



Peace & Security Council Report

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The PSC and the terrorist threat: beyond meetings

The Peace and Security Council (PSC) has held several summits to formulate a collective response to the threat of terrorism in Africa. African Union (AU) member states have also adopted various conventions and protocols to combat terrorism. However, the PSC's ability to ensure these decisions are implemented is hampered by the lack of legally binding instruments, poor coordination and a lack of commitment by some member states.

On 27 January 2018 the PSC held its third summit at the level of heads of state on the issue of terrorism. The preceding summits took place in 2014 in Nairobi and in 2016 in Addis Ababa. This third summit was organised by the Egyptian chair of the PSC, and Egypt has been one of the champions of the issue within the council.

Terrorism remains a critical threat to peace and security on the continent. Currently, three Africa-led missions are fighting terrorist insurgencies in the Sahel, the Lake Chad Basin and Somalia.

At the January summit the PSC reiterated several calls it had already made, not only at the last two summit meetings but also over the past decade. These measures include the operationalisation of the PSC subcommittee on counter-terrorism, the establishment of an African arrest warrant for terror suspects and the drafting of an African list of terrorist groups.

AU framework on terrorism provides a clear division of labour

According to Article 7 of the Protocol relating to the establishment of the PSC, the council must ensure the implementation of the Organization of African Unity (OAU) Convention on the Prevention and Combating of Terrorism (Algiers Convention), which was adopted in 1999. It was signed by 50 member states and ratified by 43. The protocol to the Algiers Convention, adopted in 2004, was signed by 45 member states but ratified by only 21.

The Algiers Convention and subsequent documents provide the AU with a framework that includes a clear division of roles:

- The PSC was to prepare, publicise and review a list of persons, groups and entities involved in terrorist acts; request that member states report on annual basis on their implementation of the Algiers Convention; and monitor and make recommendations on the implementation of the plan of action.
- The African Union Commission (AUC) was supposed to follow up with member states on decisions taken by the PSC and provide advice to member states, among other issues.
- The African Centre for the Study and Research on Terrorism was to 'centralize information, studies and analyses on terrorism and terrorist groups and develop training programs'.

PSC Chairperson

Diallo Amina Djibo

Niger's ambassador to Ethiopia and permanent representative to the African Union.

Current members of the PSC

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

- Member states were to implement the provisions of the AU frameworks regarding the harmonisation of legislation and the establishment of focal points, among others.

Uneven commitment among member states

Despite this clear division of labour, the AU has struggled to implement its decisions on combating terrorism on the continent. This is mainly because of uneven commitment among member states.

The PSC also still lacks the instruments to monitor the implementation of the Algiers Convention and its plan of action. This limitation illustrates the broader challenges the PSC faces in the area of terrorism, where its role in harmonisation and coordination is hobbled by the fact that it is dependent on the willingness of member states.

Neither the PSC nor the AUC has a binding compliance and follow-up mechanism when it comes to the implementation of legal instruments on terrorism. Martin Ewi, an Institute for Security Studies senior researcher, has indicated that the PSC mostly polices the Algiers Convention: reminding states of their obligations under the convention and urging them to ensure effective implementation.

During the summit in Nairobi in 2014, there was a lack of consensus regarding the establishment of such a binding mechanism. Many member states resent external oversight of their internal policies.

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This has clearly impacted the implementation of at least two measures included in the decision adopted in January 2018. Indeed, the establishment of a common arrest warrant requires the harmonisation of terrorism laws among member states. In the absence of incentives, progress can only be limited. The adoption of a continental list of terrorist groups faces similar challenges. Indeed, the OAU convention, which provided a broad definition of a terrorist act, requires that the AUC constitute a clearinghouse to avoid excesses such as the use of the word ‘terrorism’ to delegitimise any opposition to a state, as it is often the case in civil wars.

However, this would mean risking conflict between opposing member states in an institutional configuration where they are the main decision makers.

Limited capacity in the AU Commission

The ability of the AUC to follow up on decisions is also severely constrained by a lack of capacity, which has resulted in fewer reports by the AUC chairperson on this issue. The last report that provided an overview of activities on terrorism was presented to the PSC in 2014. In addition, member



THE AU HAS STRUGGLED TO IMPLEMENT ITS DECISIONS ON COMBATING TERRORISM ON THE CONTINENT

states do not report on their counter-terrorism policies, as provided by the 2002 plan. This makes it harder for the AUC to monitor harmonisation among member states.

State dynamics and the performance of the PSC

Finally, the dynamics among member states also affect the way in which the PSC has handled the issue. As stated earlier, while terrorism constitutes a major threat to security in many countries, commitment to tackle it at the continental level has been uneven.

In the PSC there is a tendency to see terrorism as a North African issue, owing to the prominent – and largely effective – role both Algeria and Egypt have played in placing it on the agenda. However, this has produced limited results, as illustrated by the lack of operationalisation of the PSC subcommittee on counter-terrorism, despite several calls in this regard. The dominance of these member states and their expertise, largely due to the strength of Islamic movements in their respective countries, have paradoxically resulted in limited inputs by other PSC members. Of the 12 meetings held on terrorism in the PSC over the last two years, nine occurred under the chairs of Algeria (6) and Egypt (3).

Some progress has been made

All is not lost, however. Two critical changes in the last few years will have an impact on the effectiveness of the African architecture in fighting terrorism. This is the operationalisation of the African Mechanism of Police Cooperation (AFRIPOL) and the establishment of an African Fund for the Prevention and Fight against Terrorism, following a decision by the AU Assembly in Kigali in July 2016.

