Ships Passing In the Night? Opportunities to Integrate the African Peer Review Mechanism Early Warning Findings within the African Union Peace and Security Architecture

Submitted in partial fulfillment of the requirements of the LLM (Human Rights and Democratisation in Africa) of the University of Pretoria

By

Njoroge Mercy Waithira

Student No. 29649359

Prepared under the supervision of

Katarina Crause
Institute for Human Rights, Abo Akademi University, Finland

30 October 2009

DECLARATION

I, **Njoroge Mercy Waithira** declare that the work presented in this dissertation is original. It has never been presented to any other University or Institution. Where other people's works have been used, references have been provided. It is in this regard that I declare this work as originally mine. It is hereby presented in partial fulfillment of the requirements for the award of the LL.M Degree in Human rights and democratization in Africa.

Signed……………………………………..

Date……………………………………….

Supervisor: Catarina Krause

Signature…………………………………

Date……………………………………

DEDICATION

To Dad Njoroge and Mum Wangari, and my brothers Wainaina and Ndirangu. You have redefined sacrifice!

ACKNOWLEDGMENT

I am forever grateful to the management of the Centre for Human Rights, University of Pretoria for the opportunity to be part of this prestigious LLM Program. Many thanks to Prof. Viljoen for his keen academic instruction and guidance. Special thanks to my tutors Tarisai and Waruguru for their wise and most timely counsel. My gratitude goes to Martin and John who through their administrative giftings made life a lot easier in Pretoria and Finland.

I am thankful to the Director and the entire Institute for Human Rights, Abo Akademi University, Finland for all their efforts in according me conducive learning environment while in Finland. My stay there taught me the art of research. I remain particularly indebted to Kati Frostell, for literally holding my hand up until my last day in Abo. I have learnt a lot from you.

I am grateful to my Supervisor, Catarina Krause for the invaluable intellectual guidance on my research paper. Special thanks to Sisay Alemahu, my 'African Human Rights Expert' in Turku, for his critically useful comments on my drafts.

And to the LLM class of 2009, we have come very far and drawn many lessons from each other. Indeed I have truly experienced Africa being in your midst. Thank you for making that dream come true. I cannot forget the internet dissertation support group, I'm sure this was just the beginning of other online discourses.

I remain indebted to my family and close friends, Wanja and Wambui. Your moral and material support was divine. God Bless you.

Finally and most importantly, heartfelt gratitude to Wisdom, whose wings of knowledge and understanding continue to open doors for me. Thus far I have come, and I have seen your faithfulness.

LIST OF ACRONYMS

APRM- African Peer Review Mechanism

APR- African Peer Review

ASF- African Standby Force

AU- African Union

CEWS- Continental Early Warning System

CEWARN- Conflict Early Warning and Response Mechanism

CRAI- Citizenship Rights in Africa Initiative

CRM- Country Review Mission

CSAR- Country Self Assessment Report

CRR- Country Review Report

COMESA- Common Market for Eastern and Southern African States

COPAX- Council for Peace and Security in Central Africa

EAC- East African Community

ECCAS- Economic Community of Central African States

ECOWAS- Economic Community of West African States

ECOWARN- ECOWAS Early Warning Network

ECOMOG- ECOWAS Cease-fire Monitoring Group

ICC- International Criminal Court

IGAD- Intergovernmental Authority on Development

IGADD- Intergovernmental Authority on Drought and Development

LRA- Lord's Resistance Army

MARAC- Early Warning Mechanism of Central Africa

MAP- Millennium Africa Renaissance Programme

MCPMR- Mechanism for Conflict Prevention Management and Resolution

MOU- Memorandum of Understanding

NEPAD- New Partnership for Africa's Development

OSCI- Objectives, Standards, Criteria and Indicators

POA- Programme of Action

PSC- Peace and Security Council

RECs- Regional Economic Communities

SADC- Southern Africa Development Community

UN- United Nations

TABLE OF CONTENTS

THE AFRICAN PEER REVIEW MECHANISM: LINKING GOVERNANCE WITH CONFLICT PREVENTION

1.1 Background to the Study

Violence and conflicts have become endemic and a constant threat to peace and security in Africa. Francis observes that the situation in many African states has been characterized by 'underdevelopment and poverty, humanitarian crisis, fragile/collapsed states and intrastate conflicts.'[1] This is evident in the massive loss of lives and other human rights violations in Rwanda, Burundi, Democratic Republic of Congo, Sierra Leone, Liberia, Somalia and Algeria among other countries.[2] Indeed this demonstrates the close linkage between peace and security and human rights. As illustrated by Tchoumavi, on one hand, peace appears as a result of respect for human right while on the other hand it is a prerequisite for respecting human rights.[3]

To tackle these constant threats of peace, security and stability, the African Peace and Security Architecture has undergone an evolution. This was first seen in the Charter of the Organization of the African Union's (OAU) preamble which recounted the need to maintain and establish conditions for peace and security as pre-requisites for peace and security in Africa.[4] The promulgation of the African Charter on Human and Peoples' Rights also saw the inclusion of the right to national peace and security.[5] Soon after this, the Central Organ within the OAU Mechanism for Conflict Prevention, Management and Resolution (MCPMR) was established.[6]

---

[1] DJ Francis, *Uniting Africa, Building Regional Peace and Security Systems*, (2006) 54-62.

[2] J Osamba, 'Violence and Dynamics of Transition: State, Ethnicity and Governance in Kenya' (2001) XXVI Africa Development 12.

[3] M Tchomavi 'A Critical Assessment of the Possible Role of the African Union in Achieving the right to National and International Peace and Security in Africa' unpublished Masters dissertation University of Pretoria (2005) 28.

[4] Adopted in Addis Ababa 25 May 1967 and came into force on 13th September 1963.

[5] The African Charter on Human and Peoples' Right, entered into force in 1981, art 23(1).

[6] Adopted in Principle by the OAU Assembly of Heads of State and Government in Dakar, Senegal, in June 1992 at its 28th Ordinary Session and established at the Assembly's 29th Ordinary Session in Cairo, Egypt, June 1993.

With the commencement of the African Union (AU) in 2002, a Peace and Security Architecture under the Protocol on the Peace and Security Council[7] whose responsibilities are prevention, management and resolution of conflicts, and post conflict peace-building, was established. This incorporated the Central Organ.[8] To fulfill these mandates, a Peace and Security Council (PSC), a Panel of the Wise, the African Standby Force, the African Peace Facility and the Continental Early Warning System (CEWS) are established.[9] However, it has been noted that the PSC is one of the most important institutions to deal with conflicts in the African continent, but it is ill equipped for its Herculean tasks.[10] Lack of resources amongst other challenges stand as roadblocks for the efficient and maximum working of the PSC.

One major cause of conflicts in Africa is bad governance. The link between governance and conflict was captured by the introductory paragraphs of the Cairo Declaration of 1995 where the OAU recognized and resolved that democracy, good governance, peace, security, stability and justice are most essential to Africa's development.[11] This link is further articulated by Francis who opines that 'African social, economic and political structures have the potential to generate conflict'.[12] It therefore follows that, conflict prevention and good governance are two sides of the same coin.[13]

Conscious of this, the Summit of the Heads of State and Government Implementation Committee (HSGIC) of the New Partnership for Africa's Development (NEPAD) adopted the Memorandum of Understanding on the African Peer Review Mechanism (APRM),[14] in an effort to enhance the quality of governance in member states of the African Union. The APRM is a

---

[7]   Protocol relating to the establishment of the Peace and Security Council of the African Union, entered into force 26 December 2003.

[8]   Protocol to the Constitutive Act of the African Union, article 4.

[9]   PSC Protocol (n7 above) articles 11-13.

[10] Gottschalk and Schidt, 'The African Union and the New Partnership for Africa's Development: Strong Institutions for Weak States', SAIIA, APRM Tool Kit ,145 also see J Cilliars and K Sturman 'Challenges Facing the AU Peace and Security Council' Commentary.

[11] Relaunching Africa's Economic and Social Development: The Cairo Agenda for Action. AHG/Res.236 (XXXI), para.10. Assembly of Heads of State and Government. 31st Ordinary Session, 26-28 June 1995, Addis Ababa, Ethiopia.

[12] Francis (n1 above) 54-62.

[13] J Cilliars &K Sturman, 'Challenges facing the AU Peace and Security Council' (2004) 13 (1) African Security Review 97.

[14] APRM Memorandum of Understanding, Adopted at the Sixth Summit of the Heads of State and Government Implementation Committee (HSGIC) of the New Partnership for Africa's Development (NEPAD), March 2003, Abuja, Nigeria.

governance self-assessment mechanism which African member states voluntarily accede to.[15] It is essentially designed to ensure that policies and practices of participating countries conform to the political, economic and corporate governance values, codes and standards contained in the Declaration on Democracy, Political, Economic and Corporate Governance.[16] The mechanism, through the five stage process, also facilitates the identification of deficiencies and assessment of capacity-building requirements.[17] The end result is a report which is presented before the APRM heads of state and governments to which the heads of states carry out a 'constructive dialogue' as peers and best practices and lessons learnt shared.[18]

Several best practices, positive experiences and important lessons have been identified from the countries that have been reviewed.[19] These include, that the process 'provides space for the multifaceted dialogue and open discussion of national agenda; enables participation by stakeholders and the general public and empowers the civil society to demand accountability from their leaders; provides a mechanism to monitor state compliance with international, regional and local obligations on human rights and fundamental freedoms; and creates opportunity for reviewing past achievements, challenges and failures in governance'.[20]

1.2 Statement of the problem

As of October 2009, 29 countries in Africa have acceded and undertaken their peer reviews.[21] Amongst the countries that have undergone full reviews and submitted reports are Kenya, Ghana, Algeria, South Africa, Rwanda and Uganda. Findings from some of the pioneer country reports had alluded to certain democratic challenges in the country reviewed, which if left unaddressed had the potential of degenerating into conflict:

The Kenya report observed,

---

[15]   African Peer Review Mechanism Base Document (2003) para 5.

[16]   Governance Declaration, Adopted and endorsed by the Assembly of Heads of State and   Government   of the AU, Durban, South Africa, July 2002.

[17]   African Peer Review Mechanism (AHG/235(XXXVIII) Annex 2.

[18]   Base Document (n15 above) paras 18-25.

