THE ROLE OF THE AFRICAN UNION IN PROMOTING PEACE, SECURITY AND HUMAN RIGHTS. CASE STUDY: SOUTH SUDAN

BY

NAMUDDU TAUS

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DECEMBER, 2017
DECLARATION

I, Namuddu Taus declare that the work presented in this Research paper is my original work. It has never been presented to any other University or Institution. Where other people’s works have been used, references have been provided. It is in this regard that I declare this work as originally mine.

Signed...........................................

Date.................................. 13th December 2017
APPROVAL

This research has been submitted with the approval of Mr. Kahama Dickson as the university supervisor.

Signed:  

Date  

12/12/17
DEDICATION

I dedicate this work to my lovely parents Mr Jumba Sulaiman and Mrs Namatovu Aisha J. and my sisters, Nakafeero Nuliat, Salimat Jumba and my brothers, Muhusin Mugerwa, Jumba Bashir, Jumba Muzafar, Jumba Ahmed for their continued unwavering support both financial and moral through my academic journey and for believing in me. Your sacrifice is much!
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# LIST OF ABBREVIATIONS

- **ACHPR** - African Charter on Human and Peoples' Rights
- **AU** - African Union
- **AUCISS** - African Union Commission of Inquiry in South Sudan
- **TGoNU** - Transitional Government of National Unity
- **JMEC** - Joint Monitoring and evaluation Committee
- **PSC** - Peace and Security Council
- **CEWS** - Continental Early Warning System
- **CRM** - Country Review Mission
- **CSSDCA** - Conference on Security, Stability, Development and Cooperation in Africa
- **ARCSS** - Agreement on the Resolution of the Conflict in South Sudan
- **ECOWAS** - Economic Community of West African States
- **IGAD** - Intergovernmental Authority on Development
- **HRC** - Human Rights Committee
- **NEPAD** - New Partnership for Africa’s Development
- **PAP** - Pan African Parliament
- **POC** - Protection of civilian
- **AUTJF** - African Union Transitional Justice Policy Flame Work
- **SADC** - Southern African Development Communities
ABSTRACT

The research will trace the evolution of the African Union as a successor to the Organization of African Unity in terms of its mandate for conflict prevention, peacekeeping, peacemaking and peace building. I will briefly touch upon the origin of the organisation, its role and mandate on the African continent in ensuring peace, security and human rights through its organ the Peace and Security Council and particularly its efforts in South Sudan.

The state of South Sudan is less than seven years old, but the world’s newest nation now tops the ranks of failed states worldwide. After decades of civil war between south, north Sudan and now within independent South Sudan, wherein a conflict erupted in mid-December 2013, and quickly transformed into a national, political and ethnic crisis. This was followed by yet another outbreak of crisis in July 2016 forcing people to take refuge in United Nations Protection of Civilian (PoCs) sites within South Sudan as IDPs or refugees in neighbouring countries.

A case study of South Sudan was taken because of the precarious situation in the world’s youngest nation and also the numerous efforts by the AU and some regional arrangements. The situation that South Sudan presents provides a fertile ground for assessing the role of the African Union through the Peace and Security Council of the AU in the realm of promoting peace, security and human rights. Within this study, African Union impediments to peace, security and human rights promotion on financial, political, and socio-cultural fronts will be analysed. A number of secondary methods will be employed to ensure that relevant information regarding the Role of the African Union is ascertained. These include, Reports of the Organs of the AU, desktop research, and library based information.

Furthermore, the research will seek to explore and examine whether the initiatives and approaches by the AU to the situation in South Sudan have been appropriately examined so as to end the conflicts and explain whether conflict founded upon socio-cultural, political diversity undermines the very foundation of regional solidarity and therefore compromises or makes it hard for the African Union to do its work as a regional organ in promoting peace, security and human rights or hinders its fulfilment of its mandate as the Constitutive Act. The research will end with a number of recommendations to the AU and South Sudan on what steps need to be taken to put an end to the current deadlock in efforts to resolve the conflict that South Sudan presents in the Continent.
CHAPTER ONE

INTRODUCTION

1.1 BACKGROUND

Like many regions, Africa also had a Pan-African organization created in 1963, thanks to the unflinching commitment of some first generation post-colonial leaders. The ‘federalist school’, as they are sometimes called, represented by figures like Kwame Nkrumah of Ghana essentially wanted a big bang transformation of the continent’s abundant resources. It was also grounded in the belief that such unity was necessary to end the persistence of neocolonial linkages with the former colonial masters. Kwame Nkrumah and Chief Albert Luthuli of South Africa intended to create something like the United States of Africa, a point advocated for by the Libyan leader Muammar Gaddafi, with a continental presidency and parliament and a common African military ‘High Command’. However, the time was not ripe for Pan-Africanism and what emerged was a much-diluted OAU on May 25 1963, the 32 African states that had achieved independence at that time agreed to establish the Organization of African Unity (OAU). The OAU operated on the basis of its Charter (OAU Charter) and the 1991 Treaty Establishing the African Economic Community (known as the Abuja Treaty). The OAU’s main objectives, as set out in the OAU Charter, were to promote the unity and solidarity of African states, coordinate and intensify their cooperation and efforts to achieve a better life for the peoples of Africa, safeguard the sovereignty and territorial integrity of Member States, rid the continent of colonization and apartheid, promote international cooperation within the United Nations framework, and harmonize members’ political, diplomatic, economic, educational, cultural, health, welfare, scientific, technical and defense policies. Good background information but what is your authority?

The OAU Charter, known for its emphasis on decolonization, adhered strictly to the principle of sovereignty of member states and non-interference in their internal affairs. This had weakened the organization’s ability to intervene timely to prevent and manage conflicts, especially those of an internal nature. The record of the OAU was not impressive in the field of directly security related activities and the organization was more involved in setting norms and standards that it was incapable of enforcing. They were not very

successful ones lack of finance, absence of clear mandates and logistical shortcomings accounted for the failure. With its decolonization and anti-apartheid agenda becoming irrelevant by 1994 following the establishment of black majority rule in South Africa, it was widely felt that the organization was no longer structurally poised to take on the new challenges faced by the continent in the 1990s. The region had also a high degree of democratic deficit. The end of the Cold War and the failure of the international community to prevent the genocide perpetrated in Rwanda, where the United Nations troops abandoned the country, including letting thousands of trapped civilians face certain death at the hands of the Interahamwe militia. This failure sparked transformative changes in how African nations would envision their role and empower themselves to act in the name of collective security and address African problems primarily through their own efforts. Authority?

Through the 1990s, leaders debated the need to amend the OAU’s structures to reflect the challenges of a changing world. This shift in focus motivated the leaders to do away with the OAU principle of non-interference and adopt what has now come to be known as the principle of ‘non-indifference’. Effort made at addressing these struggles in the past, saw the formation of a continental group. In 1999, the OAU Heads of State and Government issued the Sirte Declaration calling for the establishment of a new African Union. The vision for the Union was to build on the OAU’s work by establishing a body that could accelerate the process of integration in Africa, support the empowerment of African states in the global economy and address the multifaceted social, economic and political problems facing the continent. Authority?

Further, there was also a greater realization that Africans themselves must search for solutions to the region’s problems, and that any assistance from outside should be so tailored as to uphold African Ownership. This idea was promoted vigorously by Thabo Mbeki, the former president of South Africa, through the project of African renaissance. In total, four summits were held in the lead up to the official launching of the African Union, the: Sirte Summit (1999), which adopted the Sirte Declaration calling for the establishment of the AU, Lomé Summit (2000), which adopted the AU Constitutive Act, Lusaka Summit (2001),

which drew the road map for implementation of the AU, Durban Summit (2002), which launched the AU and convened its first Assembly of Heads of State and Government. Therefore, the African Union, is a geo-political entity almost covering the entirety of the African continent, with Morocco being the exception. Critics argued that the OAU in particular did little to protect the rights and liberties of African citizens from their own political leaders, often dubbing it the "Dictators' Club".3

Before its demise, it was seen by many to have failed to provide Africa the needed political platform to chart the course of unity needed for continental development. "With varied reasons adduced for the failure among scholars, the erstwhile continental body is seen as a failure", says Ajala4. Others leaning on Ajala's conclusion hold that the failure of the continental body, birth vices such as wars and poverty that became dominant across the continent. Its failure to effectively represent the interests of the common people on the continent leads to such conclusion. It did not stand for peace, unity and people centered development as wars and poverty became dominant across continent and as such, the O.A.U was seen an old boys' club where the so called leaders met annually to showcase their ill-gotten wealth and rival each other for the control of African continental political body5. Their main focus seemed to be protecting each other, no matter the circumstances in line with the so-called 'principle of state sovereignty'6. However, while the footprint of the OAU is still strong, the AU Constitutive Act and protocols established a significant number of new structures, both at the level of major organs and through a range of new technical and subsidiary committees. Many of these have evolved since 2002 and some are still under development. By the time of the AU’s creation in 2002 twenty-one (21) more members had joined gradually, reaching a total of 53.

