their regions.

Three scenarios

Following the deadlock the elections were postponed

to the next summit in Addis Ababa in late January 2017. The mandate of the commission was also extended. Moreover, the heads of state and government agreed to reopen the process to allow new candidates to apply.

The challenge for the AU now is to agree on new candidates who can overcome the regional divisions. Because of the high number of abstentions, reaching a compromise among member states will remain challenging. States that voted for Venson-Moitai might feel frustrated with those that abstained, which then led to the postponement. It is not certain that these states will be open to compromise in January.

Three possible scenarios for the next election in January are:

- Continuity: The current candidates run again, along with a new candidate from Western Africa. They may then once again fail to overcome regional divisions, leading to a new deadlock. As a result the heads of state and government may agree to allow the incumbent chairperson to stay for another term while guaranteeing her right to step down before completing it.
- The technocratic option: All past candidates withdraw from the race. A candidate with a strong technocratic background, international experience and a less affirmed regional identity is elected to overcome the current political divide.
- Regional rotation: Northern Africa – which has never led the AUC – presents a contender who is elected because of the consensus around a candidacy from this region.

On the Agenda

A closed summit to move the AU forward?

At the AU summit, heads of state and government also discussed a number of issues that are crucial for the continent. While they did not manage to elect a new chairperson for the AUC, African leaders did unanimously accept a new proposal to make the AU self-funded.

The AU summit in Kigali differed from previous summits in that diplomats and representatives from civil society organisations were not permitted to attend the open sessions of the summit. According to the commission, observers who hold side meetings with the African delegates cause a distraction. Rwandan President Paul Kagame, the host of the summit, said this did not mean information would not be shared with outside parties when necessary. 'I am of the view that we should continue to use our summits to identify the right priorities and outcomes, decide the best way to achieve them, and be ready to do just that. We might then share our perspectives in an appropriate forum, where we regularly invite strategic partners and regions to meet Africa as a whole and deepen our cooperation,' he said.

Of the two bi-annual AU summits, the summit in January in Addis Ababa is expected to be used for engaging with partners, while the second one will be closed.

Diplomats and representatives from civil society organisations were not permitted to attend the open sessions of the summit

A 'historic' decision on financing the AU

One of the most important decisions of the summit was to move towards self-financing the AU – a long-term goal of the organisation and its outgoing chairperson Nkosazana Dlamini Zuma. A plan put forward by Donald Kaberuka, former head of the African Development Bank, to impose a new levy of 0.2% on all imports was unanimously accepted by heads of state. This would bring in \$1.2 billion to finance 100% of AU operations, 75% of programmes and 25% of peacekeeping operations.

There is some doubt whether the self-financing plan will become a reality by 2017, as indicated by the heads of state. However, if the AU does become self-funded over time it will have an important impact on several levels.

Firstly, the most important immediate impact is likely to be on AU peacekeeping. According to the Kaberuka plan, \$65 million will be requested from each region – also funded by the import levy. This is to be increased to \$80 million over time. If this were to materialise and add up to 25% of AU-



0.2%

LEVY TO BE IMPOSED ON ALL
IMPORTS TO FINANCE THE AU

led peacekeeping operations, it could secure United Nations (UN) funding from assessed contributions to make up the other 75% of the funding – the so-called Obama Initiative. There is increasing recognition within the UN that although the global organisation is primarily responsible for world peace, the AU has become its principal interlocutor when it comes to peacekeeping in Africa. If the plan works out, the AU would have predictable funding for operations such as the African Mission in Somalia (AMISOM), which has been struggling due to a decrease in European Union (EU) support. (At the summit an exit plan for AMISOM was announced with a deadline of 2018.)

The second impact would be on relations with donors. If the AU no longer depended on donor funding it would radically change the relationship with major donors such as the EU, individual European countries, the United

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States, the World Bank and China. Instead of the AU's being obliged to consult with donors on key decisions and invite them to meetings, it would become a 'partnership' in the real sense of the word between the AU and outside countries, regional blocs and institutions. Heads of state and the chairperson of the AUC have long hoped for more independence in decision-making.

Finally, securing predictable and adequate funding for the AU would have an impact on the commission itself. In the last few months the AUC has struggled to pay salaries and other expenses due to dwindling membership contributions. More funds are likely to boost morale and will allow the AUC to hire the expertise needed to ensure more efficiency. It can also invest in crucial projects such as its Leadership Academy, which could ensure high-quality human resources for the AUC over time.