[19]   See generally R Herbert & S Grudz, *The African Peer Review Mechanism, Lessons from Pioneers*, (2008) Five countries are given as case studies, namely, Ghana, Kenya, Rwanda, Mauritius and   South Africa.

[20]   M Hansungule 'Report on The Role of the APRM in Strengthening Governance in Africa: Opportunities   & Constraints in Implementation', UN Expert Group Meeting 15-16 November 2007, Addis Ababa, Ethiopia.

[21]   <www.uneca.org/**aprm**/**Countries**Status.asp> (accessed 10 October 2009)

Electoral violence is both politically and ethnically based…though there are usually episodes of violence throughout the country during elections, there are some clearly vulnerable and risk prone areas that are more disproportionately affected…given this configuration, some of the most serious electoral violence is predictable, and hence preventable, based on past trends and patterns.[22]

The South Africa report observed,

South Africa also faces the major problem of vulnerable people, such as refugees, displaced and undocumented persons. Xenophobic tendencies towards these groups prevail despite the fact that the country has signed and ratified relevant regional conventions.[23]

Uganda report observed,

Whenever conflicts are not addressed quickly and peacefully, they can escalate into violence, tearing societies apart along various lines including ethnicity, race, religion, region, gender and so on. Failure to prevent conflicts and build foundations for sustainable peace is not only costly for countries in terms of continued instability, but also adversely affects efforts at socio economic development. This is precisely what the major challenge to Uganda has been.[24]

Quite unfortunate, the findings of these reports were not acted upon with the urgency that they deserved by the concerned states, neither was there action on the part of the AU mechanism on peace and security. Consequently, as anticipated by the reports, post-election violence in Kenya in 2008, xenophobic attacks in South Africa in 2008 and riots in Uganda in 2009 resulted. Should the findings and recommendations of these reports had been acted upon, the subsequent conflicts would have been prevented.

It is against the forgoing background that this study is conducted with a view to attempt an answer of the following questions:
a. How have the AU and sub-regional organizations organized early warning mechanisms within them?
b. Does the APRM structure and process have a peace and security mandate?
c. Are there conceptual and practical links between CEWS and APRM reports?
d. How can APRM findings be integrated within the AU Peace and Security Architecture?

---

[22] African Peer Review Mechanism, Country Review Report of the Republic of Kenya, May (2006) 69 <http://www.nepad.org/2005/files/aprm/APRMKenyareport.pdf> (accessed 1 August 2009)

[23] African Peer Review Mechanism, Country Review Report of the Republic of South Africa, September (2007) 32.

[24] African Peer Review Mechanism, Country Review Report of the Republic of Uganda, (2008) para 207.

1.3 Objectives

The potent nature of the APRM as an early warning tool may remain in oblivion unless its peace and security mandate is identified and benefitted from by the AU Peace and Security Architecture. To this end, the objectives of this study are threefold.

a. To examine the AU and sub-regional organizational mechanisms on early warning as well as their strengths and weaknesses.
b. To map out the APRM mandate in peace and security from the concept, instruments, process and reports.
c. To draw both conceptual and practical links between the Continental Early Warning System and the APRM reports.
d. To make recommendations of how APRM early warning findings can be integrated within the AU peace and security architecture for early response.

1.4 Significance of the Study

The African Union has been commended for better articulating the AU's mandate in promotion of peace, security and stability in Africa compared to its predecessor the OAU. Most importantly, its design is better placed in dealing with the short comings of the OAU in conflict prevention.[25] This is evident form the promulgation of the PSC Protocol which establishes the PSC and other institutions within it to support its efforts in fulfilling its mandate of promotion of peace, security and stability in Africa.

Whilst noting that the Protocol is still very new and the institutions anticipated therein are still at the formative stage, it is of more concern that the CEWS, which is the main institution to facilitate the anticipation and prevention of conflicts,[26] is yet to be fully operationalised.[27] Meanwhile, the APRM which was established two years before the PSC Protocol, has yielded reports with early warning findings for impending conflicts in the countries reviewed, which eventually took place in the countries mentioned above. Given this potential of the APRM in early warning, there has not

---

[25] JD Rechner, 'From OAU to AU: A Normative Shift with implications for Peacekeeping and Conflict Management, or just a name Change?',(2006) Vanderbilt Journal of Transitional Law 548.

[26] PSC Protocol (n7 above) Article 12.

[27] See African Union 2008, 'Framework for the Operationalisation of the Continental Early Warning System', Two workshops on early warning held in Addis Ababa on 30 and 31 October 2003 and 25 to 27 April 2006, respectively.

been an examination of how the APRM would inform and enrich the work CEWS. There is therefore a need to fill this gap by examining the prospects of APRM within the AU peace and security architecture with a view to contribute to conflict prevention in the continent.

The study will propose strategies for integrating APRM findings with a bearing to peace and security within the AU peace and security architecture and further make a case for the enforcement of such APRM findings by the PSC.

1.5 Methodology

An analytical approach with reliance on primary sources including international instruments, declarations, resolutions and reports of regional and international organizations were used in this study. Reports of the organs of the AU such as the PSC and APRM reports were considered. On the whole, the research was desk based whereby a review of published as well as unpublished materials such as books, journal Articles, research papers, reports was made. The study also relied on documentation from the internet for up to date information on the institutions and processes under study.

1.6 Limitation of study

The present study limited itself to APRM findings that are related to peace and security issues, and in this case focus on the findings of the political and democratic governance pillar of the APRM. Therefore, discussions on the enforcement of APRM findings are made only in relation to those with a bearing to peace and security.

1.7 Literature Review

In emphasizing the importance or early warning mechanism, African leaders such as Paul Kagame of Rwanda have candidly pointed out the need for the international community to take collective action in a timely and decisive manner by putting in place early warning mechanisms and ensuring that preventive interventions are the rule rather than the exception.[28]

---

[28] World Summit Excerpts, President Paul Kagame, Rwanda <www.responsibilitytoprotect.org/.../**2005**%20**World**%20**Summit**%20Excerpts%20R2P%20Chart...> (accessed 10 September 2009)

Scholars have delved into the analysis of conflict prevention and early warning highlighting on key institutions that should be at the forefront of this. Earlier ones like Walvaren observe that conflict prevention and early warning have gradually become part of the political agendas of international agencies. He however notes that this recognition did not mean that inter-governmental organizations and their member states had designed and pursed strategies of conflict prevention.[29] This is in reference to the United Nations, Cooperation in Europe and the Organization of African Unity. Today, this assertion may not be tenable significantly within the African Union which inheres within the Constitutive Act conflict prevention as a key objective. This notwithstanding, however, the question relating to the effectiveness of the African Union in conflict prevention and early warning seems to linger unanswered.

This gap still glaring, there is a plethora of commentaries on sub-regional institutions and their mandate on peace and security within the African context. Francis argues that the failure of the continental body to manage and resolve conflict in Africa, sub-regional organizations have demonstrated assertive regionalism in expanding into peacekeeping.[30] Arguably, this piece and others examine extensively the efforts of sub-regional bodies on peacekeeping with very little said on their mechanisms for early warning. This is one area that the present study will analyze.

The majority of wars and armed conflicts in Africa have been described as complex political emergencies whose cases are often embedded in political and socio-economic grievances.[31] This recognition of the link between governance and conflict may be traced back to the Cairo Declaration of 1995 where the OAU recognized and resolved that democracy, good governance, peace, security, stability and justice are most essential to Africa's development.[32] Such link is further observed in the NEPAD Declaration on Democracy, Political and Economic and Corporate Governance where African leaders commit themselves to democracy and good political governance including the restoration of stability, peace and security in the African Continent.

The concept and architecture of the APRM has attracted commentaries. Many scholars have raised issue with regard to the enforcement of the APRM report arguing that the creation of

---

[29]   K Van Walraven (ed.), *Early Warning and Conflict Prevention: Limitations and Possibilities*, Kluwer International Law (1998) 19.

[30]   Francis (n1 above) 137.

[31]   Francis (n1 above) 106.

[32]   Cairo Agenda (n11 above).

another mechanism for the protection and promotion of human rights in Africa exacerbates the situation whereby there is already a tradition of non-compliance with already existing mechanisms in the African regional human rights system.[33]

Mathoho's Article[34] explores both the strengths and weaknesses of the APRM, and the prospects of it impacting positively on Africa's governance challenges. He rightly notes that peer review process has never been attempted in Africa before and unlike judicial proceedings, the final outcome of a review is not legally binding. He thus observes that the impact from this process is likely to be limited. However, his work fails to address the question as to how regional institutions such as the AU may be instrumental in the enforcement of the outcomes of the review. An attempt to elucidate this shall be made within this study with regard to peace and security findings of the APRM.

Grudz[35] in analyzing the APRM as a conflict analysis tool, demonstrates how the reports of Ghana, Kenya and Rwanda had articulated conflict issues and concludes that the APRM has the potential in conflict analysis. Meanwhile, Ross Herbert[36] alludes to the fact that the APRM is clearly not designed to handle fast moving crisis. He continues to note that such work is most appropriately dealt with through ad-hoc diplomacy and the Peace and Security Council.

However, none of the commentators have carried the discourse further in identifying how the APRM early warning findings may be integrated within the AU PSC CEWS and eventually inform the action of the PSC in conflict prevention. Therefore this study shall seek to fill in this gap on how the findings of the APRM report may be imbibed within the Continental Early Warning System of the African Union Peace and Security Architecture.

Institute for Security Studies published upon the conclusion of the 6th Summit of the Heads of State and Government Implementation Committee Abuja, 9 march 2006.

[34] M Mathoho, 'An African Peer Review Mechanism: A Panacea for Africa's governance challenges?' (2003) Johannesburg Center for Policy Studies, Policy Brief 329.

[35] S Grudz, 'Peace, Security and the African Peer Review Mechanism: Are the tools up to the task?', African Security Review 16.3 Institute for Security Studies 57.

[36] R Herbert, 'The Survival of NEPAD and the African Peer Review Mechanism: A critical analysis', (2004) 11.1 South African Journal on International affairs.

1.8 Scope/ Overview of chapters

Chapter one introduces and describes the context of the study by laying the background and general structure.

Chapter two begins by defining the concept of early warning. It then discusses the history and background to the AU peace and security architecture with emphasis on the regional and sub-regional mechanisms on early warning. It finally makes an analysis of the interplay between CEWS and sub-regional initiatives on early warning.