No other regional organization has the peace matrix high on its agenda as the AU. While most other Regional organizations have emerged after eliminating the possibility of war or after creating, in some Cases, 'security communities'7, the AU itself is borne out of the need for peace and security, especially human security, as a necessary pre condition for addressing the development related problems of the continent.

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5Ibid
6Hodge, T, (2002), From OAU to AU: Same Old Lady, New Dress, Atlanta, The Perspective
The Constitutive Act of the African Union sets out the codified framework under which the African Union is to conduct itself. The Union has established a continent wide peace and security architecture through its Peace and Security Council which is to ensure conflict prevention and management and the AU has made some progress in peacemaking both through mediation and preventive Diplomacy and through military interventions For example, African mediation, led by Kenya under the auspices of Inter-Governmental Authority on Development (IGAD), resulted in the signing of the Comprehensive Peace Agreement in Sudan in 2005, and the AU mission in Darfur, the African Union Mission in Sudan (AMIS). By reacting to the crisis in Darfur, the PSC enhanced the African response to conflicts in the continent.

The Comprehensive Peace Agreement\(^8\) (CPA), was an accord signed on January 9, 2005, by the Sudanese people’s Liberation Movement (SPLM) and the Government of Sudan so as to end the second civil war that had erupted in 1983. The CPA was meant to develop democratic governance countrywide, and share oil revenues. It also set a timetable for a Southern Sudanese independence referendum and on April 2010, Sudan held elections meant to pave the way toward democratic transformation. However, instead of encouraging power sharing between the NCP and the SPLM/A, the elections further divided them and there was evidence of fraud on both sides. However, South Sudan gained independence from Sudan in the Southern Sudan Referendum on January 9, 2011 and Six months later, on July 9, 2011, it became the 54th member of the African Union (AU) and the world’s newest country. Despite South Sudan’s successful secession, critical aspects of the CPA were not and remain unimplemented.

On December 15, 2013, tensions between factions loyal to President Salva Kiir, of the Dinka ethnic group, and those aligned with his former Vice President, Riek Machar, of the Nuer ethnic group, exploded into fighting on the streets of Juba, the capital city. South Sudan’s dramatic return to war has torn communities apart and left countless thousands dead. As of September 2014, 1.8 million people were still too afraid to return to their homes. Even through humanitarians have given assistance to over 3.1 million people in South Sudan, they

\[^8\] Also known as the Naivasha Agreement
estimate that at least 2.2 million were still facing either crisis or emergency levels of food insecurity. 9

Thousands of people have died, thousands more are on the brink of starvation, and there have been repeated allegations of mass rape, massacres of civilians and forced cannibalism. In August 2015, after tens of thousands had been killed and more than 1.6 million people had been displaced10, a shaky peace agreement was reached between the warring parties, once again facilitated by the Inter Government Authority for Development (IGAD), the organization of African countries that includes South Sudan and most of its neighbours.

As part of the agreement, Riek Machar was to return to Juba to resume his post as the country’s vice president. Since the start of the civil war in 2013, at least eight peace deals have collapsed before taking effect, and clashes between the warring factions were reported around the country even as the latest accord was completed11, signed between the Sudan People’s Liberation Movement(SPLM) and the Sudan People’s Liberation Army-In Opposition (SPLA-IO) to end the two year conflict marked by widespread atrocities. Unfortunately, in July 2016 a fresh conflict broke out again in south Sudan shortly before the 2015 agreement could achieve proper implementation and south Sudan became the world’s newest country, steeped in ethnic conflict since violence broke out in 201312.

Article 4(h) of the Constitutive Act of the African Union envisages the right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely war crimes, genocide and crimes against humanity. The Protocol on Amendments to the Constitutive Act, which was adopted in February 2003, amends Article 4(h) by adding at the end of the sub-paragraph the words “as well as a serious threat to legitimate order to restore peace and stability to the Member State of the Union upon the recommendation of the Peace and Security Council”. Furthermore, Article 5(2) of the AU constitutive Act and Article 2(1) of the Peace and Security Council(PSC) protocol designates the Council as a standing decision-making organ for the prevention, management and

resolution of conflicts and it’s upon these principles that the African Union intervened in the South Sudan Crisis.

The African Union (AU) has pledged to create a continent of peace and Solidarity. However, dozens of socio-ethnic conflicts occur across the continent despite the African Union’s best efforts to prevent them.

This study seeks to examine the role of the AU in responding to situations that threaten peace and security through the Peace and Security Council of the AU, what has been the role of the AU in resolving the conflict in South Sudan; what impact has the AU response to the situation in South Sudan had and what more need to be done by the AU in resolving the conflict situation in South Sudan?

1.2 PROBLEM STATEMENT

For long, internationally grown solutions have not been particularly effective in addressing peace, security and human rights challenges in South Sudan. For its entire first five-years of existence, the nation of South Sudan had a U.N. peacekeeping force. Private security agencies like Dyn Corporation have also been involved in seeking to prevent conflict or bring peace and security back to south Sudan. These measures have been faulted for their foreignness and ineffectiveness at preventing conflicts in Africa.

Equally too, the activities of the Organisation of African Unity (OAU) and sub-regional bodies have followed a similar pattern. The Inter-Governmental Agency for Development (IGAD) had attempted unsuccessfully on several occasions to mediate the conflict. These regional efforts suffered the same fate as global effort, the arrangements paid no attention to the causes of conflict before they interacted and manifested their deadly effects. With the creation of the African Union in 2002 to replace the OAU, institutions and organs have been established to cope up with such challenges. It is against the foregoing background that the study will be conducted to assess the role or impact of the African Union in promoting peace, security and human rights in South Sudan.

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1Portada, Robert A. Riley, John H. Gamborne, Michael D. Journal of Third World studies 10-1-2014
1.3 OBJECTIVES

1.3.1 General Objective
To examine the role of the AU in response to the conflict situation in South Sudan.

1.3.2 Specific Objectives
a) To raise awareness on peace, security and human rights issues in South Sudan.
   a) The study will seek to establish human rights promotion in South Sudan by the African Union.
   b) To determine the challenges experienced by the AU in its response to the situation in South Sudan.
   c) To establish and provide a way forward for redressing these challenges.

1.4 RESEARCH QUESTIONS
a) What is the role of the AU in responding to the conflict situation in South Sudan?
   b) What challenges has the AU experienced in its response to the situation in South Sudan?
   c) What mechanisms can the AU explore to respond effectively to peace, security and respect for human rights in South Sudan and other African states plagued by the same challenges?

1.5 JUSTIFICATIONS FOR THE STUDY
a) There is great need to reduce gross violation of human rights
b) The need to prevent conflicts in South Sudan specifically and in the continent generally.
   c) There is need to reduce on the high costs incurred in stopping the conflicts.

1.6 SIGNIFICANCE OF THE STUDY.
Carrying out this research would help in the following ways,
   a) There will be increased information on the Topic.
   b) The study will be a propeller to further debates and the plight of African Union impact in other states
c) The study will propose key strategies to improve the impact of the African Union in the promotion of peace, security and human rights in South Sudan.

1.7 SCOPE OF THE STUDY

1.7.1 Time scope
Looking at the conflicts in South Sudan the study will focus on the period from 2011 to present. The date 2011 is so critical because is the year when South Sudan got her independence.

1.7.2 Context Scope
The study will be limited to studying the existing roles of the African Union in South Sudan, how effective it is in promoting peace, security and human rights and also challenges it faces plus the way forward on how the AU can improve its work

Methodology?

Literature review?

1.8 OVERVIEW OF CHAPTERS

1.8.1 Chapter One
Chapter One will contain, the introduction of the research topic, background of the study statement of the problem objectives of the study, justification, significance of the study scope of the study, research questions, literature Review and methodology.

1.8.2 Chapter Two
will contain the legal frame work of the AU on peace, security and human rights.

1.8.3 Chapter Three
will deal with the role of the AU in promoting peace, security and human rights and challenges hindering the AU to effectively carry out its mandate.