As the fight against terrorism has been dominated by military responses, the AU has been attempting to develop frameworks for a civilian response, based on police cooperation and intelligence sharing among its member states. Still, these mechanisms face various challenges associated with multilateral cooperation on a continent where states tend to favour bilateral exchanges, especially in the area of intelligence.

Regarding the Fund for the Prevention and Fight against Terrorism, it remains to be seen what the linkages with the AU Peace Fund would be, among others, as well as the scope of its activities, either civilian or military.

The PSC has repeatedly stressed the need for a ‘comprehensive’, ‘holistic’ response to terrorism. However, so far the body has not been able to provide guidelines on non-military/security responses to terrorism – apart from the African model anti-terrorism law endorsed by the AU in 2011. While the PSC has stressed the need for respecting humanitarian law and human rights in general, its ability to monitor compliance with this call remains limited – as does its ability to monitor other aspects of the fight against terrorism.

Therefore, while the terrorist threat on the continent is intensifying, there is room for the PSC to improve its performance and play a greater role in combating this threat.

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The impact of new funding uncertainties on AMISOM

A new report by the Institute for Security Studies reveals how funding uncertainties in the African Union Mission in Somalia (AMISOM) have heightened the debate on external support for the mission; raised concerns over AMISOM's achievements after 10 years of operations and spurred the development of concrete plans for AMISOM's tentative withdrawal by 2020/21.

The quest for predictable funding for AMISOM was yet again discussed at the recent PSC meeting on 15 February 2018. Funding uncertainty has always been a major issue for AMISOM, but the situation worsened in January 2016 when the European Union (EU) – which pays AMISOM troop allowances – placed a cap on the amount it would provide, while calling for greater burden sharing. The EU is also yet to communicate its funding for AMISOM beyond 2018, and various efforts by the AU to secure alternative funding streams have not been successful.

Recently, the AU Commission chairperson and the United Nations (UN) secretary-general respectively appointed Ramtane Lamamra, Algeria's former minister of foreign affairs, and Jean-Marie Guéhenno, former UN under-secretary-general in charge of Peacekeeping Operations, to lead a consultative process that will make recommendations on the best options for predictable and sustainable funding for AMISOM and the Somali security forces. These recommendations, which are expected within the next few months, are another attempt to keep AMISOM afloat.

A test for African solutions

AMISOM remains a significant test of the resilience of the continental body in terms of driving the peace and security agenda in Africa, in line with its resolve to find African solutions to African problems. Somalia is the only country where the AU plays the primary leadership role in the peace operations and state-building effort.

The mission, which was originally scheduled to run for six months, has now been in operation for over a decade owing to the UN's unwillingness to take over, as initially envisaged. Over the years, AMISOM has been sustained by UN logistic support and by the EU, which pays the troop and police allowances, as well as related expenses, from its African Peace Facility. Other bilateral donors such as the United States, the United Kingdom and China have also provided ad hoc support to the mission. Yet these

arrangements have been unpredictable, which in turn have impacted on when and how the mission operated.

EU calls for burden sharing

In January 2016 the EU decided on a 20% reduction in AMISOM peacekeeper stipends – from US\$1 028 to US\$822 per month. The EU started off with a monthly budget of €700 000 – about US\$500 for each peacekeeper – when it began contributing to the mission in 2007, pending the envisaged UN takeover in November 2007. Ten years on, the EU's financial commitment to AMISOM has expanded in line with increases in authorised troop numbers and individual peacekeeper allowances. By 2016 the EU budget hovered around €20 million per month (about US\$1 028 before the reduction to \$822); a steep increase from the initial pledge.

Objections by AMISOM TCCs

When the salary cut was announced, AMISOM's major troop-contributing countries (TCCs) – including Burundi, Djibouti, Ethiopia, Kenya and Uganda – opposed the move, and many threatened to withdraw from the mission. Kenya and Uganda were the most vocal, but eventually went back on their statements in view of the regional threats posed by al-Shabaab.

Burundi threatened to withdraw its troops until a last-minute deal was secured in January 2017

The EU had also refused to pay Burundian troops through the government because of its sanctions against the government (related to President Pierre Nkurunziza's decision to run for a third term in 2015). Burundi threatened to withdraw its troops until a last-minute deal was secured in January 2017 to pay the troops through a private bank.

While Ethiopia at first was reticent to take action, it then pulled its troops from key Somali towns in the Bakool, Hiiraan and Galgaduud areas. In many cases, this resulted in al-Shabaab's immediate recapture of the recovered towns. Ethiopia claimed that its troop withdrawal either involved Ethiopian forces operating outside the context of AMISOM or formed part of routine redeployments within the mission. But Ethiopian officials also linked some of the pull-outs to the lack of international support.

Worsening uncertainty

The funding uncertainty has meanwhile evolved and is now more serious than the initial troop stipend reductions. The EU is currently reviewing its future support to AMISOM in view of other mounting responsibilities, such as increased migration to Europe and the fight against terrorism in the Sahel. The EU recently raised its contribution to the G5 Sahel Force from €50 million to €100 million.

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Moreover, some within the EU favour a shift away from paying peacekeeping troops' allowances to only supporting specific logistical mission elements. This would ensure that costs to donors were kept down, as it avoids open-ended commitments to missions with unclear timeframes, as in the case of Somalia.