Chapter three introduces the APRM and briefly outlines its structure and process. In this regard it maps out the APRM's peace and security mandate from its conceptual instruments, review instruments and country reports. It then discusses the reports of Kenya, South Africa and Uganda and shows how the reports had articulated conflicts that eventually took place in those countries. It concludes that the APRM has potential to identify problems that may degenerate to conflict.

Chapter four builds on the previous chapter by proposing avenues within APRM findings on peace and security can be integrated and utilized within the AU peace and security architecture.

Chapter five summarizes the conclusions of the study and presents the recommendations.

CHAPTER TWO

THE AU PEACE AND SECURITY ARCHITECTURE ON EARLY WARNING

2.1 Introduction

This chapter begins by defining the concept of early warning. It then lays out the background and history to the legal and institutional framework for early warning within the African Union (AU) framework on Peace and Security. It analyses the Continental Early Warning System (CEWS), its institutional framework and the process towards its operationalisation. The chapter also considers sub-regional mechanisms for early warning and conflict prevention under the Regional Economic Communities (RECs). In this regard, it considers how the sub-regional mechanisms are anticipated to enrich the work of CEWS.

2.2 The Concept of Early Warning

Peace and Security are inextricably linked to the protection and promotion of human rights.[37] A conflict ridden environment creates opportune ground for violations of human rights. It cannot be overstated therefore, that conflict prevention is vital for the protection of human rights.

Conflict prevention encompasses both warning and response as key components which are the essence of preventative diplomacy.[38] This need for early warning has long been recognized especially within the United Nations (UN), and as recently seen within regional mechanisms such as the AU.[39] Dorn defines early warning as 'the act of alerting a recognized authority (such as the UN Security Council) to a new (or renewed) threat to peace at a sufficiently early

---

[37]   K Boyle and S Simonsen, 'Human Security, Human Rights and Disarmament', (2004) Disarmament Forum, United Nations Institute for Disarmament Research, <http://www.unidir.org/pdf/Articles/pdf-art2137.pdf> (accessed 24/9/2009).

[38]   B G Ramcharan, *The International Law and Practice of Early warning and Preventive Diplomacy: The Emerging Global Watch*, (1991)Martinus NIJHOFF Publishers 35.

[39]   J S Sutterlin, 'Early Warning and conflict Prevention: The Role of the United Nations' 121 in Walraven (n29 above).

stage)'.[40] Such alerts therefore ought to invoke rapid action by this authority thereby preventing a conflict from becoming violent.

2.3 Evolution of African Peace and Security Architecture

2.3.1 From OAU to AU

At the height of political turmoil and the struggle for independence, the Organization of African Unity was conceived (OAU). The OAU Charter was signed on May 25, 1963 at the close of the Conference of the Heads of State and Government in Addis Ababa, Ethiopia. The goals of the OAU were to promote decolonization and independent self-government in African States; to guarantee respect for territorial boundaries of the states; and to promote social, political, and economic development on the African continent.[41] It also recognized the peaceful settlement of disputes through mediation, conciliation and arbitration.[42]

Surprisingly, it appears that the Charter had not envisioned conflict prevention from the onset as part of its mandate. It is only in 1993 that the OAU Summit agreed to establish a mechanism for Conflict Prevention, Management and Resolution (MCPMR), also known as the Cairo Mechanism, and the creation of a specific division within the OAU secretariat, with the responsibility for implementation and development of capacity for effective management of conflicts.[43] In support of the creation of such a mechanism, the OAU Assembly of Heads of States and Government observed:[44]

> ´…We saw in the establishment of such a mechanism the opportunity to bring to the processes of dealing with conflicts on our continent a new institutional dynamism, enabling speedy action to prevent or manage and ultimately resolve conflicts when and where they occur.'

This was not only a major recognition of early warning as a primary function of the OAU, but also recognition of the duty to act promptly to prevent conflict.

---

[40]   W Dorn, 'Early and Late warning by the UN Secretary General of Threats to Peace: Article 99 Revisited', in A. Shnabel and D. Carment (eds), *Conflict Prevention, From Rhetoric to Reality*   (2004).

[41]   J Levitt (ed) *Africa: Selected Documents on Constitutive, Conflict and Security, Humanitarian and   Judicial Issues* (2003)51; see also Charter of OAU 1963, Article 2.

[42]   OAU Charter Article 3(4).

[43]   Cairo Mechanism, Adopted in Principle by the OAU Assembly of Heads of State and Government   in Dakar, Senegal, in June 1992 at its 28th Ordinary Session and established at the Assembly's 29th Ordinary Session in Cairo, Egypt, June 1993.

[44]   Declaration of the Assembly of Heads of State and Governments on the establishment Within the   OAU of a Mechanism for Conflict Prevention, Management, and Resolution AHG/Decl.3   (XXIV)/Rev.1: June (1993).

The OAU-MCPMR was eventually established in 1995, with a Central Organ to provide direction and coordination in the deployment of efforts to prevent, manage and resolve conflict.[45] Gutto hails the MCPMR as marking a historic normative shift and breakthrough within the OAU in two main ways, first, by providing a clear legal basis for responding to both conflicts within and between African countries, and second, placing equal emphasis on the preventive as on the usual management and resolution stages.[46] Unfortunately, the success of the MCPMR was largely hindered by the OAU principles amongst others non-interference in the internal affairs of states,[47] and the principle of consent and cooperation of the parties to a conflict.[48] As a result, there was a lack of clarity in defining clear entry points for OAU involvement in conflict situations, a failure to create an environment conducive to the enhancement of early warning of potential conflicts and consequently, inability to undertake proactive and effective action in instances of complex emergencies notably the 1994 genocide in Rwanda.[49]

2.3.2 The New African Union

The OAU ceased to exist upon the adoption and entry into force of the Constitutive Act,[50] which established the AU. The AU was designed to address some of the short comings of the OAU, including its inability to effectively deal with conflict in the continent. From the onset, the preamble of the Constitutive Act explicitly recognizes the problems Africa faces in terms of armed conflict and the effect that these conflicts have on human rights.[51] Further, the objectives of the AU as captured in article 3 include 'promotion of peace, security and stability on the continent'[52], and 'promotion and protection of human and peoples' rights'.[53]

---

[45]   S B O Gutto, 'The New Mechanism of the Organization for African Unity for Conflict Prevention, Management and Resolution, and the Controversial Concept of Humanitarian Intervention in International Law', South African Law Journal, 316.

[46]   As above.

[47]   OAU Charter, article 3(2).

[48]   OAU Charter, article 3.

[49]   Rechner (n25 above) 548; also see J Cilliars 'The Continental Early Warning System of the African Union, What Role for civil Society?' in A.Nhema & PT Zeleza (eds) *Resolution of African Conflicts: The Management of Conflict Resolution & Post-Conflict Reconstruction* (2008) 40.

[50]   Constitutive Act of the African Union, Adopted in Lome, Togo, on 11 July 2000 and entered into force on 26 May 2001.

[51]   AU Constitutive Act (n50 above) preamble para 8-9.

[52]   AU Constitutive Act (n50 above) article 3(f).

[53]   AU Constitutive Act (n50 above) article 3(h).

These are cardinal objectives for conflict prevention espoused by the new framework. The Constitutive Act also establishes certain organs that are key to peace and security, namely the Assembly of the Union which is the supreme organ if the union, composed of the Heads of State and Governments or their duly accredited representatives,[54] and, the Commission which is the secretariat of the union headed by the Chairman of the Commission.[55] These two institutions are critical to the frame work on peace and Security as shall be observed below.

The AU Act departs from the OAU charter on a number of issues in with regard to promotion of peace and security. The most drastic difference is perhaps with regard to intervention. The OAU Charter adopts a rigid policy of 'non-interference in the internal affairs of states'[56] while the Constitutive Act provides for 'non-interference of any Member State in the internal affairs of others',[57] but allows for 'the right of the union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity.'[58] In agreement with Rechner, the result of this provision is to explicitly grant authority to the AU to intervene in internal affairs of its members under certain circumstances. Arguably, this provision strengthens the AU's mandate for conflict prevention.

On the whole, the Constitutive Act builds on the established OAU structures for continental peace and security significantly the MCPMR.[59] During the formative process of the AU, the Assembly of Heads of State and Government of the OAU, meeting in Lusaka, Zambia in 2001, adopted Decision 8 of the implementation of the Sirte Declaration including the incorporation of other organs.[60] It was on the basis of this decision and article 5(2) of the Constitutive Act, which authorizes the Assembly to establish organs that may be necessary to fulfil its objectives, that the Peace and Security Council of the AU replaced the Central Organ of the OAU MCPMR established under the 1993 Cairo Declaration.

---

[54]   AU Constitutive Act (n50 above) article 6.

[55]   AU Constitutive Act (n50 above) article 20.

[56]   OAU Charter article 3(2)

[57]   AU Constitutive Act (n50 above) article 4(g)

[58]   AU Constitutive Act (n50 above) article 4(h)

[59]   Cairo Mechanism (n43 above).

[60]   See Decision on the Implementation of the Sirte Summit Decision on the African Union, AHG/Dec.1 (XXXVII) <www.africa-union.org/Official_documents/> (accessed 20 September 2009).

2.3.2.1 African Union Peace and Security Council

A major milestone in the promotion of peace and security in Africa was the establishment of the Peace and Security Council (PSC) by Protocol in 2002[61] pursuant to article 5(2) of the Constitutive Act, which empowers the Assembly to establish other organs as it may decide.

The PSC is composed of fifteen members, elected on the basis of equal rights and serving two and three year terms.[62] It is established chiefly, to promote peace, security and stability in Africa,[63] and in carrying out its mandate, it is to be guided by principles of the Constitutive Act, the Charter of the United Nations, and the Universal Declaration of Human rights.[64] These principles include early response to contain crisis situations so as to prevent them from developing into full-blown conflicts.[65] In the exercise of its powers, the PSC is designed to work in conjunction with the Chairperson of the AU Commission in anticipation and prevention of disputes and conflicts amongst other responsibilities.[66] Specifically, the Chairperson of the Commission is empowered 'to bring to the attention of the PSC any matter, which, in his or her opinion, may threaten peace, security and stability in the continent.'[67]

Article 2(1) of the PSC protocol defines its nature as a standby decision-making organ for the prevention, management and resolution of conflicts. The PSC is also envisaged as a collective security and early-warning arrangement to facilitate timely and efficient response to conflict and crisis situations in Africa.'[68] To support the efforts of the PSC in averting conflicts, the protocol establishes a Panel of the Wise composed of five highly respected African personalities 'to advise the PSC and the Chairperson of the Commission on all issues pertaining the promotion, and maintenance of peace, security and stability in Africa.'[69] It also establishes   the African

---

[61]   PSC Protocol (n7 above).