1.8.4 Chapter Four
will contain the summary, recommendations and conclusion
1.9 LITERATURE REVIEW

At the time of liberation from colonial rule, Mazrui noted: 'Pax Africana asserts that the peace and security of Africa is to be assured by the exertions of Africans themselves.'\textsuperscript{17} The human rights watch reports that thousands of civilians have been killed, often because of their ethnicity or perceived political alliances in South Sudan's ongoing conflict. An estimated 2 million people have been forced to flee their homes. Large parts of key towns and essential civilian infrastructure such as clinics, hospitals, and schools, have been looted, destroyed, and abandoned. Tens of thousands of people are still sheltering in United Nations compounds, too afraid to return home. Lack of accountability for decades of violence during Sudan's long civil war helped fuel the conflict. Military and political leaders on all sides have failed to make any serious attempt to reduce abuses committed by their forces, or to hold them to account.\textsuperscript{18}

In Article 4(h) of its Constitutive Act, African leaders endowed the African Union with the right to intervene in a country in the case of genocide, crimes against humanity or war crimes a principle known as 'non-indifference'. According to the African Union Commission of Investigation into South Sudan, chaired by former Nigerian President Olusegun Obasanjo and whose report was released in October 2015, it says crimes against humanity and war crimes were committed in South Sudan by both warring parties in the conflict that broke out in December 2013. There is every reason to fear the renewed conflict is already resulting in similar crimes.

Furthermore, the African Union has a particular responsibility in South Sudan. In line with the August peace agreement, the African Union is responsible for the Joint Monitoring and Evaluation Commission, chaired by former Botswana President Festus Mogae.

The nine-page report, written by an evaluation commission for the Union and dated January 29, 2016, States, 'The African Union has tried to broker a lasting agreement between the government, which is dominated by the Dinka ethnic group, and the rebels, who are mostly Nuer, but so far the leaders from both sides appear to be opposed to any immediate reconciliation.'\textsuperscript{19}

\textsuperscript{17}(A Mazrui 'Towards a pax-Africana: A study of ideology and ambition' (1967) 52 4 The Journal of Negro History 315-318.)
\textsuperscript{18}https://www.hrw.org/africa/south-sudan accessed on 8/02/2017
According to Amnesty International's Annual Report 2015/2016, despite the August 2015 peace agreement and a subsequent ceasefire declaration, conflict continued in several parts of the country, although at a lower intensity than previously. All parties flouted international human rights and international humanitarian law during the fighting, but no one was held accountable for crimes under international law committed in the context of the internal armed conflict.²⁰

Lauren Ploch Blanchard says, The African Union has, to date, played more of a supporting role, its engagement via the African Union Commission of Inquiry was an important contribution in examining the causes of the war and offering recommendations for accountability and institutional reforms²¹.

"The African Union is one body with the political credibility to take charge of a second transitional process. Its credibility rides over and its all-Africa composition and the record of its High Level Implementation Panel for Sudan and South Sudan. Led by the former South African President Thabo Mbeki, this panel has engaged different groups in North and South Sudan on Questions of Reforms²²," said Professor Mahmood Mamdani.

The African Union (AU) commission of inquiry report, made public in October 2015, highlighted the ethnic nature of abuse in the conflict, which it said included war crimes and possible crimes against humanity.²³

The activities of the African Union were aimed at calling the opposite parties to negotiations. The African Union spokesman Mr. El Ghassim Wane said, it required an immediate cessation of hostilities in South Sudan and called the leaders of the warring factions to engage in the dialogue to prevent an all-out civil war²⁴.

But the root of this war was not ethnic strife, says expert Alex de Waal in an interview. "The reason things turned from a political crisis to a war was not because of ethnic divisions as

²¹Pg. 9 PR 2 Line 4, Conflicting South Sudan and the Challenges Ahead, September 22, 2016(congressional research services). Specialist in African Affairs
such, but because the army was not a professionalized, institutionalized army," he says. To move toward peace in South Sudan, "the initiative should be taken at the African level, particularly by the African Union," says Alex de Waal. A painful history of unaddressed war crimes and human rights abuses committed during decades of conflict in South Sudan helped fuel the atrocities. No serious efforts have been made by either side to end abuses committed by their forces. Human rights watch, world report 2016.

Joint Monitoring and Evaluation Committee (JMEC) Deputy Chairman Ambassador Augustino Njoroge said this during a briefing to the African Union Peace and Security Council at the start of their three-day visit to South Sudan, "Insecurity around the country is having a profound impact on the lives of ordinary South Sudanese. Human Rights are being compromised, livelihoods are destabilized, the economy is weakened and people are left scared and anxious".

The Peace and Security Council of the African Union (AU), at its 411th meeting at the level of Heads of State and Government, in Banjul, The Gambia Communiqué stated that "the council expresses, once again, its grave concern about the crisis in South Sudan and Africa’s dismay and disappointment that the continent’s newest nation should descend so quickly into civil strife, with the potential of rapidly deteriorating into ethnic clashes and a full-fledged civil war, with far-reaching consequences for regional peace, security and stability.

JMEC Chairman, H.E. Festus Mogae, opened the February JMEC Plenary, in Juba, by expressing concern and dismay at the outbreak of fighting in South Sudan since the New Year, said, "It is simply not credible for the Parties to the Agreement to preach peace with one hand and simultaneously wage war around the country with the other. Since 2017 began, we have seen violent conflict in the Equatorials, Upper Nile and Unity regions. This is not acceptable. Security is the foundation stone upon which every other aspect of South Sudan’s

26 https://www.hrw.org/world-report/2016/country-chapters/south-sudan, accessed on 7/02/2017
future will be built. JMEC demands respect for the ceasefire and the restoration of peace by all Parties.”

The Special Rapporteur on the Rights of Women in Africa in support of the AU Campaign to: “Restore the Dignity of Women and ensure Accountability in South Sudan” Honourable Commissioner Lucy Asuagbo stated, “The Commission is deeply concerned about serious human rights violations in South Sudan since the outbreak of the conflict in 2013, especially the scale of sexual violence perpetrated against women and girls which grossly violates their dignity and other human rights”

Another addition to peacekeeping operations is the use of preventive diplomacy. Preventive diplomacy is the employment of diplomatic measures to arrest conflict before it can proliferate. Furthermore, Murray argues that much of conflict outburst stems from human rights violations. Murray states that the OAU/AU must improve their record of quelling gross human rights violations if they are to meet the goals of conflict prevention.

1.10 METHODOLOGY
This study will be based on the examination of the relevant literature. I will in addition rely on the secondary sources of data listed below as there is simply not much literature to be found about post-independence South Sudan concerning these issues.

1.10.1 Data source

1.10.2 Secondary Data

Secondary data will help to provide information regarding the topic plus through the use of Desktop method of in-depth legal and descriptive qualitative analysis of material. This kind of data will be obtained from the following sources; Treaties, declarations, resolutions, and reports of Regional and global organizations.


30http://www.achpr.org/news/2016/12/d264


Reports of the organs of the African Union such as the Peace and Security Council, African Commission, and the Pan-African Parliament plus; Focused discussions with the supervisor on relevant documents;

a) A great deal of knowledge will be gotten from the internet by referring to important documentation.

b) Library based information which will be critically analysed to discuss the research questions with the view of making relevant deductions. Library to be visited include, Basajja Balaaba library, Foundation for human Rights Initiative (FHRI).

c) I will also refer to relevant and recent news articles, interviews to illustrate certain points.

d) Manuals and journals.

1.10.3 The criteria to be used when making recommendations includes;

a) Practicability.
CHAPTER TWO

THE AU LEGAL FRAMEWORK ON PEACE, SECURITY AND HUMAN RIGHTS.

2.1 INTRODUCTION

This Chapter discusses the AU Legal framework on peace, security and human rights. It’s worth noting that the enactment of conventions is a starting point to target different forms of insecurity and human rights violations. For example- the Constitutive Act of the AU, the Protocol on peace and Security Council, African Charter on Human and Peoples’ Rights. This chapter attempts to discuss the main features of these legal frameworks and in subsequent chapters will discuss and scrutinize whether these principles were adhered in the South Sudan crisis

2.2 The AU Legal Framework

2.2.1 The Constitutive Act of the AU

The Constitutive Act of the African Union sets out the codified framework under which the African Union is to conduct itself. It was signed on 11 July 2000 at Lomé, Togo. It entered into force after two thirds of the 53 signatory states ratified the convention.