Although the EU is likely to continue funding AMISOM this year, the uncertainty around future support is daunting. In addition, the UN Security Council has rejected proposals to use the UN's assessed contributions to fund AMISOM, despite repeated requests by the AU.

Diverging opinions about AMISOM's achievements

While the funding reductions and uncertainty reflect the growing donor fatigue, the ISS report shows that this is also an outcome of the diverging opinions over AMISOM's performance. Some agree with the AU that AMISOM has achieved its principal strategic goals, notably protecting the successive Somali authorities, securing two election processes and weakening al-Shabaab.

Others, however, are more sceptical about AMISOM's added value and fault the mission for not taking stronger action against al-Shabaab, especially since mid-2015. At the same time, AMISOM TCCs see the stalled offensives in Somalia as being a result of the inadequate resources the overstretched mission has received.

Apart from both sides playing the blame game, there is also a new policy stance among donors. They believe that providing direct support to the Somali security forces rather than AMISOM should be the ultimate objective, following the elections and the restoration of various governance institutions in Somalia.

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However, the political and security situation remains fragile, as indicated by two major al-Shabaab attacks in Mogadishu in October 2017 – incidents that exposed security weaknesses in the country, and indicated the long road the Somali security forces would have to travel before taking over from AMISOM.

Impact on AMISOM's exit strategy

One of the major outcomes of the new funding crisis is the effort by the AU and its partners to develop a concrete exit strategy. Technically, the mission had always had two interlinked exit strategies. The first was the expectation that it would transition to a UN peacekeeping operation, while the second was predicated on the ability of the Somali security forces to provide security in the country.

However, in light of the current funding crisis, the PSC in June 2016 endorsed a new concept of operations, which unveiled a tentative plan for the mission to begin a drawdown in 2018, ahead of a pull-out by 2020. Deliberations with the UN moved the timeline to 2021, for a conditions-based exit predicated on seeing Somalia through the next elections in 2021, and enhancing the capacity of the country's security forces.

As part of the exit strategy, AMISOM started the first phase of its drawdown between October and December 2017, when 1 000 AMISOM soldiers were pulled out, to be replaced by 500 police officers. The drawdown also facilitated the transfer of some primary security responsibilities to the Somali security forces.

Nevertheless, the unpredictable funding has hampered the pace of the exit plans. Somalia's security forces are plagued by a lack of weapons, irregular salary payments, corruption, entrenched clan allegiances and even a stream of defections to al-Shabaab itself.

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Besides the overall focus on fighting al-Shabaab, AMISOM needs to work closely with the Intergovernmental Authority on Development in its efforts to foster unity of purpose in Somalia's governing structures, especially in terms of diffusing tensions and rivalries between the federal government and federal member states. These have been at odds over power sharing and resource control, as well as the decision of the Somali Federal Government to remain neutral in the Gulf crisis.

These issues have to be resolved to create conditions for an effective fight against al-Shabaab, as well as to address the dire refugee and humanitarian needs in the country.

The full report can be accessed at: <https://issafrica.org/research/east-africa-report/impact-of-eu-funding-dynamics-on-amisom>



UNPREDICTABLE FUNDING
HAS HAMPERED THE PACE
OF AMISOM'S EXIT PLANS

The AU and the constitutional review process in Burundi

Burundi is set to hold a referendum on a constitutional amendment in May 2018. This could enable President Pierre Nkurunziza to stay in power beyond 2020 and weaken the representation of minority groups. The lack of broader consultation on the overall amendment process further threatens the Arusha peace deal that ended the 1993–2005 Burundian civil war.

The constitutional amendment process in Burundi is Nkurunziza's second attempt to change the constitution, after he initially failed in March 2014. He went ahead to contest and win the 2015 elections owing to a controversial court ruling – a move that secured his third term in office and plunged the country into political turmoil.

Former Tanzanian president Benjamin Mkapa, the East African Community (EAC) facilitator of the stalled inter-Burundian dialogue, has warned against the constitutional review, given its potential to worsen instability in the country.

The proposed constitutional changes are widely criticised for replacing the two-thirds majority required to pass legislation with a simple majority

The proposed changes to Burundi's constitution provides for the presidential term to be limited to two terms, but increased from five to seven years. This could technically allow the incumbent Nkurunziza (54) to run for re-election in 2020 – and potentially again in 2027 – under the new constitution, despite his having served three terms under the current one.

Impact on the representation of minority groups

The proposed constitutional changes are also widely criticised for replacing the two-thirds majority required to pass legislation with a simple majority – a provision that was part of the ethnic and political power-sharing component of the Arusha peace agreement. Although the rule on 60% Hutu and 40% Tutsi representation in the National Assembly remains, the simple majority erodes the built-in mechanism allowing Tutsis' input on critical matters.

The draft constitution also replaces the provision for two vice presidents – one from the opposition and the other from the ruling party – with one vice-president and one prime minister. The vice-president, who has limited powers, will be selected from a political party and ethnic group that differs from those of the president, but the influential prime minister will be appointed by the president from the ruling party. The creation of the prime ministerial position is said to appease some members of the National Council for the Defence of Democracy–Forces for the Defence of Democracy (CNDD–FDD) who want



THE CONSTITUTIONAL AMENDMENT PROCESS IS NKURUNZIZA'S SECOND ATTEMPT AFTER HE INITIALLY FAILED IN MARCH 2014

the presidential position themselves but are hamstrung owing to Nkurunziza's grip on power.