[62]   PSC Protocol (n7 above) article 5(1) (a) (b).

[63]   PSC Protocol (n7 above) article 3 (a).

[64]   PSC Protocol (n7 above) article 4.

[65]   PSC Protocol (n7 above) article 4(b).

[66]   PSC Protocol (n7 above) article 7.

[67]   PSC Protocol (n7 above) article 10(2) (a).

[68]   PSC Protocol (n7 above) article 2(1).

[69]   PSC Protocol (n7 above) article 11(3).

Standby Force comprised of standby military contingents established by member states[70] and a Peace Fund for the purposes of financing peace operations.[71] A Secretariat for the PSC is also established which is supposed to equip the Commissioner with human and material resources for servicing and providing support to the PSC.[72]

From its structure and composition, undeniably, the PSC is an important organ for the promotion of peace and security in Africa. This importance is further buttressed by the fact that it has been incorporated into the framework of the AU by way of an amendment of the Constitutive Act. Though the Amendment Protocol has not entered into force yet,[73] it includes article 20(*bis*) in the Constitutive Act which provides.[74]

> There is hereby established, a Peace and Security Council of the Union, which shall be the standing decision-making organ for the Prevention, Management and Resolution of conflict.

This provision arguably strengthens Article 7 of the PSC protocol which seems to give it teeth with regard to its decisions.[75] The connotation of this provision is to the effect that by signing and ratifying the protocol, a member state automatically agrees:

> i) that in carrying out its duties under the protocol, PSC acts on its behalf;
> ii) to accept and implement the decisions of the PSC in accordance with the Constitutive Act;
> iii) to extend full cooperation to, and facilitate action by the PSC, for preventing, managing and resolving crisis and conflicts, pursuant to the duties entrusted to it under the protocol.

As argued by Fombad and Kebonag, this provision is similar to articles 24(3) and 25 of the UN Charter whereby members of the UN agree agrees that the Security Council when it acts under the powers conferred on it with respect to the maintenance of international peace and security 'acts on their behalf' and they 'agree to carry out the decisions' taken by it in this regard.[76] In essence then, the decisions of the PSC are binding and failure to comply with them invites sanctions contemplated in article 23 of the Constitutive Act. The above becomes important when

---

[70]   PSC Protocol (n7 above) article 13.

[71]   PSC Protocol (n7 above) article 21.

[72]   PSC Protocol (n7 above) article 10(4).

[73]   Protocol on Amendments to the Constitutive Act of the African Union, adopted on 11 July 2003 in   Maputo, Mozambique, not entered into force yet.

[74]   (As above) article 9.

[75]   CM Fombad & Z. Kebonag, 'AU, NEPAD and the APRM: Democratization Efforts Explored' (2006) 32 Current African Issues 30.

[76]   As above.

considering decisions of the PSC with regard to findings of APRM reports having a bearing on peace and security, as discussed in chapters 3 and 4 below.

2.3.2.1.1 The Continental Early Warning System

Central to this study is the Continental Early Warning System (CEWS),[77] established for purposes of anticipating and preventing conflict.

According to the PSC protocol the CEWS consists of 'an observation and monitoring centre, to be known as the 'Situation Room' located at the Conflict Management Directorate of the Union and responsible for data collection and analysis'.[78] The protocol requires that the Situation room be linked to observation and monitoring units of regional mechanisms 'which shall collect and process data at their level and transmit the same to the situation.'[79] However, in practice, the circulation of data between the AU and the RECs is still non-existent due to lack of political motivation and funding constraints.[80]

In terms of methodology, the collection and analysis of data is developed by the Early Warning System of 'an early warning module based on clearly defined and accepted political, economic, social, military and humanitarian indicators'.[81] These indicators are to be used to analyze developments within the continent and to recommend the best course of action.[82] The Chairperson of the Commission 'shall use the information gathered through the early warning system to timeously advise the PSC on threats to peace and security in Africa and recommend the best course of action'.[83]

The Protocol at article 12(3) also requires the Commission to collaborate with the United Nations and its agencies, other relevant international organizations, research centers, academic

---

[77]   PSC Protocol article 12.

[78]   PSC Protocol (n7 above) article 12(2)(a).

[79]   PSC Protocol (n7 above) article 12(2)(b).

[80]   E Fanta, 'The Capacity of African Organisations in Peace and Security' paper presented at ERD Workshop: Transforming Political Structures: Security, Institutions, and Regional Integration Mechanisms, Florence 16-17 April 2009.

[81]   PSC Protocol (n7 above) article 12(4).

[82]   PSC Protocol (n7 above) article 12.

[83]   PSC Protocol (n7 above) article 12(5).

institutions and non-governmental organizations, to facilitate the effective functioning of CEWS. Members States are also enjoined to commit themselves to facilitate early action by the PSC and/or the Chairperson of the Commission based on early warning information.[84]

2.3.2.1.2 Efforts towards operationalisation of CEWS

As observed above, effective early warning needs to consist of more than just the timely provision and sharing of relevant information. Cilliars observes that it should also involve the collection and analysis of data in a uniform and systematic manner, and such analysis and policy options communicated to the relevant end users with a view to solicit action.[85]

The road to the operationalisation of the CEWS has been a long and winding one. In July 2003, prior to the entry into force of the PSC protocol, the Assembly of Heads of States and Government adopted a decision inviting the Commission to, *inter alia*, take the necessary steps for the establishment of the CEWS.[86] This paved way for the PSC in its decision in June 2006 requesting the AU Commission to hasten the operationalisation of the Continental Peace and Security Architecture including the CEWS. Since then a number of workshops have been convened in this regard, and discussions held on the key elements identified for the operationalisation process, namely the data collection, analysis and indicators module, early action and engagement with decision makers, and coordination and collaboration with Regional Mechanisms for Conflict Prevention, Management and Resolution.[87] The latest audit of the African Union in assessing the PSC also emphasised the need for operationalisation of the CEWS.[88] However, as the situation stands, the AU does not have a credible system that can perform early warning.[89]

---

[84]   PSC Protocol (n 7 above) article 12(6).

[85]   Cilliars (n49 above) 43.

[86]   Assembly/AU/Dec.16 (ii) on the Operationalisation of the PSC Protocol http://www.africa-union.org/root/AU/AUC/Departments/PSC/PSC/CD/4_Report%20of%20the%20Status.pdf (accessed 27 September 2009).

[87]   See African Union 2008, Framework for the Operationalisation of the Continental Early Warning   System, Two workshops on early warning held in Addis Ababa on 30 and 31 October 2003 and 25 to 27 April 2006, respectively.

[88]   Audit   of   the   African   Union,   January   2008   <http://au/Audit_ReportofAU_Dec0720080207_en.pdf> (accessed 10 October 2009).

[89]   Cilliars (n49 above) 43.

2.4 Sub-Regional Mechanisms for Conflict Prevention Management and Resolution

One of the fundamental normative principles of the AU is the intention to develop closer collaboration with the many and diverse sub-regional economic communities and security defence systems in pursuance of continental development, peace and security objectives.[90] In this regard, it is noteworthy that a Memorandum of Understanding (MOU) in the area of peace and security between the AU and the RECs was signed in January 2008, with the aim of reinforcing bilateral cooperation existing between the AU and RECs.[91] This MOU has a particular focus on the mechanism for peace and security within the continent. Albeit not binding, this is a positive step towards the harmonization of peace and security operations within the continent.

Some RECs have established early warning mechanisms and are currently in the process of developing them, namely, ECOWAS, IGAD, SADC and ECCAS, while others are still in the development stages, namely, EAC, COMESA and Community of Sahelo States.[92]

2.4.1 The ECOWAS Peace and Security Mechanism

ECOWAS has adopted the Protocol Relating to the Mechanism for Conflict Prevention and Management, Resolution, Peacekeeping and Security,[93] which specifies the objectives and criteria of conflict management in West Africa. These include 'the promotion of free movement of persons; the linkage of economic and social development and security; the promotion of democratic forms of government; and the protection of human rights'.[94]   The necessity to strengthen the cooperation between member states in the field of preventative diplomacy, early warning, prevention of cross border crimes, peacekeeping, and equitable management of natural resources is buttressed by the Protocol.[95] It is also noteworthy that the ECOWAS system

---

[90]   AU Constitutive Act (n50 above) article 3(l).

[91]   Report of the Chairperson of the commission, Enhancing Africa's resolve and effectiveness in ending conflict and Sustaining Peace, Special Session of the Assembly of the Union on the consideration and Resolution of conflicts in Africa, Tripoli, Lybia (30-31 August 2009) 23.

[92]   Concept paper, Meeting the Challenge of Conflict prevention in Africa-Towards the Operationalisation of the Continental Early Warning System, Meeting of Governmental Experts on   Early Warning and Conflict Prevention, 17-19 December 2006, Kempton Park South Africa.

[93]   ECOWAS Protocol Signed by ECOWAS Heads of State and Governments, Lome, 10 December 1999.

[94]   ECOWAS Protocol (as above) article 2.

[95]   ECOWAS Protocol (n93 above) article 3.

has institutionalized the linkage between good governance and conflict prevention through the adoption of a supplementary Protocol on Democracy and Good Governance.[96]

The ECOWAS mechanism relies on three main institutions namely; first, the Authority of ECOWAS Heads of States and Government which has the powers to act on all matters concerning conflict prevention, management and resolution, peace keeping, security, humanitarian support, peace building, control of cross border crime, proliferation of small arms, as well as other matters.[97]

The second institution is the Commission replacing the Executive Secretariat in January 2007 following a decision by the ECOWAS Heads of State and Government restructuring the Organisation.[98] The Commission takes on the secretariat's powers under the Protocol to initiate actions for conflict prevention, management, resolution, peace keeping and security in the sub-region which include fact-finding, mediation, facilitation, negotiation and reconciliation of parties in conflict'.[99] To support these institutions, is the Council of Elders, who can use their good offices in mediation.[100] This institution which was first inaugurated in 2001 and later in 2003 with the inauguration of a new council of elders, places ECOWAS over and above the AU and other RECs when it comes to peacemaking.[101] There is also the Defence and Security Commission which examines all technical and administrative issues and assess logistical requirements for peacekeeping operations,[102] and the ECOWAS Cease-fire Monitoring Group (ECOMOG), a structure composed of 'several stand-by multi-purpose modules in their countries of origin, and ready for immediate deployment.'[103]

---

[96]   ECOWAS Protocol on Democracy and Good Governance, adopted in December 2001.