The preamble of the Act asserts, we heads of state and government of the member states of the AU, Conscious of the fact that the scourge of conflicts in Africa constitutes a major impediment to the socio-economic development of the continent and of the need to promote peace, security and stability as a prerequisite for the implementation of our Development and integration agenda, determined to promote and protect human and peoples’ rights, Consolidate, Democratic institutions and culture, and to ensure good governance and the rule of law.

The AU under its Article 4 lays down its organs and among these we have the General Assembly, the Commission, the PSC and other organs as the Assembly may decide to establish.

The objectives of African Union include

a) Promote peace, security, and stability on the continent

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33 Constitutive Act of the African Union
34 Constitutive Act of the African Union
35 Article 3, constitutive Act
b) Promote and protect human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights and other relevant human rights Instruments.

The Constitutive Act of the Union\textsuperscript{36} provides for, the right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity and the right of Member States to request intervention from the Union in order to restore peace and security\textsuperscript{37}. The Protocol on Amendments to the Constitutive Act, which was adopted in February 2003 amends Article 4 (h) by adding at the end of the sub-paragraph the words “as well as a serious threat to legitimate order to restore peace and stability to the Member State of the Union upon the recommendation of the Peace and Security Council.”

The addition to Article 4 (h) was adopted with the sole purpose of enabling the African Union to resolve conflicts more effectively on the continent, without ever having to sit back and do nothing because of the notion of non-interference in the internal affairs of member States.

Article 7\textsuperscript{38} gives the Assembly the mandate to make decisions by consensus or by 2/3 of the majority member states in the sole purpose of fulfilling the objectives of the AU, it’s upon this basis that the Assembly passes binding resolutions addressing particular matters.

The Assembly receives, considers and takes decisions on reports and recommendations from the other organs of the Union, establishes any organ of the Union, monitor the implementation of policies and decisions of the Union as well ensure compliance by all Member States.\textsuperscript{39}

Article 20(1)\textsuperscript{40} establishes a Commission of the Union, which shall be the Secretariat of the Union whose structure, functions and regulations of the Commission shall be determined by the Assembly.

2.2.2 Protocol relating to the establishment of the peace and Security Council

The Peace and Security Council (PSC), a new organ, is intended to provide a more robust mechanism than its predecessor, being the Central Organ of the Mechanism for Conflict Prevention, Management and Resolution. The PSC was established by a Protocol adopted in Durban in July 2002, in terms of Article 5(2)\textsuperscript{41} and entered into force on 26 December 2003.

\textsuperscript{36}Article 4 of the Constitutive Act
\textsuperscript{37}Article 4 (1) (h) and (j) of the constitutive Act
\textsuperscript{38}Constitutive Act of the African Union
\textsuperscript{39}Article 9, Constitutive Act of the Union
\textsuperscript{40}Constitutive Act of the African Union
\textsuperscript{41}Constitutive Act of the African Union
The preamble to the protocol states, We, the Heads of State and Government of the Member States of the African Union, Acknowledging the contribution of African Regional Mechanisms for Conflict Prevention, Management and Resolution in the maintenance and promotion of peace, security and stability on the Continent and the need to develop formal coordination and cooperation arrangements between these Regional Mechanisms and the African Union.

The Protocol provides for the right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely war crimes, genocide and crimes against humanity, in accordance with Article 4(h), the right of Member States to request intervention from the Union in order to restore peace and security, in accordance with Article 4(j) of the Constitutive Act of AU.

The Peace and Security Council performs the functions of promoting of peace, security and stability in Africa, early warning and preventive diplomacy, peace-making, including the use of good offices, mediation, conciliation and enquiry, peace support operations and intervention, pursuant to the Constitutive Act, peace-building and post-conflict reconstruction, humanitarian action and disaster management.

It's responsible for dealing with the scourge of conflicts that has forced millions of Africans, including women and children, into a drifting life as refugees and internally displaced persons, deprived of their means of livelihood, human dignity and hope. The PSC, is expected to consider the right to intervene when a situation so warrants and make appropriate recommendations to the Assembly of the Union for possible intervention.

2.2.3 The African Charter on Human and Peoples' Rights

The preamble of the ACHPR is to the effect that the African States members of the Organisation of African Unity, parties to the present Convention entitled “African Charter on Human and Peoples’ Rights, taking into consideration the virtues of their historical tradition and the values of African civilization which should inspire and characterize their reflection on the concept of human and peoples’ rights, recognizing on the one hand, that fundamental human rights stem from the attitudes of human beings, which justifies their international
protection and on the other hand that the reality and respect of peoples’ rights should necessarily guarantee human rights, considering that the enjoyment of rights and freedoms also implies the performance of duties on the part of everyone.

Chapter one\textsuperscript{45} lays down the various Human and peoples’ rights and duties. Article 4 and 5\textsuperscript{46} is to the effect that human beings are inviolable, every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right and every individual shall have the right to the respect of the dignity inherent in a human being.

The mandate of the commission\textsuperscript{47} as laid down in Article 45 (1)(a) and 4\textsuperscript{48} is to promote Human and Peoples’ Rights and in particular, collect documents, undertake studies and researches on African problems in the field of human and peoples’ rights, organize seminars, symposia and conferences, disseminate information, encourage national and local institutions concerned with human and peoples’ rights, and should the case arise, give its views or make recommendations to Governments. Perform any other tasks which may be entrusted to it by the Assembly of Heads of State and Government.

\textbf{2.2.4 Protocol to the African Charter on the Rights of Women,}

The preamble of the convention is to the effect that recalling that women’s rights have been recognized and guaranteed in all international human rights instruments, notably the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women and its Optional Protocol, the African Charter on the Rights and Welfare of the Child, and all other international and regional conventions and covenants relating to the rights of women as being inalienable, interdependent and indivisible human rights, firmly convinced that any practice that hinders or endangers the normal growth and affects the physical and psychological development of women and girls should be condemned and eliminated, determined to ensure that the rights of

\textsuperscript{45}African Charter on Human and peoples’ Rights
\textsuperscript{46}Ibid
\textsuperscript{47}African Commission on Human and people’s Rights
\textsuperscript{48}Constitutive Act of the African Union
women are promoted, realized and protected in order to enable them to enjoy fully all their human rights;

Article 1⁴⁹ is to the effect that States Parties shall combat all forms of discrimination against women through appropriate legislative, institutional and other measures, enact and effectively implement appropriate legislative or regulatory measures, including those prohibiting and curbing all forms of discrimination particularly those harmful practices which endanger the health and general wellbeing of women, take corrective and positive action in those areas where discrimination against women in law and in fact continues to exist;

Article 3⁵⁰ states that every woman shall have the right to dignity inherent in a human being and to the recognition and protection of her human and legal rights.

Article 4⁵¹ every woman shall be entitled to respect for her life and the integrity and security of her person. All forms of exploitation, cruel, inhuman or degrading punishment and treatment shall be prohibited.

Article 10⁵² is to the effect that Women have the right to a peaceful existence and the right to participate in the promotion and maintenance of peace.

Article 11(4)⁵³ states that States Parties shall take all necessary measures to ensure that no child, especially girls under 18 years of age, take a direct part in hostilities and that no child is recruited as a soldier.

Article 11(2)⁵⁴ states that States Parties shall, in accordance with the obligations incumbent upon them under international humanitarian law, protect civilians including women, irrespective of the population to which they belong, in the event of armed conflict.

Article 11(3)⁵⁵ is to the effect that States Parties undertake to protect asylum seeking women, refugees, returnees and internally displaced persons, against all forms of violence.

⁴⁹ Protocol to the African Charter on the Rights of Women,
⁵⁰ Ibid
⁵¹ Ibid
⁵² Ibid
⁵³ Ibid
⁵⁴ Ibid
⁵⁵ Ibid

Protocol to the African Charter on the Rights of Women,
rape and other forms of sexual exploitation, and to ensure that such acts are considered war crimes, genocide and/or crimes against humanity and that their perpetrators are brought to justice before a competent criminal jurisdiction.

2.2.5 Convention on the Rights of the African Child

The preamble of the convention states that Nothing with concern that the situation of most African children, remains critical due to the unique factors of their socio-economic, cultural, traditional and developmental circumstances, natural disasters, armed conflicts, exploitation and hunger, and on account of the child's physical and mental immaturity he/she needs special safeguards and care, recognizing that the child occupies a unique and privileged position in the African society and that for the full and harmonious development of his personality. The child should grow up in a family environment in an atmosphere of happiness, love and understanding, considering that the promotion and protection of the rights and welfare of the child also implies the performance of duties on the part of everyone.

Article 356 states that every child shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in this Charter irrespective of the child's or his/her parents' or legal guardians' race, ethnic group, color, sex, language, religion, political or other opinion, national and social origin, fortune, birth or other status.

