Policy Brief

Linking Regional Security and Human Rights in the African Union

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Summary

The transformation from the OAU to the AU in the early 2000s, and the development of the African Peace and Security Architecture, raised the regional organization's role in the maintenance of security and the promotion of human rights on the continent. However, the AU has not managed to link the African human rights and security architectures meaningfully, often favouring political engagement and dialogue toward negotiated settlements, with human rights considerations playing a secondary role. This policy brief specifies numerous recommendations to partners and donors as well as the various AU organs and institutions. Fine-tuned support for better coordination and communication between the AU Commission, the ACHPR and the African Court could bolster the AU's ability to respond meaningfully and effectively to conflict situations. Ultimately, success hinges on the political will of the AU member-states.

Introduction

The Organisation of African Unity (OAU) was founded as a bulwark against external interference, emphasizing anti-colonial struggles and regional solidarity,[1] while human rights concerns were largely left to the discretion of member-states. Recently the African Union (AU) has taken notable steps towards institutionalising and promoting human rights norms among member-states and at organizational levels.[2] The transformation from the OAU to the AU in the early 2000s, and the development of the African Peace and Security Architecture (APSA), heightened the regional organization's role in maintaining security and promoting human rights. However, the AU's responses to conflict situations involving human rights violations have raised tensions between its human rights and security architectures,[3] and the organization has often been challenged, even subverted, by other actors in the international community.

Linking Regional Security and Human Rights

In theory...

The main pillar of the AU's human rights architecture is the 1981 *African Charter on Human and Peoples' Rights*, establishing the African Commission on Human and Peoples' Rights (ACHPR) as a supervisory body to promote and protect the rights in the Charter. Although it recognized the indivisibility of civil, politi-

1 Alden. (2010) "'A Pariah in Our Midst': Regional organizations and the problematic of Western-designated pariah regimes - the case of SADC/Zimbabwe and ASEAN/Myanmar". *Crisis States Research Centre Working Paper*. London: Destin Development Studies Institute.
2 African Union. (2000) *Constitutive Act*. (Articles 4m and 4n)
3 'Architecture' here refers to a combination of treaties, institutions and mechanisms.

cal, economic, social and cultural rights, the Charter was criticized for including 'claw-back' clauses that made certain rights subject to domestic law. Especially criticized were the non-binding nature of ACHPR decisions, and the failure of member-states to implement its recommendations. In 2004, after numerous delays, the ACHPR was complemented by the African Court on Human and People's Rights.[4] In 2011, restrictions on the admission of cases were softened through an innovative move, allowing the ACHPR, member-states, African inter-governmental organizations, NGOs and even individuals to submit cases directly to the court when violations of the African Charter were suspected.

Recognizing the shortcomings of OAU structures in light of changing threats to peace and security on the continent, the AU Constitutive Act of July 2000 provided for a more strongly interventionist security architecture at the level of the AU. To operationalize this vision, the African Peace and Security Architecture (APSA) was established. The Peace and Security Council (PSC) would be the primary political organ, with decision-making responsibility for how the AU should respond to conflict situations. The PSC was vested with authority to act in response to potential or actual conflict situations, impose sanctions on member-states, suspend member-states in case of unconstitutional changes of government and authorize the deployment of peace-support operations. The PSC was to seek close cooperation with the ACHPR, which in turn would bring relevant information to the attention of the PSC.

... and in practice
With the AU playing a more active and prominent role in the management of conflict situations in the region, tensions have emerged between its human rights and security architectures. And in 2011, the AU found itself responding to crises, first in Côte d'Ivoire and then in Libya.

Côte d'Ivoire
In March 2011, tensions and violence following the November 2010 presidential elections in Côte d'Ivoire escalated into armed conflict, with human rights abuses committed by all parties to the conflict. While human rights concerns were noted in the PSC's discourse and its subsequent decisions, regional stability was the main issue. The regional economic community in West Africa, ECOWAS, and the UN initially supported the AU's political approach, but soon focused on human rights concerns, adopting a more interventionist approach to bring an end to the conflict. The continent-level human rights mechanisms (notably

the ACHPR) were largely marginalized by other AU decision-making bodies.

