

ADDRESSING HUMAN RIGHTS ISSUES IN CONFLICT SITUATIONS



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TOWARDS A MORE SYSTEMATIC
AND EFFECTIVE ROLE FOR THE
AFRICAN COMMISSION ON HUMAN
AND PEOPLES' RIGHTS



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Abbreviations and Acronyms

ACHPR	African Commission on Human and Peoples' Rights
ACDEG	African Charter on Democracy, Elections and Governance
ACLED	Armed Conflict Location & Event Data Project
AMISOM	African Union Mission in Somalia
APRM	African Peer Review Mechanism
AU	African Union
AUCISS	African Union Commission of Inquiry on South Sudan
CA	Common Article of Geneva Conventions of 1949
CAR	Central African Republic
CCTARC	Civilian Casualties Tracking, Analysis and Response Cell
CEWS	Continental Early Warning System
CRC	UN Convention on the Rights of the Child
CSPF	Continental Structural Prevention Framework
DRC	Democratic Republic of the Congo
IAC	International Armed Conflicts
IDPs	Internally displaced persons
IHL	International Humanitarian Law
IHRL	International Human Rights Law
LRA	Lord's Resistance Army (Uganda)

MDC	Movement for Democratic Change (Zimbabwe)
NANHRI	Network of National Human Rights Institutions
NATO	North Atlantic Treaty Organisation
NEPAD	New Partnership for Africa
NGOs	Non-governmental Organisations
NHRIs	National Human Rights Institutions
NIAC	Non-International Armed Conflicts
OAU	Organisation of African Unity
PRC	Permanent Representatives Council of the AU
PSC	Peace and Security Council of the AU
REC	Regional economic communities
RoP	Rules of Procedure of the ACHPR
SADR	Saharawi Arab Democratic Republic
UN	United Nations
UNAMID	UN-AU Hybrid Operations in Darfur
ZANU-PF	Zimbabwe African National Union- Patriotic Front

Foreword

Conflict and crisis situations present perhaps the most formidable challenge to the protection and observance of human and peoples' rights. These are situations in which observing human rights is not often seen as an important strategic consideration by conflict actors. The ordinary institutions for the promotion and protection of rights can also exert weak influence on the behavior of conflict actors. As experiences from across the various conflict and crisis situations on the African continent and indeed elsewhere in the world show, it is also in conflict and crisis situations that the most egregious violations and abuses of rights are perpetrated.

For all the foregoing reasons, it is in conflict and crisis situations that there is a greater demand and need for the effective operationalization of applicable human and peoples' rights regimes. Given the extraordinary challenge that they present, it is also in conflict and crisis situations that the relevant human rights system needs to put in place and effectively deploy appropriate mechanisms of protection and mobilisation of collective action for ensuring observance of rights. With the changes in the nature of conflicts and the attendant heightened threat to human and peoples' rights, there is a greater need for the human rights system to pay increasing attention to and provide effective responses to the challenges that these new dynamics present to the protection and observance of rights.

In the context of the transition of the Organisation of African Unity (OAU) to the African Union (AU) and importantly the increasing role that the AU,

through its Peace and Security Council (PSC), on its own or in collaboration with sub-regional organisations, has come to assume in the promotion and maintenance of peace and security in Africa, the importance of human and peoples' rights has become legally recognised both in the Constitutive Act of the AU and the Protocol Establishing the PSC. It has thus become imperative that adequate mechanisms, tools and approaches for ensuring the protection and observance of rights are established as part of the exercise by the AU of its role of promoting and maintaining peace and security on the continent.

It is clear from the foregoing that putting in place effective response mechanisms for addressing the grave challenges that conflict and crisis situations present to human and peoples' rights is one of the weightiest responsibilities of the African human rights system. This is particularly the case for the African Commission on Human and Peoples' Rights that enjoys not only some attributes of judicial powers but also major powers of norm-making, advocacy, investigation and public pronouncement on the most pressing human rights issues of the day. In conflict and crisis situations, the exercise of these powers requires different tools, mechanisms and approaches from the ones used in ordinary situations. As such, there is a need for the African Commission to have a dedicated framework for conflict and crisis situations that enables it to effectively respond to the exigencies of such situations.

The adoption by the African Commission of Resolution 332 on human rights in conflict situations has thus been a long time coming. As the study it requested and the interest around it attests, it is one of the Commission's most consequential initiatives. As robustly and comprehensively articulated, this study certainly presents not only the Commission's authoritative view on human rights in conflict situations but also how the Commission on its own or in concert with other relevant actors engages to address the challenges of human and peoples' rights in conflict situations in a systematic, proactive and institutionalised form (as opposed to the ad hoc and mostly reactive approach dominant thus far). The Study presents by far the most comprehensive analysis in the African human rights system of the problematic of human rights in conflict situations and as such it represents a landmark work for the AU human rights and peace and security system. This has been demonstrated in the fact that it has already started to inform and shape the AU's engagement, including the PSC and in relation to its peace support operations work.

Against the background of five challenges that conflict and crisis situations pose to human and peoples' rights identified in the Study, a five-pillar approach has been advanced as the framework for African Commission's engagement as far as human rights in conflict situations is concerned.

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- i. Monitoring and response;
 - ii. Prevention;
 - iii. Mainstreaming of human rights into conflict prevention, management, resolution and post-conflict reconstruction and development;
 - iv. Remedial Action; and
 - v. Institutional coordination and synergy with the institutions identified above including through operationalisation of Article 19 of the PSC Protocol, for example through annual consultative meetings and development of early warning systems.

In terms of implementation modalities, the Study rightly proposed, in the light of the huge strategic and institutional importance of this area of the Commission's work, that the Commission establishes a special mechanism on human rights in conflict situations.

With the implementation of the proposals contained in this Study, the Commission will certainly place itself at the forefront of the answer to the pressing demand for ensuring the protection and observance of rights in conflict situations in Africa.

It is important to point out that the elaboration and adoption of this Study followed the well-established and rigorous practice of the Commission. Following the preparation of the inception report and the preparation of the draft study, in my capacity as a focal person I convened various consultative forums. In April 2018, I convened in Addis Ababa an experts' validation consultative workshop, during which experts from across the AU system including the Peace and Security Department, from the UN Office in Addis and its field offices and representatives of national human rights institutions and civil society organisations provided their invaluable inputs. Additionally, side events and panel discussion were held during the ordinary sessions of the African Commission. Inputs were also sought through a public invitation announced on the website of the African Commission before the revised and updated version was presented for consideration and adoption by the Commission.

As I could not have carried of this heavy responsibility by my own, I would like to express my indebtedness to all those who provided their support for the implementation of my assignment to develop this Study. In particular, I would like to recognise with deep appreciation the Embassy of Switzerland for supporting the commissioning of the conception and the drafting of the Study by relevant experts. Special thanks to Ambassador Andrea Semadeni. My gratitude also

goes to the Centre for the Study of Violence and Reconciliation (CSVR) for the technical support and the printing of this Study. I also thank my colleagues at the African Commission for their constant support. I do hope that our collective effort has produced an outcome that not only makes all of us proud but also elevates the role of the Commission to a higher level.

It now gives me a particular honour to invite and call on the entire African Commission on Human and Peoples' Rights, sister bodies of the African human rights system, the wider stakeholders of the human rights system, the AU peace and security actors and all those interested in the noble fight for ensuring the protection and observance of human rights in conflict situations both to read this study and make full use of its analysis and findings for realising the motto of the African Commission: human rights, our collective responsibility.

Solomon Ayele Dersso, PhD

Commissioner

ACHPR Focal Person on Human Rights in Conflict Situations

Executive Summary

Background

Ours is indeed an era witnessing a qualitative shift in the nature and scale of human rights violations resulting from changes in the nature of conflicts. These changes are characterised by a significant decline in inter-State conflict, while intra-state conflicts including civil wars, violent political confrontations such as protest and riot events arising from demands for political change and armed violence involving irregular and loosely organised groups, such as clan militias, guerrilla forces, criminal networks, religious or ethnic militias and terrorist groups often operating in territories with weak state presence have become prominent. Some of these new forms of conflicts such as terrorism may or may not meet the threshold of armed conflicts.

In this context, the need for strengthening the role of the African Union's human rights system in addressing violations arising in such conflict and crisis situations has become very pressing. This challenge facing human rights in this context further requires that the African human rights system develops the flexibility and means to effectively meet the demands of these situations.

Cognisant of the challenges arising from human rights issues in conflict and crisis situations, and acting on its mandate under Article 45 of the African Charter, the African Commission during its 19th Extraordinary Session adopted ACHPR/Res. 332 (EXT.OS/XIX) 2016 (Resolution 332). In this Resolution, the Commission decided to conduct a human rights in conflict situations in Africa

and collaborate with the AU PSC and other relevant stakeholders working in the issues of peace and security, towards enhancing the role of the African Commission in addressing human rights issues in conflict situations.

For purposes of this Study, the term “conflict” thus covers violent and sustained political and/or social disputes. “Conflict situations” covers armed conflicts, both international and non-international, and also other instances of crisis situations manifesting violent actions of various gravity short of armed conflict, such as conditions of major instability or violence lacking the use of organised armed force.

Human rights and conflict

In the first place a state of persistent human rights violations may *cause* crisis situations or conflict. Even if human rights violations are not the sole cause of conflict, structural conditions such as horizontal inequalities along ethno-cultural lines, corrupt and abusive systems of governance, injustice and insecurity, have the effect of generating violent conflict. Violation of human rights may also be the *consequence* of violent conflict. Conflicts ultimately result in the killing and displacement of civilians and gross and systematic human rights violations, including repression of freedom of expression and media, excessive use of force by armed forces, intimidation of political opponents, rape and other sexual violations, summary executions, disappearances and torture and in some instances mass atrocities. Human rights violations have also been perpetrated through denial of humanitarian relief and destruction of infrastructure for socio-economic activities and social services and source of peoples' livelihoods. Thirdly, sustained human rights violations in a protracted conflict setting can also serve as a driving factor that *deepens* divisions and animosity among parties to a conflict.

Vulnerable groups often suffer the most egregious human rights abuses in conflict. Sexual violence is one of the major forms of human rights violations that has become common in conflict and crisis situations on the continent, and mostly affects women. Violence against children is another common form of human rights violations in conflict settings and crisis situations. Contemporary conflict and crisis situations have forced millions of people – men, women and children – to flee in order to escape suffering, human rights violations and starvation.

While States are often the perpetrators of human rights violations, some non-State actors are also perpetrators of human rights abuses in conflict situations. These include non-State armed groups (rebel and opposition groups, and terrorist and other criminal groups), and economic non-State actors (multinational corporations and private military and security companies).

Determination of applicable law

A question which is central to the challenge of addressing human rights issues in conflict situations is whether and how international humanitarian law (IHL) applies in relation to international human rights law (IHRL), particularly the African Charter on Human and Peoples' Rights (African Charter), in conflict situations. The African human rights system took the position that the rights and freedoms guaranteed in the African Charter apply both in peace and war times. In case of armed conflicts, this entails that there would be co-application of the two regimes of law. However, what the co-applicability of the two regimes of law entails is not that the African Commission directly applies IHL. In conflict situations in which IHL applies, the African Commission resorts to the standards of the applicable IHL rules on the basis of Articles 60 and 61 of the African Charter. Instead of making a finding on the existence of violation of IHL, the Commission, as it did in *Thomas Kwoyelo v. Uganda*, uses the IHL standards (rather than the normal human rights standards) for assessing the existence of violations of Charter rights.

The existing framework for addressing human rights violations in the context of conflict and crisis situations

The legal framework which forms the basis of for applying human and peoples' rights to conflict or crisis situations encompasses a number of important human rights as well as other relevant AU normative instruments. This Study accordingly offers an analysis of the various applicable legislative instruments including the African Charter, the Maputo Protocol, the African Children's Charter, and the Kampala Convention, the Constitutive Act of the AU, among others in order to provide an overview of the applicable norms in place that can be used to address human rights violations in conflict situations.

Additionally, the African Commission's mandate allows it to address challenges to human and peoples' rights within a wide context, including in conflict and crisis situations. The Commission is vested with both protective and promotional mandates. While the African Charter has given the Commission expansive latitude in terms of choosing the mechanisms for implementing its mandate, including the use of any investigative method of its choice, there are established mechanisms and procedures which can be used more systematically to address human rights issues in conflict or crisis situations.

As far as its protective mandate is concerned, apart from the Communications procedure core to the protection mandate and the related provisional measures, the available procedures and mechanisms include fact-finding/investigation

missions, resolutions and urgent letters of appeal and referral of cases to Political Organs of the AU under the Article 58 of the Charter. Its promotional mandate is implemented through awareness creation and public mobilisation activities including promotional missions, seminars, its norm elaboration work, and examination of state reports under Article 62 of the African Charter and Article 26 of the Maputo Protocol. Related to the promotion mandate of the Commission is also its interpretative mandate involving the delivery of advisory opinion and other interpretative works on the interpretation of the provisions of the African Charter. The work of the Commission under specific thematic topics is carried out by Special Mechanisms and each country also has a Country Rapporteur responsible for the promotion and protection of human rights in that country.

Coordination and collaboration by the Commission with other actors

The promotion and protection mandate of the Commission also involves cooperation with other African and international institutions concerned with the promotion and protection of human and peoples' rights. The objective of these partnerships is to create synergy for the better promotion and protection of human and peoples' rights on the continent, which also includes protection of rights in times of conflict and crisis situations.

Article 45(1)(c) of the Charter authorises the Commission to cooperate with African and international institutions concerned with the promotion and protection of human rights. In line with this provision, the African Commission has forged relations with different AU bodies for the better promotion and protection of human and peoples' rights, including in time of conflict or crisis. Some of these relations have been created explicitly under the Charter and others through Protocols. These include relationships with the AU policy organs, the Peace and Security Council of the AU (PSC), the African Court on Human and Peoples' Rights (ACHPR), the Committee on the Rights and Welfare of the Child as well as the African Peer Review Mechanism (APRM).

Apart from the relationships between the African Commission and other African regional institutions and organs of the AU horizontally, the Commission also has interaction and collaboration on the vertical axis, at the sub-regional level with regional economic communities and at the global level with the United Nations. In addition, the Commission also has crucial relationships with bodies functioning at the national level, such as national human rights institutions (NHRIs), civil society organisations and other grassroots actors.

While the measures taken by the African Commission thus far using its various tools and mechanisms have contributed to drawing attention to human rights issues in conflicts in Africa, the Commission faces challenges in the discharge of its mandate in conflict and crisis situations, including most notably in initiating responses in a systematic and timely fashion.

Based on the foregoing, five challenges can be identified with respect to the role of the Commission in addressing human rights issues in conflict situations:

- I. The first of these is the protection challenge. This raises the challenge of how to arrest incidents of violations and ensure that conflict parties avoid and take action against the perpetration of violence. Related to this is the challenge of monitoring, investigation and reporting violations.
- II. The second challenge is the promoting challenge. This challenge entails the provision of customised inputs by way of general and thematic analysis for the full consideration and integration of human rights into peace processes that are deployed for preventing or resolving conflicts.
- III. The third challenge is that of remedying (or coming to terms with) the violations that the conflict occasioned.
- IV. Fourth, there is the challenge of prevention. This is a challenge about ensuring that the root causes are addressed, the triggering factors are removed and the necessary democratic and socio-economic reforms are instituted.
- V. Fifth and finally, there is the challenge of coordination and synergy with other relevant AU mechanisms.

Proposed approach for a comprehensive response to human rights issues in conflict situations

Based on the identification of these five challenges, the African Commission should consider adopting a five-pillar approach based on the following thematic priorities:

- i. Monitoring and response;
- ii. Prevention;

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- iii. Mainstreaming of human rights into conflict prevention, management, resolution and post-conflict reconstruction and development;
 - iv. Remedial action; and
 - v. Institutional coordination and synergy with the institutions identified above including through operationalisation of Article 19 of the PSC Protocol, for example through annual consultative meetings and development of early warning systems.

Recommendations

The most pertinent of the recommendations identified in the Study is the establishment by the African Commission of a new special mechanism devoted to monitoring, reporting and responding to human rights violations that occur in conflict and crises situations, and for coordinating the strategy and efforts within the Commission and with other relevant organs of the AU. Until such time as the proposal for the establishment of a new special mechanism supported by dedicated experts can be implemented, the Commission should designate a Commissioner focal person for conflict and crisis situations.

Following the establishment of the special mechanism, it would have a broad mandate to work in collaboration with the PSC, to monitor the human rights situation of countries where AU peacekeeping missions have been deployed, and to develop guidelines and a checklist which the Commission or human rights observers could use to identify indicators and determine whether there is a risk of human rights violations deteriorating into conflict, as part of the early warning system.

The other stakeholders identified in this Study, including the PSC, other AU institutions and organs, the UN, regional economic communities, non-governmental organisations and national human rights institutions are all encouraged to collaborate, share information and support the implementation of recommendations of the Commission in order for its work to have a meaningful impact.

PART 1

Introduction

1. Perhaps the most seminal reference for understanding the disturbing character of violations that are witnessed in Africa particularly in conflict situations is the main Report of the African Union (AU) Commission of Inquiry on South Sudan (AUCISS)¹ as well as the Separate Report of Professor Mahmood Mamdani.² As both reports show, the level of brutality that the violations revealed during the course of the war that broke out in December 2013 in South Sudan has been unprecedented. The stories and reports of the human toll of the violence and brutality have been heart-wrenching states the AUCISS main report.³ It went on to note reports of people being burnt in places of worship and hospitals, mass burials, women of all ages raped; both elderly and young, women described how they were brutally gang raped, and left unconscious and bleeding, people were not simply shot, they were subjected, for instance, to beatings before being compelled to jump into a lit fire. The Commission heard of some captured people being forced to eat human flesh or forced to drink human blood.⁴ In the words of Mamdani's separate opinion, [g]ratuitous degradation was a marked feature in many of the incidents of brutality narrated to us.⁵

1 AU, Final Report of the African Union Commission of Inquiry on South Sudan (2015). [AUCISS Final Report]

2 AU, A Separate Opinion of Mahmood Mamdani, a member of the AU Commission of Inquiry on South Sudan. [AUCISS Separate Opinion]

3 AUCISS Final Report, 380.

4 Ibid.

5 AUCISS Separate Opinion, para. 9.

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2. Ours is indeed an era witnessing a qualitative shift in the nature and scale of human rights violations resulting from changes in the nature of conflicts. With even the bare minimum of humane conduct totally abandoned, violence is used with unrestrained zeal and unconscionable brutality, leading to what one leading global policy research organisation called misery as strategy.⁶ This is particularly true in conflict and crisis situations. In noting the brutality that is often witnessed in conflict situations, the African Commission in its fact-finding mission report on Burundi noted that, [i]n some of the killings, body parts of victims were butchered, revealing the level of cruelty on the part of perpetrators and showed complete disregard to the sanctity of human life.⁷ Indeed, there is no other context than situations of major political crises and armed conflicts that exhibits the worst and most heinous manifestations of violations of human rights and international humanitarian law.

 3. Ours is also an era when the institutional foundation on which the human rights edifice has been built, notably the nation state and the multilateral system, faces unprecedented assault from a web of both local and global actors. While the occurrence of violations of human rights and humanitarian law in situations of conflict and crisis is not new, the changes in the context and nature of conflicts (as aptly captured in the World Bank's 2011 World Development Report)⁸ have made the need for a close scrutiny of the role of the African Union's human rights system in addressing such violations, including in close coordination with other relevant bodies such as the Peace and Security Council (PSC) of the AU, very pressing and more urgent. The changes in the character of the violations and the contemporary pressure facing national and multilateral frameworks reveal that there is a higher demand and urgency for an effective regional system of response to human rights issues in conflict and crisis situations than in normal times. This requires that the African human rights system has the flexibility and is equipped with the requisite means for effectively meeting the demand and urgency of these situations.

6 International Crisis Group, *Misery as strategy: The human cost of conflict*, 31 May 2018 available on <https://www.crisisgroup.org/global/misery-strategy-human-cost-conflict>.

7 Report of the Delegation of the African Commission on Human and Peoples' Rights on its Factfinding Mission to Burundi, 7–13 December 2015, p32.

8 Unlike the 20th century paradigm of conflict (involving clearly defined conflict actors, sovereign states or clearly organized armed rebel groups) on which the global system is largely built, the forms of conflict and violence in the 21st century 'do not fit neatly either into "war" or "peace", or into "criminal violence" or "political violence"': World Bank (2011), *World Development Report 2011: Conflict, security and development*, 2.

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4. There are a number of other factors that reinforce the need for such review of the role of the African human rights system in the present era vis-à-vis conflict situations. First, not only that the AU has now become a dominant player in the formulation and deployment of policy responses to crisis and conflict situations, but it is also at a stage of exploring ways and means of addressing human rights issues that emerge in situations where it operates as mediator or peacekeeper. It is to be recalled that it was the AU PSC that established the commission of inquiry that investigated the human rights and international humanitarian law violations in South Sudan referred to above. The African Commission also undertook the investigation mission to Burundi in 2015 on the initiative of the PSC.
 5. Second, there are efforts to address conflicts in a more systematic and comprehensive way. In this regard, a number of initiatives are worth mentioning. First, on the part of regional organisations such as the AU Peace and Security Council, there is recognition of the need to have increasing focus on root causes and structural prevention of conflict in Africa, and the need for coordination among relevant AU institutions. For example, in a communiqué it adopted in October 2014, the PSC not only recognised marginalisation and abuse of human rights as potent triggers of conflict but it also underscored the need for greater involvement of several institutions including the African Commission on Human and Peoples' Rights (African Commission) in 'the overall efforts to promote good governance and prevent conflicts'.
 6. Second, the AU has set an ambitious target for mobilising the continent towards 'silencing the guns' by 2020. This forms part of one of the goals of Agenda 2063, namely 'a peaceful and secure Africa', which is premised on the recognition that social inclusion, respect for human rights, justice, rule of law, good governance and democracy are 'the necessary preconditions for a peaceful and conflict-free continent'.
 7. Finally, there is a need not only for optimal utilisation of the African Charter on Human and Peoples' Rights (the African Charter), the founding document of the African human rights system, as well as associated instruments for addressing the human rights issues in conflict and crisis situations, but also for equipping the African Commission, as the principal human rights body of the AU, with the requisite tools to enable it to effectively address these issues in a systematic way, including through coordinated action by drawing on the leverage of other AU mechanisms, notably those forming part of the African peace and security architecture.

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8. The African Commission on Human and Peoples' Rights (the African Commission) has not been inactive as far as human rights issues in conflict and crisis situations are concerned. Indeed, the record of the work of the Commission shows its various levels of engagement in this area through its communications procedure, the resolutions it adopted over the years, the fact-finding missions it has undertaken and the letters of appeal that Members of the Commission issue.⁹ However, the nature of human rights violations in conflict or crisis situations demands much more than the *ad hoc* and largely reactive approach that has thus far characterised the Commission's engagement.
 9. The major developments highlighted above not only set the context for looking into human rights in conflict situations but also give rise to major policy and operational issues. One such policy issue is the nature and scope of the normative frameworks of the AU system and their implications for initiating effective responses to human rights and IHL issues in crisis and conflict situations. The other is the availability of the decision-making authority and structures and the requisite mechanisms/tools for tracking, investigating and responding to human rights issues in conflict situations. Related to this is the issue of whether the human rights and the peace and security actors have developed mechanisms for a systematic and institutionalised consideration of human rights issues in all their initiatives to address all crisis or conflict situations. There is also the question of what the practice of the two systems shows in this regard and the gap between what the legal instruments envisage and the actual operation of the two institutional frameworks. Equally important is the issue of the availability of mechanisms for structured coordination and synergy between the AU institutions on peace and security and those tasked with the promotion and protection of human rights, and the extent to which the two systems have in practice coordinated their actions.
 10. Cognisant of the challenges arising from human rights issues in conflict and crisis situations, and acting on its mandate under Article 45 of the African Charter, the African Commission during its 19th Extraordinary Session held in Banjul, the Gambia from 16–25 February 2016, adopted ACHPR/Res. 332 (EXT.OS/XIX) 2016 (Resolution 332 attached in the Annexure). In this resolution addressing the theme of human rights in conflict situations, the African Commission decided, among others, to:

9 For a recent review on this see *Amnesty International, Counting the gains, filling the gaps: Strengthening African Union's Response to Human Rights Violations in Conflict Situations* (2017) 23-31.

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- i. Conduct a human rights in conflict situations in Africa, with a view to developing a comprehensive study framework on the same;
 - ii. Collaborate with the AU PSC and other relevant stakeholders working in the issues of peace and security, towards enhancing the role of the African Commission, as well as its coordination with other continental processes, in addressing human rights issues in conflict situations.
 11. This report is prepared in fulfillment of the responsibility that Resolution 332 entrusted to Commissioner Solomon Ayele Dersso for implementing the objectives of the resolution. It presents the analysis and recommendations of the Study done in pursuit of the objectives of this resolution. As such, apart from taking stock of the work of the Commission in this area, the report aims at clarifying ways of meeting the challenges that conflict situations present to the protection of human rights and international humanitarian law and fill in the gaps in the existing approaches.