Article 5(1)57 states that every child has an inherent right to life. This right shall be protected by law, (2) States Parties to the present Charter shall ensure, to the maximum extent possible, the survival, protection and development of the child.

Article 1158 states that every child shall have the right to an education. Article 1459, every child shall have the right to enjoy the best attainable state of physical, mental and spiritual health. Article 1660 States Parties to the present Charter shall take specific legislative, administrative, social and educational measures to protect the child from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse, while in the care of the child.

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56 Convention on the Rights of the African Child
57 Convention on the Rights of the African Child
58 Ibid
59 Ibid
60 Ibid
Article 22(1), (2), (3)\(^6\) respectively states that States Parties to this Charter shall undertake to respect and ensure respect for rules of international humanitarian law applicable in armed conflicts which affect the child. States Parties to the present Charter shall take all necessary measures to ensure that no child shall take a direct part in hostilities and refrain in particular, from recruiting any child. States Parties to the present Charter shall, in accordance with their obligations under international humanitarian law, protect the civilian population in armed conflicts and shall take all feasible measures to ensure the protection and care of children who are affected by armed conflicts. Such rules shall also apply to children in situations of internal armed conflicts, tension and strife.

Article 27(1)\(^6\) is to the effect that States Parties to the present Charter shall undertake to protect the child from all forms of sexual exploitation and sexual abuse and shall in particular take measures to prevent: the inducement, coercion or encouragement of a child to engage in any sexual activity, the use of children in prostitution or other sexual practices.

**AU policy framework on peace, security and human rights.**

The AU’s Peace and Security Council in 2009 through one of its pillars, the Panel of the Wise recommended the adoption of an African Transitional Justice Policy Framework.\(^6\) The AU TJ Policy Framework seeks to consolidate lessons, practices and emerging norms on credible and legitimate transitional justice mechanisms and processes in Africa. The objectives of the Framework are to assist African Union (AU) Member States emerging from violent conflicts and repression in their pursuit of accountability, sustainable peace, justice and reconciliation. The AUTJF reflects contemporary issues in the area of transitional justice and aims to be a guide that can be adapted by countries in the design and implementation of transitional justice mechanisms.

The Framework makes it clear, that it does not seek to create any “new obligations for AU Member States” but rather complements and provides clarity to AU instruments and policies that “deepen the links between justice, governance, human rights, peace and security and

\(^6\)Ibid

\(^6\)Convention on the Rights of the African Child

Development. AU TJ Policy Framework is largely inspired by the AU Shared Values instruments and policies relative to democratic governance, human rights, constitutionalism, rule of law, peace and security and post conflict reconstruction and development.

The Framework is hinged on four main principles: entrenchment of African shared values, promotion of national and local ownership and inclusive participation in transitional justice processes, promotion of reconciliation with accountability and responsibility and cooperation, coherence and coordination of transitional justice initiatives.65
CHAPTER THREE:
ROLE OF THE AU IN PROMOTING PEACE, SECURITY AND HUMAN RIGHTS AND THE CHALLENGES FACED

3.1 PEACE AND SECURITY COUNCIL
The PSC shall be a collective security and early warning arrangement to facilitate timely and efficient response to conflict and crisis situations in Africa and it's upon this basis that the Peace and Security Council (PSC) intervened in South Sudan conflicts. The PSC was established pursuant to the protocol Establishing the peace and security council protocol adopted in Durban in July 2002 in terms or Article 59(2) of the constitutive Act of the African Union and entered into force on 26 December 2003. The PSC is a standing decision-making body for the prevention, management and resolution of conflicts. It is supported by a 'panel' of the wise, a continental early warning system, an African standby force and a special fund.

3.1.2.1 About the relevant PSC decisions
At its 442nd meeting held on 17 June 2014, the PSC decided to extend the mandate of the AUCISS by an additional period of three months, to enable it to complete its work. At its 484th meeting held on 29 January 2015, the PSC decided to defer consideration of the report of the Commission of Inquiry to a later date, and to take appropriate decisions in line with the objectives set out in its Banjul communiqué. At its 515th meeting, held in Johannesburg, South Africa, on 13 June 2015, the PSC decided to convene a ministerial-level meeting by mid-July 2015, to consider the report of the AUCISS.

The 526th meeting of the PSC held at ministerial level in Addis Ababa, on 24 July 2015, officially received the report of the AUCISS (African Union Commission of Inquiry in South Sudan) and the Separate Opinion. In the communiqué adopted on that occasion, the PSC agreed on a number of practical steps to expedite the in-depth consideration of the recommendations contained therein and their subsequent implementation, including the establishment of an ad hoc sub-Committee, comprised of Algeria, Chad, Ethiopia, Nigeria, South Africa, Tanzania and Uganda, to consider the report of the AUCISS and the Separate Opinion and to make recommendations on the way forward, and the convening of a meeting.

http://www.cfr.org/south-sudan/understanding-roots-conflict-south-sudan/p3829813/2/17
of the PSC at the level of Heads of State and Government to consider the recommendations of the ad hoc sub-Committee and take the required decisions.

The PSC Summit took place in New York on 26 September 2015. It agreed on a number of steps relating to political and other reforms, accountability, healing and reconciliation. Integrity, provide basic governance and public services, rebuild the shattered economy, and establish the political and constitutional framework for the transition to full sovereignty.

To ensure that the PSC mandate is fulfilled the AUPSC has ensured that a follow up process of its activities is done, Ambassador Catherine Muigai Mwangi, head of a delegation from the Africa Union Peace and Security Council called upon the parties in South Sudan to dialogue so that the country can start on the road of recovery. The remarks came at the end of a three days’ visit in South Sudan. Speaking on Monday at Crown Hotel upon their departure to Addis Ababa, Catherine said AU delegations had discussions with President Salva Kiir this morning, First Vice President Taban Deng, SPLM Former Detainees and other political parties, religious groups, civil society and heads of diplomatic missions in South Sudan regarding the peace process.

“The Africa Union has been here in South Sudan since Friday; we traveled to South Sudan because we wanted to find out firsthand, the progress that has been made regarding the implementation of the peace process. We also wanted to find out the situation regarding peace and reconciliation, regarding other socioeconomic issues,” she said. “As we leave Juba today, we have a better understanding of what the challenges that are facing this country especially the implementation of the peace agreement. We have reassured the leadership and people of South Sudan that we will remain engaged and will continue to support South Sudan in implementing the peace agreement and make sure that peace comes back to South Sudan.” said Ambassador Catherine.67

The delegation also traveled to Malakal Protection of Civilian (POC) site where they had discussion with leaders inside the UN POC site. “Our final word is to urge every single South Sudanese to agree to peace, to agree to dialogue, so that finally your country can start on the road of recovery,” she said.68

3.1.3 THE AFRICAN UNION COMMISSION OF INQUIRY IN SOUTH SUDAN (AUCISS)

The African Union through its PSC initiated a peace building and accountability process through the establishment of the AUCISS and mobilized different stakeholders to respond to issues arising from the conflict. This was during its 411th meeting held in Banjul. The Gambia, on 30 December 2013 where it requested In the said communiqué, the Chairperson of the Commission, in consultation with the Chairperson of the African Commission on Human and Peoples’ Rights (ACHPR) and other relevant AU structures, to establish urgently a Commission to investigate the human rights violations and other abuses committed during the armed conflict in South Sudan and to make recommendations on the best ways and means to ensure accountability, reconciliation and healing among all South Sudanese communities. The Council requested that the Commission of Inquiry submit a report of its findings within three months.

3.1.3.1 Activities of the AUCISS

In the implementation of its mandate, the AUCISS undertook extensive consultations with the South Sudanese stakeholders, including the Government, the Sudan People’s Liberation Movement in Opposition (SPLM/IO), political parties, Internally Displaced Persons (IDPs), civil society organizations, and other South Sudanese parties. The AUCISS also consulted with IGAD, the countries of the region, the United Nations (UN) and other international stakeholders. The AUCISS submitted its interim report to the 23rd Ordinary Session of the Assembly of the Union held in Malabo, Equatorial Guinea, from 26 to 27 June 2014, which took note of it.

