

HUMAN RIGHTS, PEACE & SECURITY NEXUS

SILENCING THE GUNS IN AFRICA: The Role of the Regional Human Rights System

POLICY BRIEF
February 2023



The effective use of the regional human rights system as an expert resource in relation to African Union (AU) work on peace and security would be welcome. The system could also, through the use of the Maputo Protocol, make a difference in the implementation of the Women, Peace and Security agenda. In order to succeed there is need for the AU to work as one system and support the nexus between human rights and peace and security.

| The African Union at twenty

The African states face more than thirty-five internal armed conflicts and the continent is also the scene of frequent military coups and authoritarian leaders. The panorama is troublesome as the African Union turns twenty – the goal of “Silencing the Guns by 2020” was overrun and still appears remote. Where is Africa heading and who is leading the way towards peace and security?

| The right to peace

The legal framework at the AU level is highly conducive for peace and security considering its comprehensiveness and inclusion of all rights into one document – *the African Charter on Human and Peoples’ Rights*. Its full implementation would arguably constitute a potent action of conflict prevention. Not to mention that it provides for the right to peace.

The Maputo Protocol and the Solemn Declaration on Gender Equality in Africa both contribute tremendously to pushing the rights of women and girls beyond the African Charter. Their full implementation would mean a paramount contribution to the Women, Peace and Security (WPS) agenda. As in the case of the mother document – the African Charter – the Maputo Protocol includes the right to peace for women and girls.

Also the implementation of *the African Charter on the Rights and Welfare of the Child* would mean a fundamental conflict prevention and peace building effort. Although not explicitly granting the right to peace, the Charter includes important provisions related to the right for children not to take part in armed conflict, and the protection of children in armed conflict, tension and strife – including refugees and internally displaced people.

Turning to the Peace and Security Council (PSC), *the Protocol Establishing the PSC*, underscores the nexus between human rights, international humanitarian law and peace and security. In the powers of the PSC is the role to anticipate and prevent disputes and conflicts, as well as policies that may lead to genocide and crimes against humanity; to make recommendations to the AU Assembly on the possible intervention in respect of grave circumstances, and; follow-up on – as a measure of conflict prevention – the progress on democratic practices, good governance, rule of law, and protection of human rights and international humanitarian law.

“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.”

Protocol Establishing the African Union Peace and Security Council, article 19

| The nexus in practice

The regional human rights system is comprised of two quasi-judicial mechanisms being the African Commission on Human and Peoples’ Rights (ACHPR) and the African Committee of Experts on the Rights and Welfare of the Child (ACERWC), as well as one judicial body in the African Court on Human and Peoples’ Rights (the Court).

The toolbox available to the three institutions certainly contains quite an array of tools suitable for contributing to peace and security. Although the nature of work is mainly reactive, follow-up on state reporting, country visits, diplomacy, thematic and country-specific resolutions, and the use of urgent appeals and provisional measures, can all contribute to early warning and conflict prevention. This while the same tools together with the communications procedure of the ACHPR and the ACERWC also can contribute to peace building and non-recurrence.

A seldom used possibility is the article 58 mandate of ACHPR to refer situations of serious or massive violations of human rights to the AU Assembly. Upon receipt of such a notification, the AU Assembly may request an in-depth study of the situation to be conducted by the ACHPR.

When it comes to the Court, it is dependent on the cases presented before it. Its reach is also restricted by the fact that only eight states have signed the special provision giving individuals and NGOs the possibility to present cases before the Court. The Court presented a proposal that would automatically grant this possibility, but this has so far not been materialised. The Court could also gain more terrain if the ACHPR would delegate more cases to the Court and if states would file more cases before the Court. Furthermore, the Court’s mandate to issue advisory opinions could for example be used by the PSC to seek an opinion on whether a given situation amounts to grave circumstances as a prerequisite for the AU to make an AU Constitutive Act article 4(h) intervention in a member country.

Apart from these tools, the institutions can also be used as members of Committees of Inquiry in specific country situations, and the PSC can also request the ACHPR to conduct investigations on the human rights situation in any given country. In general, the regional human rights system could be used as an expert resource in all matters related to peace and security, including AU’s own Peace Support Operations.