[97]   ECOWAS Protocol (n93 above) article 4.

[98]   29th Ordinary Summit of Heads of State and Government, Niamey, Niger 12 January 2006.

[99]   ECOWAS Protocol (n93 above) article 15.

[100]   ECOWAS Protocol (n93 above) article 20.

[101]   Fanta (n80 above).

[102]   ECOWAS Protocol (n93 above) article 19.

[103]   ECOWAS Protocol (n93 above) article 21 and 30.

ECOWAS has established its early warning system ECOWAS Early Warning Network (ECOWARN) whose implementation began in 2003.[104] It is an observation and monitoring tool for conflict prevention and decision making. As set out in article 58 of the revised 1993 ECOWAS Treaty, its establishment and functioning are defined by the Protocol, relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security. The Observation and Monitoring Centre based in Abuja, is the hub of ECOWARN with four observation monitoring zones, which collect date on potential disputes and transmit to centre in Abuja.[105] ECOWARN has been credited for its unique ability to integrate contributions from West African Civil Society providing a platform for receiving information from open sources as opposed to some mechanisms that rely on state intelligence like the SADC mechanism as we shall see below.

In terms of cooperation with the AU, article 52 of the Protocol affirms that ECOWAS shall fully cooperate with the OAU MCRMR which as has now been incorporated within the AU and includes the PSC. In this regard, ECOWARN so far has been issuing quarterly early warning briefings at the AU PSC on the situation in West Africa.

Amidst the progress in the development of the ECOWARN as postulated above, there remain many challenges to Peace and Security in West Africa. Particularly in early warning, lack of adequate equipment to enhance and facilitate the process of data collection, processing and dissemination immensely hamper the process.

2.4.2 The Conflict Early Warning and Response Mechanism in the Horn of Africa

The Intergovernmental Authority on Development (IGAD) in Eastern Africa[106] was created in 1996 with the promulgation of the Agreement Establishing the Intergovernmental Authority on Development (IGAD). This replaced the Intergovernmental Authority on Drought and Development (IGADD) which had been founded in 1986.

---

[104]   Interview with Augustin Sagna, Head of ECOWARN Zone Office IV (May 2009) <http://www.oecd.org/documents/59/0,3343,en_38233741_38242551_42930299_1_1_1_1,00.html> (accessed 26 September 2009).

[105]   The four observation zones are in Banjul (Gambia), Monrovia (Liberia), Ouagadougou (Burkina Faso) and Cotonou (Benin).

[106]   IGAD has six member states namely Kenya, Uganda, Djibouti, Eritrea, Ethiopia, Sudan and Somalia.

Cilliars rightly notes that the Intergovernmental Authority on Development (IGAD) represents the most sophisticated system available amongst the Regional Economic Communities in Peace and security.[107] Indeed, article 7 of the IGAD Agreement sets out its aims and objectives which include a commitment 'to promote peace and stability in the sub-region for the prevention, management and resolution of inter and intra-state conflicts through dialogue.' Further, article 18A obliges states to 'act collectively to preserve peace, security and stability which are essential prerequisites for economic development and social progress.' Pursuant to this, IGAD established an early warning unit in 2000 under the Protocol on the Establishment of a Conflict Early Warning and Response Mechanism (CEWARN)[108] which has a central hub located in Addis Ababa. This unit is responsible for the exchange of information, encoding of information and support of the national units, known as Conflict Early Warning and Response Units.

Part II of the annex to the protocol states that ' CEWARN shall rely, for its operations, on information that is collected from the public domain, particularly in the areas of livestock rustling, conflicts over grazing and water points, smuggling and illegal trade, nomadic movements, refugees, landmines and banditry.' From this list and various reports and writings on CEWARN,[109] it is clear that its current focus is cross border pastoral conflict. This perhaps would explain CEWARN's inability to make substantive early warning reports on the post-electoral violence situation in Kenya in 2007 and the recent Ugandan riots in August 2009.[110]

2.4.3 The Early Warning Observation and Monitoring System for Central Africa

The Economic Community of Central African States (ECCAS)[111] promulgated the Protocol to the Establishment of a Mutual Security Pact in Central Africa[112] in 2000 thereby establishing a mechanism for conflict prevention, management and resolution, peace and security in the sub-

---

[107]   J Cilliars, 'Towards a Continental early Warning System for Africa', ISS paper 102, April (2005) 12.

[108]   Signed in Khartoum 9th January 2002.

[109]   C Mwaura and S Schmeidl (eds) *Early Warning and Conflict Management in the Horn of Africa*, 2002.

[110]   <http://cnnwire.blogs.cnn.com/2009/09/14/at-least-21-people-died-in-ugandan-riots-police-say/> (accessed 26 September 2009).

[111]   Treaty Eastablishing ECCAS signed on 18 October 1983 and became operational in 1985. ECCAS is comprised of the Republic of Congo, Gabon, Angola, Sao Tome and Principe, DRC, Rwanda, Burundi, Equatorial Guinea, Cameroon, the Central African Republic and Chad.

[112]   Protocol Established by ECCAS Heads of State and Government, February 2000, came to force January 2004.

region, known as Peace and Security Council for Central Africa (COPAX[113]). This was part of the community's objective of promoting, maintaining and consolidating peace and security in Central Africa.[114]

Under the protocol an Early Warning Observation and Monitoring System for Central Africa (MARAC) is conceptualized as an Observation, Monitoring and Conflict Prevention Mechanism, tasked with collection and analysis of data with a primary purpose of assisting ECCAS in conflict prevention, management and resolution activities.[115] MARAC is structured to consist of a central structure based at ECCAS headquarters in Libreville and decentralized structures made up of 'national *bureaux*' which each state shall establish.[116] In terms of the workings of the mechanism, it should submit detailed monthly reports to the serving chairman. These reports cover matters pertaining to political, economic, social, military, health and environmental situations of Member States.[117] The Protocol also mandates the coordinator of MARAC to work in close collaboration with national networks as well as the UNO, AU and other agencies in accomplishing his missions.[118] To this end, a civil society network to provide specialised support to ECCAS has been in the process of establishment, which like ECOWARN and CERWARN will partner with COPAX in information collection.[119] However, it is sad to note that this mechanism has largely been ineffective with conflicts continuing unabated among ECCAS member states.[120]

---

[113] *Conseil de Paix et de Securite de l'Afrique Centrale, e*stablished pursuant to Decision 001/Y/Fev of ECCAS Heads of State and Government, 25 February 1999.

[114] Institute for Security Studies, Profile for ECCAS <http://bibliotecavirtual.clacso.org.ar/ar/libros/iss/pdfs/eccas/ECCASProfile.pdf > (accessed 19 October 2009).

[115] ECCAS Protocol (n112 above) article 21.

[116] ECCAS Protocol (n112 above) article 2.

[117] ECCAS Protocol (n112 above) article 12.

[118] ECCAS Protocol (n112 above) article 4.

[119] Institute for Security Studies, 'Is There Hope for ECCAS' October 2007 <http://www.iss.co.za/static/templates/tmpl_html.php?node_id=2700&slink_id=5080&slink_type=12& link_id=4057 > (accessed 25/9/09).

[120] As above.

2.4.4 Southern African Development Community

The objectives of the Treaty of the Southern African Development Community[121] (SADC) as stipulated under article 5 include an objective to promote and defend peace and security. In achieving this objective, the Heads of State and Government of SADC established the Protocol establishing the SADC Organ on Politics, Defense and Security Cooperation came into force in August 2001[122] with a broad objective of promoting peace and security in the region.[123]

Article 11 at length provides for the Organ's mandate and responsibilities with regard to conflict prevention, management and resolution. Unlike the AU and ECOWAS, it does not have a Peace and Security Council or a Committee that acts on behalf of the Member States. Instead all States are involved within the Peace and Security Framework.

On an early warning mechanism, the protocol establishes an 'early warning system in order to facilitate timeous action to prevent the outbreak and escalation of conflict.'[124] However, the Protocol does not elaborate the structure and operations of this early warning system. Additionally because the SADC protocol came into force before the AU Peace and Security Protocol, in terms of liaisons and relationships with the AU, the SADC protocol refers to the Central Organ of the Organization of African Unity Mechanism for Conflict Prevention, Management and Resolution. This read together with article 15 which places a reliance of the Protocol to the Charters of the United Nations and the Organization of African States seems to create liaisons with subsequent organizations like the Peace and Security Council. However, the establishment of a SADC early warning system seems to be a priority now. Once established, its hub for the early warning will be located in Gaborone and its structure would be predominantly reliant on the national intelligence of its member states rather than allowing direct exchange of information and analysis with the African Union.[125] It is envisaged that the SADC

---

[121]   Adopted in 1992 and entered into force in 1993, altered by the 2001 Agreement Amending the Treaty of SADC < www.sadc.int> (accessed 30 September 2009).

[122]   SADC Protocol on Politics, Defense and Security Cooperation, adopted on 14th August 2001, Blantyre, Malawi.

[123]   SADC Protocol (as above) article 2.

[124]   SADC Protocol (n122 above) article 11(3)(b).

[125]   Concept paper, Operationalisation of the Continental Early Warning System, (n92 above).

system would only share its strategic reports through the office of the president that chairs the SADC organ to the African Union. [126]

2.5 Concluding Remarks

The adoption of the AU PSC underscores the need for African sub-regional organizations to play an active role in the AU's peace and security agenda. This is especially important in view of the PSC Protocol's requirement for observation and monitoring units of the regional mechanisms to be linked to the AU situation room.

Powell has opined that while African regional organisations were designed for economic development, there has been recognition by regional leaders that insecurity and instability endemic in their regions are a major impediment to integration and development.[127] This has seen the establishment of sub-regional peace and security initiatives albeit with varying competencies at different levels of establishment. The discussion above has leaned on early warning initiatives and a number of issues may be postulated from it.