The AUCISS submitted its final report to the Chairperson of the Commission on 15 October 2014. A Separate Opinion was also submitted by one member of the AUCISS. And on 27th October,2015 the report was published for the public. The findings and recommendations contained therein relate to human rights violations and other abuses during the conflict, including accountability (violations of human rights and other abuses, healing and reconciliation and sequencing of peace and justice) and to institutional reforms (building a strong state, systems of governance, devolution of power, comprehensive security sector

reform, financial management and strategic resources, national and state legislative, judiciary and justice delivery system, political parties, civil society and media). The Commission found that serious violations of human rights had been committed by both sides to the conflict and these in their view amounted to crimes against humanity. These included violations of: the right to life (through murders and executions that were carried out in various sites in South Sudan), prohibition of torture and freedom and security of the person (violated variously when soldiers allied to the SPLA gathered civilians in a confined space in the joint operation center in Gudele on 16th December 2013 and proceeded to shoot them indiscriminately, allegedly forced Nuer civilians to drink human blood, eat human flesh and jump into lit bonfires, women and girls including acts of rape and sexual violence, property: through looting and destruction of property (homes, markets, businesses, use of children in various capacities during the conflict.

The recruitment and use of children in hostilities by the warring parties contravenes customary international human rights law. The Commission concluded:“that there are reasonable grounds to believe that acts of murder, rape and sexual violence, extermination, persecution, torture and other inhumane acts of comparable gravity have been committed by both sides to the conflict.”70 in a wide spread or systematic manner existence of a state or organizational policy to launch attacks against civilians based on their ethnicity or political affiliation71, upon which the Commission recommended that the government ratifies all major International and regional human rights instruments including those that protect the rights of women and vulnerable groups, that the government should strengthen the national institutional framework for the protection of human rights.

This included strengthening and assuring the independence of the existing South Sudan Human Rights Commission in keeping with international standards. The national institutional framework on the rights of women, which includes the national and state ministries on Gender, Child and Social Welfare, should be strengthened, consideration of primary and secondary school curricula that emphasizes and prioritizes peace building and human rights.72

The AUCISS further recommended that those with the greatest responsibility for atrocities be prosecuted and that the needs of victims, including reparations, be addressed. It called for the

70Findings No- 1133 and 1134 of the AUCISS Report
71Findings No- 1135 of the AUCISS Report
72Findings No- 1145 and 1147 of the AUCISS Report
establishment of an ad hoc African legal mechanism under the leadership of the AU and other mechanisms for transitional justice similar to the provisions of the August peace agreement. Such a mechanism should include South Sudanese judges and lawyers, the reform of civil and criminal and military justice systems so as to contribute towards ensuring accountability.

3.1.4 African commission on human and peoples' rights

The ACHPR is the main body mandated with promoting human and peoples' rights on the continent. It visited South Sudan under its promotional mandate with the AU Commission of Inquiry and it also called upon South Sudan to ratify regional and international human rights instruments.

The Special Rapporteur on the Rights of Women in Africa Honourable Commissioner Lucy Asuagbor, on behalf of the African Commission on Human and Peoples' Rights, and on her own behalf, would like to add her voice, and support to the AU Campaign to “Restore the Dignity of Women and for Accountability in South Sudan” launched by H.E. Mme Bineta Diop, the AU Commission Chairperson’s Special Envoy on Women, Peace and Security.

The Commission condemns the recurrence of these violations and lack of accountability and reparation to victims, and in this regard, the Commission urges the Government of South Sudan to strengthen the security of women and girls during conflict, take necessary measures to ensure prompt, credible, transparent, independent, impartial and comprehensive investigations into allegations of sexual violence and other forms of violations perpetuated against women in South Sudan and ensure that victims and their families obtain full and adequate redress including restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.

73 Recommendation 1148. https://www.amnesty.org/en/countries/africa/south-sudan/report-south-sudan/ accessed on 8/2/17. One of the members of the Commission, Professor Mahmood Mamdani (Contribution of Professor Mamdani Mahmood was of the opinion that the only and most appropriate option in relation to accountability is political accountability, which he interprets to mean that political leaders identified as a subject for formal criminal investigations should be excluded from holding office for the duration of the investigations and for the duration of any criminal proceedings arising from such investigations.


75 Statement by the Special Rapporteur on the Rights of Women in Africa in support of the AU Campaign to: “Restore the Dignity of Women and ensure Accountability in South Sudan” http://www.achpr.org/news/2016/12/d264/
The AU, IGAD and UN have continued to express their deep concerns over the continuing spread of fighting, and risk of inter-communal violence escalating into mass atrocities, and the dire humanitarian situation in South Sudan. They have also reaffirmed their continued and collective commitment in the search for lasting peace, security and stability in the country. They also reiterated their call for an immediate cessation of hostilities and have urged the parties to ensure inclusivity of the political process, both in the proposed National Dialogue and in the implementation of the ARCSS.76

3.5 JOINT MONITORING AND EVALUATION COMMITTEE (JMEC)

JMEC is the monitoring body led by Botswana’s former president Festus Mogae. Inaugurated in Juba, on 27 November 2015 and on 26 November 2015, it commissioned its offices in Juba. JMEC is tasked to oversee the implementation of the Agreement (peace deal) on the Resolution of the Conflict in the Republic of South Sudan of August 201577 and the mandate and tasks of the TGoNU, including the adherence of the Parties to the agreed timelines and implementation schedule.

In case of non-implementation of the mandate and tasks of the TGoNU, or other serious deficiencies, the JMEC recommends appropriate corrective action to the TGoNUJMEC also oversees the work of the Monitoring and Verification Mechanism (and its successor mechanism, the Ceasefire and Transitional Security Arrangements Monitoring Mechanism (CTSAMM), the Economic and Financial Management Authority (EFMA), the Strategic Defense and Security Review Board (SDSRB), the National Elections Commission (NEC), and all other transitional institutions and mechanisms created by this Agreement and established as part of the TGoNU and present regular reports to JMEC78 which also reports directly to the peace and security council.

The Joint Monitoring and Evaluation Commission (JMEC) has followed carefully the recent political developments in and about South Sudan. In light of these developments, the JMEC resumed its meetings of its members in Juba as soon as possible. Chairman Festus Mogae met

78 http://jmeccsouthsudan.org/accesed on 10/2/17
with President Salva Kiir, as well as General Taban Deng and two SPLM/IO members in Juba on 25th July 2016.

Among the key points discussed during the productive meeting with President Kiir was his willingness to consider the deployment of a regional protection force in accordance with the recommendations of the IGAD Plus Summit and the Summit of AU Leaders. On 26th of July Chairman Mogae had further meetings with IGAD Chairperson, H. E. Haile Mariam Desalegn, to discuss the latest developments and the way forward for South Sudan. And the JMEC also continues to make efforts to resume communications with Dr. Riek Machar.

On March 31, 2016 President Festus Mogae, briefed the United Nations Security Council (UNSC) on the steps taken and challenges faced in the implementation of the peace agreement signed by the warring parties in South Sudanese conflict in August 2015. He told the Council that with the ongoing arrival to Juba of the 1,370 armed opposition (SPLM-IO) forces to be completed next week, Machar was likely to return and the long-awaited transitional government can be formed in mid-April the first of the 1,370 troops of the SPLA in Opposition have now returned, by a combination of United Nations and charter aircraft “Flights are planned to continue over the coming week, until the full complement of 1,370 has been transported. Following the arrival of these forces, the First Vice President designate, representing the SPLM (in Opposition), has assured us that he will return to Juba, thus permitting the formation of the new government.80

On 24th January 2017 JMEC called upon the United Nations Security Council to hasten the deployment of the Regional Protection Force (RPF) to the South Sudan capital, Juba. This, JMEC said, will “provide a safe, neutral and secure environment in support of the for implementation of the peace agreement”. This will also allow the government to redeploy the bulk of the army currently protecting Juba to the other parts of the country to restore law and order. JMEC appealed to the UNSC to remain actively seized of the situation in South Sudan and to ensure that the Transitional Government of National Unity (TGoNU) and all the parties live up to their responsibilities,” he said.81 He asked the world body to take note of the President Salva Kiir’s National Dialogue initiative, adding that without genuine inclusivity, and without addressing the results of the July events “there is unlikely to be sustainable peace

79 http://jmecsouthsudan.org/2016/07/27/jmec-to-resume-meetings-to-discuss-recent-development/10/2/17
in South Sudan”. He asked the Security Council to condemn the escalating violence in
different parts of the country including targeted killings of civilians in the greater Equatorial
region, and renewed fighting in parts of Upper Nile and Unity States. Addressing the 15-
member council chaired by President Olof Skoog, Mogae said estranged parties formerly
within the TGoNU must denounce violence and embrace dialogue.