PART 2

Relationship between conflict and human rights: the context, applicable law and salient issues in conflict situations in Africa

The context covered under Resolution 332

12. The starting point in clarifying the context covered in Resolution 332 is the term conflict. While the term signifies disagreement between usually two or more parties over a particular or range of subjects, for purposes of this Study it covers sustained armed or political and/or social disputes or crises involving violence. The types of conflicts (conflict situations in the language of resolution 332) that are of interest to this Study are those classified based on the parties to the conflict and the existence and degree of violence involved.¹⁰
13. The human rights issues that are covered under Resolution 332 are thus those arising in conflict situations. The phrase conflict situations in this context covers not only armed conflicts, both international and non-international, to which International Humanitarian Law (IHL) applies, but also other instances of crisis situations manifesting violent actions of various gravity short of armed conflict. Apart from those cases of organised violence involving organised armed actors between two or more parties,

¹⁰ While this is the approach followed in classifying conflict in the context of human rights, the classification of conflict under IHL follows a different approach, including that the motivation of organised groups involved in armed conflict is not a criterion for determining the existence of an armed conflict for purposes of IHL.

either State or non-State armed actors of various forms, conflict situations thus additionally cover conditions of major instability or violence lacking the use of organised armed force.

14. Such conceptualisation of conflict situations recognises the changes characterising various contemporary conflicts manifesting unconventional organisation and use of armed violence (but not meeting the threshold of armed conflicts) taking the form of “countless little wars with no front lines, no battlefields, no clear conflict zones, no distinction between combatants and civilians and no ideology,”¹¹ whether such involved conventional or traditional weapons. The inclusion (in Resolution 332’s language of conflict situations) of crisis situations other than armed conflicts also recognises internal crises, which, while lacking the use of organised armed violence, manifest upheavals or disturbances involving non-armed violent actions. These include riots, uprisings, violently contested elections, unconstitutional changes of government, and other forms of violent contestations over transitions or constitutional term limits, the systematic and violent crackdown against political opposition, civil society organisations and the media in situations of political tension.
15. Accordingly, the defining characteristic of conflict situations as used in Resolution 332 should not only be situations involving the use of armed force by non-state actors of various degrees of organisation, but should equally cover situations of political tension manifesting non-armed violent actions.
16. This interpretation is in line with the spirit of Resolution 332 and the AU’s legal and normative framework. In one of its operative paragraphs, Resolution 332 refers to “its previous Resolutions pertaining to human rights in conflict situations” and mentions four examples.¹² Reading of these four resolutions reveals that they are not only concerned with human rights violations in situations of conventional armed conflicts, but also with other cases of crisis situations, varying from the unconstitutional change of governments in the Republics of Guinea and Guinea-Bissau to the post-election crisis in Kenya, and the clampdown on political dissent, journalists and the media in Eritrea to the barbaric terrorist attacks against

11 Jeffrey Gettleman, ‘Africa’s Dirty Wars’ *The New York Review of Books* (8 March 2012) accessed 11 February 2018.

12 The four resolutions referred to in Resolution 332 are: ACHPR/Res.117 (XLII) 07 Resolution on Strengthening the Responsibility to Protect in Africa; ACHPR/Res.157 (XLVI) 09 and ACHPR/Res.207 (L) 11 Resolution on the General Human Rights Situation in Africa; and ACHPR/Res.276 (LV) 14 Resolution on Terrorist Acts in Africa.

civilians by Al-Shabab, Al-Qaeda and Boko Haram in the Eastern, Northern and Western parts of the continent respectively.

17. This approach to the term conflict situations in Resolution 332 is also consistent with Article 2 of the Protocol Relating to the Establishment of the PSC, which establishes the PSC as a standing decision-making organ to facilitate timely and efficient response to conflict and crisis situations in Africa. According to Article 4 of the same Protocol, one of the guiding principles of the PSC is to contain crisis situations so as to prevent them from developing into full-blown conflicts.
18. The inclusion of conflict prevention, management and resolution in Resolution 332 further corroborates such inclusive reading of crisis situations. As the reference to conflict prevention measures indicates, crisis situations in Africa and the relevance of the use of the applicable human rights regime are not limited to conflicts. Rather, mainstreaming of human rights is increasingly becoming relevant to various forms of management or prevention of crises including, but not limited to, preventive diplomacy and deployment, and increasingly in measures for the prevention and countering of violent extremism.
19. Finally, the frequency of violent riots and uprisings, the prevalence of the use of lethal force against civilians, and the pervasiveness of the declaration of state of emergency on the continent has made violations of human rights in crisis situations as comparably grave and alarming as those of armed conflict situations. Furthermore, in addition to the increasing similarity of the human rights violations in the two situations, the not uncommon quick escalation of crisis situations to full-blown conflicts in many instances blurs the distinction between conflict and crisis situations further justifying the treatment of the two situations together, without in any way disregarding the clear separation between the two under IHL.

The relationship between human and peoples' rights and conflict

20. Conventional literature articulates human rights violations as multi-dimensional and multi-causal in relation to conflict.¹³ Human rights may be considered as the causes, symptoms and consequences – or even the means – to transform or perpetuate violent conflict. Chandra Lekha Sriram, Olga Martin-Ortega and Johanna Herman argue that the complexity denotes the diversity of the 'interplay between human rights violations and conflict and the role of human rights violations as causes, consequences, or transformers of ongoing conflict dynamics.'¹⁴ In these contexts human rights violations and human rights protection are closely linked to the patterns of contemporary conflict in a number of ways. This section provides an overview of the intersectionality and cross-cutting nature of human rights issues in conflict contexts.

21. Some argue that when human rights violations take the form of insecurity or violence (facing individuals and social groups) arising from the failure to meet basic human needs, they are causes and symptoms of violent conflict.¹⁵ The complementary approach, in addition to this basic needs theory, emphasises inequality and exclusion factors. The groundbreaking works of Ted Robert Gurr, Francis Stewart and Lars-Erik Cederman, Kristian Skrede Gleditsch and Halvard Buhaug established how horizontal political and socio-economic inequalities coinciding with ethno-cultural divisions accompanied by grievances lead to violent conflicts.¹⁶ In contemporary conflict contexts, issues of inequality and exclusion are multi-faceted structural conditions generating violence among and within States, between communities along ethnic, religious or linguistic divides, as well as race and gender divides. In addition, Thoms and Ron argue that violations of civil and political rights are more obviously linked to conflict [...]. When populations are unsettled by long-standing inequalities in access to basic needs and political participation,

13 Frerks, G. "Human rights violations and contemporary violent conflict; an inquiry into causes and remedies." In *Human rights and conflict; Essays in honour of Bas de Gaay Fortman*, pp. 67-85. Intersentia, 2012. 67, 68.

14 Sriram, Chandra Lekha, Olga Martin-Ortega and Johanna Herman. *War, conflict and human rights: theory and practice*. Routledge, 2017. 3.

15 Mertus, Julie, and Jeffrey W. Helsing, (eds.) *Human rights and conflict: exploring the links between rights, law, and peacebuilding*. US Institute of Peace Press, 2006. 3.

16 Gurr, Minorities at risk: *A global view of ethno-political conflicts* (1993); Stewart (ed.) *Horizontal inequalities and conflict: Understanding group violence in multi-ethnic societies* (2008) and Cederman et al. *Inequality, grievances and civil war* (2013).

government repression may trigger violent conflict.¹⁷ Other studies maintain that exclusion of certain groups from social, economic or political entitlements and the existence of systematic discrimination have been established as key factors generating violent conflict.¹⁸ Experience on the continent also shows that while violations of socio-economic rights and inequality often constitute root causes of conflicts, serious incidents of violations of the rights to security, liberty and life are often likely to trigger conflicts.¹⁹

22. Even if human rights violations are not the only cause of conflict, the human rights nexus with conflict accentuates structural conditions such as inequality, corrupt and abusive systems of governance, injustice and insecurity, generating violent conflict. For example, as the north African uprisings attested, such violations as torture, inhumane treatment, arbitrary detention as well as violations of freedom of thought and other political freedoms, create the conditions for or accentuate systematic marginalisation and structural violence against sections of society (such as the youth in the countries where uprisings took place in 2011) that would, in turn, create grievance, dissatisfaction and frustration, resulting in the conditions that incentivise actors to resort to violence and armed conflict.

Human rights violations as the consequence of conflicts

23. Violation of human rights may also be the consequence of violent conflict. Conflicts that have causes rooted in multi-faceted factors ultimately result in killing and displacement of civilians and gross and systematic human rights violations.²⁰ Contemporary conflicts are regarded as the major cause of civilian death and suffering, as they employ deliberate targeting of civilians as a mode of warfare. Some common human rights violations include torture and disappearances, destruction of infrastructure for socio-economic activities and social services as well as sources of livelihoods of affected populations in general, but there may also be war crimes, crimes against humanity,

17 Thoms, Oskar NT, and James Ron. "Do human rights violations cause internal conflict?." *Human Rights Quarterly* (2007), 692, at 674, 701.

18 Global and Social Development Research Center (GSDRC) Research report on Rights, Conflict and Fragile States. Available on <<http://www.gsdr.org/go/topic-guides/human-rights/rights-conflict-and-fragile-states#frag>> accessed 17 February 2018. And also see Sriram, Chandra Lekha, Olga Martin-Ortega and Johanna Herman. *War, conflict and human rights: theory and practice*. Routledge, 2017. 5.

19 S. A. Dersso (2011), "The Role and Place of Human Rights in the Mandate and Works of the Peace and Security Council of the AU: An Appraisal", LVIII *Netherlands International Law Review* 77-101, 78-79.

20 Sriram, Chandra Lekha, Olga Martin-Ortega and Johanna Herman. *War, conflict and human rights: theory and practice*. Routledge, 2017. 5.

and even genocide.²¹ Historical examples include the 1994 genocide against the Tutsi in Rwanda and the protracted conflicts in Angola and Sudan that demonstrate massive human rights violations. The rebels of Foday Sankoh's Revolutionary United Front in Sierra Leone used human rights violations as a strategy of war to intimidate opponents and terrorise civilians. These violations included mutilation and amputation of people's hands and other body parts, rape and displacement, as well as targeted ethnic cleansing.

24. Human rights violations have also been perpetuated through denial of humanitarian relief and destruction of civilians' livelihoods. For instance, the work of humanitarian organisations in South Sudan has been obstructed by government forces despite the looming humanitarian crisis that has already put 7.8 million people in dire need of assistance.²² Direct violence as a result of conflict situations often manifests in the form of violations such as repression of freedom of expression and media, mass atrocities, excessive use of force, intimidation of political opponents, rape and other sexual violations mainly targeted at women, summary executions, disappearances and torture. Other violations directed at children include child marriage and recruitment of child soldiers. These often go hand in hand with the destruction of infrastructure such as schools and health clinics, that in turn affect social and economic rights, as well as massive displacement of civilian populations and destruction of their livelihoods, which particularly impacts on children, women, the elderly and persons with disabilities. In the South Sudan civil war, 85% of refugees and displaced people are women and children.²³

Human rights violations exacerbating conflict

25. Sustained human rights violations in a protracted conflict setting can also serve as driving factors that deepen divisions and animosity among parties in conflict. Human rights violations can continue to reinforce grievances and resentment among opposing parties, creating fertile ground for elite manipulation, and armed groups can

21 Ibid 5.

22 Armed Conflict Location & Event Data Project (ACLED) report on South Sudan – May 2017 and April 2017 Update available on: <https://www.acleddata.com/2017/05/16/south-sudan-april-2017-update/>. Accessed on 2/17/2018.

23 UN High Commissioner for Refugees "South Sudan Situation – Responding to the needs of displaced South Sudanese and refugees, Supplementary Appeal January – December 2018".

also mobilise to create “us vs. them” divides.²⁴ For instance, the conflict in the Sudan, that resulted in the deaths of over two million people and the internal displacement of four million persons out of a total national population of 38 million, fueled resentment and protracted the conflict which only ended with the secession of South Sudan in 2011. In addition, the abuse of natural resources by one or all sides to the conflict is also both a human rights violation and a factor which leads to the protraction of conflict, as natural resources are often used to fund and sustain conflict.

The emergence of new forms of conflict in Africa: nature, prevalence and dynamics

26. Despite similarities, the nature and manifestation of human rights issues are not the same for all conflict and crisis situations. The human rights issues that arise in conflict and crisis situations depend on the nature and form of the conflict/crisis situation. Human rights issues that arise in a civil war, in resource-related disputes, in violent confrontation between protestors and security forces, in situations of electoral dispute and other constitutional crises, and in the context of terrorism-related conflicts and/or the so-called war against terror are not the same.
27. The nature, dynamics and prevalence of conflict and violence on the continent have evolved with new driving factors and involving far-reaching consequences. As the economic, political, cultural and demographic landscape has changed, so too has Africa's security landscape, with some positive developments but also significant regression. Observers of the conflict landscape in Africa have witnessed a significant decline in inter-State conflict, while intra-State conflicts such as civil wars and other forms of instability showed a marked rise. Contemporary conflicts in Africa have involved either factional warfare, ethnic-based or regional conflicts involving State actors. The factional type of conflicts are characterised by its fluid nature, often aiming to use or mobilise the civilian population and controlling commercial, mineral and natural resources to sustain the conflict. Examples of such conflicts include those seen in Somalia and Cote d'Ivoire.

²⁴ Sriram, Chandra Lekha, Olga Martin-Ortega and Johanna Herman. *War, conflict and human rights: theory and practice*. Routledge, 2017.

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28. Other aspects of contemporary conflict are ethnic-territorial based, mobilising ethnic or regional identities, some of which have resulted in huge death tolls, massive displacement, fear and insecurity. Such occurrences have taken place in Burundi, the DRC in the Kivu region, and most notably in Nigeria, which in recent years have experienced outbreaks of ethnic and religious violence. The Nigerian conflict has been characterised by an intensification of conflict between herders and farmers, as a result of dwindling resources and the impacts of climate change. A similar upsurge in herder/farmer conflict can be seen across west and central Africa as resources become scarcer and people migrate into territories previously occupied by other groups.
 29. The other major type of conflict on the continent amounts to what some observers have termed the “new warfare”, also called transnational warfare, encompassing the regionalised nature of conflicts involving conventional State forces with military operations supporting factional armed groups as proxies. This type of conflict has been witnessed in the past in the wars in the DRC and in Sierra Leone. In most recent conflicts, it has been observed in the conflict in South Sudan, which involved strong regional dimensions.²⁵ As a result, civilians have suffered displacement and death, epidemic diseases and multi-faceted human rights violations.
 30. Across the continent, these conflict situations in their varied forms have resulted in massive internal displacement of civilians, and in 2016 accounted for 12.6 million African civilian casualties,²⁶ as well as other forms of extreme violence deliberately targeting civilians. These human rights violations include increasing use of violence in the form of mutilation, torture of women and children, violent rituals and the forcible involvement of children, spouses and other relatives in killing and rape. These forms of violence are used as a means of waging war primarily by militia groups and certain State proxies.
 31. The other type of conflict or crisis situation is that related to election disputes. Clear instances of this sort of conflict situation have followed contested elections and political tension in Kenya in 2007, in

25 Department for International Development (DFID), The causes of conflict in Africa – consultation document – March 200. Available on: <http://webarchive.nationalarchives.gov.uk/+/http://www.dfid.gov.uk/pubs/files/conflict-africa.pdf>. Accessed on 2 February 2018.

26 Sorcha O’Callaghan and Chloe Sydney: Africa Report On Internal Displacement December 2017. Internal Displacement Monitoring Center (IDMC) and Norwegian Refugee Council (NRC), Available on: <http://www.internal-displacement.org/assets/publications/2017/20171206-Africa-report-2017.pdf>. Accessed on 2 February 2017.

2008 in Zimbabwe, in 2011 in Cote d'Ivoire and after the 2016 elections in Gabon, to name a few. The violations that often accompany these conflict situations include violent crackdown against opposition politicians, civil society actors, journalists, the media and supporters of opposition parties. Where the situation escalates, as it did in Kenya in 2007/2008 (without reaching the threshold of armed conflict) and in Cote d'Ivoire in 2011 (involving armed conflict), the confrontation between the incumbent and the opposition descends into armed violence leading to the killing, maiming and displacement on a large scale of the civilian population.

32. Distinct but related to the above are crisis situations (short of the armed conflict threshold) related to contested political transitions, which at times centre around disputes over constitutional term limits, unconstitutional changes of government or popular demands for democratic change of government. This has been the case in a number of countries including Burkina Faso, Burundi, Congo, Ethiopia, Guinea-Bissau, Mauritania, Madagascar, Mali, Togo, Cote d'Ivoire, Egypt and The Gambia, among others. While these often lead to widespread human rights violations including excessive use of lethal force by government security forces, extra-judicial killings, arbitrary detention, torture and crack down on opposition politicians and civil society actors and the disruption of sources of livelihoods, in more serious cases the situation escalates into armed violence, as it did in Burundi in 2015 and in DRC since 2016.
33. In Burundi, the dispute over the third term of the incumbent president leading to protests by the opposition and civil society organisations escalated into conflict involving sporadic armed violence and confrontation with security forces. As the African Commission documented in its fact-finding report, the violations that accompanied this conflict situation include excessive use of lethal force by security forces, extra-judicial killings, arbitrary detention and arrest without charges, torture, retaliatory assassinations, violent crackdown against the media and journalists, arbitrary closure of non-governmental organisations in breach of the right to freedom of association, sexual violence and the flight of hundreds of thousands into neighboring countries.
34. In the DRC, the failure of the government to hold national elections in due time and the resultant extension of the term of office of the incumbent president has put the country in major turmoil. In the violence that started in 2016 in the Kasai region, the extreme violence

that government forces and armed militia used including against civilians reportedly led to the death of thousands, with UN documenting 87 mass graves and the flight of tens of thousands of civilians into Angola.²⁷

35. The other main issue concerning the contemporary conflict and crisis landscape on the continent is terrorism, which may or may not meet the armed conflict threshold.²⁸ The issues of terrorism and violent extremism continue as major peace and security threats on the continent. Terrorist attacks in Chad, Cameroon, Niger, Nigeria, Burkina Faso, Egypt and Mali have targeted civilian populations, including women and children, as well as security forces. Targeted civilian attacks in north-east Nigeria have resulted in the displacement of over 2.5 million civilians as internally displaced persons and refugees.²⁹ Armed groups such as Boko Haram in the north-east and Fulani militias in the country's middle belt³⁰ have carried out small-scale suicide bombings and armed attacks primarily targeting civilians in rural villages and displacement camps.³¹ Similarly, in Kenya, the terrorist group Al-Shabaab has been targeting security forces as well as civilians, the most noteworthy of which were the Westgate Mall attack in September 2013 and the attack on Garissa University College in April 2015 which left 148 people dead. A similar trend has been witnessed in Mozambique in 2017 and 2018 carried out by an armed Islamic group that calls itself 'Al Shabaab' and targets civilians and government institutions in the Cabo Delgado region.³² This conflict in Mozambique also has a resource element, since most of the terrorist attacks take place in an area where oil and gas reserves have been discovered.

27 Congo's Spiralling Kassi conflict, (12 September 2017) <https://www.thenewhumanitarian.org/feature/2017/09/12/mass-graves-missing-bodies-and-mysticism-inside-congo-s-spiralling-kasai-conflict>.

28 Terrorism in this context should not be understood to be conflated with armed conflict, rather it constitutes a separate form of crisis situation. Conflation of the concepts may result in groups in armed conflict being designated as terrorists by definition. Conversely, some acts carried out by groups classified as terrorists may be considered lawful under IHL, if not under national law. IHL however prohibits as war crimes certain acts of terrorism perpetrated in armed conflict, such as direct and deliberate attacks against civilians.

29 See Report of the Secretary-General: Causes of conflict and the promotion of durable peace and sustainable development in Africa. Seventy-second session Item 67 (b) of the provisional agenda. New Partnership for Africa's Development: progress in implementation and international support. General Assembly Distr.: General 1 August 2017. A/72/269 6/19 17-13183 23.

30 Armed Conflict Location & Event Data Project (ACLED) Update report on Libya – October 2017. Available on: <https://www.acleddata.com/2017/10/09/libya-october-2017-update/>. Accessed on: 2 February 2017.

31 Oscar Nkala, "Nigerian Air Force takes delivery of two Mi-35M attack helicopters" Thursday, 12 January 2017. Available on: http://www.defenceweb.co.za/index.php?option=com_content&view=article&id=46413. Accessed on: 2/17/2018.

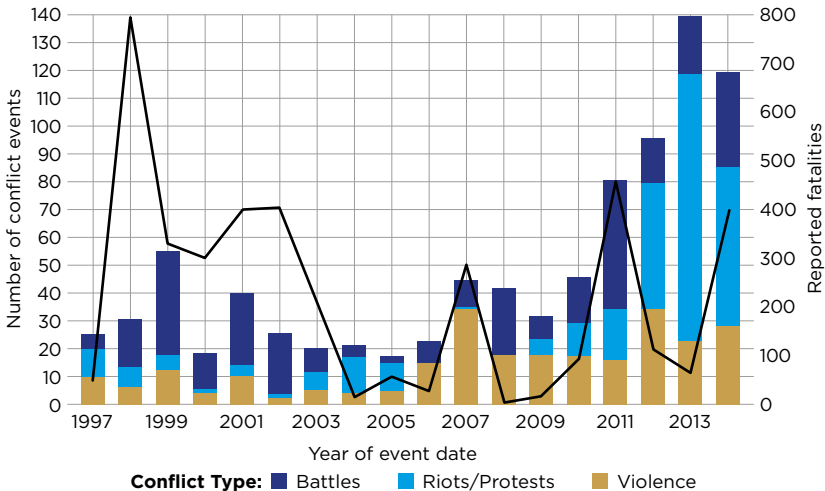
32 The Conversation, Why Islamist attack demands a careful response from Mozambique, October 18, 2017 11.06 am. Available on: <https://theconversation.com/why-islamist-attack-demands-a-careful-response-from-mozambique-85504>. Accessed on 17 February 2018.

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36. Furthermore, increasing numbers of non-State extremist groups and armed militias have de facto control over some areas in Libya, where the erosion of central government authority has resulted in a dire human rights situation. The Armed Conflict Location & Event Data Project (ACLED) database indicates that there has been increasing violence targeting civilians since 2016, carried out by militant Islamist groups in West Africa, including Côte d'Ivoire and Burkina Faso and extending to Mali in the north and to the Lake Chad basin in the east. These attacks have been committed by the Al-Qaeda-affiliated Al-Mourabitoun of Grand-Bassam as well as by other unidentified militant groups.
 37. Riots and violent protests, crisis situations, which like many of the foregoing situations fall short of the threshold of armed conflicts, have also become a common occurrence in many African countries, and these have affected civilian populations with political violence perpetrated by both State and non-State actors. Again, human rights issues are at stake because there are abundant reports that security forces, intelligence and law enforcement authorities, armies and militias have been engaged in continuing human rights violations in contexts of protests. Human rights violations such as extra-judicial killing, detention and torture have targeted journalists, politicians, and civil society leaders and activists. The general trend on the continent indicates that riots and protests have been a defining aspect of political instability in Africa and have often developed into widespread violence. For example, the ACLED database accounts for 101 riots and protests across Zambia between 2016 and 2017, and similar widespread riots and violence also occurred in Ethiopia, Cameroon, Togo, Congo, Angola, the Central African Republic, South Africa, Egypt, Morocco and Tunisia.
 38. These riots and protests have multi-faceted causes intertwined with ethnic and/or religious issues and economic and political grievances. Use of force and repressive tactics remain the most dominant forms of response to riots and protests, resulting in the narrowing down of the political space and the resultant deterioration of human rights situations and the pervasive incidence of violations.³³
 39. Resource-related conflicts in the contemporary conflict landscape of Africa have also been a major concern. Despite the enormous potential and tremendous positive economic benefit to development, natural resources have long been a conflict-generating factor.

³³ Armed Conflict Location & Event Data Project (ACLED) Rioting and Protest in Africa Update report; Available on: <https://www.acleddata.com/category/rioting-and-protests/> Accessed on 3 February 2018.

Valuable resources including oil, diamonds, copper and cobalt have demonstrated the natural resource curse, fueling violence through competition for territorial control, promoting looting and rent-seeking, and sustaining violence through financing conflict. For instance, a UN panel of experts found that the illicit trade of gold and diamonds is being used to finance conflict in the Central African Republic.³⁴ Similarly, logging and trade in diamonds to a large extent funded the conflict in Sierra Leone. The corruption and misuse prevalent in natural resource management and extraction has accentuated existing inequalities and sources of instability. Despite the extractive industries' potential, the communities of resource-rich countries in Africa are poor and underdeveloped. Competition to control these resources and extract them – combining rent-seeking with chronic corruption – generates conflict.³⁵ Even though there is no definitive empirical data to quantify the exact role that extractive resources may play in indirectly inciting political violence, the correlation has been demonstrated. The ACLED database provides adequate data to illustrate the prevalence of extractive resource driven conflict, including riots, protests and violence against civilians.