At the summit, Kagame also announced that he has been charged with investigating an important restructuring of the AU. This would include the working methods and structures of the AUC.

No withdrawal from the ICC

During the summit, a proposal was considered by the AU Executive Council to impose a collective withdrawal from the International Criminal Court (ICC) on all AU members. The proposal, which was first mooted at the January 2016 summit in Addis Ababa and which follows years of acrimony between the AU and the ICC, did not, however, pass for discussion by the heads of state.

In the AU Executive Council the issue was discussed at length, with some countries, including Senegal and Nigeria, arguing that the 20-odd countries that are not members of the ICC cannot impose a withdrawal on those that are members. Besides, the AU is not legally authorised to impose such a withdrawal.

\$65 million

THE CONTRIBUTION BY EACH
REGION TO AU PEACEKEEPING

Rumours around the possible return of Morocco

One of the most debated issues on the sidelines of the summit was the possible return of Morocco to the organisation, which it left in 1984. This had been in protest against the recognition of the fledgling Sahrawi Democratic Arab Republic (RASD) as full AU member. Rumours at the summit had it that King Mohammed VI would attend the summit to ask for Morocco's re-admission. A letter by the king was also handed over to the current AU chairperson, Chad's President Idriss Déby.

However, the issue was not tabled during the Assembly of Heads of State and it seemed highly unlikely that the king would travel to Kigali without an official decision by the AU that re-admits the country.

Moroccan and francophone African media reported widely on Morocco's demand, including a proposal by 28 countries that the RASD be expelled from the AU on the grounds that the organisation does not represent a bona fide state and is not accepted in other inter-governmental organisations like the UN. Senegal's President Macky Sall is said to be leading this drive. Morocco is an important investor in West Africa and has strong political and religious links with this part of the continent.

Many obstacles remain, however, for this to happen. For one thing, the AU statutes do not provide for the expulsion of any member.

One of the most debated issues on the sidelines of the summit was the possible return of Morocco

Whether powerful AU members such as Algeria would accept Morocco back into the AU while the dispute over Western Sahara also remains to be seen. From the overtures made by the king and his special envoys, who were present on the sidelines at Kigali, the re-integration of Morocco without any pre-conditions – with the RASD still being a member of the AU – seems a possibility. If this is the case, most AU states are likely to accept Morocco – the only African country that is not part of the AU. A simple majority of votes would be needed to admit any country willing to accede to the Constitutive Act of the AU.



On the Agenda

No end in sight to the fraught relationship between the AU and the ICC

Decisions made at the summit in Kigali, Rwanda, once again highlight the rift between the continental organisation and the International Criminal Court (ICC). However, no decision was made by the AU heads of state on African member states' collective withdrawal from the ICC. Instead, this proposal was referred back to the ministerial committee set up to investigate links between the AU and the ICC. As expected, the heads of state also rejected the plan to use UN peacekeepers to arrest those wanted by the ICC.

As recommended by the PSC at its 606th meeting on 20 June, AU leaders called on African states parties to the Rome Statute of the ICC to reject the draft ICC Action Plan on Arrest Strategies, which involves the possible use of UN peacekeeping forces to execute arrest warrants.

The draft action plan was developed in view of the protracted non-cooperation of certain states, such as when South Africa failed to hand over Sudanese President Omar al-Bashir to the ICC in 2015. Ahead of the AU summit the PSC had called on African leaders to reject the draft ICC action plan. The PSC argues that the possible use of UN peacekeepers to enforce arrest warrants violates the objectivity, impartiality and neutrality guiding peace operations.

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The AU had further urged its Open Ended Ministerial Committee on the ICC, which was commissioned in June 2015, to develop a comprehensive strategy on a collective withdrawal from the ICC. This proposal had been made at the January 2016 summit. However, it emerged in Kigali that many AU member states are not in favour of such a withdrawal.

At the summit leaders also once again called for the suspension of the case against al-Bashir, while welcoming the ICC's decision to terminate the proceedings against Kenya's Deputy President William Ruto in April 2016, just as it had withdrawn the charges against Kenya's President Uhuru Kenyatta in December 2014.