The consultative process

The AU, in two of its summit decisions in July 2017 and January 2018, called for broader consensus among all stakeholders on the ongoing constitutional reforms in Burundi. This has not happened.

Since May 2017, when Nkurunziza appointed a 15-member committee to draft the proposed changes to the constitution, the process has been shrouded in secrecy.

Critics of the constitutional review process have reportedly been harassed and some have been arrested by the government.

In all this, the government has avoided engaging Parliament, the legislative branch of government. This has been an attempt to avoid criticism from both opposition members and members of the CNDD-FDD who oppose the constitutional review. Moreover, the ruling CNDD-FDD does not have the required majority in the National Assembly to unilaterally approve the constitutional amendment.

Impact of the AU's unclear position on constitutional reviews

The AU's earlier half-hearted response to the Burundi crisis and its failure to speak up about the current process are in line with its stance in similar situations around the continent. Under the AU's watch, countries such as Uganda, Rwanda, the Republic of Congo, Gabon, Chad and Djibouti have altered their constitutions based on an individual's quest to stay in office.

The AU does have tools to encourage democratic changes of government, such as the African Charter on Democracy, Elections and Governance (ACDEG). Article 23.5 of the charter prohibits 'any amendment or revision of the constitution or legal instruments, which is an infringement on the principles of democratic change of government'.

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While the AU has called for adherence to the Arusha peace deal and emphasised the need for broader consensus, the organisation has been reticent about speaking out about the implications of the review process on the ACDEG. Burundi has signed the ACDEG but not ratified it, hence it is not legally bound by the charter. Its signature does, however, require Burundi to refrain from acts that undermine the charter's purpose and objective. Burundi is also party to several AU declarations as well as the protocol establishing the PSC, which calls for sanctions in cases of unconstitutional changes of government.

The ACDEG mandates the AU Commission to 'evaluate compliance by States Parties' on matters relating to democracy, elections and governance in accord

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with article 44.2, but the commission has not engaged on this and has generally been non-committal on the constitutional review processes on the continent. In many instances these constitutional revisions are equal to the power grabs by military regimes through coups d'état. While coups are unacceptable to the AU, there is as yet no precedent when it comes to regimes that stay on thanks to constitutional changes. Hence, the Burundian government embarked on the contentious constitutional review knowing that there would be no backlash from the AU.

The AU's contradictory approach

The AU has also made contradictory statements that undermine attempts to get Burundian authorities to pursue democratic values. One of these contradictions is seen in the AU decision at the recently concluded 30th summit in January 2018, when it condemned the International Criminal Court's (ICC) decision to open an investigation on human rights violations in Burundi.

The AU statements undermine attempts to get Burundian authorities to pursue democratic values

The condemnation is in line with the AU's disagreement with the ICC, especially on the issue of prosecuting sitting leaders in Africa. The AU decision notes that the ICC investigation could destabilise the country, violate its sovereignty and impede the peace process led by the EAC. The condemnation, however, contradicts the fact that the AU has also been making unsuccessful attempts at getting the government to sign a memorandum of understanding (MoU) on human rights and military observers to investigate the human rights abuses in the country.

Since 13 June 2015, when the AU observer mission was created, the Burundian government has refused to sign an MoU to allow the observers to operate freely. Burundi has also denied access to the observers sent by the UN Human Rights Council. Hence, the AU's condemnation of the ICC investigation of human rights abuses contradicts its own stated intent to investigate human rights violations in Burundi and the need to ramp up international pressure on the country.

The pen-holder situation in the AU

Burundi is the acting chair of the AU's open-ended ministerial committee on the ICC – a committee established to follow up on the AU's concerns about the court. Over the years, the AU has relied on the pen-holder on key issues to set the agenda and tone of the AU's decisions. Using its leverage as the committee chair, Burundi pushed for the AU's condemnation of the ICC investigation while other AU member states merely endorsed the decision for the sake of African solidarity.

Since January 2016, when the AU Assembly rejected the PSC decision of 17 December 2015 to send a mission to Burundi, the AU's overall capacity to address the crisis has been limited. The impact of the reversed decision has been far-reaching in terms of the PSC's response to crises. Since that decision, the PSC has focused more on discussing broader thematic issues while holding fewer meetings on country-specific situations, as indicated by the *PSC Report's* review of PSC meetings and decisions, published in January 2018.

The end of Burundi's PSC tenure an opportunity?

Burundi's two-year tenure on the PSC ends in March 2018. During its PSC membership in 2016 and 2017, Burundi was able to weaken discussions on its own instability. Indeed, the PSC's recent meeting on the issue (on 27 October 2017) came a year after its previous meeting on Burundi (on 6 October 2016). The recent meeting produced a communiqué that was devoid of any decisions, indicating only those who briefed the PSC without any mention of important steps the AU needed to take regarding the crisis. This was not surprising, since Burundi chaired the PSC in October 2017 and the 'pen-holder' situation thus prevailed.

With Burundi out of the PSC, the AU has a unique opportunity to meet its obligation of defending human rights in the country. This should include a concerted effort to implement the decision to impose targeted sanctions 'against all the Burundian stakeholders whose actions and statements contribute to the perpetuation of violence and impede the search for a solution', as agreed during the PSC meeting on 17 October 2015.

The PSC should also make a crucial statement on the ongoing constitutional review vis-à-vis its compliance with the ACDEG.