Figure 1: Resource-related conflict in Africa, 1997–2014³⁶

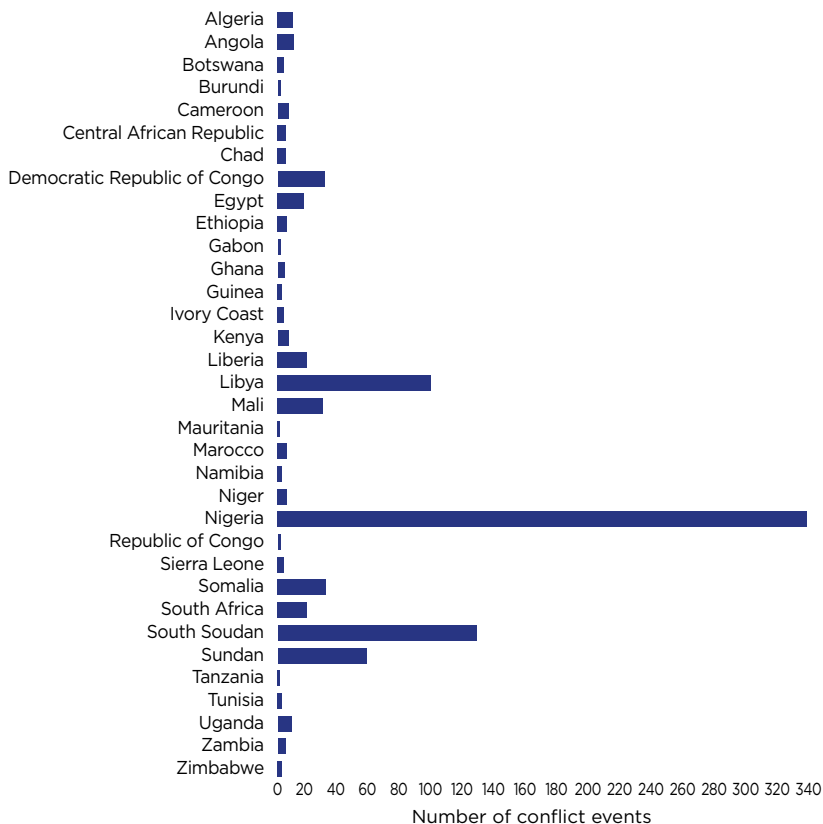


34 Gold, diamonds fuelling conflict in Central African Republic: UN panel, Daniel Flynn. Reuter. November 5, 2014 12:34 am. Available on: <https://www.reuters.com/article/us-centralafrica-un-panel/gold-diamonds-fuelling-conflict-in-central-african-republic-u-n-panel-idUSKBN0IO21420141105>. Accessed on: 17 February 2018.

35 Ibid.

36 ACLED <https://www.crisis.acledata.com/resource-related-conflict-in-africa/>.

Figure 2: Resource-related conflict in Africa, 1997–2014³⁷



40. Research also shows that armed groups – militias and rebels – employ various tactics including disruption, control and manipulation of the extractive resources to finance civil wars. Such instances have been witnessed, among others in Angola, the DRC and Sierra Leone.³⁸ The ACLED dataset captures resource-related conflict related to oil, mines, diamonds, and resources with more direct links such as kidnapping of oil workers, conflicts over access to a specific diamond mine, or protesting against an oil company. In recent years, the prevalence of conflict with direct links to these resources has been increasing, and conflict occurrence is now over five times the level it

37 ACLED <https://www.crisis.acleddata.com/resource-related-conflict-in-africa/>.

38 <https://www.amnestyusa.org/themes/business-human-rights/oil-gas-mining-industries/>.

was ten years ago, although the number of associated fatalities has been decreasing. Figure 1 shows that the fatalities related to these conflicts are lower than levels seen in the late 1990s. Nevertheless, the ACLED dataset illustrates increased conflict (higher prevalence of riots and protests) driven by extractive resources, resource-related clashes and instances of violence against civilians only seen in a few countries such as Nigeria, Sudan, South Sudan, the DRC and Somalia. Nigeria exhibits a constant rise in directly-resource-related conflict that has resulted in targeted violence against civilians, followed by South Sudan, which has experienced violent conflict as a result of government forces' and rebel groups' struggle to control the oil-rich regions of the new country.³⁹

Some salient human rights and humanitarian issues in conflict and crisis situations

41. In the context of new forms of violence and war, both State and non-State actors are key players in explaining various patterns of human rights violations related to conflict and violent crisis situations. Some of the major non-State actors as perpetrators of human rights violations/abuses in armed conflict settings and other situations of violence are non-State armed groups (rebel and opposition groups, armed militias, and terrorist groups and criminal networks) and economic non-State actors (multi-national corporations and private military and security companies). Related to changes in contemporary violent conflict and related crises in Africa are also changes in the tactics and methods of fighting of armed groups.
42. Sexual violence is one of the major forms of human rights violations that has become common in conflict and crisis situations on the continent. ACLED includes a Gendered Repression Dataset, which lists data from across the continent. Some examples of the tactics used include rape, physical attack, abduction, killing and the targeting of female political leaders, whose bodies are used as weapons of humiliation. Megan Bastick, Karin Grimm and Rahel Kunz argue that armed groups' deliberate strategy of employing sexual violence as a weapon of political conflict aims to humiliate opponents and terrify

³⁹ ACLED <https://www.crisis.acleddata.com/resource-related-conflict-in-africa/>.

society as an ultimately expression of domination.⁴⁰ The best known examples of this are the sexual violence that has been used as a weapon of political violence in the DRC,⁴¹ in the Darfur region of Sudan,⁴² and most recently in South Sudan.⁴³

43. As documented; the African Committee of Experts on the Rights and Welfare of the Child report on its continental the impact of conflict and crises, violence against children is another common form of human rights violations in conflict settings and crisis situations. Armed groups use violence against children with the aim of terrorising and fomenting a sense of fear and insecurity among civilian populations. For instance, Boko Haram attacks in Nigeria in recent years have included children as targets of violence, dramatically increasing the number of child fatalities in the conflict. Similar incidents of government and rebel forces targeting and killing children have occurred in South Sudan since 2014, reported following the discovery of dozens of mass graves.⁴⁴ Rebel groups and armed militias in the Central African Republic (CAR) have also targeted children and employed public executions of pregnant women and children, attacks on children using grenades and machetes, slitting of throats, and burning down homes, amongst other tactics.⁴⁵ Besides directly targeting children with violence, there are reports that illustrate the prevalent practice of armed militias and rebel groups conscripting child soldiers. Such instances

40 Bastick, Megan, Karin Grimm, and Rahel Kunz. "Sexual violence in armed conflict." Global overview and implications for the security sector, Geneva: DCAF (2007). Available on: https://www1.essex.ac.uk/armedcon/story_id/sexualviolence_conflict_full%5B1%5D.pdf Accessed on 17 February 2018 and see also United Nations Secretary-General's UNiTE to End Violence against Women campaign <http://www.un.org/en/women/endviolence/situation.shtml> Accessed on: 17 February 2018.

41 UN official calls DR Congo 'rape capital of the world', BBC News Last updated at 16:50 GMT, Wednesday, 28 April 2010 17:50 UK available on <http://news.bbc.co.uk/2/hi/8650112.stm>. Accessed on 17 February 2018.

42 See Real time analysis of political violence across Africa – Armed Conflict Location & Event Data Project (ACLED) database – The Strategic Use of Unidentified Armed Groups in Conflict Zones. Available on: <http://www.crisis.acleddata.com/the-strategic-use-of-unidentified-armed-groups-in-conflict-zones/>. Accessed on 17 February 2018.

43 See the Final Report of the African Union Commission of Inquiry on South Sudan (AUCISS) (2014) available at <http://www.peaceau.org/uploads/auciss.final.report.pdf>.

44 'Civilians targeted' in South Sudan violence' The Associated Press. United Nations, Saturday, 22 February 2014, Last Update: Saturday, 22 February 2014 KSA 08:50 – GMT 05:50. Available on: <http://english.alarabiya.net/en/News/africa/2014/02/22/-Civilians-targeted-in-South-Sudan-violence.html>. Accessed on 17 February 2018.

45 See Central African Republic: UN credibility at stake amid rising attacks against civilians, 6 November 2014, 00:00 UTC Available on: <https://www.amnesty.org/en/latest/news/2014/11/central-african-republic-un-credibility-stake-amid-rising-attacks-against-civilians/>; 'Unspeakable horrors in a country on the verge of genocide' The Guardian, Available on: <https://www.theguardian.com/world/2013/nov/22/central-african-republic-verge-of-genocide>. See Central African Republic: Seleka Fighters Attack Village French: African Forces Should Step Up Protection Patrols, March 11, 2014 1:55AM EDT Available on: <https://www.hrw.org/news/2014/03/11/central-african-republic-seleka-fighters-attack-village>.

are reported to be prevalent in CAR,⁴⁶ Uganda and the DRC, most notably because of the Lord's Resistance Army (LRA) that was infamous for child conscription, killing and abduction.⁴⁷

44. Contemporary conflict and crisis situations have forced millions of people – men, women and children – to flee their homes in order to escape suffering, human rights violations and starvation. Many are unable to return to their places of origin. Conflict situations in CAR, Cameroon, Mali, Chad, Niger, Somalia, Nigeria, DRC, South Sudan and Sudan have continued to generate internally displaced people and refugees. It has been widely reported that hundreds of thousands of refugees and migrants traveled to Libya to escape persecution or extreme poverty and war, only to end up drowning in the Mediterranean Sea or being forced into slavery. In the process of migration, millions of people have suffered multi-faceted human rights violations, including sexual violence, torture and killing. Many have suffered heinous crimes committed by human traffickers and smugglers.

45. As at the end of 2017, in northern Nigeria two million people remain internally displaced, living in host communities or in overcrowded camps with inadequate food, water and sanitation. 4.5 million South Sudanese, nearly 40% of the country's population, have been forcibly displaced since the civil war broke out in December 2013. Tens of thousands of internally displaced persons in IDP camps in these countries have reportedly faced various violations including sexual exploitation, malnutrition, disease and death due to the severe conditions.⁴⁸ Another challenge faced by IDPs and refugees in camps is that they often face limitations on their freedom of movement and extremely poor conditions in camps. More than 300 000 people have fled Burundi and remain in neighbouring Rwanda and Tanzania. Approximately 2.2 million Somalis live in refugee camps in neighbouring countries. According to the UN, by the end of 2017 over 20 million people in Africa were either displaced or forced to flee to other countries, with 6.3 million refugees, up from 5.1 million, and 14.5 million internally displaced persons, up from 11.1 million.⁴⁹

46 'Child soldiers in Central African Republic more than doubled says charity' The Guardian, Available on: <https://www.theguardian.com/world/2014/dec/18/sp-child-soldiers-central-african-republic-doubled>. Accessed on 17 February 2018.

47 See 'DR Congo: Lord's Resistance Army Rampage Kills 321: Regional Strategy Needed to End Rebel Group's Atrocities and Apprehend Leaders', Human Rights Watch March 28, 2010 2:00PM EDT, Available on: <https://www.hrw.org/news/2010/03/28/dr-congo-lords-resistance-army-rampage-kills-321> Accessed on 17 February 2018.

48 See UN Doc A/73/340, Report of the UN High Commissioner for Refugees (24 August 2018).

49 Ibid.

Determination of the applicable law

46. The conflict situations covered under Resolution 332 and the protection issues that they give rise to necessarily evoke normative discussion on the applicable law. The issue here is whether and how international humanitarian law (IHL) applies in relation to the human rights standards of the African Charter (IHRL) in these conflict situations.
47. The main distinction between IHRL and IHL is that IHRL protects the individual from abusive or arbitrary exercise of power by State authorities, whereas IHL primarily regulates the conduct of parties to an armed conflict by regulating methods of warfare and the protection of those not participating in the conflict, without creating rights that protected persons enforce through individual complaints, except through IHRL treaties, such as the African Charter. Therefore, the application of IHL and hence its relationship to human rights law arises *only* in cases of armed conflicts. Secondly, the definition of armed conflict under IHL is much narrower than the broad definition of conflict adopted above, which encompasses conflict situations falling short of armed conflicts. IHL thus does not apply in crisis situations where the violence is below the threshold for armed conflict under the definitions of IHL. It is thus necessary for purposes of determining the application of IHL to have regard to the definition of armed conflict in the context of IHL.
48. For purposes of IHL, there are two types of armed conflicts: international armed conflicts (IACs) and non-international armed conflicts (NIACs). Common Article 2 of the Geneva Conventions of 1949 defines IACs as “all cases of declared war or of any armed conflict that may arise between two or more High Contracting Parties, even if the state of war is not recognised by one of them”,⁵⁰ and it also includes “all cases of partial or total occupation⁵¹ of the territory of a High Contracting Party, even if the said occupation meets no armed resistance”.⁵² There is no need for a formal declaration of war, or for

50 Common Article 2 of Geneva Conventions of 1949.

51 In the words of art. 42 of the 1907 Hague Regulations, “territory is considered occupied when it is actually placed under the authority of the hostile army”.

52 This paragraph, although it may look superfluous, guarantees protection to not only to the sick military personnel of the occupied country, but also to all the personnel, establishments and property covered by the Convention, so as to enable them to freely carry on their charitable work as required. Otherwise, the Occupying Power could have been free to use for its own purposes medical establishments or property protected by the Convention as well as the doctors and other members of the medical service of the Occupied State.

recognition of the state of war.⁵³ As the Commentary to the Geneva Conventions put it “[It] makes no difference how long the conflict lasts, or how much slaughter takes place”.⁵⁴

49. According to Common Article 3 (CA 3), NIACs are “armed conflicts not of an international character occurring in the territory of one of the Contracting Parties”.⁵⁵ These include armed conflicts in which one or more non-governmental armed groups are involved in a fight either against the government or between themselves and sometimes against both the government and between themselves. The Additional Protocol II in Article 1(1) provides that, for a conflict to constitute NIAC, the armed opposition forces must be “under responsible command, exercise such control over a part of its territory as to enable them to carry out sustainable and concerted military operations and to implement this Protocol”.⁵⁶

53 The substitution of the term war, of which legal definition may lead to endless debates, with armed conflicts was deliberate. A State can always pretend, when it commits a hostile act against another State, that it is not making war, but merely engaging in a police action, or acting in legitimate self-defence. The expression “armed conflict” makes such arguments less easy. Any difference arising between two States and leading to the intervention of armed forces is an armed conflict within the meaning of Article 2. Jean S. Pictet, Commentary on Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, ICRC, 1952, p. 32.

54 The respect due to human personality is not measured by the number of victims. Nor, incidentally, does the application of the Convention necessarily involve the intervention of cumbersome machinery. It all depends on circumstances. If there is only a single wounded person as a result of the conflict, the Convention will have been applied as soon as he has been collected and tended. *Id.*, p. 32.

55 As the four Geneva Conventions have universally been ratified now, the requirement that the armed conflict must occur “in the territory of one of the High Contracting Parties” has lost its importance in practice. Indeed, any armed conflict between governmental armed forces and armed groups or between such groups cannot but take place on the territory of one of the Parties to the Convention. Perhaps a question arises with respect to NIACs that occur on the territories of more than one state.

56 The Commentary of the ICRC on Common Article 3 of the 1949 Geneva Conventions lays down an elaborate requirement/criteria that an armed conflict should fulfil to be regarded as NIAC: “That the Party in revolt against the de jure Government possesses an organised military force, an authority responsible for its acts, acting within a determinate territory and having the means of respecting and ensuring respect for the Convention. (2) That the legal Government is obliged to have recourse to the regular military forces against insurgents organised as military and in possession of a part of the national territory.(3) (a) That the de jure Government has recognised the insurgents as belligerents; or (b) That it has claimed for itself the rights of a belligerent; or (c) That it has accorded the insurgents recognition as belligerents for the purposes only of the present Convention; or (d) That the dispute has been admitted to the agenda of the Security Council or the General Assembly of the United Nations as being a threat to international peace, a breach of the peace, or an act of aggression”. Available at <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/1a13044f3bbb5b8ec12563fb0066f226/466097d7a301f8c4c12563cd00424e2b>. (4)(a) That the insurgents have an organisation purporting to have the characteristics of a State. (b) That the insurgent civil authority exercises de facto authority over the population within a determinate portion of the national territory. (c) That the armed forces act under the direction of an organised authority and are prepared to observe the ordinary laws of war. (d) That the insurgent civil authority agrees to be bound by the provisions of the Convention.

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50. According to the foregoing definition and as elaborated by the Commission in its decision on *Communication 431/12 – Thomas Kwoyelo v. Uganda*,⁵⁷ drawing on the jurisprudence of both the International Criminal Tribunal for Rwanda and International Criminal Tribunal for the former Yugoslavia, there are four cumulative elements for determining the existence of NIAC. First, the conflict has to be between armed forces of a state and dissident or other organised armed groups. Second, the conflict takes place in the territory of the state. Third, the dissident or the armed opposition group has to be organised with command and control structure and exercising control over a part of the territory of the state. Fourth, the conflict has to be a situation of regular and intense armed confrontation and hence involving direct hostilities between the armed forces of a state and the dissident or opposition armed group.
51. Accordingly, for an armed conflict of a non-international character to come into existence in a situation of violence between a State and a non-State armed group or between two or more non-State armed groups, it is a pre-requisite that the criteria of intensity and organisation are fulfilled. However, with the change in the nature of conflicts including in terms of the unconventional means and methods of violence, the use of new technology and the levels of organisation and control of territory, the lines that international norms neatly draw have become blurred and it has become difficult to determine which legal regime should apply.
52. For example, in the South Sudan civil war that erupted in December 2013 the conflict would not be treated as NIAC before it reaches the threshold in Common Article 3 of the Geneva Conventions in relation to intensity and organisation. Similarly, in the conflict involving Boko Haram it is not clear at what point it would be classified as NIAC, since the sporadic violence and the lack of clear organisational structure renders such classification difficult. Other situations that similarly give rise to challenges in determining the applicable law include i) those involving foreign intervention in intra-state conflicts of another state, such as the role of Ugandan forces in the 2013 South Sudan conflict, as well interventions by international organisations such as NATO (North Atlantic Treaty Organisation), UN or AU; ii) NIAC of a transnational nature; iii) other forms of intra-state conflicts taking place on the territories of several states, as in the conflict involving the Lord's Resistance Army in the central Africa region or Boko Haram in the Lake Chad basin; iv) the increased

57 Para 144.

participation of civilians in armed conflict; and v) the amalgamation of tasks assigned to armed forces, including military operations and law enforcement tasks, such as in the G5 Sahel Joint-Force, which is in addition tasked with curbing “transnational organised crime, including arms and drug trafficking, the smuggling of migrants, trafficking in persons”.

53. A further point to note in terms of the applicable law is that the traditional distinction that reserves the application of IHL to war times and IHRL to peace no longer holds.⁵⁸ Traditionally, *jus in bello* (or IHL), is the law that governs the way in which warfare is conducted, in order to limit the suffering which is caused by the armed conflict. “The law therefore addresses the reality of a conflict without considering the reasons for or legality of resorting to force.”⁵⁹ On the other hand, *jus ad bellum* is the law on the use of force, and is the concern of IHRL. IHRL is thus concerned with the legitimacy and lawfulness of use of force, including that it should only be used as a last resort.⁶⁰ Thus, while it may be argued that the use of force in certain circumstances in NIAC is legal from the perspective of IHL,⁶¹ from the perspective of IHRL standards the same use of force could be a breach of IHRL if the use of force was not applied as a last resort.⁶²
54. However, given the changes in the nature of conflicts noted above and the ensuing legal issues, the co-applicability of these two regimes of law has become a legal imperative currently supported by diverse sources of authority. The contemporary international law position thus does not uphold a watertight dichotomy between human rights

58 Suter, Keith D. “An Enquiry into the Meaning of the Phrase Human Rights in Armed Conflicts.” *Mil. L. & L. War Rev.* 15 (1976): 393. 394.

59 ICRC “jus ad bellum and jus in bello” 29 October 2010 available at <https://www.icrc.org/en/document/jus-ad-bellum-jus-in-bello>.

60 Lubell, Noam. “Parallel Application of International Humanitarian Law and International Human Rights Law: An Examination of the Debate.” *Israel Law Review* 40, no. 2 (2007): 650-62.

61 While State armed forces are not considered civilians, practice is not clear as to whether members of armed opposition groups are civilians subject to Rule 6 on loss of protection from attack in the event of direct participation or whether members of such groups are liable to attack as such, independently of the operation of Rule 6. This is a quote needs to be in 1 J. HENCK. A ERTS & L. DOSWALD-BECK, CUSTOMARY INTERNATIONAL HUMANITARIAN LAW 19, & 17-24 (2005); see also International Humanitarian Law and the Challenges of Contemporary Armed Conflicts, 28th International Conference of the Red Cross and Red Crescent, ICRC, Geneva, 2003, 27- 36, available at <http://www.icrc.org/Web/eng/siteeng0.nsf/html/5XRDC>.

62 Eight UN Congress on the Prevention of Crime and the Treatment of Offenders, UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 9, UN Doc. A/ CONF.144/28/Rev.1 (1990); G.A. Res. 34/169, UN Code of Conduct for Law Enforcement Officials, annex, 3, 34 UN GAOR Supp. (No. 46) LYN Doc. A/34/46 (1979); McCann and Others v. United Kingdom, 21 Eur. H.R. Rep. 97 (1995), at paras. 147-149; C.K. Boyle, The Concept of Arbitrary Deprivation of Life, in *The right to life in international law* 221 (B.G. Ramcharan ed., 1985).

law and IHL in armed conflicts. The evolving legal consensus has been that, that even in times of armed conflict, human rights continue to apply but, unlike in situations other than those amounting to armed conflict, human rights law does not have exclusive application. Rather it applies alongside IHL.⁶³ Even in cases of emergency, according to the UN Human Rights Committee, States are not considered as operating in a legal vacuum, and in its General Comment No. 29 the Committee clearly affirmed that States' measures of derogation from treaty obligation should be in accordance with humanitarian law.⁶⁴ Emergency derogation from human rights law in cases of armed conflict thus activates the application of humanitarian law, which enforces the criteria of distinction between civilian and military targets, requirements of necessity and proportionality, and humane treatment of protected persons.

55. The African human rights system took the position that the rights and freedoms guaranteed in the Charter apply both in peace and war times. First, in legislative terms, unlike other human rights instruments that allow derogation in cases of a state of emergency, the African Charter does not make a similar provision. The African Commission adopted a more explicit position in its practice. According to the Commission, people must be protected from violation of their rights, including threats to their lives not only in times of peace but also in war situations. Similarly, based on Articles 60 and 61 of the African Charter, the African Commission upheld the applicability of IHL rules in various cases of conflict situations.

63 In 1996, the ICJ in its advisory opinion on the Legality of the Threat or Use of Nuclear Weapon opined that the protection of the International Covenant on Civil and Political Rights does not cease in times of war, except by operation of Article 4 of the Covenant whereby certain provisions may be derogated from in time of emergency. The European Union Guidelines states "IHL is applicable in time of armed conflict and occupation. Conversely, human rights law is applicable to everyone within the jurisdiction of the State concerned in time of peace as well as in time of armed conflict. Thus while distinct, the two sets of rules may both be applicable to a particular situation." See European Union Guidelines on promoting compliance with international humanitarian law [2005] OJ. Further, concurrent applicability of IHRL and IHL is evidenced in the States' declaration at the Teheran Conference in 1968; decisions of international and regional judicial and quasi-judicial bodies; general comments of the UN Human Rights Committee and the UN Committee on Economic, Social and Cultural Rights; decisions of the International Court of Justice and the Inter-American Commission and Court of Human Rights. Finally, the interdependence and parallel application of IHL and IHRL is affirmed in the International Court of Justice decisions on the Construction of the Wall in the Occupied Palestinian Territory and *DRC v. Uganda*. In the Congo-Uganda case, the Court observed that Uganda committed human rights law and humanitarian law violations because Ugandan forces in the occupied parts of the Congo committed serious and widespread human rights and humanitarian law violations.

64 UN Human Rights Committee (HRC), *CCPR General Comment No. 29: Article 4: Derogations during a State of Emergency*, 31 August 2001, CCPR/C/21/Rev.1/Add.11, (para. 11). Available at: <http://www.refworld.org/docid/453883fd1f.html> [accessed 17 February 2018]. According to the Committee, states may in no circumstances invoke Art. 4 ICCPR for acting in violation of humanitarian law.