These AU decisions highlight the fact that the relationship between the AU and the ICC is increasingly marked by political considerations, to the detriment of the question of justice for victims of genocide, war crimes and crimes against humanity.

20 June

THE PSC REJECTED THE USE OF
UN PEACEKEEPERS BY THE ICC

Can the new AU Commission that will emerge following the elections scheduled for January 2017 play a role in reframing the relationship between the ICC and the AU?

Concerns over targeting of African states

AU leaders have been decisive in condemning the ICC's apparent targeting of African states. They point out that out of the ten situations under investigation by the ICC, nine are from Africa. The ICC's engagement in Africa is conceived against the background of powerful states' being accused of neo-colonial and imperialist behaviour, with claims that they use international structures to dominate and oppress weaker states, such as those in Africa.

AU leaders have been decisive in condemning the ICC's apparent targeting of African states

The question is often asked whether leaders of other regions are not also committing alleged war crimes worthy of investigation by the ICC. Some observers note that damning cases against actors from powerful states – see Tony Blair's involvement in the war in Iraq, for example, as revealed by the Chilcot report – tend to be brushed aside based on legal grounds. Such concerns led Tedros Adhanom Ghebreyesus, the Ethiopian Foreign Minister and Chairperson of the AU Open Ended Ministerial Committee on the ICC, to contend that the ICC has become a court not for all but for Africa.

Within this context, the proposal to use UN peace operations to enforce arrests raised concerns that powerful states could undermine state sovereignty and 'take out' leaders they are not in agreement with.

The broader question asked by observers is: what about justice in Africa? Can the relationship between the ICC and the AU be mended in view of the need for justice on the continent and the lack of a functioning African Court on Justice and Human and Peoples' Rights (African Court)?

The development of the African Court shows that the AU, like the ICC, is interested in prosecuting heinous international crimes. If the AU is keen on avoiding impunity and providing justice to the citizens of Africa,

many believe there is a need to reassess and reframe the dominant narrative of the relationship between the ICC and Africa.

Revisiting the arguments supporting the AU's stance on the ICC

A departure point for inquiring into the narrative on the ICC's role in Africa is to ask whether Africa warrants the so-called 'uneven attention' it gets from the ICC, which seeks to prosecute genocide, war crimes and crimes against humanity. Although there are international crimes in other regions, the challenges of genocide, war crimes and crimes against humanity are a reality in Africa.

Secondly, a major issue for the continental body is that the ICC extends the quest for justice to Africa's sitting heads of state and government – leaders who were present at the AU summit. Markedly, the relationship between the ICC and the AU – which had been the initial exponent of the international court – soured in 2009 when the ICC issued an arrest warrant against al-Bashir. The AU's persistence saw the withdrawal of the charges against Kenyatta in December 2014 and the termination of the case against Ruto in April 2016. If the concern is about the unjust targeting of Africa, what is the position of the AU on the prosecution of leaders who are not incumbents?

The AU's stance on immunity could have an effect on the leaders of the warring factions in South Sudan

Detrimental effect of calls for immunity

The AU contends that sitting heads of state and government should be immune from prosecution based on the need to uphold the sovereignty of states and to avoid jeopardising the legitimacy of governments and the stability of states. The proposed immunity clause for sitting heads of state and senior government officials, however, fails to address concerns regarding a number of African heads of state who prefer to sit tight in office while being suspected of gross human rights violations.

The AU's stance on immunity could also, for example, have an effect on the leaders of the warring factions in South Sudan, who have carried out heinous crimes that reek of impunity between 2013 and 2016.

Furthermore, key discussions on the topic of immunity reveal that while political actors are the main critics of the indictment of sitting heads of state, civil society organisations would prefer to avoid impunity and thus have suspected actors indicted, including sitting heads of state. These two conflicting positions show the divide between African political leaders and civil society on matters of accountability.

It is worth noting that the AU was launched in 2002 to serve not as a union of African governments but as a union of African people, highlighting the primacy of people over state elites.

African Court of Justice not yet a reality

The successful prosecution of former Chadian president Hissène Habré by an AU-mandated court in Senegal created renewed momentum around the African Court's criminal jurisdiction. But will the African Court be more effective in delivering justice than the ICC? The inability of the AU to finance its activities raises questions around the financing of the African Court, especially in the face of dwindling donor funding for AU operations. It is uncertain whether donor countries will fund an African Court when a somewhat parallel organisation like the ICC is already in place. Besides, a number of non-financial challenges remain that need to be surmounted before a functional African Court can be attained. Will the African Court address the AU's apparent concerns around imperialism if it is not self-funded?