Advancing the Women, Peace and Security agenda

When it comes to Women, Peace and Security, the same tools could be used for advancing the agenda. Now, comparing to the situation for children's rights, women's rights do not count with their own treaty body. Even though the ACHPR has a Special Rapporteur on Women's Rights, this can hardly be compared to what a special treaty body could achieve. Awaiting a special treaty body, the coordinated work by the ACERWC, the Special Rapporteur, the Special Envoy on WPS, the Regional Economical Communities (RECs) and the AU Women's Directorate, will be important for advancing the implementation of the WPS-agenda.

Performance of the regional human rights system

The regional bodies present a relatively positive record when it comes to dealing with state reporting – especially considering the weak cooperation of states in this field. Also in terms of normative development and intervening in urgent situations, the system as a whole delivers. However, worrying factors include the back-log of cases both before the Court and the ACHPR. This situation cannot be separated from the fact that both institutions operate at effective staff levels considerably below their approved organisational structures.

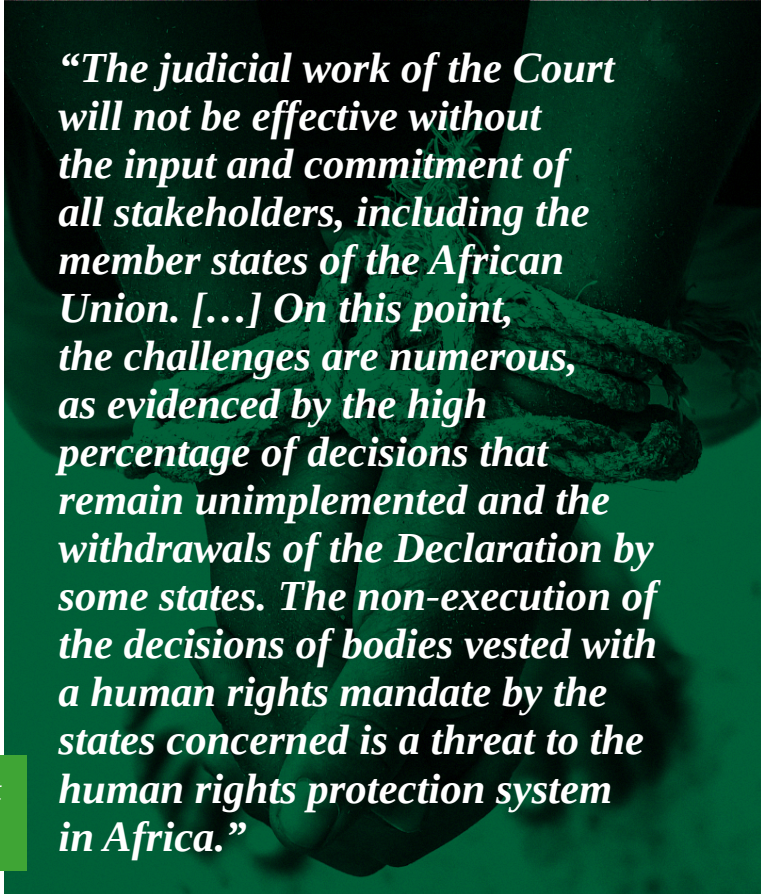
When it comes to peace and security, both the ACHPR and the ACERWC have made efforts to engage in the field. ACHPR, through its resolution 332, decided to dedicate more efforts to human rights in conflict situations, and delivered a report on addressing human rights in conflict situations, analysing their own role in contributing to peace and security. They also approached the PSC to seek closer and institutionalised cooperation. ACERWC appointed a Special Rapporteur on Children in Armed Conflict and contributed by means of a continental study on the impact of conflict and crises on children in Africa. The bodies have also issued country-specific and thematic resolutions, as well as urgent appeals and special provisions related to conflict situations.