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56. However, even with the co-applicability of IHRL and IHL, there are enormous challenges in actual implementation in the context of emerging situations, notably the war on terror or intra-state conflicts in the territories of several states that brings in, among others, the problem of IHRL's extra-territorial applicability.⁶⁵ This is mainly because there are different rules and considerations, which regulate the extra-territorial application of IHL and IHRL. However, as the African Commission held in its decision in *Thomas Kwoyelo v. Uganda*, there are ample precedents that provide evidence about the extra-territorial applicability of IHRL if it is established that the armed forces of a state exercise control over the territory of another state.⁶⁶ Many point to the International Court of Justice decision and the UN human rights bodies and their case law.⁶⁷ This means that, if a State exercises effective control over a territory, the State should abide by its obligations under IHRL. Additionally, even in instances where there are doubts on the question of effective control where a State uses force, no legal vacuum arises and the applicability of IHL and/or IHRL should understandably be determined after due examination of the specific circumstances of the conflict situation.
57. For purposes of the African Charter and indeed this Study, what the co-applicability of the two regimes of law entails is not that the African Commission directly applies IHL. In conflict situations in which IHL applies, the African Commission resorts to the applicable IHL rules on the basis of Articles 60 and 61 of the African Charter. And instead of making a finding on the existence of violation of IHL, the Commission uses, as it did in *Thomas Kwoyelo v. Uganda*, the IHL standards, rather than the normal human rights standards for assessing existence of violations, to determine violations of Charter rights.
58. In terms of the applicable law, the other issue that arises is the applicability of IHRL to non-state actors. IHL is applicable to armed non-State groups provided that these armed groups are party to an

65 Lubell, Noam. "Parallel Application of International Humanitarian Law and International Human Rights Law: An Examination of the Debate." *Israel Law Review* 40, no. 2 (2007): 648-660.

66 Ibid 649-650; ACHPR, Communication 431/12, *Thomas Kwoyelo v. Uganda*.

67 Loizidou v. Turkey, 310 Eur. Ct. H.R. (ser. A)(1995)(Preliminary Objections), at para. 62-64 available at: http://www.prio-cyprus-displacement.net/images/users/1/ECtHR/Loizidou%20v.%20Turkey_Preliminary%20Objections.pdf; Cyprus v. Turkey, 2001-IV Eur. Ct. H.R., at para. 77 (GC) Available at: <http://www.asylumlawdatabase.eu/en/content/ecthr-cyprus-v-turkey-application-no-2578194-10-may-2001>. And see also *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion*, 2004 I.C.J. p.136, at para.107-112.

armed conflict⁶⁸ and fulfill the legal definition with sufficient organisation and the requisite degree of intensity of the fight.⁶⁹ However, the binding nature of IHRL on armed non-State groups in either wartime or peacetime is contentious, because they are not party to international treaties.⁷⁰ There is an emerging view in international law that certain rules of IHRL apply to non-state actors where they exercise effective control over territory.⁷¹ Such arguments have been advanced by the UN Human Right Council, stating that certain IHRL provisions should be applicable to armed non-State actors in Afghanistan and Libya because they have *de facto* control over a territory.⁷² Similarly, the UN Security Council denounced the human rights violations and acts of violence committed in northern Mali. The report directly calls out rebels, terrorist groups and other organised transnational crime networks for the violence perpetrated against women and children, the killings, the hostage-taking, pillaging, theft and destruction of religious and cultural sites, as well as the recruitment of child soldiers, and calls for the perpetrators of these acts to be brought to justice.⁷³ The African Commission held similar views in the various resolutions and statements it issued in relation to various conflict situations including the one involving Boko Haram. This illustrates the tacit recognition of the applicability of IHRL to non-State armed groups under certain circumstances. The Commission would have to engage further with the exact extent and scope of application of IHRL to non-state actors who are traditionally seen as being beyond the jurisdiction of an instrument such as the African Charter.

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- 68 *Prosecutor v. Sam Hinga Norman* (Decision on the Preliminary Motion Based on Lack of Jurisdiction) Special Court for Sierra Leone (SCSL) (31 May 2004), para. 22. Available at: <https://webcache.googleusercontent.com/search?q=cache:7JrRFREtH3EJ:https://sierralii.org/sl/judgment/special-court/2004/18+&cd=2&hl=en&ct=clnk&gl=us> or <http://www.sierralii.org/sl/judgment/special-court/2004/18..> Accessed 17 February 2018.
- 69 *Prosecutor v. Dusko Tadić* (Judgement) ICTY Case IT-94-1-A (15 July 1999), para. 70. Available at: <http://www.icty.org/x/cases/tadic/acjug/en/tad-aj990715e.pdf> accessed 17 February 2018,
- 70 Sivakumaran, Sandesh. "Re-envisioning the international law of internal armed conflict." *European Journal of International Law* 22, no. 1 (2011): 251.
- 71 Geneva Academy of International Humanitarian Law and Human Rights, *Rules of engagement: protecting civilians through dialogue with non-state actors* (Geneva 2011) <<http://www.geneva-academy.ch/docs/publications/Policy%20studies/Rules%20of%20Engagement.pdf>> accessed 25 May 2014, 25.
- 72 Assembly, UN General. *Human Rights Council: Report of the International Commission of Inquiry to investigate all alleged violations of international human rights law in the Libyan Arab Jamahiriya*. UN Doc. A/HRC/17/44, 2011. UN Doc. A/HRC/17/44, 1 June 2011, para.72. http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.44_AUV.pdf accessed 3 February, 2018.
- 73 Security Council, Resolution 2056, UN Doc. S/Res/2056 2012, para.13 available at: [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2056\(2012\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2056(2012)) accessed on 18 February 2018 and also see Security Council, Resolution 2071, UN Doc. S/ Res/2071 (2012), para.14 available at: [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2071\(2012\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2071(2012)) accessed on 18 February 2018 and Security Council, Resolution 2085 UN Doc. S/Res/2085 2012, para.6 Available at: [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2085\(2012\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2085(2012)) accessed on 18 February 2018.

PART 3

The African human rights system and conflict situations

Analysis of relevant norms

59. The legal framework, which forms the basis of the interaction between the human rights system and conflict or crisis situations, encompasses human rights instruments. This part seeks to identify and discuss the relevant legal instruments and how these instruments address conflict and crisis situations. This offers an analysis of the various legislative instruments including the African Charter, the Maputo Protocol, the African Children's Charter, and the Kampala Convention, as well as the other relevant AU instruments including the Constitutive Act of the AU.

African Charter

60. The founding instrument of the African human rights system is the African Charter which was formally adopted by the nineteenth summit of the Organisation of African Unity (OAU, now AU) in Nairobi, Kenya, in June 1981 and entered into force in October 1986. The African Charter is broadly divided into three parts: part one (Articles 1 to 29) specifies the list of human and peoples' rights and individual duties; part two (Articles 30 to 63) addresses the establishment and organisation of the ACHPR; finally, part three (Articles 64 to 68) contains general procedural provisions.⁷⁴

⁷⁴ *Promotion of Human Security in Africa: The role of African Human Rights Institutions*, ISS Monograph No. 145 (June 2008), 11.

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61. The African Charter enshrines almost all internationally recognised rights. Accordingly, it recognises the civil and political rights of individuals, including those to freedom from discrimination; to equality; to bodily integrity and to life; to dignity and to protection from torture and inhumane treatment; to liberty and security; to a fair trial; to freedom of conscience; to freedom of expression, association, assembly and movement and to political participation. As rightly pointed out, these guarantees seek to protect people from institutional, political or social conditions that threaten their liberty, physical integrity and freedoms.⁷⁵ They do so through proscribing extra-judicial and arbitrary killings, unlawful detention or imprisonment, torture and other physical or psychological abuses.
62. The African Charter provides for economic, social and cultural rights on an equal footing with civil and political rights.⁷⁶ These rights include those to equitable and satisfactory conditions of work, health, education, property and protection of the family. In addition, Guidelines for National Periodic Reports define parameters for, among others, the rights to social security, social insurance and an adequate standard of living, which are not expressly mentioned in the Charter.⁷⁷ The decision of the Commission in *SERAC v. Nigeria*⁷⁸ expanded on socio-economic rights by recognising the right to food⁷⁹ as well as housing.⁸⁰ The protection of the right to water under the African Charter was confirmed by the Commission through the adoption of Resolution 300 on the Right to Water Obligations, which also requested the Working Group on Economic, Social and Cultural Rights to elaborate Guidelines and Principles on the Right to Water.⁸¹ Given that socio-economic deprivations and inequality often create the underlying conditions for the emergence of conflict or crisis situations on the continent, the socio-economic rights of the Charter offer a useful framework in the fight against poverty and mend social

75 Ibid.

76 Ibid, 12.

77 Ibid.

78 Communication 155/96 Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria.

79 SERAC case, para 65: "the right to food is inseparably linked to the dignity of human beings and is therefore essential for the enjoyment and fulfilment of such other rights as health, education, work and political participation".

80 SERAC case, para 60: "Although the right to housing or shelter is not explicitly provided for under the African Charter, the corollary of the combination of the provisions protecting the right to enjoy the best attainable state of mental and physical health, cited under Article 16 above, the right to property, and the protection accorded to the family forbids the wanton destruction of shelter because when housing is destroyed, property, health, and family life are adversely affected."

81 Resolution 300 on the Right to Water Obligations – ACHPR/Res.300 (EXT.OS/XVII) 20, adopted by the Commission during its 17th Extraordinary Session held from 19 to 28 February 2015.

divisions that catalyse political competition and subsequent violent conflict.⁸²

63. Socio-economic rights guarantee protection to individuals and communities against destruction of their homes, sources of livelihoods and infrastructures of public services on which they depend for their survival, through violent acts. In various communications, the African Commission has dealt with violations of economic and social rights in conditions of armed conflicts or situations of political instability. In the Communication of *COHRE v. Sudan*⁸³ the Commission found several violations. It considered that the right to health under the African Charter had been breached, given that “the destruction of homes, livestock and farms as well as the poisoning of water sources, such as wells, exposed the victims to serious health risks”. The Commission also relied on the right to property in finding violations of the right to housing (in that) “the fact that the victims cannot derive their livelihood from what they possessed for generations means they have been deprived of the use of their property under conditions which are not permitted by Article 14.”⁸⁴ Similarly in *Democratic Republic of the Congo v. Burundi, Rwanda and Uganda*,⁸⁵ the Commission stated that “the looting, killing, mass and indiscriminate transfers of civilian population, the besiege and damage of the hydro-dam, stopping of essential services in the hospital, leading to death of patients and the general disruption of life and state of war [...] are in violation of Article 14 guaranteeing the right to property’.
64. Perhaps the most distinctive feature of the African Charter vis-à-vis other human rights instruments is its elaboration of the collective rights of peoples.⁸⁶ The importance attached to peoples’ rights and the resultant uniqueness of the African Charter is expressed by the use of peoples’ rights together with human rights in the title of this historical document. The formulation of these rights under the African Charter is by far the most generous and comprehensive.⁸⁷ The

82 Ibid.

83 Sudan Human Rights Organisation and Centre on Housing Rights and Evictions (COHRE)/Sudan, Communications Nos. 279/03 and 296/05, decision of May 2009.

84 Sudan Human Rights Organisation and Centre on Housing Rights and Evictions (COHRE)/Sudan, Communications Nos. 279/03 and 296/05, decision of May 2009. See in particular paras. 9–14, 205, 209 and 212; Office of the UN High Commissioner for Human Rights (2014); *Transitional Justice and Social, Economic and Cultural Rights* HR/PUB/13/5).

85 Communication 227/99 *Democratic Republic of the Congo v. Burundi, Rwanda and Uganda*.

86 Ibid, 13; also see The African human rights system and the issue of Minorities in Africa, 20 (2) *The African Journal of International and Comparative Law* (2012).

87 See Fatsah Onguergouz, *The African Charter on Human and Peoples’ Rights: A comprehensive agenda for human rights and sustainable democracy in Africa* (2003), 203.

African Charter proclaims not only the internationally recognised right of all peoples to self-determination⁸⁸ but also the right of peoples to equality;⁸⁹ the right to existence;⁹⁰ the right to development;⁹¹ the right to national and international peace;⁹² and the right to environment.⁹³ Given that conflicts in Africa often follow group-based identity lines, the enunciation of these collective rights of peoples is of paramount importance to address the full scope of rights issues that arise in such conflicts.

65. Article 20 of the African Charter provides for the right of all peoples to existence and self-determination. At a minimum, this article prohibits measures that would amount to genocide according to international law. "Article 20 also prohibits what is known as 'cultural genocide', that is, acts that, although do not destroy a group physically, have the effect of destroying the group as such." The Charter also guarantees peoples' rights to self-determination which is not only important in asserting collective identity, but is also instrumental in ensuring the rights of people to dispose their wealth and resources, and the right to determine their own path of political, economic and social development.
66. Another substantive right of particular importance is the right to peace provided for under Article 23 of the African Charter. This right demands, among others, that measures are taken to prevent conflicts and where conflicts have erupted, all steps are taken to manage, resolve and bring them to an end. For countries in conflict, the right to peace and security imposes the obligation on parties to seek peace negotiations and achieve compromise for ending the conflict and the attendant human and peoples' rights violations.
67. The African Charter displays equal measure of uniqueness in enshrining the duties of individuals, dubbed by one of the leading African human rights scholars Makau Mutua, the "African cultural fingerprint".⁹⁴ Articles 27 to 29 of the African Charter provide for an individual's duties towards his/her "family and society, the State and other legally recognised communities and the international

88 Article 20.

89 Article 19.

90 Article 20.

91 Article 22.

92 Article 23.

93 Article 24.

94 The Banjul Charter and the African cultural fingerprint: An evaluation of the language of duties, (1994-95) 35 *Virginia Journal of International Law*. 339.

community”,⁹⁵ while being called upon to exercise his/her rights “with due regard to the rights of others, collective security, morality and common interest”.

Maputo Protocol

68. As with the African Charter, the Protocol to the African Charter on the Rights of Women in Africa (Maputo Protocol) has a number of articles that have specific provisions that envisage the right to peace and the right to protection in armed conflicts. Article 3 of the Maputo Protocol states that States are duty bound “to adopt and implement appropriate measures to prohibit exploitation or degradation of women and ensure the protection of every woman’s right to respect for her dignity and protection of women from all forms of violence.” This is a responsibility for States that must identify the causes and consequences of violence against women and take appropriate measures to prevent, eliminate and punish such violence.
69. In terms of its treatment of violence, the Maputo Protocol moves beyond the definition in the UN Declaration on the Elimination of Violence against Women, by including violence against women in conflict situations.⁹⁶ Articles 10 and 11 go further, making direct reference to the right to peace, which affirms that women have the right to a peaceful existence and protection in armed conflicts. This means that the Protocol envisages that states are obliged to respect and ensure protection for women in armed conflict. Under Article 11, “State 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”.
70. Further, a cumulative reading of Article 11(2) with Article 11(3) requires State parties to “protect civilians including women, irrespective of the population to which they belong,” including asylum-seeking women, refugees, returnees and internally displaced persons, against all forms of violence, rape and other forms of sexual exploitation, and to ensure that such acts are considered war crimes, genocide and/or crimes against humanity.⁹⁷ And by virtue of Article 11(2), these crimes are those defined “in accordance with the obligations incumbent upon them under the international

95 African Charter, Article 27(1).

96 Keetharuth, 2009, p.185.

97 African Charter Art. 11(2).

humanitarian law.”⁹⁸ This provision is important for two main reasons. Sexual violence during armed conflict constitutes a crime against humanity, a war crime and even genocide, acts that constitute peremptory norms – *jus cogens* – from which no State can derogate.⁹⁹ The violations also constitute what the Constitutive Act of the AU under Article 4(h) terms grave circumstances which warrant intervention against the State in which they occur or there is threat of occurrence.

African Charter on the Rights and Welfare of the Child

71. The African Charter on the Rights and Welfare of the Child (African Children’s Charter) became the first – and, to date, only – regional children’s rights document in the world, applying to all persons under the age of 18.¹⁰⁰ The relevant two areas in which the Children’s Charter expanded the level of protection that the UN Convention on the Rights of the Child (CRC), according to Frans Viljoen, are the complete ban of the use of child soldiers in conflicts and in its protection of child refugees, the African Children’s Charter extends its ambit to ‘internally displaced children’, something the CRC does not do.¹⁰¹
72. Indeed, the African Children’s Charter envisages prohibition of certain acts while demanding proactive measures to protect children during armed conflicts. Under Article 22(1) of the African Children’s Charter, State Parties to the Charter are obliged to “undertake to respect and ensure respect for rules of international humanitarian law applicable to conflicts which affect children relating to conflicts and crises”. Article 22(2) of the African Children’s Charter obliges State parties to “take all necessary measures to ensure that no child shall take a direct part in hostilities and prohibition on child conscription to take part in hostility”.

98 Kindiki, Kithure. “The normative and institutional framework of the African Union relating to the protection of human rights and the maintenance of international peace and security: a critical appraisal.” *African human rights law Journal* 3, no. 1 (2003): 108.

99 This means that crimes against humanity, genocide, war crimes and torture are international crimes that constitute to the level of *jus cogens*. Bassiouni, M. Cherif. “Universal jurisdiction for international crimes: historical perspectives and contemporary practice.” *Va. J. Int’l L.* 42 (2001): 81.108. Also see Bassiouni, M. Cherif, and Edward Martin Wise. *Aut dedere aut judicare: the duty to extradite or prosecute in international law*. Martinus Nijhoff Publishers, 1995.52. Bassiouni, M. Cherif, and Madeline H. Morris. *Accountability for international crimes and serious violations of fundamental human rights*. Duke University, School of Law, 1996. p.9, 17.

100 Article 2 of the African Children’s Charter.

101 Frans Viljoen, p. 262

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73. The African Children's Charter also obliges States to protect the civilian population (including refugee children¹⁰²) in armed conflict in line with their obligations under international humanitarian law. And it further obliges States to take all feasible measures to ensure the protection and care of children affected in armed conflicts. The obligation is also applicable to children in situations of internal armed conflict, tension and strife.¹⁰³ This Charter provides a broad set of provisions that aim to protect children from a wide range of violations and acts of exploitation, violence, abuse and discrimination in all types of conflict or crisis situation.

OUA Refugee Convention and the Kampala Convention on IDPs

74. One of the sources of law for the African human rights system is the OAU Convention Governing Specific Aspects of Refugee Problems in Africa of 1969. This Convention was adopted in 1969 and came into force in 1974. The protections envisaged in this Convention are of paramount importance as various conflicts in Africa have forced many people to flee their countries and seek refuge in neighbouring states. It provides a framework for the protection of the rights of refugees and the provision of humanitarian assistance.
75. The African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, also known as the Kampala Convention was adopted on 23 October 2009 and entered into force on 6 December 2012. States have to protect the rights of internally displaced persons (IDPs), no matter what the cause of displacement is, by refraining from and preventing discrimination, genocide, crimes against humanity, war crimes, arbitrary killings and detentions, enforced disappearance, abduction, torture, sexual and gender-based violence and starvation.¹⁰⁴ One obligation is of particular interest, namely the obligation for States to safeguard places where IDPs are sheltered from being infiltrated by armed groups and to ensure that IDPs do not engage in subversive activities.¹⁰⁵
76. The Convention also imposes a host of other obligations on States such as providing special support to women IDPs, protection against forcible return, guaranteeing freedom of movement,

102 ACERWC Art. 23 and 24.

103 ACERWC Art. 22(3).

104 Art. 9(1) of the Kampala Convention.

105 Art. 3(1)(f) of the Kampala Convention.

putting safeguards against environmental degradation and the protection of individual, collective and cultural property left behind by IDPs.¹⁰⁶

77. Perhaps the most distinctive aspect of the Convention is its treatment of the obligation of non-State groups. The Convention provides that armed groups and their members are criminally responsible in case they violate the rights of IDPs under international or national law. They are explicitly but non-exhaustively, prohibited from carrying out arbitrary displacement, hindering the protection or assistance of IDPs in any way, restricting the IDPs' freedom of movement, recruiting children, engaging in abduction, slavery or trafficking.¹⁰⁷
78. With regards to monitoring compliance, Article 14 establishes a Conference of States Parties to monitor and review the implementation of the objectives of the Convention. The same provision also requires states to submit reports to the African Commission and the African Peer Review Mechanism on legislative and other measures that have been taken to give effect to the Convention.
79. It is also worth mentioning that the Convention imposes an obligation on the African Union to share information with the African Commission on the situation of displacement and the protection and assistance given to IDPs in Africa, and also to cooperate with the Special Rapporteur on Refugees, Returnees, IDPs and Asylum Seekers in Africa in addressing issues of IDPs.¹⁰⁸

Protocol on the Rights of Older Persons

80. The Protocol to the African Charter on the Rights of Older Persons that was adopted on 13 January 2016 has not yet been ratified by any African country, and hence has not come into force.¹⁰⁹ With respect to protection of older persons in conflict and disaster situations, it is provided that they should be given priority in accessing assistance during rescue efforts, settlement, repatriation and other interventions. They are also entitled to humane treatment, protection and respect at

106 Art. 9(2)(c) – (m) of the Kampala Convention.

107 Art. 7 of the Kampala Convention.

108 Art. 8(3)(e) & (f) of the Kampala Convention.

109 Five countries have signed onto the Protocol on the Rights of Older Persons, which are: Benin, Comoros, Ghana, Sierra Leone and Zambia. Status List, Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons, adopted on 30 January 2016 available at https://au.int/sites/default/files/treaties/31391-sl-protocol_to_the_african_charter_on_human_and_peoples_rights_on_the_rights_of_older_persons.pdf.

all times and should be provided with medical assistance when needed.¹¹⁰ So, older persons are another category of vulnerable group that enjoy legal protection in time of conflict and crisis under the African human rights normative framework.

Protocol on the Rights of Persons with Disabilities

81. The AU Assembly of Heads of States and Government during its 30th Ordinary Session held from 28-29 January 2018 in Addis Ababa, Ethiopia adopted the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa. While the Protocol is not yet available in the public domain, the Draft Protocol provided for an obligation on State Parties to take special measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and natural disasters.

African Youth Charter

82. In addition to children and older persons, Africa also has a treaty on the rights and responsibilities of its youth. The African Youth Charter was adopted on 2 July 2006 and entered into force on 9 August 2009, and has thus far 38 ratifications.¹¹¹
83. The African Youth Charter recognises the important role that the youth play in the promotion of peace and non-violence, and the lasting physical and psychological impacts of violence, armed conflicts and war. In light of this, the African Youth Charter imposes obligations on States to, among others, strengthen the capacity of the youth and their organisations in peace building, conflict prevention and resolutions; condemn armed conflict and prevent the participation in whichever form and recruitment of young people in armed conflicts; mobilise the youth for the reconstruction of areas devastated by war; and facilitate and assist physical and psychological recovery and social integrations of young victims of armed conflicts.¹¹²

110 Art. 14 of the Protocol on the Rights of Older Persons.

111 Status List, African Youth Charter, 2 July 2006, available at https://au.int/sites/default/files/treaties/7789-sl-african_youth_charter_1.pdf

112 Art. 17 of the African Youth Charter.

African Charter on Democracy, Elections and Governance

84. The African Charter on Democracy, Elections and Governance (ACDEG) was adopted on 9 January 2007 and came into force on 15 February 2012 and is ratified by 30 states so far.¹¹³ This is an important instrument particularly in relation to conflict and crisis situations involving electoral disputes, contested transitions and unconstitutional changes of government. The inclusion of all these aspects within ACDEG makes it “an important instrument that represents a systematic and comprehensive presentation and elaboration of the commitments of member states of the OAU in various instruments”.¹¹⁴
85. The general obligation under ACDEG as set out in Article 9 stipulates that “state parties undertake to design and implement social and economic policies and programmes that promote sustainable development and human security”. The Charter also envisages the need for promoting a culture of democracy and peace, dedicating one of the chapters of the Charter. Most notably, Article 13 of the Charter enjoins States parties to “take measures to ensure and maintain political and social dialogue, as well as public trust and transparency between political leaders and the people, in order to consolidate democracy and peace”.
86. The ACDEG specifically addresses measures that should be taken in relation to election disputes, unconstitutional changes of government and conditions that may threaten constitutional order. Article 17(2) provides that States shall establish and strengthen national mechanisms that redress election related disputes in a timely manner. Under Article 24, the PSC of the AU is vested with the power to take appropriate measures when situations arise in a state party that may affect its “democratic political institutional arrangements or the legitimate exercise of power”. Articles 23 and 25 respectively provide for the conditions that constitute unconstitutional changes of government and the steps that the PSC is mandated to take when such conditions arise in a State party.

113 Status List, African Charter on Democracy, Elections and Governance, 9 January 2007, available at https://au.int/sites/default/files/treaties/7790-sl-african_charter_on_democracy_elections_and_governance_8.pdf.