Central Africa's gathering storm

Countries in Central Africa had a turbulent 2017 – and forecasts suggest that the region's problems aren't going away any time soon. The oil-dependent region continues its tepid recovery from the 2014 bust in commodity prices. At the same time, socio-political restiveness simmers against a backdrop of pseudo-democratic governance and political repression.

Security threats posed by Boko Haram on the north-western front of the Central African Economic and Monetary Community (CEMAC) region compound political and economic instability. Military cooperation by Chad and Cameroon (together with their *Economic Community of West African States* and international partners) is thwarting the terror group's expansion. But piracy along the Gulf of Guinea and instability in the Central African Republic continue to threaten the region's security.

The failed coup attempt in Equatorial Guinea last December is only one example of opposition to entrenched regimes. Although robust security cooperation between Equatorial Guinea and Cameroon foiled the plot, organised by a regional mercenary group, tensions remain high.

A new study by the Institute for Security Studies shows that by 2040, the region's population is set to increase by 75% to more than 90 million people from about 51 million in 2016. This population growth – fuelled by high fertility rates and prolonged life expectancy – will increase stress on governments to provide essential goods and services across decentralised urban spaces. Within the same timeframe, the working-age population (15 to 64

years) in the region will nearly double, and states will need to create employment opportunities for more than 25 million additional people.

While it is notoriously difficult to obtain reliable unemployment figures in these countries, a 2016 International Monetary Fund (IMF) report noted that 'poverty and unemployment remain high, particularly among young people'. This will present more structural hurdles in a region already grappling with high youth unemployment and an expanding informal economic sector that fails to guarantee sustainable livelihoods.

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Structural challenges

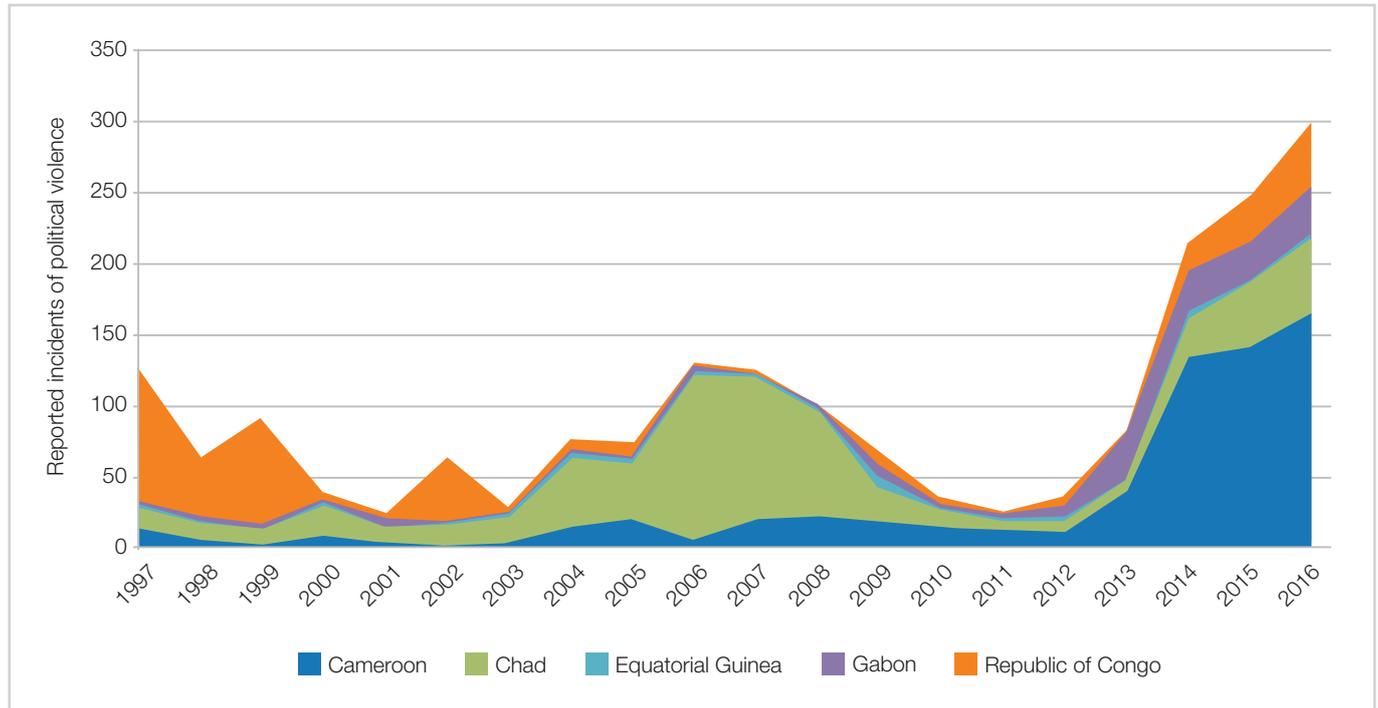
In absolute figures, the IFs forecast indicates that by 2040, there will be roughly 34 million people without access to improved sanitation facilities, about 26 million people living below the international extreme poverty line of US\$1.90 per person per day, nearly 18 million people without access to piped water and more than 14 million adults without a primary education in the CEMAC region. These future structural challenges are compounded by current governance rigidity characterised by democratic deficiencies, tenuous accountability and repression of regime opponents. When viewed as a group, CEMAC countries score well below other African regions, and the continental average, on various measures of governance.