Imani Daud Aboud, President of the African Court on Human and Peoples' Rights, February 2023

Boosting impact

Although the impact of the system is hard to evaluate, it is still worth saying some words on factors that work against its impact. The top factor on such a list would most probably be the lack of state compliance and political commitment. It shows in low implementation of decisions, low state reporting compliance and reluctance by states to open up for country-visits. The impression is that the ACERWC has been slightly more successful in these respects though, succeeding in diplomatic efforts. As for political commitment, the AU Commission has the power to push through decisions by the treaty bodies, but it has not done so. Quite to the contrary, the AU political structures unfortunately seem to be more concerned with interfering with the systems' independence – especially when it triggers anger from member states.

Unfortunately, the lack of political commitment and implementation of decisions also affects the supposedly legally binding decisions of the Court. Out of the relatively few number of cases decided on merits by the Court, implementation rate is worrying. The weak political commitment also shows in the reluctance by states to allow for individuals and NGOs to file cases against them before the Court.



“The judicial work of the Court will not be effective without the input and commitment of all stakeholders, including the member states of the African Union. [...] On this point, the challenges are numerous, as evidenced by the high percentage of decisions that remain unimplemented and the withdrawals of the Declaration by some states. The non-execution of the decisions of bodies vested with a human rights mandate by the states concerned is a threat to the human rights protection system in Africa.”

The overall implementation rate of AU decisions is, at its best, low. Also a relatively powerful organ as the PSC meets difficulties. One example is the establishment of the hybrid court in South Sudan under the auspices of the African Union – part of the 2015 peace agreement – which is still pending as the terms-of-reference are lingering with the Government. Voices have been raised that, considering the Government's unwillingness, the AU may and should unilaterally establish the hybrid court. The establishment of the court is a unique opportunity for the AU to demonstrate African leadership and to offer an African-led solution for the most serious crimes.

Breaking the work in silos

Criticism can be made both as to the weak coordination and cooperation between the three institutions making up the regional human rights system, as well as for the coordination and cooperation with other parts of the AU.

However, efforts are made to move away from ad-hoc cooperation, arriving at an institutionalisation of a mechanism for day-to-day interaction with other AU institutions and RECs. Yet another challenge is the generally low level of knowledge of the regional human rights system on part of other AU institutions and decision-making bodies, as well as among the RECs. An example of this is the constitution of the Commission of Inquiry on South Sudan where the Court and the ACHPR were invited to participate but not the ACERWC – allegedly due to lack of knowledge on the existence of the ACERWC.

There is a great potential in increased coordination, joining forces and avoiding duplication as well as to the effective use of the regional human rights bodies in providing expertise on peace and security matters. The regional system for human rights could play a greater role for peace and security, there is a clear ambition from its institutions, and important steps have been taken in this direction. The system is there, willing to contribute, and should be used accordingly.

Further reading



SILENCING THE GUNS IN AFRICA:
On the human rights and peace and security nexus with a special focus on Women, Peace and Security, Swedish Foundation for Human Rights, 2020

PDF-version in English and French available [here](#)

Selected recommendations

There are a few factors that would facilitate a more prominent role of the regional system for human rights in contributing to peace and security. Some are under the power of the regional system itself, some in coordination with other AU institutions, and others fall under the powers of AU decision-making bodies.

- Enhanced and institutionalised coordination between the three institutions that constitute the system. The 2019 report of the ACHPR could be a valuable input in this process – arriving at common ground, common objectives and agenda for the contribution to peace and security.
- Proper dimensions of financial and human resources – including permanent premises – for the regional human rights bodies in order to be able to fully comply with their mandates.
- Enhanced coordination with relevant parts of the AU, including the PSC. This entails better and more timely use of the products provided by the regional human rights system as well as the more timely production, presentation, and follow-up on, for example, human rights investigation reports.
- Inclusion of the regional system for human rights in the elaboration of the African Peace and Security Architecture Roadmap.
- Enhanced coordination with Regional Economic Commissions and Regional Mechanisms.
- Enhanced coordination and division of roles regarding human rights observers deployed under the umbrella of the AU Commission.

For a complete list of recommendations to different stakeholders please refer to the full report.