According to the Ceasefire and Transitional Security Arrangements Monitoring Mechanism
(CTSAMM) reports, he said, there are different armed groups emerging and operating in
these areas, some allied to the former Parties to the peace agreement.82

The Chairman has continued to consult with regional leaders and international partners and
has thus met with the African Union, the Intergovernmental Authority on Development
(IGAD), the United Nations and other concerned parties to discuss the political impasse at
this sensitive and difficult time for South Sudan.83

JMEC has continued condemning fighting in South Sudan: During the Opening statement by
H.E. Festus G. Mogae, Chairman of JMEC during the plenary meeting of the Joint
Monitoring & Evaluation Commission 8th February 2017, he stated “There have been
increasing reports of targeted and revenge killings, sexual violence, torture and destruction of
farmland and property being committed by various groups, including men in uniform. Since
November 2016, the main highways from Uganda and Kenya remain extremely dangerous
due to the high number of ambushes, killings, and robberies, and all these acts we condemn
them and call for peace84.

Every month the JMEC Chairman presents his report to the Board members, including
representatives of the Transitional Government of National Unity, South Sudanese
Stakeholders, IGAD member states, the UN, the Troika (US, UK, Norway), China, EU and
International Partners Forum and Friends of South Sudan.

82) http://nyamile.com/2017/01/24/jmec-wants-unsc-to-hasten-deployment-of-regional-protection-force-to-
juba/accessed on 21/3/17
83) http://jmecsouthsudan.org/2016/07/27/jmec-to-resume-meetings-to-discuss-recent-developments
84) http://jmecsouthsudan.org/2017/02/14/jmec-chairman-plenary-opening-statement-8th-february-2017-juba-
south-sudan/ accessed on 22/3/17

29
Reports are also received from the Transitional Government of National Unity (TGoNU), Ceasefire and Transitional Security Arrangements Monitoring Mechanism (CTSAMM), Joint Military Ceasefire Commission (JMCC), Joint Integrated Police (JIP), Strategic Defense and Security Review Board (SDSRB) and the National Constitutional Amendment Committee (NCAC) “JMEC will never tire of repeating its resolute belief that South Sudan’s problems must be resolved peacefully and politically, not forcefully. We must be willing to accommodate each other rather than defeat each other.”

The Joint Monitoring and Evaluation Commission (JMEC) has urged inclusive participation in the implementation of transitional security arrangements through, the Cantonment process. “Inclusivity means inviting all ‘parties’ to join the cantonment and DDR process peacefully, and ensuring genuine representation of the national character in all transformed institutions,” said Lt. Gen. Augustino Njoroge Vice Chairperson of the JMEC peace monitoring group. These remarks were made at a workshop on the establishment of cantonment sites for former combatants. This two day meeting in Juba, called by the JMEC peace monitors, discussed specific locations of the cantonment sites, criteria regarding eligibility of combatants for admission into the assembly areas and arrangements for the protection and security of the sites. Cantonment of forces was aimed to allow for the screening as well as the disarmament and demobilization of the former fighters in specific locations so as to ensure peace building and security and implementation of the ARCSS this is because it states that the cantonment sites shall be agreed upon by the SPLA and SPLA-IO. And they are to be situated away from the civilian population, far from borders with neighboring countries fitted with water and other basic utilities and have the capacity to accommodate the troops to be cantoned.

The oversight and co-ordination of forces to be cantoned is the responsibility of a 4 man Joint Military Ceasefire Commission (JMCC) comprising two Deputy Chiefs of General staff from each side. JMEC has continued to make recommendations to IGAD on the status of the implementation of ARCSS, during the IGAD Summit 16 July 2016 in Kigali Rwanda it called upon the IGAD Summit to condemn in the strongest terms the recent armed confrontation between the SPLA and SPLA-IO that caused the loss of innocent lives, including unwarranted attacks on diplomatic vehicles and UN Protection of Civilian sites.

and call for a full investigation and accountability for those who bear direct responsibility, call upon the President and the First Vice President to ensure the strict adherence by their respective forces to the Cessation of Hostilities and the Ceasefire and embark on full implementation of the Agreement and Transitional Security Arrangement provisions, called upon the IGAD Heads of State and Government to remain seized of the situation in South Sudan, and to take all necessary measures, to ensure full implementation and adherence, by the Parties to the ARCISS.\textsuperscript{87}

3.6A high level implementation for Sudan and South Sudan

It was formed to facilitate negotiations relating to South Sudan’s independence from Sudan in July 2011 including disputes over oil, security, citizenship, assets, and their common border plus the Implementation of all elements of the 27 September 2012 Agreements. A high-level panel of African experts was appointed to produce a non-binding advisory opinion on how the disputes should be resolved. It is chaired by a former member of the International Court of Justice, Judge Abdul Koroma.

Peace and security council at its 353th meeting in Addis Ababa, Ethiopia, 13 February 2013 report of the African union high level implementation panel for Sudan and South Sudan was submitted, it indicated that AUHIP facilitated negotiations between the Parties, including a summit meeting held between the two presidents of Sudan and south Sudan from 22 to 27 September 2012. The summit culminated in the signing of a cooperation Agreement and Agreements on eight other issues, covering security arrangements, oil and transitional financial arrangements, the status of nationals of one country resident in the other, post-service benefits, trade, banking, border issues and certain other economic matters.\textsuperscript{88}

From 4 to 5 January 2013, with the support of the Chair of IGAD, the AUHIP convened a Summit meeting between the Presidents of South Sudan and Sudan, in Addis Ababa, to address outstanding issues. This Summit agreed on the need for the expedited, unconditional and coordinated implementation of all elements of the 27 September 2012 Agreements.\textsuperscript{89}


\textsuperscript{89}Ibid 71
The Peace and Security Council of the African Union (AU), at its 562nd meeting held on 10 December 2015, adopted the following decision on the mandate of the AUHIP on Sudan and South Sudan: it was to the effect that the Council extended the mandate of the AUHIP until 31 December 2015 and it was to present to Council a comprehensive report on its activities as soon as possible.

During the 569th PSC Meeting on the activities of the AUHIP for Sudan and South Sudan Welcomed the positive outcomes of the extraordinary meeting of the Joint Political and Security Mechanism (JPSM) convened by the AUHIP in Addis Ababa on 13 to 14 October 2015, particularly, the decision by the Parties to accept the Map and the Centre line proposed by the Panel to facilitate the establishment of the Safe Demilitarized Border Zone (SDBZ). Council urged the two parties to resume regular meetings of the JPSM as agreed and ensure progress in the work of the Joint Border Verification and Monitoring Mission (JBVMM), and called upon Sudan and South Sudan to extend full cooperation to the JBVMM for the implementation of its mandate.

90 Ibid 71
91 Communiqué PSC/PR/COMM. (CDLXXVII) adopted at its 477th meeting held on 18 December 2014
CHAPTER FOUR

CHALLENGES AND SUMMARY TO PEACE IN SOUTH SUDAN

4.1 Challenges Faced by the AU in South Sudan

This section contains challenges faced by the AU in promoting peace, security and human rights in South Sudan. This shortcoming in AU member funding provides an alarming illustration of the organization's inability to finance necessary and effective peacemaking and human rights campaigns. Given the price tag of peace and security promoting efforts, it follows that more effective and efficient uses of funds are needed thus forcing the organization to look for international support. Political and cultural issues arise as well. Political constraints can include policies of inaction. Other political constraints include policies of South Sudan which prevent AU goals from being set, for example South Sudan refused the deployment of a regional force after the outbreak of conflict in July 2016.

However, the AU also views this as an opportunity to establish itself as a significant regional power on the African continent. This reliance on outside funding, however, ultimately chips away at the AU's chances at achieving this reputation. Furthermore, these shortcomings continue to illustrate that the AU has assumed a responsibility far greater than it can handle. AU success is dependent, according to HRW, upon the willingness of the U.S. and the E.U. to fund the AU's peacekeeping endeavors within the region South Sudan conflict inclusive.

Political impediments to AU's promoting peace, security and human rights in South Sudan span across the domestic as well as the international realm. State-sponsored violence is a unique impediment, according to the AUCISS Report showed that soldiers of the government and SPLA-O, as the major cause of the conflicts.

Socio-Cultural Clash: When considering the South Sudan crisis, one must also consider the vast cleavages between the various ethnicities and religious groups. Not only is there a clear division and clash between Dinka and Neur groups, differing agendas within the SPLM and SPLA-O has also led to infighting Ethnic Cleavages These have hampered peace talks, negotiations, human rights campaign and power sharing and above all the strength of peace agreements.