114 African Security Review (21/3): 11.

Protocol establishing the Peace and Security Council

87. One of the major legal frameworks dealing with conflict situations is the Protocol to the AU Constitutive Act on the Establishment of the Peace and Security Council (PSC) of the AU.¹¹⁵ It is in this Protocol that the role and place of human rights in the context of peace and security and the whole gamut of conflict prevention, management and resolution as well as post-conflict reconstruction is comprehensively articulated.¹¹⁶ Two of the six objectives of the PSC underscore the inherent interdependence of peace and security and human rights and thereby tasking the PSC to undertake its activities within this framework and to the end of achieving the related objectives of ensuring human rights and peace and security.
88. Accordingly, one of the objectives of the PSC is to “promote peace, security and stability in Africa, in order to guarantee 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 development”.¹¹⁷ Reinforcing this centrality of the concern for human rights in the context of peace and security in Africa, another objective that the Protocol sets out for the PSC is to “promote and encourage democratic practices, good governance and the rule of law, protect human rights and fundamental freedoms, respect for the sanctity of human life and international humanitarian law, as part of the effort for preventing conflict”.¹¹⁸ It these human rights precepts that the PSC is legally bound to give due regard to in undertaking its conflict prevention functions such as in particular “early warning and preventive diplomacy”, “peacemaking” and the overarching “promotion of peace and security”.
89. The powers of the PSC are set out in Article 7 of the Protocol. For the purpose of this Study, the most important of the PSC’s powers include

115 For discussion on the PSC and its protocol see The AU Audit Report; Jermey I Levitt, *The Peace and Security Council of the AU: The Known Unknowns*, 13 *Transnational Law and Contemporary Problems* (2003) 109. For early examination of the PSC see Jakkie Cilliers and Kathryn Sturman, *Challenges Facing the AU’s Peace and Security Council*, 13 (1) *African Security Review* (2004) 97.

116 For literature on human rights and the AU Act see S. A. Derso, (2011) “The Role and Place of Human Rights in the Mandate and Works of the PSC: An Appraisal”, 58(1) *Netherlands International Law Review*, 77–101; SA Derso, the role of the African human rights system in the operationalization of Article 4(h) of the AU Constitutive Act, in D Kuwali and F Viljeon (eds.) *Africa and the responsibility to protect* (2014), 195, 198-200; A Abass and M Baderin “Towards effective collective security and human rights protection in Africa: An assessment of the Constitutive Act of the new African Union” (2002) 49 *Netherlands International Law Review*.

117 Art. 3 (a) PSC Protocol.

118 See Art. 6 on the functions of the PSC.

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- a) anticipate and prevent disputes and conflicts, as well as policies that may lead to genocide and crimes against humanity; [...]
 - e) recommend to the Assembly, pursuant to Article 4(h) of the Constitutive Act, intervention [...] in respect to grave circumstances, namely war crimes, genocide and crimes against humanity, as defined in relevant international conventions and instruments; [...]
 - m) follow-up, within the framework its conflict prevention responsibilities, the progress towards the promotion of democratic practices, good governance, the rule of law, protection of human rights and respect for the sanctity of human life and international humanitarian law by Member States; [...] and
 - p) support and facilitate humanitarian action in situations of armed conflicts or major natural disasters.
90. In recognition of the importance of human rights in peace and security, Article 19 of the PSC Protocol provides:

“The Peace and Security Council shall seek close cooperation 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.”

OAU Convention on the Prevention and Combating of Terrorism and its Protocol

91. The 2004 Protocol on the Convention against Terrorism mandates the PSC with the task of harmonising and coordinating efforts in the prevention and combating of terrorism by, among others; facilitating information gathering, processing, and dissemination on patterns and trends of terrorist acts and the activities of terrorists and sharing of such information among states; examining reports submitted by states parties on the implementation of the provisions of the Protocol.¹¹⁹

¹¹⁹ Art. 4 of the Protocol on the Convention against Terrorism.

African Union Convention on Preventing and Combating Corruption

92. The Preamble of the Convention on Preventing and Combating Corruption, which entered into force on 5 August 2006, expresses the concern of Member States about the negative effects of corruption and impunity on the political, economic, social and cultural stability of African States, and goes on to indicate the principles which signatories to the Convention agree to abide by, including respect for democratic principles and institutions as well as human rights.¹²⁰ Not only do conflict situations create a viable environment for corruption, “[w]hen it becomes endemic, corruption can derail political and economic transitions, undermine state capacity and legitimacy, exacerbate poverty and inflame grievances linked to conflict.”¹²¹ Therefore, African States should during both conflict and peace time strive to ensure that corruption does not exacerbate or inflame conflict or crisis situations through taking the measures to combat corruption as set out in this Convention.

Mandate of the African Commission vis-à-vis conflict and crisis situations

93. The African Commission is vested with both protective and promotional mandates. While the African Charter has given the Commission expansive latitude in terms of choosing the mechanisms for implementing its mandate, including the use of any investigative method of its choice, there are established mechanisms and procedures for discharging its mandates. As far as its protective mandate is concerned, apart from the Communications procedure core to the protection mandate, the available procedures and mechanisms include fact-finding missions, resolutions and urgent letters of appeal, and the Article 58 procedure.
94. Its promotional mandate is implemented through awareness creation and public mobilisation activities including seminars, its norm elaboration work, examination of Atate reports under Article 62 of the African Charter and Article 26 of the Maputo Protocol, special mechanisms and promotional missions. The promotional mandate also relates to cooperation with other African and international institutions concerned with the promotion and protection of human

120 Article 3 of the African Union Convention on Preventing and Combating Corruption.

121 M O'Donnell "Post-conflict Corruption: A Rule of Law Agenda?" (2006) *Civil War and the Rule of Law*.

and peoples' rights.¹²² The objective of these partnerships is to create synergy for the better promotion and protection of human and peoples' rights on the continent, which also includes protection of rights in times of conflict and crisis situation. Related to the promotion mandate of the Commission is also its interpretative mandate involving the delivery of advisory opinion on the interpretation of the provisions of the African Charter.

Review of existing tools and mechanisms of the African Commission

95. So as to properly discharge its mandate, the African Commission has put in place several tools and mechanisms. The existing tools and mechanisms of the Commission that are pertinent to situations of conflict and crisis are Communications procedure, which includes Provisional Measures and referral of cases to Political Organs of the AU and the African Court; protection and promotion missions; urgent appeals, resolutions, statements, state reporting, Special Mechanisms and Country rapporteurs. While these various tools and mechanisms have been used in responding to human rights issues, these responses have been ad hoc and fragmented. This section will review the potential of these mechanisms to be more affectively applied and the additional approaches that may be required to fill in existing gaps to address human rights issues in conflict and crisis situations on the continent.

Communications procedure¹²³

96. Depending on the entity that files human rights complaints, Communications before the Commission can be of two types: inter-State, and "other" or individual Communications. Inter-State Communications are human rights complaints brought by one or more State Parties against one or more other State Parties to the Charter and are governed by Articles 47 to 54 of the Charter and Rules 86 to 92 of the Rules of Procedure (RoP) of the Commission. Individual Communications, on the other hand, are human rights complaints filed by non-governmental organisations (NGOs) or individuals, on their own behalf or on behalf of victim(s) against a State party and are regulated by Articles 55 to 57 of the Charter and Rules 93 to 113 of the RoP of the Commission.

122 Art. 45(1)(c) of the African Charter.

123 This procedure is the embodiment of the Commission's quasi-judicial mandate. Through the Communications procedure the Commission deals only with specific cases of violations contained in the application of individual or group complainants. As a judicial process, this procedure is also set in motion only on the initiative of claimants and never on the Commission's own motion.

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97. States and individuals alike have been using this procedure to get redress for human rights violations in conflict situations. In the only inter-State Communication decided by the Commission so far, DRC filed a complaint against Burundi, Rwanda and Uganda alleging that the three countries had committed grave violations of human and peoples' rights by invading its territory and through the activities of rebels groups which DRC alleged were supported by the States.¹²⁴ In its decision, the Commission found that the actions of the three states in occupying the territories of DRC violated the rights of the Congolese people to self-determination and constituted a threat to national and international peace and security. The Commission further found that the killings and massacres committed in Congolese provinces occupied by the military forces of the occupying States violated the Fourth Geneva Convention and Articles 2 and 4 of the African Charter.¹²⁵ The Commission stated that, by taking charge of several natural resources producing areas of DRC, the occupying States had deprived the Congolese peoples of their rights to freely dispose of their natural resources. Accordingly, the Commission found several violations of the provisions of the Charter and requested the offending States to, among others, pay adequate reparations for and on behalf of the victims for human rights violations committed by their armed forces while they were in effective control of the provinces of DRC.¹²⁶
98. In terms of the individual Communications procedure under Article 55(1), the Commission has addressed human rights issues in various conflict situations. According to the Commission, people must be protected from violation of their rights, including threats to their lives, both in times of peace and of war. In a decision on a Communication against Chad, while finding that several accounts of killings and assassinations were contrary to the right to life, the Commission indicated that the State could not use the civil war in Chad as an excuse to violate rights, or to permit or tolerate violations of rights in the African Charter.¹²⁷

124 ACHPR, Communication 227/99 Democratic Republic of Congo v. Burundi, Rwanda and Uganda, (May 2003).

125 *Id.*, paras 79-80.

126 *Ibid.*

127 Communication 74/92, *Commission Nationale des Droits de l'Homme et des Libertes v Chad*, Ninth Annual Activity Report (1995-1996), para 21.

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99. Similarly, it emphasised that “[e]ven if Sudan is going through a civil war, civilians in areas of strife are especially vulnerable and the State must take all possible measures to ensure that they are treated in accordance with international humanitarian law”.¹²⁸
100. The Commission held that people should be protected not only from life-threatening conditions and acts for which State authorities are directly responsible but also from those created or perpetrated by non-state actors. In the case against Sudan, it held that even if some of the executions committed were not the work of government forces, the government had a responsibility to protect all the people under its jurisdiction.¹²⁹ Furthermore, it held that a State had a responsibility to secure the safety and liberty of its citizens and to conduct investigations into murders even where it could be proved that violations were committed by government agents.¹³⁰
101. Another characteristic of the Communications procedure, which is currently underutilised, is amicable settlement. The African Charter provides in relation to inter-State Communications that, before making a finding, it should first have “tried all appropriate means to reach an amicable solution based on the respect of human and peoples’ rights” (Article 52) and this is confirmed in Rule 90 of the RoP. This availing of its good offices to the Parties is also provided for in the context of individual Communications, but in this regard it is not a requirement, but good offices may be extended on the Commission’s own initiative or at the request of either of the parties concerned.¹³¹ Particularly in situations of crisis, which has the potential to escalate into conflict, the use of amicable settlement may be more effective than a decision on the violation of rights.

Provisional Measures

102. A Provisional Measure is a request made by the Commission to a Government of a State Party, against which a Communication is pending before the Commission, to prevent irreparable harm against an individual’s or group’s rights. Therefore, for the Commission to issue a Provisional Measure, firstly, there should be a pending case before it and secondly, one or more of the victims in the Communication

128 Communications 48/90, 50/91, 52/91, 89/93, *Amnesty International, Comite Loosli Bachelard, Lawyers Committee for Human Rights and Association of Members of Episcopal Conference of East Africa v. Sudan*, Thirteenth Annual Activity Report (1999–2000), para. 50.

129 Ibid.

130 Communication 74/92 (above), para. 22.

131 Rule 109, Rules of Procedure of the African Commission.

must face a serious and imminent threat that may cause irreparable harm. Usually such requests are made to stop executions, evictions or prevent torture.

103. Provisional Measures apply in normal times but are particularly important in conflict or crisis situations. For instance, in a number of communications joined together against Nigeria in relation to the Niger Delta conflict alleging violations of the rights to life, security and liberty, fair trial, freedom of assembly and others against a human rights activist and environmentalist Saro-Wiwa and communities living in Ogoniland, Nigeria, the Commission issued a request for a Provisional Measure to stop the execution of the above mentioned victims who were sentenced to death for incitement of violence and murder. The victims were, however, executed by the Government in complete disregard for the appeal by the Commission.¹³²
104. In a myriad of cases brought against Egypt following the recent alleged mass arrests and trials, arbitrary detention and torture of political dissidents, journalists and human rights activists in the context of the change of government and political instability and terrorism related insecurity, the Commission issued a number of Provisional Measures.¹³³
105. Provisional Measures of the Commission have a very low rate of implementation despite the gravity and urgency of the issues they raise. In the cases referred to above, the provisional measures that the Commission requested were not implemented, leading in some instances to irreparable damage being caused.¹³⁴ This is in line with the findings of the literature, which shows that “shaming” as a method of ensuring compliance, while not the most effective of methods, is even less effective in situations of conflict and crisis where political actors may depend on repression to retain or gain power.¹³⁵

132 ACHPR, Communications 137/94-139/94-154/96-161/97 International Pen, Constitutional Rights Project, Civil Liberties Organization and Interights (on behalf of Ken Saro-Wiwa Jr.) v Nigeria, (October 1998).

133 See generally 38th to 43rd Activity Reports of the Commission.

134 Press Release on the execution of Mohammad Bakri Mohammad Haroun and five others, 21 May 2015, available at <http://www.achpr.org/press/2015/05/d259/>.

135 Helfer & Slaughter, *supra* note 2, at 329. Steiner and Alston, *supra* note 2, at 621, 871, 874-881; Douglas Donoho, Human Rights Enforcement in the Twenty-First Century, 35 *Georgetown Journal of International and Comparative Law*. L. 1, 11, 28-29 (2006); Christopher C. Joyner, Redressing Impunity for Human Rights Violations: The Universal Declaration and the Search for Accountability, 26 *Denver Journal of International Law and Policy* 591, 609 (1998); Jack Donnelly, Recent Trends in UN Human Rights Activity: Description and Polemic, 35 *Int'l Org.* 654 (1981); Henry Steiner, 'International Protection of Human Rights' in Malcolm Evans (ed.) *International Law 768* (Oxford Univ. Press 2003).

106. In a Communication brought against Libya in 2012 regarding the arrest and incommunicado detention of Saif Al-Islam Gaddafi, the second son of the former President of Libya Muammar Gaddafi, following the armed conflict that broke out in the country, the Commission issued a Provisional Measure to stop a possible death sentence that may be rendered in a trial marred by procedural irregularities. The request was not complied with and subsequently the Commission had to refer the matter to the African Court.¹³⁶

Article 58 procedure

107. As an important component of the protection mandate of the African Commission, Article 58 of the African Charter laid down procedures for responding to grave and emergency cases of violations of the rights guaranteed in the African Charter.

- “1. When it appears after deliberations of the Commission that one or more communications apparently relate to 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.
2. The Assembly of Heads of State and Government may then request the Commission to undertake an in-depth study of these cases and make factual report, accompanied by its findings and recommendations.
3. A case of emergency duly noticed by the Commission shall be submitted by the latter to the Chairperson of the Assembly of Heads of State and Government who may request an in-depth study.”

108. There are a number of points worth noting from these provisions. First, there are two cases envisaged in paragraphs 1 and 3 with respect of which the procedure is envisaged. These are what the Charter calls “special cases” and a “case of emergency”. Second, with respect to special cases under paragraph 1, it is not necessary for the Commission to conclusively establish the existence of the “special cases”. It suffices that there are prima facie indications from the Communication/s to reasonably believe that such cases appear to

¹³⁶ AfCHPR, Application No. 002/2013 – African Commission on Human and Peoples’ Rights v. Libya, Order of Provisional Measures, (March 2013).

exist. Third, the “special cases” involve situations manifesting “a series of serious or massive violations of human and peoples’ rights”.

109. Fourth, the Commission is legally responsible for drawing the attention of the Assembly to these “special cases”. Fifth, it emerges from paragraph 3 that, apart from the “special cases”, another basis for invoking Article 58 involves “a case of emergency duly noticed by the Commission”. In this particular instance, the Commission shall submit such cases of emergency to the Chairperson of the Assembly. Sixth and finally, it is apparent that both situations in paragraphs 1 and 3 must be based on communications with which the Commission is seized.
110. Although it can apply in times outside of conflict situations,¹³⁷ the most common instances in which Article 58 arises involve conflict situations. The nature, scale and gravity of violations that occur in conflict situations put them under the category of serious or massive violations. It was based on this understanding that the Commission qualified the 1994 genocide against the Tutsi in Rwanda,¹³⁸ the conflicts in Darfur,¹³⁹ South Sudan,¹⁴⁰ Central African Republic,¹⁴¹ DRC¹⁴² and Northern Mali¹⁴³ as involving serious and/or massive violations of human rights.
111. In another case against DRC, then Zaire, the Commission found serious and massive violations of rights as a result of, among others, the extrajudicial executions, torture and inhumane treatment, the arbitrary arrest and detention and unfair trials that were perpetrated on a large scale by the government.¹⁴⁴ In fact, in this case, the Commission had referred the matter to the Assembly of Heads of State and Government based on Article 58(1) of the Charter.¹⁴⁵

137 ACHPR, Resolution on Nigeria, 22 March 1995.

138 ACHPR, Resolution on Rwanda, 17 April 1994; ACHPR, Resolution on Rwanda, 3 November 1994.

139 ACHPR, Resolution on Darfur, 4 June 2004.

140 ACHPR, Resolution on the Human Rights Situation in the Republic of South Sudan, 14 March 2014.

141 ACHPR, Resolution on the Human Rights Situation in the Central African Republic, 24 July 2013; ACHPR, Resolution on the Human Rights Situation in the Central African Republic, 14 March 2014.

142 ACHPR, Resolution on the Situation in the Democratic Republic of Congo, 5 December 2005; ACHPR, Resolution on the Situation in the Democratic Republic of Congo, 24 July 2013.

143 ACHPR, Resolution on the Situation of the North of the Republic of Mali, 2 May 2012.

144 ACHPR, 25/89 – 47/90 – 56/91-100/93: Free Legal Assistance Group, Lawyers’ Committee for Human Rights, Union Interfrancaine des Droits de l’Homme, Les Temoins de Jehova v DRC, 18th Ordinary Session, October 1995.

145 ACHPR, 25/89 – 47/90 – 56/91-100/93: Free Legal Assistance Group, Lawyers’ Committee for Human Rights, Union Interfrancaine des Droits de l’Homme, Les Temoins de Jehova v DRC, paras. 5 & 15, 18th Ordinary Session, October 1995.

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112. The above cases reveal the existence of crisis situations in those countries. The types, nature, gravity and scale of human rights violations in a country could therefore be both indicators (of the existence) and fallouts of conflict and crisis situations. Therefore, human rights violations that arise in most conflict and crisis situations do fall under Article 58(1) as illustrated above. When such situations of “series of serious or massive” violations of rights are brought to the attention of the Commission, it can either refer the matter to the Assembly of Heads of State and Government as envisaged under Article 58(1) or to the PSC as per Rule 84(1) of the RoPs of the Commission.
113. While referral of cases to the Assembly is one of the important avenues for the African Commission to mobilise political pressure for averting the series of serious or massive violations, the Commission has not applied it on a regular basis. However, contrary to the perception of Article 58 having “gone into a state of disuse”,¹⁴⁶ the Commission has not stopped applying Article 58, albeit sparingly and on an ad hoc basis.

Urgent Appeals

114. Urgent Appeals or Letters of Appeal are letters addressed to a Head of State or Government by a Special Mechanism of the Commission, Commissioner Rapporteur of a country or the Chairperson of the Commission in accordance with Article 46 of the Charter. When the Commission receives reliable information that an individual or group or community in a country are likely to suffer or are suffering from violations of human rights that may cause irreparable harm to life, security, liberty or freedoms guaranteed in the Charter, the Commission issues an Urgent Appeal with a view to prevent such harm from occurring.
115. Once again while these can be used in times outside of conflict situations, Letters of Urgent Appeal are commonly used in conflict or crisis situations including in cases of electoral tensions, contestations over constitutional term limits and situations of protests and riots. In June 2017, a Letter of Urgent Appeal was sent to Egypt concerning allegations of the sentencing of ten individuals to death by Egyptian courts.¹⁴⁷ The Urgent Appeal to Kenya of May 2017 relates to the alarming trends of extrajudicial killings implicating the police in Kenya as well as the lack of investigation and prosecution in such

¹⁴⁶ Amnesty International, *Counting Gains, Filling Gaps* (2017), 32.

¹⁴⁷ *Id.*, 43rd Activity Report, para. 30.

cases.¹⁴⁸ In October 2016, the Commission sent a Letter of Urgent Appeal regarding the alleged deaths of more than 55 people in a stampede in Bishoftu, Oromia Region of Ethiopia.¹⁴⁹ In an Urgent Appeal to The Gambia, the Commission expressed its concern in respect of the alleged brutal repression of a peaceful demonstration and torture to death of certain opposition members challenging electoral laws in the country.¹⁵⁰

116. Out of these four Urgent Appeals only the one, that of The Gambia, received a response from the State. All the rest have not solicited any response from the concerned States. This shows the low rate of compliance by States with appeals from the Commission, or at the least it shows the lack of communication between State Parties and the Commission in cases where there may have been implementation, but no response is received.
117. Urgent Appeals are confidential correspondences and thus the Letters themselves cannot be disclosed to third parties or the wider public. But the Commissioner who issued the Letter can reveal the contents of the report while presenting his/her activity report together with the response of the government, if any.
118. Since the existence of a pending Communication is not required for issuing Urgent Appeals, the Commission has the latitude to either issue by its own initiative or with the request of stakeholders whenever grave violations that endanger the life, security, liberty, freedom and property of individuals or communities arise. Urgent Appeals create the opportunity for constructive dialogue with governments over human rights situation in their countries, which makes them an essential tool in addressing human rights violations that occur in situations of conflict and crisis.
119. The Commission issues numerous Urgent Appeals every year through its various special mechanisms and members.¹⁵¹ While there is no complete record of Urgent Appeals issued by the Commission, the Commission has started listing Urgent Appeals sent to States in its Activity Report together with status of implementation. This is instrumental in keeping record of the Urgent Appeals as well as in tracking implementation.

148 ACHPR, 42nd Activity Report, para. 36.

149 ACHPR, 41st Activity Report, para. 27.

150 ACHPR, 40TH Activity Report, para. 19.

151 See generally Activity Reports of the Commission available at <http://www.achpr.org/activity-reports/>.

Protection/fact-finding missions

120. Protection missions, also known as fact-finding missions, are visits to a State Party undertaken by members of the Commission in order to investigate serious violations of rights brought to the attention of the Commission. The purpose of fact-finding missions is to gather first-hand information and evidence by visiting places where the alleged human rights violations occurred, meeting with victims of the violations, with relevant government officials, national human rights institutions, civil society, UN agencies and diplomatic missions based in the country, and any other entity or individual that is capable of enlightening the Commission on the situation.
121. Protection missions are sanctioned by Article 46 of the Charter and Rules 81 and 82 of the RoPs. The Commission can *proprio motu* request to undertake protection missions or be invited by a State Party. Other organs of the AU can also request the Commission to carry out a mission. A State where the Commission plans to visit is required to extend an open invitation, and provide the necessary security protection and documents required for the mission by the delegation. The State should also guarantee the free movement of members of the mission and provide the facilities and authorisation needed. The State should also commit not to take any kind of retaliatory measures against entities and individuals that provide the delegation with information, testimony and/or evidence.
122. When a request for a protection mission comes from an organ of the AU, the onus is on the requesting organ to cover the expenses of the mission. When missions are requested by an AU organ, securing authorisation is no longer a concern, since the request usually comes from an organ that has the political leverage obtain the the authorisation. However, obtaining authorisation is not as easy when the request comes from the Commission. As in the case of promotion missions, requests for protection missions from the Commission are often either ignored or rejected by States. This is understandable given the fact that protection missions by and large are requested when there is a volatile political situation in country that leads to widespread violations of rights. The protection missions carried out by the Commission so far are to countries destabilised by either armed conflicts or crisis situations.
123. The Commission is also entitled to undertake promotion missions. The difference between a promotion mission and a protection

mission is that a promotion mission is undertaken to monitor the general human rights situation in the country and a country's level of compliance with Charter obligations, whereas, protection missions are intended to investigate particular violations of human rights that are grave and widespread.

124. Some of the countries to which the Commission undertook protection mission are Zimbabwe (2002), Sudan (2004), Central African Republic (2012), Saharawi Arab Democratic Republic (SADR) (2012), Mali (2013) and Burundi (2015).
125. These cases show how protection missions are best suited in dealing with human rights violations that occur in conflict and crisis situations. First and foremost, in reaching a conclusion and making recommendations, the Commission does not rely on outside sources or the parties to the conflict. Rather it bases its findings largely on first-hand information that the Commission gathered through meetings with relevant stakeholders, visits, testimonies and documents. Second, missions create the opportunity for continued constructive dialogue with the government as well as other concerned bodies. This enables the Commission to continuously and regularly engage with the government, which creates the feeling of partnership and trust which again increases the chances of implementation of recommendations. Third, when organs of the AU are involved, the Commission gets the political leverage that it ordinarily lacks, which allows the Commission to carry out missions with fewer or no diplomatic and procedural bottlenecks. It also helps in approaching and addressing the situation in a holistic manner, that is both legal and political, which is critically needed in conflict and crisis situations.