There is no doubt that the uneven capacities and powers within the continent are factors that will inevitably play out in the workings of the African Court. There are already concerns about the dominant position of South Africa in Southern Africa and Nigeria in West Africa, as well as the roles of countries like Uganda in South Sudan, and Ethiopia and Kenya in Somalia, among many others. To what extent will the leaders of Africa permit an independent African Court? In accordance with Article 46A *bis* of the Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights, the African Court will not try incumbent African leaders and senior

government officials. As such, the court could turn into an avenue for sitting heads of state to remain in office and call for the prosecution of opposition elites who challenge their leadership.

The functioning of the African Court could depend on the goodwill of sitting heads of state and their willingness to permit the prosecution of their allies. Notably, the eventual successful prosecution of Habré was largely possible because he no longer enjoyed political support. In 1990 Habré went into exile in Senegal after a former ally, General Idriss Déby Itno (the president of Chad since), deposed him.

Will the African Court address the AU's apparent concerns around imperialism if it is not self-funded?

What image will the AU present to ordinary citizens if some of its members are suspected of grievous crimes against humanity and yet are immune from prosecution? An indifferent stance on this question clearly negates Article 4(h) of the AU Constitutive Act, which espouses the AU's non-indifference to human rights abuses in member states.

Africa's best bet at this time

Aspiration 3 of the AU's Agenda 2063 envisions that the continent's population shall 'enjoy affordable and timely access to independent courts and judiciary that deliver justice without fear or favour'. In view of Africa's weaknesses in trying its leaders, the best bet for justice for victims of genocide, crimes against humanity and war crimes in Africa remains with the ICC, until such a time when the powers of African leaders are defined by accountability to their electorates. The new AUC chairperson, together with the AU Legal Affairs department, could play a crucial role in addressing the tension between the AU and the ICC. This could be done by shifting the discussion from immunity for sitting heads of state to the need for justice in Africa, coupled with the need for a strategy to extend the reach of the ICC across the globe.

Situation Analysis

AU plans a national dialogue in Libya



The AU plans to initiate a national dialogue on reconciliation among Libyan stakeholders in an effort to address the security crisis in post-2011 Libya. This was announced at the recent AU summit in Kigali, Rwanda. However, it is still unclear how this dialogue will be put in place.

At the recent AU summit, AU Peace and Security Commissioner Smaïl Chergui said that the AU chairperson had decided to initiate a meeting on national dialogue and reconciliation in Libya. 'Hopefully, at this stage, this is what the Libyan people need to bring them together, for reconciliation [to happen] and to see how we can really contribute to the effort of putting an end to the crisis,' he said.

The reconciliation plan follows the signing of the Libyan Political Agreement on 17 December 2015 by the majority of the Libyan delegates and representatives during a political dialogue in Morocco facilitated by the United Nations (UN). The agreement paved the way for the formation of the Government of National Accord (GNA), which consists of a Presidency Council, Cabinet, House of Representatives and State Council.

The initiative will be one of the first concrete steps taken by the AU to directly address the challenges in post-Gaddafi Libya

The PSC on 9 June 2016 commended efforts by current AU Chairperson Idriss Déby to convene the Libyan parties to discuss reconciliation. If the AU's planned national dialogue on reconciliation holds, the initiative will be one of the first concrete steps taken by the AU to directly address the challenges in post-Gaddafi Libya. Although most reports about international mediation in Libya focus on efforts by the UN, the European Union (EU), France, the United States and neighbouring countries, the AU has been involved behind the scenes in the attempt to seek a political solution to Libya's crisis after the ouster of Gaddafi. The sidelining of the AU during the NATO-led regime change campaign of 2011 strengthened the impression of its playing a minimal role in dealing with the challenges in post-Gaddafi Libya.

The search for a stable Libya

The humanitarian and security situation in post-2011 Libya has long been a concern for the AU. As highlighted by the report of the AU Commission (AUC) in 2014, 'the fate of the Libyan people is inseparable from that of the rest of their African sisters and brothers, with whom they have historical ties.