93 Human Rights Watch, 2005.
94 Ibid 79
Slow implementation in large part due to obstacles posed by the warring parties of the Agreement on the Resolution of the Conflict in South Sudan (the Peace Agreement) have affected the momentum of the African Union’s intervention. In addition, the multiplicity of actors and interventions without effective coordination has further delayed a timely effective and efficient implementation of the Peace Agreement as well as the AUCISS’s recommendations.

4.2 Summary.

The overall objectives of the study were to establish the role of the AU in promoting peace, security and Human rights in South Sudan, and the researcher has discussed the various roles of the AU, its legal framework towards promoting peace, security and human rights, the challenges it faces in carrying out its role in South Sudan and the way forward on what the AU should come up with or do to ensure that peace, security and human rights are promoted in South Sudan.

The roles of the AU where discovered to be majorly played by the various AU organs or bodies. For example, the AUPSC, AU Commission, AU Commission on Human Rights, AUCISS. The challenges faced by the AU in promoting peace, security and human rights in South Sudan as pointed out in the research findings included limited funds, state sponsored violence, political impediments, social-cultural clash and slow implementation of various decisions.

Among the recommendations suggested by the researcher include, a well-resourced and decisive AU leadership on South Sudan, taking a victim-centered approach to peace, reconciliation and justice in South Sudan, perpetrators of gross human rights violations must be held accountable, the need for more international support, Support local civil society to support grassroots peace efforts, take immediate steps to establish a hybrid judicial court to try alleged perpetrators of gross human rights violations and the need of a transitional administration.
CHAPTER FIVE

CONCLUSIONS AND RECOMMENDATIONS

5.0 Introduction.
The chapter contains the conclusions and recommendations based on study findings as well as the researchers own recommendations after thorough analysis of the research findings.

5.1 Conclusion

The report notes that "opposition to a UN and AU transitional administration could be mitigated through a combination of politics and force by working with important South Sudanese constituencies frustrated with President Salva Kiir, former First Vice President Riek Machar, and their cronies and then deploying a lean and agile peace intervention force to combat and deter the remaining spoilers once they have been politically isolated."

Although such an internationally guaranteed transition seems radical, Knopf notes that it is not unprecedented similar efforts have previously succeeded in Bosnia and Herzegovina, Kosovo, East Timor, Cambodia, and Liberia.

Member states also need to provide adequate funding. Aside from the loss of credibility and ownership that reliance on external donors brings, the AU can no longer count on the same levels of external financing from the U.S. and Europe. The AUC’s ability to work effectively depends on member states willingness to implement the July 2016 summit decision for a 0.2 per cent levy on imports, with proceeds going to the AU. Only a handful of states have begun to enact the tax into law.

To reiterate, the shift from non-interference to non-indifference with the establishment of peace and security architecture in the AU is a positive move towards enabling Africans to resolve African problems. However, the effectiveness of this shift depends on the commitment of African states to act in a timely manner when aiming to free Africa from the scourges of its intractable conflicts, such as the one which the South Sudanese face today.

Violations of peace, security and human rights whether perpetrated by private or state actors constitutes a violation of human rights. It’s thus the duty of states under the Umbrella of the AU to ensure that the region fights impunity and hold perpetrators of such violations
accountable. State policies and inactions majorly condone such conflicts. However, South Sudan, other AU member states and other international states have a duty under regional law international and to respond to peace, security and human rights violations and abuses.

5.2 Recommendations.

There is an urgent need for a more coordinated well-resourced and decisive African Union leadership on South Sudan than having a multiplicity of actors and interventions without effective coordination. The African Union’s steering effort, with the support of the United Nations, is perhaps needed now more than ever.

The African Union should find ways to provide leadership and coordination especially with respect to reconciliation, healing and accountability in South Sudan. One way would be for the office of the African Union Special Envoy to identify the elements in the Peace Agreement and AUCISS report that need coordination for their proper implementation, and to ensure that the variety of actors concerned with the Peace Agreement’s implementation are aware of and assisting the African Union’s effort to develop a cohesive package of recommendations and benchmarks for reconciliation, healing and accountability.

There is need for strong and consistent pressure on the warring parties to abide by the agreement’s terms and to permanently put aside any plans to resort once more to war. This pressure must especially come from the African Union. The African Union through the report of the Commission of Inquiry already reasonably believes that mass killings, torture, mutilations and rape against civilians as well as forced cannibalism have taken place in South Sudan, allegations that amount to serious war crimes and Crimes against humanity; inaction will foster impunity and send the dangerous message that such heinous crimes come with no consequences.

The release of the AUCISS report did not further destabilize the country or the peace agreement, which attests to the fact that there is enough room in South Sudan to pursue reconciliation and justice simultaneously and should provide the African Union with the impetus to act.

The African Union’s commitment to combating impunity, as observed in its declaration of 2016 as the African Year of Human Rights, requires that it should undertake a victim centered approach to peace, reconciliation and justice in South Sudan. The people of South Sudan and victims of these heinous crimes demand reconciliation, healing and that perpetrator of grave
abuses be held accountable for their crimes. The timely, public and official exposure of individuals, their motives and people or institutions responsible for the atrocities that unfolded in South Sudan is in itself an important component of justice in its own right.

The African Union should encourage and support the Government of South Sudan to commence the process for establishing the National Commission for Healing and Reconciliation in South Sudan (the Commission) in a manner that safeguards the balance between national stability, meeting the needs of the victims and instituting social and personal accountability. The mandate, composition and Selection of the commissioners for this body should be informed by lessons from other similar structures in South Africa, Sierra Leone and Kenya. Mostly importantly, the African Union should ensure that civil society Organizations play a significant role in the setting up and workings of the Commission.

The extent of the atrocities committed between ethnic groups in the context of the current conflict in South Sudan is arguably the most traumatic the country has ever witnessed. Unfortunately, current peace efforts place too much emphasis on compromise at the political and elite level. Locals must be engaged in the peace, security and human rights efforts.

The African Union should support the development of a well-planned and resourced strategy that enables local civil society organizations to meaningfully participate in peacemaking in South Sudan, and to urge the Government of South Sudan to demonstrate a political commitment that will guarantee civil society a space to provide this input. Ultimately, the Peace Agreement’s chances of success lay with the ability of South Sudanese civil society organizations to champion its implementation from beginning to end.

Actual establishment of a hybrid judicial court to try alleged perpetrators of gross human rights violations as recommended in the AUCISS. The AU is uniquely placed to do and is tasked to do so by the AUCISS report. While the establishment of a fully functional hybrid court with the necessary personnel, infrastructure and funding will take time, the AU has to act reasonably so as to try the perpetrators because delay will lead to the withering away of evidence the quality of which may deteriorate or disappear if not gathered in time, witnesses’ memories fade, their whereabouts become unknown and vital evidence is lost forever.

The formation of the hybrid court also presents the AU with an opportunity for it to lead efforts to close the impunity gap that South Sudan’s political elite have exploited for far too long their vested interests in the perpetuation of the war for their personal benefit, which has led to a level of corruption that has severely debilitated the country. This is why the hybrid
court for South Sudan must not only hold people accountable for committing grave abuses of human rights violations, but also grave economic crimes that have had just as big a role in destroying the country’s fabric.

The AU should immediately initiate a process to develop the legal structure and mandate of the court which should investigate grave violations of human rights and the perpetration of economic crime to address its human and financial resourcing needs, the composition of its judges and the court’s location.

Following its independence in 2011, three years of civil war have left South Sudan on the cusp of full-scale genocide, with its sovereignty discredited by warring elites, asserts a new Council Special Report, Ending South Sudan's Civil War. “The only remaining path to protect [South Sudan's] sovereignty and territorial integrity, restore its legitimacy, and politically empower its citizens is through an international transitional administration, established by the United Nations and the African Union (AU), to run the country for a finite period," argues Katherine Almquist Knopf, the author of the report.

Knopf, director of the Africa Center for Strategic Studies based at the National Defense University, makes the case that an international transitional administration is the only realistic path to end the violence and to allow South Sudan the kind of "clean break" from its leaders and power structures that can restore the country to viability. Moreover, she argues that an international transitional administration would not necessitate an investment costlier than what the United States is already spending more than $2 billion since 2013 (and more than $11 billion since 2005).

The report recommends the United Nations and the AU lead a transitional administration with an executive mandate for ten to fifteen years to maintain the country's territorial integrity, provide basic governance and public services, rebuild the shattered economy, and establish the political and constitutional framework for the transition to full sovereignty.
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Universal Declaration of Human Rights (UDHR)

Convention on Elimination of all forms of Discrimination against Women

International Covenant on Civil and Political Rights (ICCPR)