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Presentation of the African Commission on Human and Peoples' Rights (ACHPR) to the African Union Peace and Security Council (PSC)

866th meeting of the PSC on the consultative meeting between the PSC and the African Commission on Human and Peoples' Rights (ACHPR)

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Excellencies, ladies and gentlemen, colleagues and friends, all protocols duly observed, a very good morning to you all.

At the outset I would like to express the appreciation and commendation of the African Commission on Human and Peoples' Rights to you the Chairperson of the PSC for the month of August and all of you excellencies members of the PSC for convening this consultative meeting. As I express this appreciation on behalf of the Chairperson of the Commission, Commissioner Soyata Maiga, my colleagues in the Commission and on my own behalf, I am also happy to bring to you the greetings of all my colleagues and their best wishes for the success of this session and indeed the work of the PSC.

Excellency Ambassador Albert, excellencies ladies and gentlemen,

I am sure you all agree that today's session has been a long time coming. It has been 17 years since the adoption the PSC Protocol in 2002. This year 2019 also marks the 15 years anniversary of the official launch of this distinguished body, the Peace and Security Council. While, as I will highlight further below, the PSC and the ACHPR have engaged in an ad hoc working relationship, it took them 17 years since the adoption of the PSC protocol and 15 years since the launching of the official launching of the PSC for them to engaged officially on the operationalization of Article 19 of the PSC Protocol which calls for a close working relationship between the two bodies. May I also add that it has also been over 12 years since the Dakar Retreat of the PSC on its working methods whose conclusions provided for the convening of this annual consultative meeting between the PSC and the ACHPR.

Notwithstanding the fact that this session has been a long time coming, it has also come at an opportune time in the life of both the PSC and the ACHPR. As far as the PSC is concerned, this has come at a time when the PSC has accumulated rich experience in the implementation of its mandate and hence when it has clarity on how best to operationalize its working relationship with the ACHPR as envisaged under Article 19 of the PSC Protocol. For the ACHPR as well, this has come at a time when it has established a dedicated thematic focus on human rights in conflict situations under its Resolution 332.

It is thus my hope and that of the ACHPR that both the PSC and the ACHPR are in good standing to make excellent use of today's session for establishing a framework for effective, institutionalized and functioning working relationship that help in the implementation of the human rights dimension of the mandate of the PSC and that of the African Commission's dedicated work on human rights in conflict situations.

Excellency Amb Albert, excellencies ladies and gentlemen members of the PSC,

For purposes of today's session, my briefing will focus on two areas. The first of this concerns the work of the ACHPR that converges with the mandate of the PSC. The second area relates to the normative foundations for the working relationship between the PSC and the ACHPR and the practice thus far in the relationship between the PSC and the ACHPR.

In terms of the work of the ACHPR, an important point of departure is the rights enshrined in the African Charter and the Maputo Protocol and the nature of the mandate entrusted to the ACHPR under those two instruments. In this respect, it is worth noting that the African Charter a unique catalogue of rights that gives equal legal status to all so called three generation of rights. Accordingly, in providing for the protection of not only the traditional civil and political rights but also socio-economic rights and the collective rights of peoples, the African Charter is pioneer not only in affirming the interdependence and indivisibility among these various categories of rights but also inseparability of human rights, development and peace and security. Both the African Charter and the Maputo Protocol are also unique in their recognition of the right to peace which constitutes the core mandate of this house, which has established itself to be the pride of the continent on matters of peace and security – the embodiment of the possibility for realizing what the renowned Kenyan scholar the late Ali Mazrui called Pax Africana. Article 23 of the African Charter provides not only for the right to peace at the international plane and hence in inter-state relationship but also nationally at the intra-state level. Going even further, under its Articles 10 and 11, the Maputo Protocol provides for both the right to peace and the protection of women in armed conflicts.