Promotion Missions

126. As noted above, the Commission can also conduct promotion missions to State Parties, with the aim of monitoring the general human rights situation in the country and a country's level of compliance with Charter obligations. As in the case of protection missions the Commission needs authorisation from the State concerned before a promotion mission can be undertaken. One example of a promotion mission which was undertaken to a country experiencing a crisis/conflict situation, is the mission which the Commission undertook to Nigeria in 2016. This mission particularly engaged with the conflict in the north-east of the country.

State reporting

127. Article 62 of the African Charter requires states to submit periodic reports every two years on legislative and other measures that they have taken so as to ensure the realisation of the rights and freedoms guaranteed in the Charter. Article 26 of the Maputo Protocol also requires states to report on measures taken to give effect to the provisions of the Protocol. In the same vein, under Article 14(4) of the Kampala Convention states are required to report to the African Commission on the implementation of the provisions of the Convention. In order to assist states in the drafting and presentation of state reports and to facilitate the process of consideration, the Commission has adopted elaborate reporting Guidelines on the African Charter and the Maputo Protocol.
128. The State → procedure creates a forum for constructive dialogue between the Commission and States. States are able to take stock of their achievements and failures in the light of the Charter and other supplementary treaties. It also allows the Commission to monitor the implementation of the relevant treaties and be informed of challenges that States are facing in their implementation.
129. A State report submitted to the Commission must address measures taken to give effect to the provisions of the Charter and the two supplementary treaties; progress made and challenges faced in the implementation of the Charter and the relevant supplementary treaties. One of the factors that impede implementation is the presence of conflicts or crisis situation in a country, and that has been raised as an issue of concern during the consideration of State reports.
130. In the Concluding Observations on the second periodic report of Uganda in November 2006, the Commission pointed to the existence of NIAC in the country between government forces and armed rebel groups as one factor restricting the enjoyment of the rights in the African Charter. The Commission noted that the rebel groups were involved in the abduction of children and other human rights violations which affected marginalised groups. The link between the conflict in Uganda with other regional conflicts was also identified as a factor that undermined development projects, which in turn jeopardises the enjoyment of rights guaranteed in the Charter.¹⁵²

¹⁵² ACHPR, Concluding Observations and Recommendations on the Second Periodic Report of the Republic of Uganda, 40th Ordinary Session, 15–29 November 2006.

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131. Under areas of concern, the Commission again emphasised that the conflicts in northern Uganda are undermining development projects. To address these challenges, the Commission recommended that the Government of Uganda, among others, reduce the marginalisation of the northern part of Uganda by strengthening central government services to eradicate poverty and insecurity, and also to collaborate with national and international actors to sensitise people and address Uganda's difficulties, in particular those related to insecurity and development.¹⁵³
 132. The Government of Uganda was urged to inform the Commission of steps that it has taken to address the areas of concern and how it has implemented the recommendations of the Commission in its next periodic report.¹⁵⁴
 133. In compliance with the recommendations of the Commission, in its third periodic report presented in May 2009, Uganda reported that with a view to address the issue of insecurity facing the northern region, it has established the Ministry of State of Karamoja Affairs and also launched the Karamoja Integrated Disarmament Development Programme in 2008 to develop and implement a comprehensive, coordinated and sustainable disarmament programme that enhances peace building and development in Karamoja. It also reported that it has adopted the Peace, Recovery and Development Plan of Northern Uganda 2007–2010 for the stabilisation, rehabilitation and consolidation of peace in northern and eastern parts of Uganda.¹⁵⁵
 134. The Commission noted the progress and commended the Government of Uganda for its efforts to address the human rights violations that occur in the country as a result of armed conflicts.¹⁵⁶
 135. However, the Commission also expressed its concern with regards to the continued internal armed conflict in the northern part of Uganda, and noted with concern the gruesome human rights violations that were being committed by rebel groups such as attacks on civilians by raping, mutilating, slaughtering, abducting civilians, raiding villages, looting properties, burning houses and schools and recruiting child

153 Ibid.

154 Ibid.

155 ACHPR, Concluding Observations and Recommendations on the Third Periodic Report of the Republic of Uganda, 45th Ordinary Session, 13–27 May 2009.

156 Ibid.

soldiers.¹⁵⁷ In subsequent Concluding Observations adopted by the Commission on the fourth and fifth periodic reports of Uganda, the issue of conflict-related human rights violations was not raised as an issue as the conflict had subsided.¹⁵⁸

136. Another country where the issue of human rights violations in armed conflicts has recurred in its engagement with the Commission through the State reporting procedure is Sudan. After considering Sudan's first combined periodic report in May 2004, the Commission expressed its concern about the devastating armed conflict that has been ongoing for decades that has been the cause of serious human rights violations in the country. The Commission also noted with concern the state of emergency that has been in place for years in parts of the country that have been affected by armed conflicts, which curtails the normal enjoyment of rights guaranteed in the Charter and other international instruments.¹⁵⁹
137. The Commission can follow up on the implementation of its recommendations emanating from Concluding Observations not only through the State reporting procedure but also through promotion missions that are undertaken to that particular country. During such missions, questions can be posed by the delegation to the relevant government offices on the status of implementation of the recommendations of the Commission. Recommendations from promotions missions could also be followed up during the consideration of state reports. This system of following up on recommendations of the Commission during State reporting and promotion missions can also be extended to recommendations from Communications, fact-finding missions, requests for Provisional Measures, Urgent Appeals, and resolutions. A synchronised and coordinated approach may contribute to a better rate of implementation of decisions/recommendations.
138. Another challenge arises where States do not report or do not report regularly. There is currently no procedure for reviewing countries, which have not submitted reports.

157 Ibid.

158 ACHPR, Concluding Observations and Recommendations on the Fourth Periodic Report of the Republic of Uganda, 49th Ordinary Session, 28 April to 12 May 2011.

159 ACHPR, Concluding Observations and Recommendations on the Periodic Report of the Republic of Sudan, 35th Ordinary Session, 21 May 4 June 2004.

Thematic and country-specific resolutions

139. Article 45 of the Charter mandates the Commission to “formulate and lay down principles and rules aimed at solving legal problems relating to human and peoples’ rights.” Pursuant to this provision, the Commission adopts resolutions to address diverse human rights issues. These resolutions could generally be classified into three main types, namely: thematic, country-specific and administrative resolutions.¹⁶⁰ Administrative resolutions deal with the Commission’s procedures, internal mechanisms and relationships between the Commission and other organs of the AU, inter-governmental organisations, national human rights institutions, and NGOs. The types of resolutions that are relevant for the purposes of this Study are thematic and country-specific resolutions.

Thematic Resolutions

140. A thematic resolution elaborates in greater detail specific human rights themes or a particular substantive right covered in the Charter. It defines states’ obligations in respect of such right, and describes the standard set by the Charter.¹⁶¹ The Commission has passed a number of thematic resolutions covering a wide range of themes including, arrest and detention, counter-terrorism, combating sexual violence, freedom of expression and fair trial, indigenous peoples, socio-cultural rights, HIV/AIDS, and freedom of association.¹⁶²

141. Although not many of the thematic resolutions adopted by the Commission so far deal solely with human rights in conflict situations, some have parts that touch on the scope and protection of specific rights during conflict and crisis situations. One example is the Resolution 283 on the Situation of Women and Children in Armed Conflict, adopted at the Commission’s 55th Ordinary Session in May 2014, which expressed concern about in particular sexual and gender-based violence such as rape, sexual slavery, and sexual mutilations of women and children, mostly used as a tactic of war.¹⁶³ This resolution called on States to provide comprehensive support to women and children affected by war, including through legislation, provision of redress and support to survivors, conduct investigations and punish perpetrators and ensure the involvement

160 ACHPR, Documents-Resolutions available at <http://www.achpr.org/search/>.

161 Ibid.

162 See ACHPR, Legal Instruments – Soft Law available at <http://www.achpr.org/instruments/>.

163 <http://www.achpr.org/sessions/55th/resolutions/283/>.

of survivors throughout the post-conflict peacebuilding processes. Resolution 276 on Terrorist Acts in Africa¹⁶⁴ adopted during the same Session condemns the terrorist attacks which had been taking place in countries across the continent, called upon the perpetrators to put an end to these attacks, and urged States to take the necessary steps for perpetrators to be brought to justice. Other relevant resolutions include Resolution 7 the Promotion and Respect of International Humanitarian Law and Human and Peoples' Rights and Resolution 17 of 2007 on Strengthening the Responsibility to Protect in Africa, which both deal with aspects of human rights and conflict, including the need for training of national militaries on humanitarian and human rights law.

Country-specific resolutions

142. Country-specific resolutions address pertinent human rights concerns in states parties. This genre of resolution has proven very useful whenever there are widespread violations in a state party but no individual has submitted any communications to the Commission in respect of those violations.¹⁶⁵ The Commission has passed one or more country-specific resolutions to address the human rights situation in Sudan, Uganda, Zimbabwe, Ethiopia, Eritrea, Somalia, Kenya, CAR, DRC, Côte d'Ivoire, Comoros, Libya, Tunisia, Guinea-Bissau, Liberia, Burundi, Rwanda and many other countries.

143. For instance, in 2012 the Commission passed a resolution on Somalia, *inter alia*, calling on the government and all armed groups to end ongoing violations of human rights against journalists and media practitioners.¹⁶⁶ During the genocide in Rwanda the Commission issued a resolution calling on parties to the conflict to respect the Charter and rules of IHL and to immediately cease hostilities and work towards peaceful settlement.¹⁶⁷ A 2015 resolution on Nigeria condemned acts of violence against civilian population by Boko Haram militants and the use of female and children suicide bombers.¹⁶⁸ The 2013 resolution of the Commission on Mali urged the government to put an end to human rights violations, acts of violence and impunity caused by the political instability in the country.¹⁶⁹ The Commission condemned the gross

164 <http://www.achpr.org/sessions/55th/resolutions/276/>.

165 ACHPR, Documents-Resolutions available at <http://www.achpr.org/search/>.

166 ACHPR, Resolution on Attacks Against Journalists and Media Practitioners in Somalia, 2 May 2012.

167 ACHPR, Resolution on the Situation in Rwanda, 27 April 1994.

168 ACHPR, Resolution on the Human Rights Situation in the Federal Republic of Nigeria, 28 February 2015.

169 ACHPR, Resolution on the Political Situation in the Republic of Mali, 24 July 2013.

human rights violations committed by armed groups in eastern DRC against civilians including rape and other forms of violence on women and children.¹⁷⁰

144. Following the violence that broke out in the wake of the December 2007 elections in Kenya, the Commission condemned the human rights violations perpetrated by all parties, and called on them to exercise patience and restraint. The Commission also decided to undertake a fact-finding mission to investigate allegations of violations of human rights and called on the government and the opposition to cooperate and extend assistance to the fact-finding mission.¹⁷¹ The mission never took place because the government did not grant permission for the mission to go ahead. A resolution that deplored the serious human rights violations as a result of the unconstitutional change of government twice in a year in Guinea-Bissau was adopted by the Commission on 2 May 2012.¹⁷² The Commission also condemned the mass arrest and trial, and the imposition of death penalty following trials that completely disregarded fair trial standards on political dissenters and critics in Egypt in February 2015.¹⁷³
145. Similar country-specific resolutions were also issued on Eritrea and Ethiopia in 2005 and 2012 respectively. In Eritrea, the Commission was concerned about the arbitrary arrests and continued detention without trial for many years of several former cabinet ministers and government officials, members of opposition groups, journalists and media practitioners in violation of the provisions of the African Charter.¹⁷⁴ In the case of Ethiopia, the Commission was alarmed by the arrests and prosecution of journalists and opposition members, charged with terrorism and other offences including treason, for exercising their legitimate rights to freedom of expression and freedom of association. The Commission also condemned the excessive restrictions placed on human rights work by the Charities and Societies Proclamation, denying human rights organisations access to essential funding, endowing the Charities and Societies Agency with excessive powers of interference in human rights organisations.¹⁷⁵

170 ACHPR, Resolution on the Human Rights Situation in the DRC, 24 July 2013.

171 ACHPR, Resolution on the Human Rights Situation in Kenya, 23 February 2008.

172 ACHPR, Resolution on the Unconstitutional Change of Government, 2 May 2012.

173 ACHPR, Resolution on the Deteriorating Human Rights Situation in the Arab Republic of Egypt, 28 February 2015.

174 ACHPR, Resolution on the Human Rights Situation in Ethiopia, 5 December 2005.

175 ACHPR, Resolution on the Human Rights Situation in the Democratic Republic of Ethiopia, 2 May 2012.

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146. From the foregoing it is obvious that resolutions play a crucial role in bringing to light grave human rights violations that are committed in conflict and crisis situations. From the Rwandan genocide to the post-election crisis in Kenya, unconstitutional change of government in Guinea-Bissau, terrorist attacks in Nigeria and Somali and internal tensions in Ethiopia and Eritrea, country-specific resolutions have proved to be vital tools in responding to human rights violations.
 147. One shortcoming of resolutions is that they are adopted only when the Commission is in Session, which is four times in a year maximum. The implication of this is that the Commission cannot give timely response through resolutions to human rights violations that occur in conflict and crisis situations unless the violations occur when the Commission is in Session or close to it.
 148. The other major limitation of country-specific resolutions is that the rate of compliance of resolutions of the Commission is lower than the other decisions and recommendations of the Commission for various reasons.
 149. The first could be the procedure followed in issuing resolutions. Most of the times draft resolutions come from NGOs through the NGO forum or from the Commission itself sponsored by country rapporteurs or special mechanisms. In both cases, however, the State is not given the opportunity to give its response or feedback on the draft resolution before it is adopted by the Commission. Therefore, there is a tendency from States to view it as a procedure that lacks impartiality, and hence they seem to be reluctant to implement/comply. Some States have even accused the Commission on a number of occasions of copying resolutions of international organisations. This problem is exacerbated by the apparent absence of rules in the Charter or RoP of the Commission that regulate the procedures for the consideration and adoption of resolutions.
 150. The second reason is the lack of follow-up mechanism in the RoP as well as in practice. The Commission has not yet developed a system to follow up on the implementation of its resolutions. Recommendations of missions are followed up by subsequent missions or State reports, and State reports by State reports or missions. Decisions on communications including provisional

measures by the Working Group on Communications¹⁷⁶ or referral or missions and/or state reports. But there is no mechanism for following up on resolutions.

151. The third reason, related to the second, is that after resolutions are adopted they are not sent to the concerned State and stakeholders. There is a haphazard practice of sending a compilation of adopted resolutions to embassies in Addis Ababa after each session. While this is commendable, if the Commission is serious about getting its resolutions implemented or followed up then when country-specific resolutions are adopted, in addition to sending the compilation, it should also send the specific resolution to each State on which a resolution has been adopted with an accompanying letter requesting the State to report on implementation. This is, of course, assuming that the procedural defects identified above are cured by giving the State the opportunity to forward its feedback on the draft resolution, if any, before it is adopted.
152. As it stands, States on which country-specific resolution have been adopted are neither availed with a copy of the resolution as a matter of regular and formalised procedure, nor are they requested to report on implementation or compliance. There is no point in adopting a resolution on a State if the State is not going to be informed of it.
153. In order to accommodate all the above suggestions, the Commission should reconsider its resolution procedure and adopt detailed guidelines on resolutions that lay down the procedure for the presentation of draft resolutions, their consideration, adoption and follow up. However, any procedure adopted should still give proper consideration to the interests of the victims, and the process should not be so cumbersome that it is not practicable.

Press releases/statements

154. Press releases or press statements are statements that the Commission issues on topical human rights issues or its activities. The type of press release that is of relevance to this Study is the one on topical human rights issues as it can be used to condemn or express concern about ongoing human rights violations in conflict or

176 The expanded mandate of the Working Group on Communications includes following up and collecting information on the status of implementation of the Commission's decisions on communications. ACHPR, Resolution on the Expansion of the Mandate of the Working Group on Communications and Modifying its Composition, 22 October 2012.

crisis situations. Press releases on activities are meant to give information to the public on just concluded, ongoing or planned activities of the Commission or in commemoration of events.

155. The advantage that press statements have over country-specific resolutions is that they can be issued at any time. The Commission does not need to be in Session to issue them. In fact, most statements are issued when the Commission is not in Session, enabling timely and prompt response to human rights violations. Other than this, press statements also share similar challenges as country-specific resolutions vis-à-vis lack of follow-up mechanisms and implementation.
156. Some of the most recent press releases of the Commission are on the human rights situations in Cameroon, Kenya and DRC. In its January 2018 press release the Commission condemned the violence and human rights violations, in particular the militarisation of the English-speaking regions of Cameroon and the disproportionate use of force against the population. It also condemned enforced disappearances, arbitrary detention under deplorable conditions, and prohibition of peaceful demonstrations and displacement of Anglophone Cameroonians.¹⁷⁷
157. The press release on Kenya was jointly issued by the Commissioner Rapporteur for Kenya and the Special Rapporteur on Freedom of Expression and Access to Information. The Press statement raised concerns regarding the shutting down of private TV stations that were attempting to live broadcast the swearing-in of opposition leader, Raila Odinga, and the refusal of the government to obey a court decision allowing the stations to be re-opened. The Commission also condemned the arrest and detention and mistreatment in detention of two opposition figures for their role in the inauguration ceremony, and the deportation of one of them from the country.¹⁷⁸ The press release on DRC was issued by the Country Rapporteur strongly condemning the abusive and disproportionate use of force against peaceful demonstrators that resulted in the loss of life and injuries.¹⁷⁹

177 ACHPR, Press Release on the Human Rights Situation in Cameroon, 29 January 2018.

178 ACHPR, Press Statement of the African Commission on Human and Peoples' Rights on the Human Rights Situation in Kenya by Commissioner Rapporteur for the Republic of Kenya, Commissioner Solomon Ayele Dersso and the Special Rapporteur on Freedom of Expression and Access to Information, Commissioner Lawrence Mute, 9 February 2018.

179 ACHPR, Press Release on the Human Rights Situation in the Democratic Republic of Congo by Commissioner in charge of monitoring the human rights situation in DRC, Commissioner Soyata Maiga, 8 January 2018.

158. The Commission also issued press statements on the plight of the Chibok girls, who were abducted by the Boko Haram militants in Nigeria in April 2014, as well as on the further abductions of girls in Borno and Yobe States, condemning the instigators and perpetrators of these indefensible acts of violence, and demanding an immediate end to their attacks on civilians. In a press statement of 1 March 2018, the Commission stressed that these abductions do not only amount to acts of violence against these girls, but also violate their right of education, underscoring the negative impact of conflict and crisis situations on the right to education.

Special Mechanisms

159. The African Commission has twelve human rights thematic Special Mechanisms, tasked with specific mandates in relation to Refugees, Asylum Seekers, Migrants and Internally Displaced Persons; Rights of Women; Prevention of Torture; Economic, Social and Cultural Rights; Rights of Older Persons and People with Disabilities; and Extractive Industries and Environment, among others. Under their thematic mandates, in addition to the various tools of the Commission discussed above, including initiation of resolutions and the issuing of press statements and letters of appeal, Commissioners can also be given the responsibility to develop normative instruments for adoption by the Commission. A few of these have touched on the issue of conflict and crisis situations.

160. For example, the Guidelines on Combating Sexual Violence and its Consequences in Africa that was adopted in May 2017 has a part on the investigation and prosecution of crimes of sexual violence in situations of conflict and crisis as international crimes.¹⁸⁰ The Commission's Special Rapporteur on Rights of Women has a crucial role in ensuring that women who are victims in conflict are protected and receive redress, and also that women are empowered to take part in the peace processes. In this regard, the Special Rapporteur during 2017 took part in workshops in Nigeria and Cameroon organised by the UN Office on Drugs and Crime and aimed at addressing the gender dimensions in the fight against terrorism.

¹⁸⁰ ACHPR, Guidelines on Combating Sexual Violence and its Consequences in Africa, (2017), paras. 44-52.

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161. The 2015 Principles and Guidelines on Human and Peoples' Rights while Countering Terrorism in Africa under the General Principles provides that States have the obligation to respect their human rights obligations while conducting counter-terrorism operations abroad, including in times of armed conflict during which times IHL is also applicable.¹⁸¹ The part on implementation further states that the obligations outlined in the Guidelines should always be guaranteed in law and practice even during armed conflicts and state of emergency.¹⁸² The 2014 Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa imposes the same obligation of guarantee on states.¹⁸³
162. The Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in Africa in defining vulnerable and disadvantaged groups includes victims of armed conflicts as one group.¹⁸⁴ It also obliges States to provide mental health care to survivors of conflicts among others.¹⁸⁵ States are also required to give social security services to areas affected by armed conflicts.¹⁸⁶ Through engaging States in conflict, at risk of conflict and emerging from conflict on the socio-economic and development issues which are often the underlying causes or drivers of conflict, the Working Group on Economic, Social and Cultural Rights can play useful role in providing guidance on addressing the socio-economic rights dimension of conflicts.
163. The 2002 Robben Island Guidelines absolutely prohibit torture, inhuman or degrading treatment or punishment even under situations of state of war, threat of war, internal political instability or any other public emergency.¹⁸⁷ It further proscribes the use of notions of 'necessity', 'national emergency', and 'public order' as justification of torture, inhuman or degrading treatment or punishment.¹⁸⁸ The Committee for the Prevention of Torture in Africa (CPTA) is the special mechanism of the Commission responsible for promoting and facilitating the implementation of the Robben Island Guidelines within the Member

181 ACHPR, Principles and Guidelines on Human and Peoples' Rights while Countering Terrorism in Africa, (2015), General Principles L, p. 15.

182 *Id.*, Implementation A, p. 39.

183 ACHPR, Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa, (2014).

184 ACHPR, Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in Africa, (2012), para. 1(e), p. 8.

185 *Id.*, para. 67(ff) p. 27.

186 *Id.*, para. 82(k) p. 47.

187 ACHPR, Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (Robben Island Guidelines), (2002), para. C(9).

188 *Id.*, para. C(10).

States. CPTA also developed the General Comment No. 4 on the African Charter on Human and Peoples' Rights: The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment (Article 5), which *inter alia* deals with the right to redress where torture took place in the context of armed conflict, and sets out the duties of both States and armed non-state groups.

164. As noted above, one of the main consequences of conflict on the continent is the displacement of people, either internally or outside of their countries. The Special Rapporteur on Refugees, Asylum Seekers, Migrants and Internally Displaced Persons thus has an important role in the context of conflict and crisis situations, including in relation to prevention of conflict resulting in displacement. In addition, and related to this, in some conflicts the right of freedom of movement of civilians is violated, in that conflict parties restrict directly or indirectly the ability of civilians to move from areas of violence to seek safe havens. The Commission could have a role in ensuring the establishment of corridors of humanitarian aid through which such persons can escape to neighbouring countries and be granted asylum.
165. Similarly, the Commission should also strengthen the role of the Working Group on Rights of Older Persons and People with Disabilities in relation to these vulnerable groups particularly affected by conflict and crisis situations.

Country rapporteurs

166. Each of the Commissioners also bear the responsibility to monitor the human and peoples' rights situations in specific countries, covering all the State Parties under the Charter. The Country Rapporteur will thus often be the first person to be aware of developments in their countries of responsibility, and if it is a matter of wider concern, can bring it to the attention of the Commission, or specific Commissioners, for a coordinated response. Thus, for example, a letter of appeal sent to Kenya regarding the widespread patterns of extra-judicial killings implicating the police in Kenya was a joint letter sent by the Chairperson of the Working Group on Death Penalty and Extra-Judicial, Summary or Arbitrary killings in Africa and the Commissioner Rapporteur on the Human Rights Situation in the Republic of Kenya. Such collaboration strengthens the impact of the mechanisms of the Commission.

Coordination and Collaboration by the Commission with other actors on the continent

Coordination and Collaboration of the Commission with relevant AU Bodies

167. Article 45(1)(c) of the Charter authorises the Commission to cooperate with African and international institutions concerned with the promotion and protection of human rights. In line with this provision, the African Commission has forged relations with different AU bodies for the better promotion and protection of human and peoples' rights, including in time of conflict or crisis. Some of these relations have been created explicitly under the Charter, others through Protocols and still others through RoP of the Commission, resolutions and Memoranda of Understanding (MoU). Some of these formalised relationships are discussed below.

Relationship with AU policy organs

168. The Constitutive Act of the AU sets the promotion and protection of human rights in accordance with the African Charter as one of the objectives of the AU.¹⁸⁹ Some of the principles of the AU also directly relate to the mandate of the Commission such as respect for democratic principles, human rights, rule of law and governance; promotion of social justice; respect for the sanctity of human life, condemnation and rejection of impunity and political assassination, acts of terrorism and subversive activities; condemnation and rejection of unconstitutional changes of governments; prevention of conflicts and war crimes, crimes against humanity and genocide.¹⁹⁰

169. Policy organs of the AU in the context of this Study refers to the Assembly of Heads of States and Government (the Assembly), the Executive Council and the Permanent Representatives Council (PRC).