First, that most RECs for various reasons including financial and other capacity constraints, have not fully operationalised their early warning mechanisms and therefore a gap still stands with regard to strengthening the anticipated linkage between CEWS and RECs.

Second, it is apparent that ECOWAS and IGAD are at the forefront in terms of early warning. One key lesson that the CEWS would benefit especially from ECOWARN, CERWARN and ECCAS is the enthusiasm to collaborate with civil society information collection and analysis. This perhaps gives the APRM reports credit as vital sources of information for CEWS in view of the inclusion of diverse stakeholders during the review process. This aspect shall be explored further in the next two chapters, defining the APRM and analysing conceptual and practical linkages between CEWS and APRM.

---

[126]   Cilliars (n107 above) 18.

[127]   Kristina Powell, 'The African Union's Emerging Peace and Security Regime: Opportunities and challenges fro delivering the Responsibility to Protect (2005) 15 <www.nsi-ins.ca/english/.../NSI_AU_RRP_Working_Paper_May_05.pdf> (last accessed 25 September 2009).

CHAPTER THREE

AFRICA PEER REVIEW MECHANISM MANDATE IN PEACE AND SECURITY

3.1 Introduction

This chapter seeks to call attention to the relevance of the APRM to peace and security in Africa particularly as a tool for early warning. It begins first by giving a brief definition of the APRM's history, framework and process. It then explores the peace and security mandate of the APRM as drawn from the NEPAD documents and the instruments establishing it. This is followed by a discussion of the APRM reports for selected countries namely, Kenya, South Africa and Uganda, drawing attention to explicit warnings of conflicts captured within the reports and finally linking the findings of the report in relation to conflicts that ensued in the countries reviewed later. The link between the report findings and conflict that followed in the countries forms the basis for the selection of these four countries out of the six that have so far undergone full review and had they reports submitted at the APR Heads of State and Government Forum, Uganda's report being the latest.

3.2 The New Partnership for Africa's Development

A discourse on the genesis of the APRM solicit consideration first of the New Partnership for Africa's development (NEPAD). NEPAD sprung from a new philosophy of African renaissance, a theory of African re-birth proposed by the former President Mbeki of South Africa in his Millennium Partnership for the Africa Recovery Programme Plan (MAP)[128] and OMEGA plan for Africa (OMEGA Plan)[129] presented by the President Wade of Senegal.

As captured by the NEPAD Declaration,[130] NEPAD is 'a pledge by African leaders, based on a common vision and a firm and shared conviction, that they have a pressing duty to eradicate poverty and to place their countries, both individually and collectively, on a path of sustainable

---

[128] President Obasanjo (Nigeria) and President Bouteflika (Algeria).

[129] <http://www.sarpn.org.za/NEPAD/Omega.pdf> (accessed 6 October 2009).

[130] The NEPAD Framework document was adopted as the New African Initiative (NAI) by the OAU Assembly in Lusaka, Zambia, in July 2001. NAI was renamed the New Partnership for Africa's Development at the first meeting of the Implementation committee in Abuja, Nigeria, in October 2001. <www.nepad.org> (accessed 6 October 2009).

growth and development and, at the same time, to participate actively in the world economy and body politic'.[131]

3.2.1 The Concept of APRM

Parallel to the development of NEPAD, the African Peer Review Mechanism was being mooted with an objective 'to encourage mutual learning, monitor progress towards goals, apply peer review pressure on governments to adhere to agreed standards and benchmarks…disseminate good practices, identify capacity gaps and recommend approaches for addressing these gaps'.[132] Soon after this, the NEPAD implementation Committee at its first meeting decided that 'African leaders should set up parameters for Good Governance to guide their activities at both the political and economic levels'.[133] Consequently, a sub committee in charge of drafting the APRM codes and standards was appointed and on 11 June 2002, the NEPAD Implementation Committee adopted the Declaration on Democracy, Political, Economic and Corporate Governance (Governance Declaration)[134] and the APRM Base Document.[135] A Memorandum of Understanding on the African Peer Review Mechanism (MOU) was subsequently adopted by the Implementation Committee on 9 March 2003 in Abuja, as a framework for a formal accession to the APRM.[136] These three documents are the basic instruments that guide the APRM process.[137] By 28 September 2009, 29 out of 53 AU member states had signed the MOU, Togo being the recent in June 2008.

The operations of the APRM are directed and managed by a panel of five to seven eminent persons who are nominated by participating countries, shortlisted by a Committee of Ministers and appointed by Heads of State and Government of the participating countries.[138] The Panel is

---

[131]   The New Partnership for Africa's Development (NEPAD) Declaration (2001), para 1.

[132]   UNECA 'Africa/OECD Ministerial Consultation Big Table II, Amsterdam, 14-16 October 2001', Summary Report, <www.uneca.org/thebigtable/bigtable2.htm> (accessed 21 September 2009).

[133]   Communiqué issued at the end of the meeting of the Implementation Committee of Heads of State and Government on the New Partnership for Africa's Development, Abuja, Nigeria, 23 October 2001, Para 6.

[134]   Adopted by the NEPAD Implementation Committee in rome, Italy, in June 2002. Endorsed by the Assembly of Heads of State and Government of the AU, Durban, South Africa in July 2002.

[135]   Documents available < www.aprm-international.org> (accessed 21 September 2009).

[136]   APRM MOU (n14 above).

[137]   M Killander (2009) 'The Role of the African Peer Review Mechanism in Inducing Compliance with   Human Rights',draft LLD Thesis, August 2009 (on file with the author) 56.

[138]   APRM Base Document (n15 above) paras 6-10.

supported by a secretariat whose functions include 'maintaining extensive database information on political and economic developments in all participating countries, preparation of background documents for the Peer Review teams, proposing performance indicators and tracking performance of individual countries'.[139]

In its breadth and depth, the APRM is unique. It seeks assessment of a range of state activities under four broad themes namely, democracy and political governance; economic governance and management; corporate governance and socio-economic development.[140]
The Democracy and Political Governance pillar is central to this piece, as it touches on issues of peace and security, as shall be illustrated below.

3.3 Peace and Security mandate within NEPAD and APRM Documents

3.3.1 NEPAD Declaration

Peace and security emerges as a priority to the NEPAD process right from its inception. The Millennium Africa Renaissance Programme (MAP) plan had set out priority areas to include 'the creation of peace, security and stability, and democratic governance without which would be impossible to engage in meaningful economic activity'.[141] Consequently, the NEPAD Declaration seems to have forecast the APRM's mandate with regard to peace and security. Within its text, it highlights conflict prevention as one of the objectives of the agendas by African leaders for the continent. Paragraph 49 of the framework document propounds

> African leaders will take joint responsibility for..strengthening mechanisms for conflict prevention, management and resolution at the sub-regional and continental levels, and to ensure that these mechanisms are used to restore and maintain peace.[142]

Furthermore, in paragraph 71-95, the Declaration sets out the conditions for sustainable development under three headings, namely, the Peace and Security initiative, the Democracy and Political Governance initiative, and the Economic and Corporate Governance initiative. In

---

[139]   APRM Base Document (n15 above) para 12.

[140]   Governance Declaration (n16 above).

[141]   Briefing of the World Economic Forum Meeting-Millennium Africa Renaissance Programme implementation issues. <www.thepresidency.gov.za/show.asp?type=sp&include=president/2001/tm0128.html> (accessed 6 October 2009).

[142]   NEPAD Declaration (n131 above) para 49.

fact as has been suggested by Killander, 'paragraphs 72-78 which capture the peace and security initiative has led to the establishment by the AU of the Peace and Security Council'[143] which was one of the pledges by the AU at the Lusaka Summit to take drastic measures in reviving the organs responsible for conflict prevention and resolution.[144] Specific to early warning, the Declaration emphasizes the need to build capacity of African institutions for early warning, as well as enhancing their capacity to prevent, manage and resolve conflicts.[145]

3.3.2 Declaration on Democracy, Political and Economic and Corporate Governance (Governance Declaration)

The Governance Declaration explicitly mentions treaties and declarations that the OAU adopted for reasons amongst others 'ensuring stability, peace and security'.[146] Amongst the instruments mentioned having a bearing on peace and security include:

- The African Charter on Human and Peoples' Rights (1981)
- The Cairo Declaration Establishing the Mechanism for Conflict Prevention, Management and Resolution (1993)
- The Constitutive Act of the African Union (2000)
- The Conference on Security, Stability, Development, Cooperation (CSSDCA) Solemn Declaration (2000)

It also sets out four objectives which the participating heads of State and Government agree to pursue in achieving the NEPAD objectives. These are Democracy and Good political Governance, Economic and Corporate governance, Socio-Economic Development and African Peer Review Mechanism.[147] Paragraphs 7-15 elucidate Democracy and Good Political Governance with commitments constituting the restoration of stability, peace and security in the African Continent. For the fulfilment of this commitment, the participating Heads of State and Government point out as an action plan the need to 'enforce strict adherence to decisions of the

---

143   Killander (n137 above) 56.

144   NEPAD Declaration (n131 above) para 78.

145   NEPAD Declaration (n131 above) para 72.

146   Governance Declaration (n16 above) para 3.

147   Governance Declaration (n16 above) para 6.

AU aimed at promoting democracy, good governance, peace and security'.[148] This, as shall be discussed below, forms the basis for early action by the AU on the strength of the findings of the APRM reports.

3.3.3. African Peer Review Mechanism (APRM): Base Document 2003

As discussed above, the APRM Base Document describes in detail the APRM's mandate, structure and process. Two key aspects emerge from this document with regard to its peace and security mandate. First, with regard to types of peer reviews, the base document at paragraph 14 outlines that 'early signs of impending political or economic crisis in a member country would be sufficient case for instituting a review, which can be called for by participating Heads of State and Government in a spirit of helpfulness to the government concerned.' It is unclear from the Base Document how such a review would be conducted, and as earlier observed, such a review has not been called upon yet. Seemingly, it would appear that such a review would be requested at any point, or even in the middle of other ongoing review ongoing. On further exploration of the wherewithal of such a review, findings in the Country Self Assessment Report (CSAR) or the Country Review Report (CRR) may indicate early signs of impending political or economic crisis, and this would form a basis upon which the heads of state and governments request a review in this manner. It is plausible that a review of this kind would serve the purpose of gathering more information upon which the relevant organs of the AU would act upon. In this regard, such may be postulated as a form of early warning that would be instrumental in informing decision and policy to avert impending crisis.