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2015

THE SIGNING OF THE LIBYAN
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A stable and democratic Libya will be a tremendous asset for the continent. Conversely, an unstable Libya will first and foremost affect its African neighborhood and beyond.'

In this regard, the AU has consistently assured Libyans of its support through the transition process. After the 2011 uprising the then chairperson of the AUC, Jean Ping, visited Libya on 16 January 2012 to assure the National Transitional Council (NTC) of the continental body's willingness to contribute to the stabilisation of the region, in collaboration with regional and international partners. The leaders of the NTC, which had been established on 27 February 2011, also emphasised their commitment to the AU, and the NTC attended the AU summit in Addis Ababa in January 2012.

However, the inability of the successive governments in Libya to unite the country fostered the proliferation of rival militias and the spread of criminal and terrorist networks such as the Islamic States of Iraq and Levant (ISIL). The two rival parliaments in Tripoli and Tobruk between 2014 and 2015 further complicated the international response to the Libyan crisis.

AU's actions in Libya to support the UN

In response to the challenges in Libya, the AUC on 11 June 2014 appointed Dileita Mohamed Dileita, former prime minister of Djibouti and former member of the AU High-Level Panel for Egypt, as its special envoy to Libya. Dileita held a number of high-level consultations with Libyan stakeholders, neighbouring countries and international stakeholders, including the UN Support Mission in Libya (UNSMIL). On 23 September 2014 the PSC established the International Contact Group for Libya (ICG-L) at its 459th ministerial meeting. The ICGL comprises all Libya's neighbours (Algeria, Chad, Egypt, Niger, Sudan and Tunisia), as well as relevant multilateral and bilateral partners, including other AU member states, the UNSC, the League of Arab States, the Community of Sahelo-Saharan States and the EU. The ICGL, which has held five meetings so far, was mandated to facilitate a coordinated and harmonised international engagement in Libya.

The AU has consistently assured Libyans of its support through the transition process

In view of the external interference in Libya, the AU has consistently stressed 'the unity, territorial integrity, political independence and sovereignty of Libya' in all its communiqués. The AU insists that 'there can be no military solution to the current crisis in Libya' because military interferences in the country can only exacerbate and further polarise the situation, 'thereby making it more difficult to reach a peaceful political solution fully owned by the Libyan stakeholders'. Based on this, the AU's response has focused on pushing for a political solution. In this context, the external powers that continue to provide military support to different factions in the region remain the focus of attention.

The AU fully supported the UN-facilitated political dialogue that began in January 2015. Despite initial challenges, the political dialogue led to the signing of the agreement in December 2015. The nine-member Presidency Council of the GNA is led by Prime Minister-designate, Fayez al-Sarraj. On 30 March 2016 key members of the Presidency Council of the GNA moved to Tripoli. Significant divisions between the western and the eastern part of Libya remain, which continue to undermine any political gains. In this regard, the agreement that formed the unity government provides avenues for the international community to consolidate the unification of Libya.

Significant divisions between the western and the eastern part of Libya remain, which continue to undermine any political gains

The relevance of the national dialogue on reconciliation

The AU's plan to convene a dialogue for national reconciliation in Libya highlights its keenness to ensure a return to stability in the country. The intended dialogue aims to bring together representatives of all Libyan stakeholders to address the issue of national reconciliation so as to tackle the divisions in the country. The proposed AU-led national reconciliation dialogue will hopefully help Libyans to further unite in the fight against spoilers of peace. One such effort is the fight against ISIL, embarked upon by pro-government forces and allies in May 2016. The AU could also use the opportunity to advance the need for security sector reform in the region so as to unite all militias under the government umbrella. However, the AU has to ensure that the plan for national dialogue is followed up by concrete action, as well as the mobilisation of sufficient resources to implement the initiative.

At its January 2016 summit the AU established the High-Level Committee of Heads of State and Government, as agreed by the PSC on 23 September 2014, to enable the regional body to support peace and reconstruction in Libya more effectively. The committee has, however, yet to visit Libya and has not been involved in any of the UN-led mediation efforts. It consists of the AU High-Level Representative for Libya – a position currently filled by Jakaya Kikwete, former president of Tanzania – the presidents of South Africa, Mauritania, Gabon and Niger, and the prime minister of Ethiopia. The committee will have to play a key role in facilitating the national dialogue on reconciliation and deepening the AU's engagement in Libya.