170. The relationship between the Commission and the policy organs of AU has been set out under various provisions of the Charter¹⁹¹ and further elaborated in the RoP of the Commission.

171. The most relevant provisions laying out the relationship between the Commission and the policy organs, which can be applied in

189 Constitutive Act of the African Union, 2000, Art. 3(h).

190 *Id.*, art. 4.

191 See for example arts. 30, 33, 37, 39, 41, 44, 45(3) & (4), 52, 53, 54, 58, 59.

cases of human rights violations in conflict and crisis situations are Articles 58 and 59 of the Charter. The nature of the relationship between the two provisions has been discussed in detail above under “The review of existing Tools and Mechanisms of the African Commission”, and there is no need to repeat that discussion here. But it should be recalled that according to Article 58, the Assembly has the ultimate and full power to enforce the decisions and recommendations of the Commission. Hence, the enforcement of the decisions of the Commission on violations of human rights in conflict and crisis situations completely depends on the Assembly. Only the Assembly has the power to convince or force the State concerned to comply with the decision of the Commission, and that requires political will from the Assembly.

172. So far, the Assembly has not demonstrated the required political will to enforce the decisions of the Commission. Except making general statements requiring States to comply with decisions of the Commission, the Assembly and the Executive Council have not taken any concrete steps to enforce decisions. And this has seriously hampered the effectiveness of the protection mandate of the Commission and, by extension, the tools and mechanisms of the Commission relevant for addressing human rights violations in times of conflict and crisis.
173. Contrary to the supportive role that they are expected to play, the working relationship between the policy bodies and the Commission has become fraught with tension. As a result, at the January 2018 summit, the AU Assembly decided that the Commission should hold a retreat with the members of the Permanent Representatives Committee for addressing the various issues affecting the relationship of the Commission with these bodies. The policy organs of the AU have also in the past forced the hand of the African Commission when they determined that its work caused them political inconvenience. Any close cooperation with policy organs should thus be approached with caution to ensure that it does not impact on the actual or perceived independence and impartiality of the Commission.
174. On the positive side, the Executive Council on a few occasions has requested the Commission to undertake fact-finding missions to investigate reports of serious and massive human rights violations in a member state. The case of SADR is one example, as discussed above.

175. Thus, the greatest challenge in making the relationship between the Commission and the political organs of the AU work is the lack of political will of the latter. Additional challenges of a technical nature include the absence of established working relationships and mechanisms for operationalising the relationships envisaged under the African Charter. Until and unless these issues are addressed, the objectives of the envisaged working relationship will not be effectively achieved.

Relationship with the PSC

176. In upholding the human and peoples' rights in the African Charter, both the Constitutive Act of the AU and the Protocol Establishing the Peace and Security Council acknowledge the role of the African Commission in the peace processes of the AU. Against this background, there have been instances in which the PSC resorted to the Commission as part of its effort in maintaining peace and security in Africa.

177. Since 2004 the PSC has made a number of requests to the ACHPR to undertake investigations of issues of human rights in various situations on the continent, including in Cote d'Ivoire, Darfur, the Republic of Guinea, and Somalia. Most recently, the PSC 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. However, following the report there was no clear indication that the recommendations made were taken on board by the PSC, other than the suggestion by the PSC for the mediators of the Burundi conflict to take account of the recommendations. The PSC could also have taken a more proactive role in assisting the Commission to overcome challenges in obtaining permission to undertake the mission to Burundi. There is thus a clear lack of synergy and full cooperation between the two institutions, which requires that a closer working relationship be established.

178. In terms of the normative basis for this relationship, both the PSC Protocol and the African Commission's legal instruments reveal that there is clear overlap in the mandates of the African Commission and the PSC. Accordingly, under the PSC Protocol, the PSC enjoys the power: (a) to institute sanctions whenever an unconstitutional change of government takes place in a Member State and (b) to follow up on the progress towards the promotion of democratic practices, good

governance, the rule of law, protection of human rights and fundamental freedoms, and respect for the sanctity of human life and international humanitarian law by member states. Additionally, regarding “grave circumstances” identified under Article 4(h) of the Constitutive Act of the AU, the PSC is vested with the power: (a) to anticipate and prevent policies that may lead to genocide and crimes against humanity¹⁹² and (b) to recommend to the AU Assembly intervention in a member state in respect of grave circumstances.¹⁹³

179. These dimensions of the mandate of the PSC fall squarely within the area of competence of the African Commission, whose mandate and activities in the promotion and protection of human and peoples’ rights directly feature in and concern all the areas of engagement of the PSC, conflict prevention, management, resolution and post-conflict transition processes. These are all areas in which various issues of human and peoples’ rights loom large.
180. This overlap in mandates, as well as the effective implementation of the respective responsibilities of the two institutions in these areas of common interest, require that the two bodies adopt an institutionalised mechanism for a close working relationship.
181. Rule 84(1) of the Rules of Procedures of the Commission stipulates that the African Commission may refer situations falling under Article 58 of the African Charter to the PSC. A more comprehensive framework for institutionalised close working relationship between the PSC and the African Commission is laid down under Article 19 of the PSC Protocol. This provision states:
- “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.”
182. Building on the Conclusions of the Dakar Retreat of the PSC in 2007 that provided for the holding of an annual consultative meeting between the two bodies, and in order to operationalise Article 19 of the PSC Protocol in an institutionalised framework, the African Commission made a request to attend a session of the PSC to discuss

192 PSC Protocol, Art. 7(1)(a).

193 PSC Protocol, Art. 7(1)(e).

the modalities for a closer working relationship between the PSC and the African Commission. Despite the fact that the meeting requested by the Commission under Article 19 of the PSC Protocol did not take place, its request led to the convening of a session of the PSC on 5 September 2017 with organs of the AU with human rights mandates, including the African Commission.

183. From the current format of collaboration, it is clear that there is a lot to be gained from a close working relationship between the two bodies. Indeed, the limited experience with respect to various situations including Mali or Burundi has shown that such a close working relationship helps to advance the respective mandates of the two bodies. Given that currently the working relationship remains largely *ad hoc* and reactive, there is a need for having a more institutionalised arrangement in implementing Article 19 of the PSC Protocol, including through activating the Conclusions of the 2007 Dakar Retreat of the PSC mandating the convening of the annual consultative meeting. Most importantly, there is a need for articulating a framework for the multidimensional operationalisation of the provisions of Article 19 of the PSC Protocol with respect to prevention, management and resolution of conflicts.

Relationship with the African Court

184. The relationship between the Commission and the Court is envisaged under Article 2 of the Court Protocol and further sketched out in the respective RoP of the Commission and the Court. The relationship is one of complementarity, with the Court complementing and reinforcing the protection mandate of the Commission.¹⁹⁴ The reason why the protection mandate of the Commission needed to be complemented by the Court is because the decisions and recommendations of the Commission are not legally binding. As a result, the majority of the decisions/recommendations of the Commission are not implemented by States, and hence the need to establish a Court that gives legally binding decisions.
185. Whether the lack of compliance with decisions can be rectified by establishing a Court is beyond the scope of this Study. However, it should be emphasised that the problem of compliance in the African human rights system is largely related to the lack of will by governments to uphold their commitments and the prevalence of weak systems of democratic governance and rule of law, conflicts

¹⁹⁴ See the Preamble and Article 2 of the Court Protocol.

and prevailing socio-economic factors such as poverty, corruption and harmful traditional practices. The establishment of a Court is not something that will rectify these conditions that hinder compliance.

186. Regardless, there is no doubt that the establishment of the Court contributes to enhanced protection of human and peoples' rights on the continent complementing the role of the Commission. Creating a smooth, cordial, and effective relation between the Commission and the Court is indispensable for the better protection of human rights in Africa. Especially at this stage where only seven states have made the Declaration under Article 34(6) of the Court Protocol allowing individuals direct access to the Court,¹⁹⁵ the role of the Commission for enabling the complementary protection role of the Court is crucial.¹⁹⁶
187. However, the reality is very different from this aspiration. While the Commission has referred only three cases,¹⁹⁷ there remain a number of challenges that have impeded the full operationalisation of complementarity. One of the reasons for this is the lack of clear rules and guidelines within the Commission to identify cases to be referred to the Court. In this regard Rule 118 of the Commission's RoP lays out some general criteria for referral cases, which are: cases of non-compliance by States with decisions on Communications or requests for Provisional Measures of the Commission, and cases that involve serious or massive violations of human rights.
188. Despite the apparent simplicity of these rules, there are several factors, including the deficiency of the rules, that impede the implementation of the referral system. Firstly, from the side of the African Commission, referral of cases to the African Court requires

195 Article 34 of the Protocol [Ratification] stipulates that "at the time of ratification of this Protocol or any time thereafter, the State shall make a declaration accepting the competence of the Court to receive cases under Article 5(3) of this Protocol. The Court shall not receive any petition under Article 5(3) involving a State which has not made such a declaration." Article 5(3) states as follows: "The Court may entitle relevant Non Governmental Organizations (NGOs) with observer status before the Commission, and individuals to institute cases directly before it, in accordance with Article 34(6) of this Protocol." The seven states that have made the Declaration under Article 34(6) are: Burkina Faso, Malawi, Mali, Tanzania, Ghana, Cote d'Ivoire and Benin. See the Status List (of ratification) of the Court Protocol available at https://au.int/sites/default/files/treaties/7778-sl-protocol_to_the_african_charter_on_human_and_peoplesrights_on_the_estab.pdf.

196 Rule 33 of the Rules of Court.

197 The most recent case to be referred to the Court was against Libya, in the case of Saif Al-Islam Ghaddafi, (AfCHPR, Application 002/2013 – African Commission on Human and Peoples' Rights v. Libya, Judgment, June 2016) which was referred in 2012. The Court rendered a judgment in the case in 2016. In another case relating to the Ogiek indigenous communities of Kenya (AfCHPR, Application No. 006/2012, African Commission on Human and Peoples' Rights v. Republic of Kenya, Judgment, May 2017), the Court decided in favour of the Commission in May 2017. The third case was also against Libya and is discussed below.

that there is a capacity within the Commission that prepares, files and follows up the cases. Currently the Commission lacks the resources and dedicated capacity that this requires. It would be incumbent on the AU to provide the necessary human and financial resources for the Commission to establish a litigation unit, in order that more cases may be referred to the African Court, to strengthen the implementation of complementarity and provision of access to justice.

189. Secondly and more importantly, there are some legal challenges, among which is the loose or inadequate criteria for referral of cases. If one looks at the criteria under Rule 118 of the current RoP of the Commission, referral of a case that has been finalised at the level of the Commission to the Court on account of non-implementation can lead to the re-opening of the case by the Court and its reconsideration on admissibility and the merits. Such reopening of the case would entail not only waste of judicial resources but also leads to major frustration for the parties and creates undue legal uncertainty. In addition, in relation to cases involving Article 58 situations, referring cases on the basis of gravity of violations or their jurisprudential importance would imply that the Commission deals with less serious or less important cases, which would be contrary to the clear terms of the Court Protocol which envisages the role of the Court to be complementary to that of the Commission.
190. Despite the Commission and the Court having held regular meetings every year since 2011, they have not articulated mechanisms for resolving these institutional, technical and normative issues and these challenges remain unresolved.¹⁹⁸
191. The first case that was referred to the Court against Libya in 2011 was struck out by the Court for lack of diligent prosecution.¹⁹⁹ This was a test case for two reasons. Firstly, it was the first ever case referred from the Commission to the Court. Secondly, the case relates to human rights violations committed during the Libyan revolution by the Gaddafi regime²⁰⁰ and hence could have been used to demonstrate how the Court can afford a better protection to human rights in conflict situations. But it was struck out for failure by the Commission to diligently prosecute the case, clearly demonstrating the lack of proper thinking about the institutional and resource implications of

198 See the 30th to the 43rd Activity Reports of the Commission available at <http://www.achpr.org/activity-reports/>.

199 AfCHPR, Application No. 004/2011 – *African Commission on Human and Peoples' Rights v. Great Socialist People's Libyan Arab Jamahiriya*, Order, March 2013.

200 Ibid.

the complementarity principle noted above. Since then, the Ogiek case referred to by the Commission has been concluded with the Court handing down a judgment in favour of the Ogiek Community against Kenya.

192. It is hoped that the ongoing process of the revision of the Rules of Procedure of the Commission would afford an opportunity in addressing at least the legal/technical challenges limiting referral of cases and hence the poor implementation of the complementary relationship between the Court and the Commission, although effective operationalisation of complementarity requires addressing the other legal (reopening of communications) and institutional challenges.
193. The other issue is that the complementary relationship between the two entails a two-way traffic involving referral both from the Commission and from the Court. In relation to referral from the Court as well, discussions thus far between the two bodies show that it is only cases involving States that did not ratify the court protocol or did not make the Article 34(6) declaration that the Court is inclined to refer to the Commission. This however may not be considered as referral given the lack of jurisdiction on the part of the Court.
194. From the perspective of the focus of this conflict and crisis situations, what is of significance in terms of the working relationship between the Commission and the Court is the opportunity that it presents for elaborating the effective protection of the Charter standards in conflict situations.

Relationship with the Children's Committee

195. The Commission and the Children's Committee are both regional human rights treaty-monitoring bodies under the auspices of the AU, and have similar mandates. While the Commission is mandated to promote and protect human and peoples' rights in Africa, the Children's Committee is entrusted with the mandate of promoting and protecting the rights of the child on the continent.²⁰¹ Thus while the Commission has a general mandate, the Committee has a specific-group focused or thematic mandate.

201 See Article 45 of the African Charter and Article 42 of the Children's Charter.

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196. Despite the existence of general provisions in their constitutive instruments that allow the two institutions to collaborate and cooperate with other AU institutions with similar mandates, no explicit statutory relation has been established between the Commission and the Children's Committee.²⁰² However, since their mandates are similar and deal with cross-cutting human rights issues, they have formalised their relationships through a resolution, and continuous engagement and sharing of information.
197. The 2009 resolution of the Commission establishes a formal relation with the Children's Committee with a view to enhance the cooperation between the two institutions. It also appointed the Special Rapporteur on the Rights of Women in Africa as the focal person of the Commission for the cooperation between the two institutions, who is also required to report on the status of cooperation at every Ordinary Session of the Commission.²⁰³
198. Given the similarities of the mandate and working tools of the two bodies, there is huge potential for joint action in addressing human rights issues in conflict and crisis situations. The most significant collaboration to date has been the adoption of a joint General Comment between the two institutions on ending child marriage. In August 2017, the Commission and the Committee also sent a joint Letter of Urgent Appeal to the Government of Tanzania concerning a statement made by the President on 22 June 2017 to the effect that pregnant girls and teen mothers would no longer be allowed to attend school and continue their education.²⁰⁴ This is encouraging and can be effectively used to protect human rights in time of conflict and crisis situations.
199. Similar joint actions or activities can be carried out in undertaking fact-finding missions, issuing resolutions and perhaps also in referring cases to the political organs of the AU. Taking joint action will have more visibility and force, and is a strategy that should particularly be often used in cases involving human rights violations in conflicts and crisis situations. If for instance a joint fact-finding mission is undertaken to a troubled country and a joint report is presented to the political organs, its impact will be felt much more than if it is done individually.

202 See in particular Article 45(1)(c) and Article 42(a)(iii) of the Children's Charter.

203 ACHPR, Resolution on Cooperation between the African Commission on Human and Peoples' Rights and the African Committee of Experts on the Rights and Welfare of the Child, 27 May 2009.

204 ACHPR, 43rd Activity Report, para. 30.

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200. Since the two institutions also face the same problem when it comes to implementation of their decisions, they should develop a joint strategy, if possible together with the Court, to strengthen implementation of their decisions. One possibility is to propose the establishment of a body at the AU that is dedicated to oversee the enforcement of the decisions of regional human rights bodies. A continuous and concerted effort in this regard will yield the necessary results sooner than a piecemeal approach.
201. Specifically in relation to the focus of this Study, there were also some missed opportunities for cooperation that the Commission and the Committee should draw lessons from. A case in point is the 2016 study of the Committee on the Impact of Conflict and Crises on Children in Africa.²⁰⁵ The Committee was requested to undertake the Study by the PSC²⁰⁶ and the involvement of the Commission would have contributed to its outcome and outreach. It would have also solidified the tripartite cooperation between the Commission, the Committee and the PSC. In order to set a precedent for the future, this present Study has benefitted from the input from representatives of both the Committee and the PSC.
202. Despite these ad hoc collaborations there is still no institutionalised, regularised and systematised relation and cooperation between the Commission and the Committee and its establishment is crucial.

Relationship with the APRM

203. The African Peer Review Mechanism (APRM) was established in 2003 by the New Partnership for Africa (NEPAD) as an instrument for monitoring performance in governance among Member States. Performance and progress are measured in four thematic areas: democracy and political governance; economic governance and management; corporate governance; and socio-economic development. In addition, one of the key indicators of the APRM peer review process is the respect for and protection of fundamental rights and freedoms. There is thus a clear overlap in what the African Commission and APRM hope to achieve.
204. The APRM review process requires that the Report of the APRM should be formally and publicly tabled before the ACHPR. In addition,

²⁰⁵ ACERWC, *Continental the Impact of Conflict and Crises on Children in Africa*, 2016.

²⁰⁶ See a brief description of the background to the the ACERWC available at <http://www.acerwc.org/study-children-and-armed-conflicts/>.

the Commission in 2010 adopted Resolution ACHPR/Res.168 (XLVIII) 10 on the Cooperation between the African Commission on Human and Peoples' Rights and the African Peer Review Mechanism, and renewed the mandate of the Focal Point on APRM in 2016. These preliminary arrangements culminated in the signing during the 62nd Ordinary Session of the Commission of a Memorandum of Understanding between the Commission and APRM to regulate and promote closer cooperation and collaboration.

205. In relation to conflict situations on the continent there is also room for collaboration. In this regard the APRM produced a Country Review Report on Kenya in 2006 which noted that "the country still exhibits many of the factors that have been markers of civil strife elsewhere, such as strong ethnic divisions, polarised political issues, political manipulation, rampant violence, socio-economic disparities, deepening levels of poverty and endemic corruption", and urged reforms to address the issues.²⁰⁷ This warning was borne out by the outbreak of post-election violence in the 2007 election. Sharing of such information between the two institutions could be applied future in prevention strategies.

206. From the foregoing, it can be concluded that although the Commission has the requisite statutory or formalised relation with the relevant AU organs and institutions with human and rights and conflict related mandate, the formal relation has not been translated into meaningful and impactful practice. Apart from political will, the main challenges include the *ad hoc* nature of the interactions, a tradition of working in silos, difference of interests (as between the Commission and the policy bodies in which States are represented), lack of institutionalised arrangements for regular exchange and appropriate frameworks for the proper operationalisation of working relationship. And this problem is not unique to these organs only but cuts across the whole AU system. Short of a radical and holistic reform of the system and institutions of the AU, commitment and articulation of workable strategy could address some of these challenges.

Relationships with other Actors on the continent

207. Apart from the relationships between the African Commission and other African regional institutions and organs of the AU, which are horizontal relationships, the Commission also has interaction and

²⁰⁷ APRM Country Review Report of the Republic of Kenya, May 2006, p14.

collaboration on the vertical axis, at the sub-regional level with regional economic communities and at the global level with the United Nations. In addition, the Commission also has crucial relationships with bodies functioning at the national level, such as National Human Rights Institutions (NHRIs), civil society organisations and other grassroots actors.

United Nations

208. A UN High-Level Independent Panel on Peace Operations in 2015 concluded a reassessment of the UN's peace operations, which inter alia concluded that "stronger global-regional partnerships are central to effective international peace and security engagements".²⁰⁸ Following this, in April 2017, the two organisations signed the Joint UN-AU Framework for Enhancing Partnership on Peace and Security, with the aim to ensure closer cooperation and coordination between the two organisations on peace and security. This was followed by the signing of an MOU in September 2017. While some of the areas of collaboration are assigned to specific organs and institutions, such as the UNSC with the AUPSC, or the United Nations Office to the African Union, other agreed areas of collaboration are between the two organisations in general, which provides room for collaboration between the UN and the African Commission. Examples of such areas include exchange of information on understanding the root causes of conflict, particularly socio-economic causes or other causes related to the violation of human rights; prevention of conflict through early warning analysis; and including "peacebuilding strategies in joint planning of conflict prevention and peace operations, taking full account of cross-cutting themes such as human rights, justice and reconciliation, gender, children's rights, etc.", among other areas.
209. The African Commission should also strengthen its engagement with not only the UN High Commission for Human Rights and the UN special mechanisms but also the UN Human Rights Council and the peace and security bodies of the UN in New York. Given the nature of its mandate, the African Commission can also play a central role in the UN-AU partnership in the field of human rights generally and human rights in conflict situations in particular. The role that the Commission can play in this regard has been demonstrated with the support that the Commission's focal person on human rights in conflict situations has, on request from the AU Department of Peace

208 http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2015/682.

and Security, given in assessing the experience of AU peace missions in human rights and IHL compliance and in proposing a framework for such compliance.

210. The AU and UN also have a number of joint operations on the continent, for example the UN-AU Hybrid Operations in Darfur (UNAMID), as well as joint actions to fight Boko Haram in the Lake Chad Basin, and in Somalia the UN provides logistics, technical and training support to the African Union Mission in Somalia (AMISOM). The Commission could have a role in these missions particularly in terms of the standards that they should comply with, the specific human rights and IHL violation risks that should be mitigated in such operations, and the training and monitoring measures that should be put in place in such operations.
211. Finally, given the resource constraints within the AU and the African Commission specifically, collaboration with the UN provides for a possibility for joint resource mobilisation and implementation on issues of mutual concern.

Regional economic communities

212. In the African context, regional organisations have a core role in preventing and addressing conflict as well as in post-conflict processes. Some of the most recent examples include the role played by Economic Community of West African States (ECOWAS) in ensuring a peaceful settlement to the political crisis in The Gambia in 2016/2017, and the continued efforts to end the conflict in South Sudan, which is led by Intergovernmental Authority on Development (IGAD), in close collaboration with both the AU and the UN. A regional intervention, which remains unsuccessful, but for which through the recommendation of the Commission the PSC requested the East African Community (EAC) mediator to take account of the findings of the African Commission's Burundi investigation report⁷, was the attempt by EAC to resolve the crisis in Burundi.
213. Interaction between regional communities and the African Commission has to date been nominal. A possible role for the Commission in this regard could be to strengthen the human rights aspect of the interventions of the regional communities, through playing an advisory role where they intervene in one of their member states. In addition, there could also be an important aspect of information sharing between regional communities and the

Commission, particularly in relation to early warning and prevention of crisis from escalating into full-scale conflict.

National Human Rights Institutions

214. The Commission has adopted, and recently revised the Resolution regulating its relationship with NHRIs. The 2017 Resolution on the Granting of Observer Status to National Human Rights Institutions in Africa provides that national institutions which have affiliate status “will assist the Commission in the promotion and protection of human rights at national level”. Rule 75 (5) of the Rules of Procedure of the Commission in addition provides that in the consideration of State reports the Commission shall “explore all the pertinent information relating to the human rights situation in the State concerned, including statements and shadow reports from National Human Rights Institutions”. This is an important way in which NHRIs can provide the Commission with information on emerging conflict and crisis situations on the continent.
215. The Resolution further takes account of the establishment of the Network of National Human Rights Institutions (NANHRI), the regional umbrella body that brings together African NHRIs and works to support and strengthen national human rights institutions in Africa. By engaging with NANHRI, the Commission is thus able to reach all the NHRIs on the continent, including those that do not have affiliate status with the Commission.

Grassroots actors and civil society

216. The Commission has to date granted observer status to 518 NGOs working on human rights issues on the African continent. These NGOs have an obligation to report to the Commission every two years on the activities which they had undertaken, which reports could be invaluable to the Commission in terms of assessing some of the challenges affecting specific countries. However, not many NGOs comply with this requirement, and in addition, the Commission has serious limitations in its capacity to interact with NGOs on a regular basis. One of the most relevant forums for engagement is during the Commission’s Sessions, including through making statements on specific human rights concerns, hosting side events and participation of the Commission in the NGO Forum, the latter of which can be capitalised on to a bigger extent.