Libya
In the wake of the Arab Spring, protests erupted in eastern Libya in early 2011. Government reprisals sparked a serious armed rebellion a month later, and the country descended into civil conflict. The AU mobilized its security architecture, again promoting political engagement while human rights violations were rapidly escalating. This time, however, the regional human rights mechanisms came to play a more active role. In March 2011, the ACHPR condemned the actions of the Libyan government and instituted proceedings in the African Court for 'serious and massive violations of human rights'. That same month, and for the first time, the Court ordered provisional measures against a member-state, requiring Libya to 'immediately refrain from any action that would result in loss of life or violation of physical integrity of persons' in breach of the African Charter or other international human rights instruments to which Libya is party. The AU, however, failed to enforce these provisions, with several member-states actively working to marginalize the role of the ACHPR and the African Court, and their recommendations and decisions had scant impact on the AU's approach to the conflict.

Observations and Recommendations
First, no significant efforts have been made to link the African human rights mechanisms (the ACHPR and the African Court) with the APSA, or with decision-making in the AU through the PSC or the Assembly of Heads of State and Government. While the AU human rights architecture is nominally detached from member-states, the PSC is an inherently political organ led by member-states. This gives the ACHPR and the Court independence and legitimacy – but leaves these human rights actors with little direct power to enforce decisions, or for human rights considerations to influence decision-making in the PSC. While human rights violations have been declared primary security concerns for the region, actual roles and responsibilities between decision-making bodies and the procedures for responding to human rights violations remain unclear, and regional human rights and security decision-making processes have tended to bypass one another.[5]

- AU member-states should give greater consideration to the inter-linkages between the regional human rights and security architectures, in general and when making decisions in response to specific conflict situations. The new African Governance Architecture and the African Human Rights Strategy present an opportunity here.

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4   The African Court is to be merged with the proposed African Court of Justice to form a permanent court, the African Court of Justice and Human Rights.

5   Murray. (2004) *Human rights in Africa: from the OAU to the African Union*, Cambridge: Cambridge University Press. p. 48.

- Donors and partners could provide specific support to such efforts – and to outlining more clearly roles and responsibilities – in decision-making processes where human rights and security architectures of the AU come together, especially where the ACHPR, the African Court, the decision-making organs of the AU and the AU Commission (AUC) all hold specific responsibilities.

Second, AU member-states seem insufficiently aware of the work and role of the ACHPR and the African Court, not least of the binding nature of the Court's decisions. At best, many member-states view the ACHPR and the Court as largely advisory bodies – at worst, both institutions are sidelined in decision-making.

- The ACHPR and the Court should work to raise awareness among member-states of their role and mandate, and of their decision-making mechanisms and procedures.
- Donors and partners could support initiatives by the ACHPR and the Court to raise awareness, interest and ownership of both institutions by AU member-states, while underscoring the independence and impartiality of these mechanisms. Such initiatives should not promote an external agenda, but instead conform to the decisions taken by AU member-states.

Third, the linkages between the AUC, which functions as the AU secretariat, and the ACHPR and the African Court are extremely weak. While interaction does take place at the individual level,[6] there is no institutionalized interaction,[7] perhaps due partly to geographical separation (the AUC in Addis Ababa, the ACHPR in Banjul and the African Court in Arusha). Despite legal provisions for heightened cooperation,[8] political procedures for addressing human rights abuses within member-states are de-linked and stove-piped.

- The ACHPR, the African Court and the AUC should establish clear mechanisms for coordination and regular institutional engagement through liaison offices, coordination meetings, or other relevant mechanisms.

- Donors and partners could encourage greater interaction between human rights mechanisms and the AUC and the AU's political organs, e.g. through support for the establishment of an ACHPR and African Court liaison office in Addis Ababa.