PSC Interview

Kodjo: 'It will be difficult to hold elections in the DRC in November'

At the 27th African Union (AU) summit in Kigali, Rwanda, last month, the *PSC Report* caught up with Edem Kodjo, AU special envoy to facilitate a national dialogue in the Democratic Republic of the Congo (DRC). The dialogue is aimed at breaking the political deadlock over elections that should take place before President Joseph Kabila's second and last term expires on 19 December this year.

What can you tell us about the national dialogue in the DRC, which you have been charged with organising as the special envoy of the AU in the country?

You're right that we are busy trying to put in place this dialogue and at this point I don't see any major obstacles in organising it. We have managed to make contacts, to talk to the parties that up to now haven't been very open, and we have managed to get their agreement. Everything is in place for the dialogue to start, and as far as I am concerned it should start soon.

Are we talking weeks or months?

We are talking about weeks.

In your view, will all the opposition leaders, including Moise Katumbi [former governor of Katanga, currently out of the country] be at the table for this dialogue?

At this stage I don't know the composition of the delegations that will participate in the dialogue. We are starting with a preparatory committee. It is a small group that is going to try and prepare the talks. The main dialogue has to consist of the political heavyweights. Political personalities of all ranks should have their place at the dialogue. So at this moment Mr Katumbi, if his party decides so and if his supporters decide so, will participate.

Are you the main mediator in this dialogue? We have seen joint statements by the United Nations (UN) and others.

I am the facilitator. There isn't a whole range of them. It's only me. But the facilitator is lucky to be helped by what we call the support group, which is made up of first and foremost the UN and the AU, and also the European Union, the Francophonie, the ICGR [International Conference of the Great Lakes Region] and SADC [Southern African Development Community]. Constituted as such, the support group really makes an important contribution that allows the facilitator to do his work much easier than if he had been on his own.

Where will this dialogue take place? In Addis Ababa or Kinshasa?

Preferably Kinshasa. The preparatory committee that I am convening will meet in Kinshasa.

Do you think that elections could take place before the end of the year, as the constitution requires?

I really don't know. As you know we have consulted widely on this issue with the international organisations that are the most experienced, the most authoritative. At the UN there is a commission made up of 10 members [that deals with this]. There is also the independent electoral commission and the Francophonie. But in my opinion, given where we are now ... everyone knows very well, even those who don't want to say it, that it will be very difficult to have elections in November when we are already in July and we don't even have the information for the electoral list ready.

Everyone knows that it will be very difficult to have elections in November

Are you worried that there might be major civil society protests if the elections do not take place?

This is not the kind of question that I respond to. I'm not here for that. I'm here to do a job and I don't get involved in such considerations. It's a question that you should ask politicians.

The election of a new chairperson of the AU Commission has been postponed. Are you worried that the organisation will be in limbo for several months because even the commissioners will have to wait until January 2017 before being elected?

It's too early to say. I don't know what the heads of state have planned because no-one has been elected. We don't know yet whether Madame [Nkosazana Dlamini] Zuma will continue until the elections are held or whether they will find an interim solution. It is up to the heads of state.



About the ISS

The Institute for Security Studies is an African organisation that aims to enhance human security on the continent. It does independent and authoritative research, provides expert policy analysis and advice, and delivers practical training and technical assistance.

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About us

The *Peace and Security Council (PSC) Report* is an initiative of the Institute for Security Studies (ISS) through its office in Addis Ababa, Ethiopia. It was established in 2009 with the principal aim of supporting and complementing the work of the African Union (AU) and its Peace and Security Council through the provision of regular, independent and research-based information on and analysis of the PSC and its activities. The *PSC Report* offers the wider constituency of the AU, as well as African civil society organisations, the media and the international diplomatic community a reliable means of following and tracking the work of the PSC.

The *PSC Report* accomplishes these objectives through the publication of regular reports on issues that are either on the PSC's agenda or that deserve its attention. Through its webpage dedicated exclusively to the ISS' work on the PSC, the *PSC Report* also offers regular updates on current and emerging agenda items of the PSC.

The *PSC Report* has no institutional relationship with the AU or the PSC. However, the *Report* works in close collaboration with the AU Peace and Security Department, the Secretariat of the PSC and member states of the PSC.