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217. In relation to other grassroots actors including women’s groups, youth groups, traditional leaders, e-activists, among many others, the Commission is not able to interact with each of these individually, for example by providing training at national or community level, due to resource and mandate constraints. The Commission should thus find other ways in which it can empower such groups to play a role in conflict situations. One way in which such engagement can take place is consultations with ordinary people which take place during promotion or fact-finding missions.
218. One significant challenge in this regard is that the African Commission as an institution is not well known to the African people. The Commission could benefit from a public presence. To this end, it should implement a communication/media and advocacy strategy in order to enhance its public recognition and deepen its legitimacy in the eyes of ordinary people.
219. While the measures taken by the African Commission thus far, including through its Communications procedure, adopting relevant resolutions on conflicts, conducting fact-finding missions, issuing Letters of Appeal, among others, have contributed to drawing attention to human rights issues in conflicts in Africa, the Commission faces challenges in the discharge of its mandate especially in conflict and crisis situations.²⁰⁹
220. As the foregoing analysis clearly established, there are five challenges that can in particular be identified with respect to the role of the Commission in addressing human rights issues in conflict situations:
- I. The first of this is the **protection** challenge. This has to do with the issue of how to arrest incidents of violations and ensure that conflict parties avoid and take action against perpetration of violence. Related to this is the issue of the monitoring, investigation and reporting of violations.
 - II. The second challenge is the **promotion** challenge. This challenge entails the provision of customised inputs by way of general and thematic analysis for the full consideration and integration of human rights into peace processes that are deployed for preventing or resolving conflicts.

209 Amnesty International, *Counting Gains, Filling Gaps: Strengthening African Union’s response to Human Rights Violations committed in Conflict Situations*, 2017.

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- III. The third challenge is that of **remedying** (or coming to terms with) the violations that the conflict occasioned.
 - IV. Fourth, there is the challenge of **prevention**. This is a challenge about ensuring that the root causes are addressed, the triggering factors are removed and the necessary democratic and socio-economic reforms are instituted.
 - V. Fifth and finally, there is the challenge of **coordination and synergy** with other relevant AU mechanisms.

PART 4

Proposed approach to addressing human rights issues in conflict and crisis situations and recommendations

Proposed approach for a comprehensive response to human rights issues in conflict situations

221. The African Commission in collaboration with relevant stakeholders, especially the PSC, should move away from the dominant *ad hoc* approach to a more institutionalised, predictable and systematised framework for promoting and protecting human rights. The adoption of Resolution 332 provides an opportunity to realise this ambition. In the implementation of Resolution 332, and in light of existing gaps in the promotion of human rights in Africa, the African Commission should consider adopting a five-pillar approach based on the following thematic priorities:

- i. Monitoring and response;
- ii. Prevention through addressing root causes of conflict;
- iii. Mainstreaming of human rights into conflict prevention, management, resolution and post-conflict reconstruction and development;
- iv. Remedial measures within the Commission's procedures; and
- v. Institutional coordination and synergy, including the operationalisation of Article 19 of the PSC Protocol.

Monitoring and response

222. The African Commission requires a dedicated capacity for monitoring human rights situation on the continent and, where necessary, investigating violations when they occur, either on its own initiative and/or on the request of relevant AU organs. The establishment of such dedicated capacity helps the Commission in initiating promotional measures aimed at averting the occurrence of abuses or violations in conflict situations. This is to be achieved through issuing proactive statements on risks of such abuses or violations and by availing advice to the peace and security actors on adopting preventive measures as part of their conflict prevention, management and resolution initiatives, thereby supporting the promotional mandate of the Commission. In addition, the establishment of such a capacity is crucial, as the *ad hoc* arrangements such as Commissions of Inquiry, assessments and State reporting do not offer the timeliness and predictability that are required to inform political decision-making and effective responses.
223. As a measure of taking the proposed action in the preceding paragraph, the Commission should further adopt a more institutionalised and predictable approach to monitoring and response to crises through various means tailored to the demands of the particular situation. In this regard, the Commission should adopt a special mechanism supported by a team of experts for monitoring and investigation of human rights violations that occur in conflict and crisis situations. The mechanism will also be responsible for following up on decisions and actions taken by the Commission in such situations. The Secretariat should also be capacitated to support the Commission in the monitoring of human rights violations in conflict and the coordination of responses.
224. Effective response would also require that the Commission makes use of its power under Article 58 to refer serious and massive violations to the Assembly of Heads of State and Government or the PSC.

Prevention through addressing the root causes of conflict

225. Prevention of violations of human rights cannot be isolated from broader processes aimed at addressing the root causes of conflict and crisis situations. The African Commission should increasingly work with development actors, including within the AU, other African home-grown organisations as well as relevant UN and AU specialised agencies in promoting a rights-based approach in addressing root causes of conflicts and crises, including factors such as climate change, unemployment, and unequal access to land, water and wealth, among other factors. In this regard the Commission could specifically consider the role that it can play in the context of the AU Agenda 2063. Facilitating this synergy will meaningfully contribute towards structural prevention of crisis situations and by extension, substantially mitigate the risks of human rights violations emanating from such situations of conflict.
226. Importantly, the Commission should be in a position to identify the conditions and factors showing threats of violations evolving into conflict situations and should outline specific measures that should be taken for preventing such violations and their escalation into conflicts. Such a process would require regular tracking of developments across the continent and integrated engagement of all the country rapporteurs. Yet the experience has shown that the Commission, in articulating the standards that should apply in various situations, for example the use of force by government security forces in the management of protests or in counter-terrorism operations, is able to specify the precautionary measures that should be taken for preventing the human rights violations that could otherwise occur in such situations.
227. Further, in relation to its norm-setting role, the Commission should consider developing guidelines to States on factors, particularly those related to socio-economic rights, which have the potential to be conflicts of crisis and conflict situations, on which States would be expected to report in their State Periodic Reports. In relation to the Communications procedure before the Commission, a central role should be given to the possibility of friendly settlement, particularly as a tool to prevent violent conflict from erupting. The Commission should thus assess Communications before it, particularly where they arose in the context of emerging conflict situations, as the Commission may of its own volition decide to offer its good offices to the Parties, and could thereby prevent the grievances from escalating to full conflict.

Mainstreaming of human rights in conflict prevention, management, resolution and post-conflict reconstruction and development

228. Beyond the structural dimension of conflict prevention in addressing the root cause dealt with in the foregoing, pillar three is particularly concerned with the operational prevention of conflict and the role of human rights in this regard. AU strategies on preventing and resolving crises should integrate human rights and in particular the role of the African Commission. There are emerging opportunities that could be further explored: for example, the adoption by the AU Commission of a Continental Structural Prevention Framework (CSPF) with human rights as one of its five pillars would require fleshing out and implementation; and the current development of a framework on preventive diplomacy should necessarily include a human rights dimension. Importantly, the Commission should establish working arrangements for sharing information and its statements on emerging situations with the Continental Early Warning System of the AU, the conflict preventive diplomacy mechanism of the Panel of the Wise and relevant regional economic communities (REC) and UN structures.
229. In addition, the planning, deployment and management of peace support operations especially in the development of mandates, Concept of Operations and other mission directives must mainstream human rights and where possible the role of the African Commission. Such integration of human rights is also required in all cycles of peace processes in general. A robust mainstreaming of human rights into AU peace processes, as well as processes led by the RECs, will ensure that the protection challenges associated with imminent or actual crisis situations are addressed to the maximum extent possible. The Commission through its dedicated mechanism can elaborate general guidelines and case specific advisory notes that help the various AU actors and peace-making processes on the ways and means of integrating human rights as part of the conflict prevention, management and resolution initiatives.
230. There are also similar opportunities for integrating the work of the African Commission into the post-conflict reconstruction and development (PCRD) work of the AU. This is not only in relation to the implementation of certain components of peace agreements such as transitional justice processes but also constitutional and institutional reform measures including justice sector reforms, which would benefit from the human rights perspective offered by the Commission,

including on matters such as the inclusion of women and the youth in peace and reconstruction processes. In this respect as well, the Commission can provide general guidelines applicable in all processes and case or thematic specific advisory notes for designing case- and implementing PCRD works that adequately uphold the standards of the African Charter.

Remedial measures within the Commission's procedures

231. The African Commission can initiate various remedial measures through the creative use of its protective and promotion mandates. One such measure is the availing of its Communication procedure to people whose rights are affected in conflict situations. From the jurisprudence of the African Commission arising from the Communications procedure, one of the most useful pronouncements relevant to the adjudication of issues of interest for conflict situations relate to the requirement of exhaustion of local remedies under Article 56 of the African Charter. Accordingly, in relation to Communications revealing mass violations, the Commission held that “[i]n accordance with its earlier decisions on cases of serious and massive violations of human rights, and in view of the vast and varied scope of the violations alleged and the large number of individuals involved, the Commission holds that local remedies need not be exhausted and, as such, declares the Communications admissible”.²¹⁰ The Commission has reaffirmed this position of excluding the application of the requirement of exhaustion of local remedies in conflict or crisis situations in a number of cases.²¹¹

232. In addition, the jurisprudence of the Commission in relation to remedies granted in Communications has developed over the years, and currently provides for a wide spectrum of possible remedies in addressing violations, including revision of legislation, payment of compensation to victims, provision of psychological support, and determining the whereabouts of missing persons, among others.²¹² In relation to victims of sexual and gender based violence, the Commission should make provision for access to remedies such as

210 Communication 27/89-46/91-49/91-99/93 Organisation mondiale contre la torture, Association Internationale des juristes démocrates, Commission internationale des juristes, Union interafricaine des droits de l’Homme v. Rwanda, para 18.

211 See Communication 299/05 – Anuak Justice Council v. Ethiopia; para 59.

212 See for example the extensive remedies granted by the Commission in Communication 155/96 – Social and Economic Rights Action Center (SERAC) and *Center for Economic and Social Rights (CESR) v. Nigeria*; Communication 339/2007: *Patrick Okiring and Agupio Samson (represented by Human Rights Network and ISIS-WICCE) v. Republic of Uganda*; Communication 393/10 – Institute for Human Rights and Development in Africa and Others v. Democratic Republic of the Congo.

essential services, including sexual and reproductive rights services. There should also be provisions for monetary compensation in relation to pecuniary and non-pecuniary damages suffered.

233. In relation to recommendations in Communications, conflict situations also provide an opportunity to the Commission to move from an approach of mainly providing for individual compensation to a broader approach of addressing structural concerns and constitutional justice, including addressing gender discrimination and transitional justice processes.
234. Another avenue for remedial action is the use of the fact-finding role of the Commission. In this respect, it is appropriate that the Commission articulates guidelines on the criteria and processes for the deployment of fact-finding missions on its own motion.
235. In relation to conflict situations for which the AU deploys conflict management and resolution tools, support of victims is again a necessary component of promoting durable solutions in addressing human rights abuses against vulnerable groups. In this respect, the African Commission should support the establishment of AU policies on compensation or *ex-gratia* payments including medical services (where required) to support victims. In addition, in contexts of AU peace support operations, mechanisms such as a Civilian Casualties Tracking, Analysis and Response Cell (CCTARC) could be established and resourced to provide support to victims. As the experience in Somalia illustrates, facilitating the establishment of independent hotlines has sometimes served to build confidence amongst local communities on real-time reporting and action against violations. Depending on the nature of the crisis situations, the African Commission should consider suitable mechanisms that will alleviate the suffering of victims.
236. In relation to its state reporting guidelines, the Commission should provide for guidelines in relation to conflict, and in particular require of states to submit on the remedial actions which had been put in place following situations of conflict or crisis, including the remedies provided to the most vulnerable groups; as well as the steps that were taken to hold perpetrators to account. In its conclusions on State Reporting as well as conclusions on missions undertaken, the Commission can make recommendations on the considerations for restorative measures beyond and above accountability for violations in conflict by the forces of conflict parties.

Institutional coordination and synergy, including the operationalisation of Article 19 of the PSC Protocol

237. As has been pointed out earlier, addressing the current limitations and lack of institutionalised working relationship between the Commission and the PSC, envisaged under Article 19 of the PSC Protocol, requires the elaboration of modalities for the full operationalisation of this article to take the current ad hoc relationship to a higher level. The following are some of the proposed modalities.

Annual consultative meeting envisaged in the 2007 Dakar Conclusions of the PSC Retreat on PSC Working Methods

238. A starting point for the actualisation of the working relationship is the implementation of the annual consultative/briefing meeting between the ACHPR and the PSC envisaged in the Dakar Conclusions of the PSC Retreat on Working Methods in 2007. The Commission could also use the opportunity of this annual meeting to submit a report to the PSC on the state of human rights in conflict and crisis situations on the continent. As an interim measure, until the production of such a report is viable, the Commission could make a contribution on human rights to the PSC report on conflict.

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

239. The African Commission is best placed to highlight the human rights dimensions of specific crisis situations and provide recommendations on how those human rights issues can be integrated and addressed in AU peace processes through preventive diplomacy, mediation, peacemaking, peace support operations and 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.

240. In addition, the Commission could advise the PSC on ensuring the streamlining of women's rights in the peace and security processes of the AU, including through greater representation of women in such processes, as mediators and experts.

Informal consultations

241. A close working relationship between the PSC and the African Commission can also be optimally implemented through regular informal consultations in which the African Commission shares information with the PSC on existing or emerging situations of concern, with a view to enabling the PSC to take a policy position on dealing with the situation appropriately with due regard to the human rights issues involved. There should thus be open channels of communication between the two institutions.

Investigation missions and participation in PSC field missions

242. By virtue of its mandate of monitoring the human rights situation on the continent and initiating appropriate responses, the African Commission together with the Children's Committee are the only bodies with the requisite mandate and experience for undertaking investigations into the human rights dimension of emerging or existing conflict situations.

243. Therefore, the Commission could be represented in the field missions of the PSC for advising on the human rights dimensions of its visits and the follow-up actions required. The Commission in the short term can provide briefings to the PSC in advance of missions taking place, to inform all aspects of the human rights dimension of the conflict situation where the PSC undertakes field visits.

Early warning systems

244. The African Commission, by virtue of its mandate and the nature of its activities, continuously and regularly receives and collects information on the human rights situation of State 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 to the field, often serve as important and first-hand indications of emerging or impending crisis, sharing information on such situations with the Continental Early Warning System (CEWS) and the PSC contributes to enhancing the early warning and early response system of the AU. There is accordingly a need for the African Commission to formally draw the attention of the PSC to emerging or impending situations of concern including through submitting its statements and reports to the PSC, as

appropriate. Conversely, the PSC could also provide the Commission with information on emerging situations, so that it may follow up on the human rights implications. In this regard there is simply a need to establish the link with the conflict processes and circulate the information to the relevant offices.

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

245. The African Commission has various mechanisms and has developed a number of thematic guidelines and frameworks on various areas of human rights including human rights as they relate to situations of counter-terrorism, transitional justice and conflict. Accordingly, the African Commission can provide the PSC with briefings on the human rights dimension of the situation or theme on the agenda of the PSC.

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

246. In the light of the fact that human and peoples' rights form part of the mandate of the PSC, the African Commission submits that the PSC could establish human rights and peace and security as a standing thematic item on the agenda of the PSC, or through the holding of 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 to those crisis situations accordingly.

Proposing to the PSC the tabling of a situation on its agenda

247. Finally, one of the avenues that are available for mobilising effective policy action for addressing human rights issues in conflict situations is the referral of such situations to the PSC for it to put it on its agenda. It would however be important that the Commission first elaborates transparent criteria on the basis of which country situations meeting the threshold are to be referred to the PSC for placing them on its agenda.

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248. In addition to these strategies of further collaboration with the PSC, the Commission should also strengthen its coordination and synergy with other bodies and institutions. The main focus of such cooperation should be the protection of human rights through preventive measures by taking actions before conflicts erupt and through intervention measures to ensure that civilians are spared the consequences of conflict situations.
249. In addition, collaboration at the vertical level with bodies such as the UN and RECs is critical. In this respect, the African Commission can make use of its work for informing the conflict prevention, management and resolution interventions of the UN and RECs. Also important is the collaboration with the UN High Commission for Human Rights and the other UN human rights mechanisms, particularly the special mechanisms, to maximise the effectiveness of their preventive, protective and remedial efforts in situations of emerging or ongoing conflicts.

Recommendations

250. This Study lays out the general approach and direction that the Commission should adopt as part of its long-term plan for effectively redressing human rights violations that occur in the context of conflicts and crisis situations. For a comprehensive and coordinated response in conflict and crises situations, the following interim and longer-term measures are recommended:

Recommendations to the African Commission

251. A new mechanism should be established that is devoted to monitoring, reporting and responding to human rights violations that occur in conflict and crisis situations, and for coordinating the strategy and efforts within the Commission and with other relevant organs of the AU. This mechanism would also be responsible for monitoring state of emergency laws and practices in Africa, and review the Commission's position on derogation from Charter rights under states of emergency. It should also be given the mandate to follow up decisions and recommendations as well as Letters of Appeal and resolutions relating to conflict or crisis situations. Such a mechanism could also be supported by a pool of experts upon whom the Commission can call for expert contributions;

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252. Pending the establishment of a new special mechanism supported by dedicated experts can be implemented, the Commission should continue with the focal person, who will be responsible for monitoring human rights in conflict and crisis situations and for coordinating action among the various special mechanisms of the Commission and country rapporteurs for swift, coordinated and effective response by the Commission. The focal person will also be responsible for coordinating effort with other AU organs and institutions and to ensure that dedicated capacity is available within the Secretariat to support the focal point;
 253. The Commission should work towards the full and effective operationalisation of provisions of treaties and instruments that call for a joint and coordinated action for monitoring and implementation including Article 58 of the African Charter; Article 19 of the PSC Protocol; Article 5(1)(a) of the Court Protocol; Article 26(1) of the Maputo Protocol; Article 42(a) and (b) of the African Children's Charter; Article 14 and Article 8(3)(e) and (f) of the Kampala Convention; Article 49(2) and Art. 45(c) of the ACDEG; the 2009 Resolution on Cooperation between the Commission and the Committee and the Joint UN-AU Framework for Enhancing Partnership on Peace and Security;
 254. When AU Policy organs request the Commission to undertake a fact-finding mission, there is a need for ensuring that such organs facilitate that authorisation for undertaking the mission is secured;
 255. When feasible, undertake fact-finding missions together with other AU organs and institutions such as the PSC and the Children's Committee; and
 256. Develop, together with the Children's Committee and the African Court, strategies to effectively lobby AU political organs for the establishment of a strong and independent body for the enforcement of their decisions and for direct reporting by States to the Executive Council on implementation.

Recommendations for the Special Mechanism/focal point to be established

257. Work through the special mechanism and in consultation with the PSC towards the adoption and implementation of the modalities highlighted above on the operationalisation of Article 19 of the PSC Protocol and initiate their implementation through engagement with relevant PSC bodies;
258. The special mechanism should also be tasked as part of its mandate to develop a strategy to further strengthen its cooperation with all the relevant AU bodies, the UN, RECs, NHRIs and others with a function in relation to early warning systems, prevention and resolution of conflict situations, particularly in relation to sharing of information and in ensuring compliance with human rights obligations;
259. It should also be part of the mandate of the special mechanism to strengthen its oversight role in ensuring that human and peoples' rights are observed in all peace and security processes through
 - a) participating in the design and delivery of training of AU peace operations leadership, mediators and troops on human rights,
 - b) briefing AUC Missions, and
 - c) playing an advisory role in peace negotiations led by the AU; AU electoral missions; and in relation to special or hybrid Courts spearheaded by the AU. In relation to State Parties to the Charter, the Commission can do the same through advising on the planning and implementation of training on human rights and playing an advisory role in the establishment of national Truth and Reconciliation Commissions;
260. Through the special mechanism the African Commission should regularly monitor the human rights situation of countries where AU peace-keeping missions have been deployed from its inception and throughout the life cycle of the mission;
261. The mandate of the special mechanism should include developing norms and guidelines on the respect for, protection as well as application of IHRL and IHL in conflict and crisis situations, including as it relates to non-state actors, as well as the effective and timely response by the Commission in such situations; and
262. As part of the mandate of the special mechanism, develop guidelines, advisory notes and a checklist which the Commission or human rights observers could use to identify indicators and determine

whether there is a risk of human rights violations deteriorating into conflict, as part of the early warning system; and which States can use to report on potential conflict situations.

Recommendations to other AU institutions and organs

263. In order to achieve the institutional cooperation and synergy between the Commission and the PSC, it is imperative that both institutions commit to an institutionalised closer collaboration and information sharing, including through articulating a framework for the operationalisation of the provisions of Article 19 of the PSC Protocol as well as adopting annual joint action plans;
264. The AU organs, especially the PSC, should also assist in securing authorisation from States when the Commission on its own initiative decides to undertake a fact-finding mission involving conflict or crisis situations;
265. AU policy organs should establish effective follow-up mechanisms which can track and enforce implementation of decisions and recommendations of the African Commission, the African Court and the Children's Rights Committee;
266. The AU policy organs should continue the practice of taking the initiative in requesting the Commission to undertake fact-finding missions to investigate reports of serious and massive human rights violations in Member States, and should facilitate the timely granting of authorisation for such missions, as well as ensure the timely consideration of the report of such missions and the implementation of its recommendations; and
267. In addition, the policy organs should encourage States to provide standing invitations to the Commission for the purpose of fact-finding missions to help address human rights issues in situations of political instability and violent conflicts.

Recommendations to other stakeholders

268. The UN, with its wide presence or reach as a major actor in peace processes and its comparatively large capacity for mobilising resources, stands to benefit from collaboration with the Commission in the latter's role on human rights in conflict situations in Africa, particularly in planning of conflict prevention and peace operations on the continent, thereby ensuring the adequate integration of human rights considerations. The collaboration would also include technical facilitation in helping the Special Mechanism/focal point effectively implement the role of the African Commission in conflict situations notably through information sharing on conflict situations and the operationalisation by the Special Mechanism/focal point of the five pillars approach set out above;
269. The ICRC should establish institutionalised collaboration with the special mechanism/focal point for sharing lessons learned, working together in the Commission's work in developing technical documents and in working jointly in helping Member States in integrating appropriately human rights and IHL in their peacekeeping curricula.
270. NHRIs should monitor and support implementation of the recommendations made by the Commission at the national level, and should provide regular updates to the Commission both on implementation as well as areas of concern which may lead to conflict, thereby contributing to early detection, enhancing the possibility of prevention of conflict and crisis situations; and
271. Civil society and grassroots activists can support the work of the Commission and particularly the Special Mechanism/focal point by providing it with reliable and verifiable information and data on human rights abuses or violations or risks of such abuses or violations in countries where conflict or crisis situations are present.

ANNEXURE

Resolution 332 on Human Rights in Conflict Situations

Resolution 332 on Human Rights in Conflict Situations – ACHPR/Res.332(EXT.OS/XIX)2016

The African Commission on Human and Peoples' Rights (the Commission), meeting at its 19th Extra-Ordinary Session, held in Banjul, The Islamic Republic of The Gambia, from 16 to 25 February 2016;

Recalling its mandate to “promote human and peoples’ rights and ensure their protection in Africa”, including in particular in a situation of serious or massive violations of human and peoples’ rights as provided under the African Charter on Human and Peoples’ Rights (the African Charter);

Considering that one of the objectives of the African Union (AU), as outlined under Article 3(f) of its Constitutive Act, includes “promoting peace, security and stability on the Continent” and that Article 3 (f) of the Protocol Establishing the Peace and Security Council (PSC Protocol) has as its objective protecting “human rights” and “respect for the sanctity of human life and international humanitarian law”;

Considering further that Article 23 of the African Charter guarantees the rights to peace and security;

Bearing in mind its previous Resolutions pertaining to human rights in conflict situations on the continent, including, amongst others Resolution ACHPR/Res.117 (XLII) 07 on Strengthening the Responsibility to Protect in Africa; Resolutions ACHPR/Res.157 (XLVI) 09 and ACHPR/Res.207 (L) 11 on the General Human Rights Situation in Africa; and Resolution ACHPR/Res.276 (LV) 14 on Terrorist Acts in Africa;

Deeply concerned by the on-going conflict situations affecting various parts of Africa, as well as the consistent reports of violence being faced by civilian populations and the attendant widespread violations of human and peoples' rights and humanitarian law;

Considering that despite the existing regional normative and institutional frameworks for addressing conflicts and threats of conflicts in Africa, there seem to be limitations in coordinated responses to human rights violations arising in conflict situations;

Mindful of the role of the Commission under the African Charter, in particular, Article 58, to respond to cases of "series of serious or massive violations of human and peoples' rights" and to ensure that human rights issues are addressed in conflict prevention, management and resolution;

Recognising the urgent need for institutionalising a human rights-based approach to conflict prevention, management and resolution on the continent;

Further recognising the need to work closely with the AU Peace and Security Council in accordance with Article 19 of the PSC Protocol and other regional and sub-regional processes, in addressing human rights in conflict situations;

The Commission:

Decides to:

- Conduct a human rights in conflict situations in Africa, with a view to developing a comprehensive strategy and framework on the same;
- Collaborate with the AU Peace and Security Council and other relevant stakeholders working on issues of peace and security, towards enhancing the role of the Commission, as well as its coordination with other continental processes, in addressing human rights issues in conflict situations; and
- Task Commissioner Solomon Ayele Dersso to work on the implementation of this resolution and report to the 61st Ordinary Session of the Commission.

Done in Banjul, The Islamic Republic of The Gambia, 25 February 2016