In terms of the mandate of the ACHPR, it is important to note that the human and peoples' rights promotion and protection mandate of the ACHPR under Article 45 of the African Charter and its monitoring role under the Maputo Protocol on the Rights of Women apply not only in peace times but also in conflict times as well. This application of the mandate of the ACHPR and the rights enshrined in the African Charter and the Maputo Protocol has been established both in the jurisprudence of the ACHPR and in its promotional and norm elaboration/clarification works as well. In terms of the jurisprudence, there are a number of cases from various conflict or crisis situations such as those from the 1990s in Rwanda, Nigeria, Chad and Sudan as well as from the inter-state communications involving Burundi against a number of east African countries and DRC against a number of its neighboring countries.

The ACHPR is also empowered under Articles 45 (2) and 46 to undertake fact finding missions (also known as investigation missions) as part of its mandate to protect human rights using what the Charter calls 'any appropriate means of investigation'. This mandate covers among other things the investigation into human rights violations that arise in conflict or crisis situations. For example, within this framework the ACHPR undertook an investigation mission to Darfur in 2004.

As part of its promotional and interpretative mandate under Article 45(1) (a) & (b), the ACHPR also elaborated relevant normative instruments through its various special mechanisms. In this respect some of the relevant works of the Commission include the elaboration of the Maputo Protocol (in terms of binding legal instruments), the Guidelines on Human Rights Protection while countering terrorism, its General Comments on the right to life under Article 4 and on Article 5 on freedom from torture, inhuman, degrading punishment and treatment and its studies on sexual violence against women in conflict situations, on transitional justice and on human rights in conflict situations.

The use of its special mechanisms has also been an important avenue for the engagement of the ACHPR in addressing human rights issues in conflict situations. Indeed, it was in response to the mass atrocities in Rwanda that culminated in the 1994 genocide against the Tutsi that the ACHPR established its first special rapporteur on extra-judicial executions in early 1994 at its 15th ordinary session.

The ACHPR also responds to human rights violations committed in conflict situations through a variety of mechanisms, including the following: adoption of country-specific or thematic resolutions. It adopted such statements and resolutions in respect to a wide range of conflict or crisis situations including Sudan, Somalia, South Sudan, Nigeria, Rwanda, Burundi, Niger, CAR, DRC, Libya, etc. The range of conflict or crisis-related issues that the ACHPR has responded to through such resolutions include the following: attacks on civilians; illegality of unconstitutional changes of government; implementation of peace agreements; plight of refugees and internally displaced persons; prevalence of rape and sexual violence during armed conflicts; and accountability for perpetrators of conflict or crisis-related human rights violations and abuses.

Other methods that the ACHPR uses include referral of situations of serious or massive violations of human rights to the AU Assembly pursuant to Article 58(3) of the African Charter. Article 58 mandates the ACHPR to notify or draw the attention of the AU Assembly to cases of “serious or massive” violations of human rights as well as to emergency situations. Article 58(1) states that where there are ‘special cases which reveal the existence of a series of serious or massive violations of human and peoples' rights, the Commission shall draw the attention of the Assembly of Heads of State and Government to these special cases’. Similarly, Article 58(3) stipulates that cases of emergency duly noticed by the ACHPR shall be communicated to the AU Assembly. Upon receipt of notification submitted to it pursuant to Article 58(1) or (3), the AU Assembly may request an in- depth study to be conducted by the ACHPR. The 2010 Rules of Procedure of the ACHPR stipulates under Rule 80 that the Commission shall “draw the attention” of both the AU Assembly and the PSC of situations of emergency while the Executive Council and the Chairperson of the AU Commission shall be “informed” of the notification, although the active implementation of this procedure leaves so much to be desired.

Article 45 (1) (c) establishes the basis for the ACHPR to establish cooperation with African and other institutions concerned with the promotion and protection of human rights. This is one of the legal basis for establishing working relationship with AU institutions including this august house, the PSC. Within the framework of resolution 332 on human rights in conflict situations, the ACHPR through its focal person also activated its engagement on human rights in conflict situations through providing technical expertise for helping articulate the AU framework for compliance with human rights, international humanitarian law and conduct and discipline. Of particular interest in this respect is also the work

undertaken in collaboration with the AU Peace Support Operations Division. As reported in the activity report of the focal point in 2018 and 2019, the focal point helped in undertaking assessment mission and preparing report on the experience of AU peace support operations with compliance with human rights, IHL and conduct and discipline and gave a briefing to PSOD on the relevance of the work of the ACHPR for AU peace support operations.