Fourth, despite the prominent role accorded the ACHPR, it has been largely side-lined by AU member-states, for political reasons. While the ACHPR is a quasi-judicial body and can hear individual complaints, its recommendations, unlike the decisions of the Court, are not binding, and it is up to individual member-states to implement recommendations. Since 2008, no report of the ACHPR had been approved by the AU Assembly.[9] Chronically under-resourced, the ACHPR has had neither the means nor the political access to elevate this as a concern to AU member-states.[10]

- The ACHPR should identify member-states which are supportive of their role, and willing to bring matters of relevance to their work onto the agenda of AU meetings and summits.
- Partners and donors could provide technical support to AU member-states willing to work towards greater recognition of the work and reports of the ACHPR in AU decision-making processes.

Fifth, while the African Court has a broad remit to address human rights concerns and take decisions binding on member-states, the Court commenced operations only in 2006, and has not heard sufficient cases to assert its role vis-à-vis AU member-states or AU decision-making bodies. Decisions on Libya give an indication of the Court's potential role, but only time will tell whether it can enforce its powerful mandate. The planned merger of the African Court with the proposed African Court of Justice to form the African Court of Justice and Human Rights (AfCJHR) will open new opportunities, but also bring unpredictability that may further delay the institutionalization of an empowered human rights judicial body.

- The Court should work to identify member-states willing to encourage the development of a judicial entity that is assertive, and to effectively bring decisions of the Court into AU decision-making processes. The Court should work with member-states to ensure that the proposed AfCJHR does not suffer from the same lack of political will.
- Partners and donors could provide technical support to member-states willing to work towards greater recognition of the Court, and support the processes related to the establishment and development of the AfCJHR.

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6 Personal interview 1. (2011). Addis Ababa.
7 Murray. (2004) *Human rights in Africa : from the OAU to the African Union*, Cambridge: Cambridge University Press. p. 70.
8 African Union. (2000) *Constitutive Act.* art. 3 (h) and 4 (m) African Union. (2002) *Protocol Relating to the Establishment of the Peace and Security Council of the African Union*, Durban. Article 19: African Union. (2004) *Protocol on the Statute of the African Court of Justice and Human Rights*. African Union. (2007a) *African Charter on Democracy, Governance and Elections*, Addis Ababa. Art 45 (c) *African Union. (2009) African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa*, Kampala. Art 3 (e) and (f).

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9 Personal interview 5. (2011). Addis Ababa.
10 Sceats. (2009) "Africa's New Human Rights Court: Whistling in the Wind?". Chatham House briefing paper. London: Chatham House. p. 4. and Human Rights Monitor. (2012) "Human Rights Monitor Quarterly". 1. p. 33.

Finally, while significant investments have been made in developing the regional security architecture, this is not the case with the regional human rights architecture – a discrepancy particularly evident at the level of the AUC. The Peace and Security Department (PSD) is well-staffed and funded – but not the Political Affairs Department, which deals with human rights and humanitarian issues.[11] This imbalance in funding has resulted in sub-optimal coordination between the AUC departments tasked with human rights and peace and security matters. It remains to be seen whether this can be rectified by the recently launched African Governance Architecture and the African Human Rights strategy.

- AU member-states should work with the AUC to ensure that priority areas are suitably staffed and resourced, and demand greater coordination and harmonization of human rights and security issues.
- Partners and donors could explore modalities to provide targeted support beyond the AU PSD as part of a longer-term strategy to bolster the AU's ability to develop holistic responses to conflict situations. Partners could link their support for the development of the APSA to the development of the continent-level human rights architecture, and encourage the development of linkages within the AUC in this regard.

The human rights and security architectures of the AU, while on paper mutually constitutive and reinforcing, are in reality divorced from one another. This critically affects the AU's legitimacy and credibility as well as its ability to assert itself as the primary actor in the region. Unless these tensions are resolved, the AU is likely to face external interference when responding to future conflicts. Then the AU may find its legitimacy and credibility questioned, not only by the international community, but also by its own member-states. The above recommendations can go some way towards addressing the existing shortcomings of the AU's conflict management approach, it is ultimately the political will of the AU member-states to empower the regional human rights mechanisms and relevant components of the AUC that will elevate human rights concerns in regional conflict management approaches, and reconcile the discrepancies between the continental human rights and security architectures.

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11 Donors are reluctant to fund the PAD unless it shows improvements in management and implementation. Personal interview 6. (2011). Addis Ababa.

About the authors

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