Countries in the region have, on average, less democratic regimes, less civil and political freedom, less effective governments and higher levels of corruption than other regions across the continent. There are signs that this type of sclerotic governance may be beginning to wear

Figure 1: Countries in the Central African Economic and Monetary Community



Figure 2: Political violence in CEMAC countries, 1997–2016



Source: ACLED all Africa data version 7.

NB: Central African Republic has been excluded from this figure because of the disproportionately high number of events in that country.

thin on citizens in the region, as evidenced by the rise in reported riots and protests in all CEMAC countries since 2012, as shown in Figure 2.

The democratic deficit

Regimes in the CEMAC region have devised creative strategies to eternalise their hold on political power. The youngest regime is in Chad where President Idriss Déby has held power for 28 years. The Bongo family have been in power in Gabon since 1967. In Equatorial Guinea, Cameroon and the Republic of Congo the same presidents have ruled for 38, 35 and 33 non-consecutive years, respectively.

When countries choose to secure regimes at the expense of effectively addressing legitimate socio-political discontent, they put sustainable peace and security at risk.

There are no quick fixes to the challenges CEMAC countries face. Nor will economic interventions alone, like those being negotiated within the framework of the IMF's Extended Credit Facility, solve the deep and interconnected socio-political problems.

In October 2017, the CEMAC heads of state met in N'djamena, Chad, and opted for accelerated integration to

drive regional economic growth. Promoting regional economic complementarity would spur mutually beneficial technical and commercial exchange. This should, they argued, be led by a diversification of CEMAC economies away from commodities along with a push towards greater connectivity of the region's transport infrastructure.

However, to effectively deal with the region's complex challenges, CEMAC states must redress the thorny issue of state capture and poor governance by entrenched regimes. This will foster the social cohesion necessary to confront security threats at its regional frontiers, promote more inclusive economic growth, and quell the recent rise in politically motivated unrest.

Otherwise the gathering storm in CEMAC, if allowed to brew, will spill over into the rest of Central and West Africa, with potentially devastating outcomes. Humanitarian costs are already high as a result of violent extremism in the Lake Chad basin and the Central African Republic's continuing instability. Inaction will have dire consequences for countries and human development across the entire region.

Challenges facing the PSC's Committee of Experts

As 10 new members of the PSC prepare to take up office next month, indications are that the Committee of Experts, the main subsidiary body of the PSC, is finally getting off the ground. The committee, meant to lessen the workload of ambassadors and improve decision-making, has met five times since the beginning of 2018 and held its first retreat in December 2017. The lack of capacity in some embassies in Addis Ababa, however, remains a big challenge.

According to the PSC website, the Committee of Experts was established under Article 8(5) of the PSC Protocol. 'It assists the PSC to elaborate its draft decisions. The Committee is composed of a designated expert representing each PSC Member State and two Peace and Security Department expert officers. The Committee meets prior to each PSC meeting.'

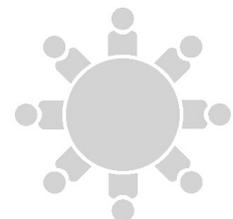
Operationalising this Committee of Experts goes to the heart of the issue of ownership of the decisions adopted by the PSC. In the current system, the AUC, through the PSC Secretariat, plays a major role in drafting the decisions ultimately adopted by the PSC. Some member states resent the pre-eminent role played by the AUC and wish to play a bigger part in the decision-making.

It is doubtful whether member states from West Africa necessarily possess a deep knowledge of the conflict dynamics in the Horn of Africa, and vice versa

However, this willingness on the part of member states is often contradicted by their limited capacity, especially in terms of issues that are not in their region and require a certain amount of expertise. It is, for example, doubtful whether member states from West Africa necessarily possess a deep knowledge of the conflict dynamics in the Horn of Africa, and vice versa.

In addition, the limited capacity of the PSC Secretariat (currently three staff members) contributes to the state of affairs. Instead of being the conduit of member states, the secretariat ends up relying mostly on the AUC, which often has the required expertise on various issues that the PSC may lack.

In that sense, full activation of the Committee of Experts could be a stepping stone to a more effective PSC that can fill its critical role in ensuring that the continent achieves its goal of silencing the guns by 2020.



FULL ACTIVATION OF THE COMMITTEE OF EXPERTS COULD BE A STEPPING STONE TO A MORE EFFECTIVE PSC

The role of Egypt in advocating for the committee

The first five meetings of the Committee of Experts were held during Egypt's chairpersonship of the PSC, in January 2018. Egypt has stressed this issue during its previous tenures and it is hoped that this could open the door to an activation *ad minima* of the Committee of Experts.

Indeed, one of the outcomes of the committee's retreat was the decision that it should meet at least once a month and should adopt an annual work plan that would include, among others, preparatory sessions for partnership meetings, such as those with the United Nations and the European Union (EU), and for field missions.

The capacity of PSC member states to provide experts on some issues may vary from one state to another

According to some stakeholders, the activation of the committee is the result of consensus within the PSC that the workload of the permanent representatives (ambassadors in Addis Ababa) needs to be alleviated. This would allow the ambassadors to focus on critical issues and streamline the decision-making process.

However, many challenges must be overcome in order for the committee to become fully operational.

Need for technical expertise

The committee meetings that took place in January were to consider the report on the implementation of the Master Roadmap to Silencing the Guns by 2020, preparations for the meeting between the EU Political and Security Committee and the PSC, and the retreat of December 2017. These issues are mostly general and do not necessarily require experts with specific knowledge and competence. However, most of the other issues on the agenda of the PSC do require technical knowledge.