As the foregoing brief overview of the mandate and work of the ACHPR shows, there is a substantial body of work and resources that are of direct interest to the mandate and work of the PSC. There is a great deal that the PSC could benefit by tapping into this hugely rich and substantial amount of work of the ACHPR on human rights and peace and security.

Excellency Chair of the PSC, excellencies ladies and gentlemen members of the PSC,

I would like now to address you on the second area of my intervention for this session. As I hinted earlier, this concerns the normative foundation for the working relationship between the PSC and the ACHPR and the practice thus far in the working relationship between the two.

In terms of legal foundations apart from Article 45(1)(C) and Rule 80 of the Rules of Procedure of the ACHPR, the working relationship between the PSC and the ACHPR draws on the major AU legal instruments including notably the Constitutive Act and the PSC Protocol. Of the 18 principles listed in the AU Constitutive Act, eight form the central planks of the AU peace and security regime. These are the sovereign equality of states; non-intervention and peaceful co-existence; peaceful resolution of conflicts and non-use of force; *uti possidetis juris*; respect for human rights, sanctity of human life and democratic principles, and good governance; rejection of impunity and unconstitutional changes of governments; and the right of the AU to intervene in a member state in case of grave circumstances.

Out of these the ones that directly implicate the mandate of the ACHPR include peaceful resolution of conflicts and non-use of force (relating to Article 23 of the ACHPR and Articles 10 and 11 of the Maputo Protocol) respect for human rights, sanctity of human life and democratic principles and good governance; rejection of impunity and

unconstitutional changes of governments; and the right of the AU to intervene in a member state in case of grave circumstances namely genocide, war crimes and crimes against humanity.

Perhaps, the instrument of most direct importance is the PSC Protocol. In its preamble the PSC Protocol affirms that the development of strong democratic institutions and culture, observance of human rights and the rule of law, ... are essential for the promotion of collective security, durable peace and stability, as well as for the prevention of conflicts.' The Protocol also envisages that the first objective of the PSC in promoting peace and security is directed to 'the protection and preservation of life and property, the well-being of the African people and their environment, as well as the creation of conditions conducive to sustainable environment' The fact that this is the first objective of the PSC could be indicative of the weight assigned to the importance of human rights in the mandate of the PSC. Additionally, the PSC also have the additional objective to 'promote and encourage democratic practices, good governance and the rule of law, protect human rights and fundamental freedoms, respect the sanctity of human life and humanitarian law'. Among the principles that underpin the PSC Protocol include respect for the rule of law, fundamental human rights and freedoms, the sanctity of human life and international humanitarian law.

In terms of the PSC's mandate, the details of the power of PSC specified under Article 7 of the Protocol that are of interest include

- Anticipate and prevent disputes and conflicts;
- identify policies that may lead to genocide and crimes against humanity;
- undertake peace-making and peace-building functions to resolve conflicts where they have occurred;
- authorize the mounting and deployment of peace support operations;
- recommend to the AU Assembly when to intervene in a member state to stop war crimes, genocide and crimes against humanity; and
- follow-up, within the framework of its conflict prevention responsibilities, the progress towards the promotion of democratic practices, good governance, the rule of law, protection of human rights and fundamental freedoms, respect for the sanctity of human life and international humanitarian law by member states;

Given the expertise of the ACHPR on matters human rights, it is only logical that all these substantive human rights components of the mandate of the PSC are best operationalized through close working relationship of the PSC and the ACHPR. For example, in terms of activating its mandate under Article 4(J) and 7 (e) of the PSC Protocol on genocide, war crimes and crimes against humanity, the expertise of the ACHPR, with its substantial amount of work highlighted above, can come handy in enabling the PSC take an informed decision.