The second emerging aspect on peace and security implicit from the Base Document is in reference to paragraph 25 which highlights a number of regional and sub-regional institutions where the report is formerly and publicly tabled six months after it has been considered by the Heads of State and Governments. The Peace and Security Council is one of the institutions that the report is envisaged to be tabled. This would inform the working of the PSC, feeding into the mechanisms within the PSC such as the Panel of the Wise, the ASF and the CEWS. However, as of 20 October 2009, only five reports have been tabled at the Pan African Parliament.[149] This

---

[148]   Governance Declaration (n16 above) para 13.

[149]   The Ghana, Kenya and Rwanda reports were presented to PAP in November 2006 and the reports on Algeria and South Africa in October 2008. see Pan-African Parliament, Draft programme of the tenth ordinary session October 27 to November 07, 2008, <www.pan-african-parliament.org> (accessed 20 October 2009).

delay poses a challenge to conflict prevention if findings on early warning are not promptly tabled at the PSC for purposes of early action.

3.3.4 Objectives, Standards, Criteria and Indicators and Country Self-Assessment Questionnaire

The NEPAD Implementation Committee adopted the Objectives, Standards, Criteria and Indicators (OSCI) in March 2003. It was the first document to set out the main areas of inquiry of a peer review. The OSCI was expanded into a document entitled 'Country Self-Assessment for the African Peer Review Mechanism' commonly known as the Questionnaire in 2004. Following this, participating states are allowed to adapt into the prevailing country's circumstances. The OSCI and the questionnaire offer guidance on what should be considered in conducting a governance inquiry. Both documents contain standards, criteria and indicators to guide a country in assessment. Apart from a few differences in wording, the two documents are largely similar and since the questionnaire followed the OSCI, it contains more standards, criteria and indicators and for that reason has been seen to supersede the OSCI.[150] The Questionnaire is divided into four major sections corresponding to the four areas in the OSCI. These are:

- Democracy and Good Political Governance
- Economic Governance and Management
- Corporate Governance
- Socio-economic Development

In each focus area, the overall objective of the section is defined, followed by the components in terms of which country action with regard to the overall goal is assessed. Section 1 of the Questionnaire covers Democracy and Good Political Governance and is thus most relevant in assessing how the APRM contributes to conflict prevention and management. It sets out a myriad of international instruments as standards and codes against which a country ought to gauge its performance with. Some of the instruments that have a direct bearing on peace and security are as mentioned above and also include the AU Peace and Security Protocol which primarily is indicated as the lead benchmark for the first objective.[151] Consequently, the first objective under this section aims in

---

[150]   Herbert and Grudz (n19 above) 325.

[151]   APRM Secretariat, 'Country Self –Assessment for the African Peer Review Mechanism,' (APRM Questionnaire) Midrand, South Africa, undated (2004) 25.

Preventing and reducing intra- and inter-state conflicts with particular attention to the extent to which the country under review strives to sustain peace and security within its borders and to contribute to peace and stability in its neighbourhood. In this connection, the existence of effective early warning systems, whether formal or informal, in a country or at the regional level is considered as an indicator;[152]

The manner in which a participating country answers the following section, which are the questions following the objectives, emerges as the most relevant part for conflict analysis. The questionnaire also suggests indicators for each question posed. Such questions include:[153]

(1) What are the recent or on-going conflicts in your country and the sources of these?

(2) What mechanisms exist for preventing, reducing, and managing conflicts in your country or region and how effective are these mechanisms?

(3) To what extent have regional and sub-regional organisations been involved in intra- and inter-state conflict resolution affecting your country?

Other objectives under this heading would also serve for purposes of mirroring the state of affairs in a country; hence indicate areas of potential conflicts. For example, Objective 2 which deals with constitutional democracy poses the question 'Does the political system as practiced in your country allow for free and fair competition for power and the promotion of democratic governance?' Such a question properly and with detailed explanations and supporting material would expose potential conflict issues as shall be demonstrated below whilst analysing the selected country reports. It should be noted that information is collected from a broad spectrum of stakeholders both state and non-state actors[154] and therefore giving credible information.

On the whole, the Questionnaire provides somewhat a framework for conflict analysis as has been discussed by Grudz,[155] but not without some weaknesses. He opines that a key weakness in the questionnaire is that it 'asks countries to describe laws, institutions or practices, without explicitly requiring them to evaluate or assess performance and delivery.' He justifies this by maintaining and rightly so, that most countries possess good laws and policies on paper, and they can easily note these in responses, however thorough assessment is requisite to check

---

[152]   APRM Questionnaire (as above) 18.

[153]   APRM Questionnaire (n151 above) 27-29.

[154]   APRM Secretariat, 'Guidelines for Countries to prepare for and Participate in the African Peer Review Mechanism', November 2003.

[155]   Grudz (n35 above) 57.

whether they really work. Herbert and Corrigan[156] have also raised other weaknesses with the Questionnaire ability in conflict analysis. They note that the term conflict is narrowly used to denote 'open violence'. In this regard, they suggest that the first question in this regard should be to guide countries to anticipate societal tensions, rather than just react once crisis erupt'. In their alternative questionnaire they propose the addition of other key conflict inducing factors such as 'electoral disputes, unfair or repressive political systems, land and previous unresolved conflict.'[157] They further argue that the questionnaire makes it difficult to discuss issues related to conflict prevention and management comprehensively by the way it divides subjects.[158] They give the example of refugees' issues that are mentioned in the first indicator, but analysis is made under objective 9 dealing with vulnerable groups.

That said, and despite these limitations, reports of countries that have undergone assessment as shall be discussed below have noted the potential of conflict should the issues raised therein remain unaddressed. To that extent, it could be argued that the questionnaire is potent in conflict analysis and early warning, and therefore the recommendations would only serve to improve this strength in conflict prevention.

3.4 Country Reports Conflict Early Warning Analysis

3.4.1 Kenya

Kenya was the third country to undergo review. It acceded to the APRM in March 2003 in Abuja, Nigeria, and its report was completed and presented to the APRM Heads of State and Government forum in June 2006.
The Kenyan Country Review Report begins by observing Kenya's history of remaining peaceful within its region.[159] However, the report adds that internal conflict is rife in Kenya.[160]

> The report identifies several strands of conflict, mostly interconnected and feeding on each
> other. However, politically induced conflict, which is basically an outfall of competition and
> struggle or power often, provides the basis for the politicization of ethnic differences, abuse

---

[156]   R. Herbert and T. Corrigan, Alternative self- assessment questionnaire, unpublished SAIIA working draft
         (2006) 2 as cited in S. Grudz (n34 above).

[157]   Herbert and Corrigan (as above) 2.

[158]   Herbert and Corrigan (n156 above) 3.

[159]   APRM Kenya (n22 above) 63.

[160]   APRM Kenya (n22 above) 62.

of political power and authority, existence of militias in political parties, and limited opportunities for effective political participation. According to the (country self-assessment report) CSAR, resource based conflicts occur in most cases over the politicisation of land ownership and land rights, arbitrary allocation of community land, scarcity of land for pasture and crop farming, struggles for access to and use of water resources and depletion of limited water. The CSAR identified additional cases of conflict arising from land use for public purposes by government, and from forced removals from 'environmentally protected areas' by government.

On the whole, the report emphasises that the overarching conflict in Kenya is political citing politicisation of ethnicity as a tool that politicians have welded to the detriment of unification, nation building and peace building in Kenya.[161] It goes at length to explore the political situation in Kenya, specifically observing:[162]

> The ethnic based clashes evidenced in various parts of Kenya are an indication that mechanisms to address root causes of dissension are needed in the immediate future to avoid escalation into greater conflict.

On further exposition, the report contends that[163]

> Electoral violence is both politically and ethnically based…though there are usually episodes of violence throughout the country during elections, there are some clearly vulnerable and risk prone areas that are more disproportionately affected…given this configuration, some of the most serious electoral violence is predictable, and hence preventable, based on past trends and patterns.

Consequently, the Kenya report as demonstrated above seems to have warned about the post-election violence that occurred in January 2008, one and a half years after the report was presented to the APRM Heads of State and Government. It is notable that the same causes of conflict captured in the APRM report were identified by a Commission of Inquiry established to investigate the facts surrounding violence that followed the 2007 presidential elections.[164]

---

[161]   APRM Kenya (n22 above) 65.

[162]   APRM Kenya (n22 above) 66.

[163]   APRM Kenya (n22 above) 69.

[164]   Report by the Commission of Inquiry into Post Election Violence, often referred to as the Waki Report, after the Chairman Judge Phillip Waki <http://www.kenyalaw.org/Downloads/Reports/Commission_of_Inquiry_into_Post_Election_Violence.pdf >(accessed 29 September 2009).

3.4.2 South Africa

South Africa was the eighth country to undergo self assessment in September 2005 with its report being presented before the APR Forum on 1 July 2007 in Accra, Ghana.[165]

The report begins by acknowledging South Africa's past and the tremendous progress made by the government in nurturing and maintaining peace and stability in the country. Most importantly, the report notes the adoption of a constitutional democracy as having mitigated in the occurrence of future conflicts in South Africa,[166] and the efforts towards improving the quality of life of the disadvantaged population through various programmes such as social grants, housing and broad based black economic empowerment.[167]

That said, the report nevertheless makes note of concerns raised by stakeholders that remain unaddressed such as influx of illegal immigrants, the struggle for resources and poor service delivery.[168] In this regard, it reports that[169]

> ..some stakeholders perceived that the presence of immigrants was an additional problem in their struggle for a better life. The report observed that these perceptions had prompted social tension and the eruption of violence and crimes which if not properly managed, may covert into major sources of internal strife and, possibly, potential sources of inter state conflict.

Additionally, the report specifically observes that[170]

> An atmosphere of xenophobia, particularly against black people coming from other African countries, seems to be emerging

In this light, the Panel in its recommendations urges the government of South Africa to find better-informed measures for combating the growing problem of xenophobia, such as programmes of civic education.[171] This notwithstanding, there was a wave of attacks against foreign nationals in South Arica in May 2008, which according to reports compiled soon after,

---

[165]   APRM SA (n 23 above).

[166]   APRM SA (n 23 above) para 86.

[167]   APRM SA (n23 above) para 100.