The capacity of PSC member states to provide experts on some issues may vary from one state to another, and thus the scope of consideration by the experts may be limited. A good illustration is the fact that the military counterpart of the Committee of Experts, the Military Staff Committee, has hardly ever met, despite the fact that at least three Africa-led peace support operations are deployed on the continent.

To be fair, there has been some, if marginal, improvement in the willingness of member states to allocate the proper human resources to their respective delegations in Addis Ababa. Indeed, the portfolios of most African delegations tend to include, in addition to the AU, bilateral relations with Ethiopia and neighbouring countries (Djibouti, Kenya), plus the UN Economic Commission for Africa. This makes it difficult for embassies with huge



MANY OF THE ISSUES
ON THE PSC'S AGENDA
REQUIRE TECHNICAL
KNOWLEDGE

financial constraints to employ extra personnel to serve as experts to the PSC.

The challenge of keeping the momentum

Another challenge in the operationalisation of the Committee of Experts, linked to the capacity of member states, is whether the current PSC will be able to maintain the pace of activities of the committee.

There is a perception that the quick and unpredictable turnover in embassy staff could hamper the consistency of efforts and limit the momentum created towards building institutional memory for the functioning of the subsidiary bodies.

In addition, there is the issue of political will and whether it will be sustained. For example, after two months during which the Committee of Experts was quite active, the provisional programme for March 2018 did not include any meetings of the subsidiary body.

Although the December retreat called for at least one monthly meeting, implementation is at the discretion of member states and depends on their capacity and the availability of staff.

How can PSC member states increase their capacity?

So far, the PSC and the AU in general have refrained from implementing Article 5.4 of the PSC Protocol, which calls for regular AUC assessments of the capability of PSC members with regard to their mandate.

Most member states are reluctant to accept any measures that compel them to increase their capacity of their permanent representations in Addis Ababa

The initial report on the institutional reform of the AUC chaired by President Paul Kagame also called for 'reviewing the PSC's membership, in line with Article 5(4) of the PSC Protocol', but this recommendation was not retained among the final AU decisions.

Most member states would be very reluctant to accept any measures that compel them to increase the capacity of their permanent representations in Addis Ababa. Instead, they believe that the issue of capacity should be one of the factors guiding the election of members to the PSC. This is, however, less and less likely, given the tendency in the AU to move towards consensual elections, rather than those based on the capacity of member states to fulfil their obligations on a body such as the PSC.

There is clearly a gap between the political will of some PSC member states to operationalise subsidiary committees and the reluctance of others to take the proper steps to ensure that it happens.



THE PROVISIONAL PROGRAMME FOR MARCH 2018 DID NOT INCLUDE ANY MEETINGS OF THE SUBSIDIARY BODY

PSC interview: Political will is needed for equitable transitional justice

The *PSC Report* spoke to Institute for Security Studies senior researcher Allan Ngari about the International Criminal Court (ICC), the issue of equality before the law and transitional justice in conflict situations in Africa.

There has been a lot of controversy over the death penalty meted out against a South African military advisor for South Sudan's opposition, led by Riek Machar. What are your views on this?

The larger questions that need further interrogation are the efficacy and capacity of the justice system in South Sudan to dispense justice in a fair and equitable manner. There are serious doubts as to such efficiency and capacity. The Obasanjo report [commissioned by the AU in 2014] speaks in detail of the need to reform the judicial and justice system of the country.

What is the difference between equality before the law and transitional justice?

Equality before the law is a core principle in human rights law and constitutionalism. In the context of the national application of the principle, it embraces the uniform application of the law and the institutions charged with enforcing the law equally to all people, with no distinction on any basis, whether ethnic, racial, gender or any other status.

Obasanjo's commission recommended that an Africa-led, Africa-owned, Africa-resourced legal mechanism be established under the aegis of the AU

Transitional justice relates to the range of mechanisms employed by post-conflict states going through political change from autocratic rule to democracy, and/or from periods of mass violations of human rights to the respect for the rule of law. It includes criminal accountability, truth seeking, reparations and guarantees for non-recurrence.

The Obasanjo report recommended the setting up of a hybrid court for South Sudan. How far is this process?

Obasanjo's commission recommended that an Africa-led, Africa-owned, Africa-resourced legal mechanism be established under the aegis of the AU and supported by the international community, particularly the United Nations [UN], to bring those with the greatest responsibility at the highest level to account. Although both sides in the conflict accepted the establishment of a Hybrid Court for South Sudan [HCSS] in their August 2015 peace deal, progress has been slow. Internal processes in South Sudan on



EQUALITY BEFORE THE
LAW IS A CORE PRINCIPLE
IN HUMAN RIGHTS LAW
AND CONSTITUTIONALISM

establishing the court have led to a draft statute being approved by the South Sudan Council of Ministers and the AU Commission, but it has yet to obtain parliamentary approval. Meanwhile, the AU office of legal counsel is in the process of staffing key personnel to assist with the work of establishing the court.

From a transitional justice perspective, the establishment of the hybrid court, although welcomed, would not be useful without the proper implementation of the peace agreement and establishment of the other key institutions – the Commission for Truth, Reconciliation and Healing [CTRH] and the Compensation and Reparation Authority [CRA]. As a complementary institution, the CTRH would have a mandate to make recommendations for investigation and prosecution at the HCSS. The HCSS, on its part, is expected to have the capacity to make reparation orders in order to compensate the victims of the crimes within its jurisdiction. It would therefore be meaningful for the HCSS and CRA to make reference to each other in dispensing reparative justice in South Sudan.