This mandate overlap and the effective implementation of the respective responsibilities of the two institutions in these areas of common interest require that the two adopt an institutionalized mechanism for close working relationship. Against the background of the foregoing, the PSC Protocol provided for a logical framework for enabling the relationship between the PSC and the ACHPR. Article 19 of the Protocol accordingly stipulates:

The Peace and Security Council shall seek close co-operation with the African Commission on Human and Peoples' Rights in all matters relevant to its objectives and mandates. The Commission on Human and Peoples' Rights shall bring to the attention of the Peace and Security Council any information relevant to the objectives and mandate of the Peace and Security Council.

Building on this provision and in order to start its operationalization, the Conclusions of the Dakar Retreat of the PSC in 2007 provided for the establishment of an annual consultative meeting as one avenue for activating Article 19. This provision of the Dakar Conclusions have since been reiterated in the outcome documents of the various subsequent retreats of the PSC.

In terms of the practice, there has been ad hoc interactions between the two bodies. This has in particular been the in case with respect to investigation of human rights issues in conflict or crisis situations. In a number of occasions since 2004 the PSC made requests to the ACHPR to undertake investigation of issues of human rights in various situations including in Cote d'Ivoire, Darfur, the Republic of Guinea, Mali, and Somalia. Most recently, the PSC similarly tasked the African Commission to investigate the human rights situation in Burundi. Acting on this request, the Commission undertook its investigations on 7-13 December 2015 and presented its investigation report to the PSC on 28 April 2016.

While this has become an important area of engagement between the PSC and the ACHPR as recent references to the ACHPR made in relation to PSC outcome documents on Sudan and Libya, there is still huge room for the effective operationalization of this existing area of engagement. There are at least two issues that need to be looked into in this respect. The first is that beyond and above making a request for the ACHPR to undertake a mission in pursuit of its mandate, the PSC has to facilitate access into the country where the investigation mission takes place. In the most recent experience in Burundi, the investigation mission became possible on account of the authorization for field visit that the Government of Burundi granted the ACHPR. Without the willingness of the authorities in Burundi, that investigation mission might not have happened. The PSC, when tasking the ACHPR to undertake investigation mission, should make stipulations urging the authorities concerned to allow access to the ACHPR and lend the ACHPR the diplomatic support that would enable the ACHPR undertake the investigation in pursuit of the PSC mandate. Second, there has also to be clarity in terms of putting in place a procedure for following up on the implementation of the investigation and for processing of the report of the ACHPR on its findings report in order to ensure that the PSC receives the report of the ACHPR and acts on the recommendations in the report.

Beyond and above addressing the gaps in the current practice in the relationship between the two bodies, there are further modalities for the operationalization of Article 19 of the PSC Protocol outlined in ACHPR Study on human rights in conflict situations under Resolution 332 to which by way of conclusion I will now turn my attention.

Modalities for the operationalization of the Article 19 of the PSC Protocol

1. Annual consultative meeting envisaged in the 2007 Dakar Conclusions of the PSC Retreat on PSC Working methods

The first modality for the operationalization of Article 19 is the implementation of the conclusions of the Dakar Retreat. This entails the institutionalization of this consultative meeting as a standing annual agenda that should be inscribed into the indicative annual work plan of the PSC. This is best achieved through a binding decision of the PSC by a communique of this session institutionalizing the annual meeting and calling for its annual

convening during a month when the ACHPR is not in session, such as like this one in August.

2. Submission by the African Commission on the human rights dimensions of AU peace and security processes

The African Commission is best placed to highlight the human rights dimensions of specific crisis situations and provide recommendations how those human rights issues can be integrated and addressed in AU peace processes whether those be preventive diplomacy, mediation, peacemaking, peace support operations or post-conflict reconstruction support initiatives. This includes supporting the AU in integrating human rights in the mandates, design and implementation of peace processes including peace support operations.