The establishment of the hybrid court would not be useful without the implementation of the peace agreement

Transitional justice during or after conflict situations has been a controversial issue in many countries in Africa, not only South Sudan, but also places such as Côte d'Ivoire. What do you see as the major challenges in achieving equitable justice following the end of a conflict?

Major challenges in achieving justice in post-conflict African states revolve around a lack of political will on the part of the state to establish transitional justice institutions that would effectively deal with the past. If these institutions are created, they often do not speak to the spirit of dealing with the past and states choose the mechanisms that best suit their political exigencies. For example, the composition and functions of Côte d'Ivoire's reconciliation commission, the *Commission Dialogue, Vérité et Réconciliation*, and Kenya's Truth, Justice and Reconciliation Commission were severely compromised. Ultimately they were unable to deliver on their mandates as transitional justice mechanisms.

The AU last year supported a motion for the collective withdrawal of AU member states that are signatories to the Rome Statute. Yet so far only Burundi has withdrawn from the ICC. Where do you see this process going?

Although the January 2017 summit decision on the ICC was couched as a 'withdrawal strategy' for African states parties from the ICC



PROGRESS ON ESTABLISHING THE HYBRID COURT FOR SOUTH SUDAN HAS BEEN SLOW

Statute, the contents of the strategy betrayed its title. The strategy presented legal and political avenues through which African states and the AU would engage the ICC and the UN Security Council on the AU or African states' concerns over the work of the ICC.

Since that decision, only Burundi has formally withdrawn, with The Gambia retracting its plans to withdraw following the fall of the Jammeh regime. South Africa withdrew its notice following domestic court rulings on the unconstitutional nature of the withdrawal from the ICC Statute.

The January 2018 AU Summit also pronounced itself by way of a decision on the ICC. Key to the decision is the proposal to submit the question of immunity from prosecution for heads of state to the International Court of Justice [ICJ] for an Advisory Opinion. This has been chief among AU/African states' concerns with the ICC and, of course, is a significant proposal, which would offer some progress on the question of immunity before the ICC should there be some follow-through with an advisory opinion from the ICJ. This is a position that the ISS has championed as a global policy for institutions such as the ICC's Assembly of States Parties.

It is difficult to state at this time whether South Africa will continue with its withdrawal from the ICC, but ANC policies stand unopposed at this stage

The 2018 AU decision in this regard is seen as a positive development, given that there was a missed opportunity for the ICC Appeals Chamber to possibly discuss the matter following the July 2017 Pre-Trial Chamber decision on South Africa's non-compliance with the ICC Statute.

Do you think South Africa will stay in the ICC, given that there is a new leadership in the country?

The 2017 African National Congress [ANC] policy conference resolved to withdraw the country from the ICC Statute. This resolution was supported by previous decisions of key structures of the ANC in 2016. Following the election of a new ANC president and structures, it's difficult to conclusively state at this time whether South Africa will continue in its trajectory on withdrawal from the ICC Statute. The ANC policies, however, stand unopposed at this stage.

What is also clear is that, following the announcement at the ICC's Assembly of States Parties in December 2017 by the Minister of Justice and Correctional Services that South Africa would withdraw from the ICC Statute, a bill has been presented before the National Parliament to repeal the existing South African law that binds South Africa to the ICC Statute. If this bill is debated, passed and confirmed by the president, the executive will proceed with lodging its instrument of withdrawal from the ICC Statute with the secretary general of the UN, as depositary of the ICC Statute.

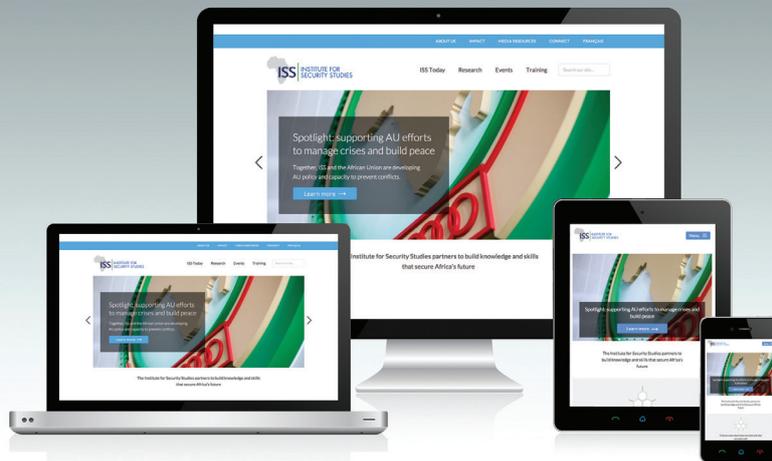
SINCE THE JANUARY 2017
AU DECISION ON THE ICC

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About the PSC Report

The Peace and Security Council Report analyses developments and decisions at the African Union Peace and Security Council (PSC). The monthly publication is the only one of its kind dedicated to providing current analysis of the PSC's work. It is written by a team of ISS analysts in Addis Ababa.

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The Institute for Security Studies (ISS) partners to build knowledge and skills that secure Africa's future. Our goal is to enhance human security as a means to achieve sustainable peace and prosperity. Using its networks and influence, the ISS provides timely and credible analysis, practical training and technical assistance to governments and civil society.

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