Within the framework of Resolution 332 of the African Commission on Human Rights in Conflict Situations, the Commission supported the AU Peace Support Operations Division (PSOD), through its focal person on human rights in conflict situation Commissioner Dersso, in undertaking a comprehensive assessment of experience of the AU's peace support operations with compliance with human rights, international humanitarian law and conduct and discipline standards and submitting a report for helping the AU developing a human rights, IHL and conduct and discipline compliance framework for its peace support operations.

3. Informal consultations

The close working relationship between the PSC and the African Commission can also be optimally implemented through informal consultations in which the African Commission shares with the PSC about existing or emerging situations of concern with a view to enable the PSC take a policy position on dealing with the situation appropriately with due regard to the human rights issues involved.

4. Investigation missions

By virtue of its mandate of monitoring the human rights situation on the continent and of

initiating appropriate response, the African Commission is the only body with the requisite mandate and experience for undertaking investigation into the human rights dimension of emerging or existing conflict situations. There is already an established practice of the African Commission undertaking investigation missions, including on the request of the Peace and Security Council. In this respect, the African Commission undertook missions to Darfur, Sudan, Mali, Central African Republic and Burundi. But the only investigation report initiated on the request of the PSC whose report has been submitted and considered by the PSC is that of the report of the investigation mission to Burundi. Although the AU tasked the African Commission to undertake investigation mission into the reported acts of violations meted out against migrants including slave trading that took place in Libya, this could not be implemented for lack of authorization for undertaking this investigation mission.

The Commission has also been a member of the AU Commission of Inquiry for South Sudan that the PSC established for investigating the gross human rights violations that took place in South Sudan following the eruption of the civil war in South Sudan in December 2013.

5. Information sharing on major human rights violations for early warning

The African Commission by virtue of its mandate and the nature of its activities receives and collects information on regular basis on the human rights situation of AU States Parties to the African Charter, including those on the agenda of the PSC. Since patterns of systematic or serious violations on which the African Commission receives and collects information from various sources including through visits and reports of national human rights institutions often serve as important signs of emerging or impending crisis, sharing information on such situations to the PSC contributes to enhancing the early warning and early response system of the AU. The PSC may thus benefit from the information of the African Commission and have its attention drawn to emerging or impending situations of concern including through submission by the Commission of its statements and reports as appropriate and based on agreed modalities.

6. Briefing the PSC formally on the human rights dimension of the situation or theme on the agenda of the PSC

The African Commission has various mechanisms and has developed a number of thematic guidelines and frameworks on various areas of human rights including those relating to situations of counter terrorism, transitional justice and conflicts. It has recently adopted a landmark study on human rights in conflict situations in Africa. Accordingly, the African Commission can provide the PSC briefings on the human rights dimension of the situation or theme on the agenda of the PSC, thereby helping the PSC discharge its mandate relating to human rights as enunciated in the PSC Protocol.

7. The establishment of a standing thematic agenda of the PSC on human rights and peace and security

Finally, in the light of the fact that human and peoples' rights forms part of the mandate of the PSC, the African Commission submits that the PSC establishes human rights and peace and security as a standing thematic agenda of the PSC on which the PSC holds bi-annual sessions dedicated to the theme of human rights and peace and security in Africa. This will be one avenue through which the PSC receives reports dedicated to the subject of human rights and peace and security in Africa with a view to help it be fully informed of the current and emerging human rights issues in crisis situations during the reporting period and adjust its approaches and responses to those crisis situations accordingly as part of its regular monitoring of those crisis situations.

8. Joint filed visits by the PSC and the ACHPR

The other and final modality for the operationalization of Article 19 is the invitation to by the PSC for the ACHPR to join it when the PSC undertakes a field visit.

9. Regular exchanges between the ACHPR focal person on human rights in conflict and the monthly chair of the PSC

This will help in enabling free flow of information and in having human rights dimension integrated into the situations in monthly programs.

Excellency the Chair of the PSC, excellencies ladies and gentlemen, having outlined the modalities for a fully functioning and more institutionalized working relationship between

this August body and the body I represent today, all that is left for me to say is to thank you all for your kind attention and wish us a productive deliberation for the rest of the session.

Thank you!