[168]   APRM SA (n 23 above) para 101.

[169]   APRM SA (n 23 above) para 103.

[170]   APRM SA (n23 above).

[171]   APRM SA (n23 above) para 117.

could have been avoided as the report notes that the government failed to respond strongly to this violence. [172] One of the reports by Citizenship Rights in Africa Initiative (CRAI) acknowledges the same causes of the attacks as the ones articulated by the APRM report.[173]

3.4.3 Uganda

Uganda acceded to the APRM in 2003 and was successfully peer reviewed on 29th June 2008 by the APR Forum in Egypt. The CSAR is very descriptive of the long history of conflicts in Uganda which resulted in 'socio-economic destruction, loss of lives, and retardation of sustainable human development and as a result 'this has become visible in the country's social fabric and political psyche'.[174]

In terms of sources of intra-state conflict in Uganda, the CSAR alludes to five major causes namely 'political differences and poor governance; land and imbalanced resource allocation; rivalry over water and pasture; ethnic differences; and cultural differences'.[175] It captures the situation in Northern Uganda and highlights efforts made towards the management of the over 20year old conflict, including the Juba Peace negotiations between the government of Uganda and the Lord's Resistance Army (LRA), government development initiatives aimed at redressing the vicious cycle of poverty and conflict in Northern Uganda[176] and the 2005 ICC warrants of arrests for the LRA leaders. [177]

The above considered, however, the Country Review Mission (CRM) in making its findings, notes that[178]

> Whenever conflicts are not addressed quickly and peacefully, they can escalate into violence, tearing societies apart along various lines including ethnicity, race, religion, region, gender and so on. Failure to prevent conflicts and build foundations for sustainable

---

[172]   Citizenship Rights in Africa Initiative (CRAI) 'Tolerating intolerance: Xenophobic violence in South   Africa,' <http://www.citizenshiprightsinafrica.org/Publications/2009/CRAISAReport.July2009.pdf > (accessed 30 September 2009).

[173]   CRAI (as above) 18.

[174]   APRM Uganda (n24 above) para 174 <http://aprm.krazyboyz.co.za/index.php?option=com_aprm_documents&Itemid=32&page=documents-category&cid=25&nid=21&id=21> (accessed 1 July 2009).

[175]   APRM Uganda (n24 above) para 198.

[176]   APRM Uganda (n24 above)para 228.

[177]   APRM Uganda (n24 above) para 199-203.

[178]   APRM Uganda (n24 above)para 207.

peace is not only costly for countries in terms of continued instability, but also adversely affects efforts at socio economic development. This is precisely what the major challenge to Uganda has been.

Critically, the CRM also draws attention to the tension relations between the government and the Buganda Kingdom and suggests that it is a matter of land tenure and ownership of land. The report queries the land tribunals established under the 1995 constitution and maintains that they have not been effective in handling these tensions. It also notes that the land reform efforts by the government through amendments of the Lands Legislation have been marked with controversy.[179] In this regard, the APR Panel makes recommendations to the Ugandan government to intensify the reforms to ensure amicable resolution of land disputes and conflicts.[180] Closely linked to this are the findings of the CRM on the management of diversity within the Ugandan society which observe[181]

> By the nature if their formation and being, African states have had serious problems with the management of diversity…a major consequence of forced integration accentuated by state-authored system of discrimination and inequality has been the long history of agitation over the right to self-determination by dominated, oppressed and marginalised groups, of which minorities constitute a special category.

The report seems to aver that Uganda faces an enormous challenge in managing diversity since independence, with politics ridden by continued tribal and regional divisions, precisely the north-south divide which could be potential for conflict. Indeed, this was witnessed in September 2009 by the violence that broke out in Kampala,[182] 15 months after the presentation of the Uganda report to the APRM Summit.

Though the onus for implementation of findings and recommendations of the APRM reports lies with reviewed country, failure in efficient implementation may threaten peace and security, bringing such situations within the scope of the AU PSC mandate. It seems to be the AU's practice to only act in conflict situations of a higher magnitude. This is perhaps the narrower interpretation of article 4(h) of the Constitutive Act that allows for intervention in circumstances of war, genocide and crimes against humanity. Such an interpretation makes the PSC reactive

---

[179]   APRM Uganda (n24 above)para 210.

[180]   APRM Uganda (n24 above)para 235.

[181]   APRM Uganda (n24 above) Executive Summary ix.

[182]   See reports at <http://allafrica.com/stories/printable/200910020444.html> (accessed 10 October 2009)

rather than preventive. Considering the recent prevalent if conflicts in Africa for instance election related violence as observed in the Kenyan situation, it is arguable that it is within the PSC's preventative mandate to act in such situations.

3.5 Concluding Remarks

This Chapter has demonstrated the APRM's ability in early warning for conflicts, from the discussion on the instruments establishing it, the tools of assessment and the findings of the reports.

The chapter has also attempted to draw links between the causes of conflict as posited by the reports and conflict situations that emerged in the countries in review after the presentation of the report. It will be recalled that the country reports after presentation before APR Forum are supposed to be tabled at various regional institutions within the AU System within six months, which only so far five reports have been tabled at the pan African parliament. Should such information been tabled at the PSC, then it would have called upon the respective states to take action. The PSC may also have initiated mediation efforts through the Panel of the wise.

As observed above, most of the unrests occurred between one and a half to two years after the presentation of the reports to the APR Forum. It can therefore be suggested that the PSC is one of these institutions that ought to have, analysed and acted upon the reports. It is arguable that these reports form a concrete source of information base, upon which the Chairperson of the AU Commission may present to the PSC as matters that may threaten peace and security in accordance with article 10(2) (a) of the PSC Protocol.

Having laid this background on the potent capacity of the reports in early warning, the next chapter shall explore how the APRM reports can adequately and efficiently be integrated within the CEWS as a measure towards conflict prevention.

CHAPTER FOUR

INTERGRATING APRM FINDINGS WITHIN THE AFRICA UNION PEACE AND SECURITY ARCHITECTURE

4.1 Introduction

As has been established in previous chapters, the African Peer Review Mechanism (APRM) has so far demonstrated its effectiveness in early detection and warning for conflicts, in the short time it has been operational. However, in spite of its contribution in early warning, these recommendations have gone unheeded. As observed in the preceding chapter, neither the countries reviewed nor regional or sub-regional mechanisms took action. This was the case regardless of the fact that the APRM Base Document requires the tabling of APRM reports before regional and sub-regional institutions six months after the submission to the APR Forum. As observed earlier, such has only been done with regard to PAP.[183] It is only after violence broke out did the countries in question and the AU commence conflict management and resolution initiatives.[184] Undeniably as alleged by Grudz, the APRM 'process has tremendous potential, but it is not a panacea. It has shown that it can identify problems, but cannot enforce solutions'.[185] How then can the findings of the APRM be married with the existing initiatives of the PSC in conflict prevention?

It is against this backdrop that this chapter will build on the previous chapter, in seeking to propose ways in which the findings of the APRM as an early warning tool may be utilized within the AU framework on Peace and Security in order to avert or mitigate impending conflicts in Africa. In essence, the chapter will seek to answer the question how can findings of the APRM having a bearing on peace and security be integrated and utilized within the AU architecture on peace and security.

A host of commentaries have been made with regard to the non-enforcement nature of the APRM findings. Mathoho argues that because the process is voluntary, it suggests that as

---

[183]   n 149 above.

[184]   AU Mediation initiative in Kenya led by Kofi Annan, 2008 see also 'Regionalism and conflict resolution: Lessons from Kenya's crisis, Journal of Contemporary African Studies, (2009) vol. 27 issue 3, 439-444.

[185]   S. Grudz 'The African Peer Review Mechanism: Assessing Origins, Institutional Relations and Achievements' Occasional Paper No. 29 SAIIA (2009) 3.

'sovereign entities', African states will not be 'duty bound' to follow any prescribed ruling by any other state and that the acceptance of APRM recommendations will be up to the states reviewed.[186] Even though such comments may have a basis, they fail to address the effectiveness or non-effectiveness of follow up reviews mentioned in the base document. Quite in order, in terms of periodicity of reviews, the APRM Base Document requires that the cycle of review be repeated every two to four years with another self-assessment and country review.[187] The civil society also has an opportunity to monitor progress toward implementing the POA. Additionally, Governments are required to provide six monthly reports to the Forum on the progress in implementing the POA.[188]

Effective as this may appear, on the follow up of recommendations, the periodicity of subsequent reviews ranging two to four years becomes too long a time for issues that may require urgent action such as those touching on peace and security. This is in view of conflict situations as has been discussed in the preceding chapter. This, coupled with the inefficiency to table the APRM reports before the PSC six months after review at the APRM Forum, leaves early warning findings of the reports unaddressed and therefore a threat to peace and security in the continent.[189] A solution to this problem may be the effective and timeous amalgamation of the work of the PSC with that of the APRM. The following sections attempt to discuss the wherewithal of such an amalgamation.

4.2 Integration of APRM early warning findings into the PSC Framework

As earlier indicated the APRM base document recognizes that the APRM reports, six months after presentation at the APR Forum should be submitted to regional and sub regional institutions.[190] This in itself places the reports for scrutiny by these anticipated regional and sub regional institutions including the PSC although the practicality of this is questionable as has earlier been observed.

---

[186]   Mathoho (n34 above).

[187]   Base Document (n15 above) para 13.

[188]   Herbert & Grudz (n19 above) 17

[189]   n 149 above.

[190]   Base Document (n15 above) para 24.

To further concretize this, article 7 of the PSC Protocol imports that the PSC acts as 'an agent' of all member states and secondly, that all member states are bound by its actions and therefore agree to accept and implement them.[191] This provision makes it clear that the decisions of the PSC must be taken as decisions of the AU, and failure to comply with them will invite the sanctions contemplated in article 23 of the Constitutive Act. This provision would then be applicable for the implementation of decisions that the PSC may take based on APRM findings.

However, a question arises as to whether the PSC would have jurisdiction over countries that have acceded to the APR process but have not ratified the PSC, Kenya being an example of such countries.[192] In this regard Oluborode argues that the PSC seems to have departed from the international law principle of *pancta sunt servanda.* [193] He illustrates this with article 22 of the PSC protocol which provides for ratification by simple majority of the member states before entry into force, a characteristic that is different from other AU protocols.[194] Whereas article 13 of the Protocol on Amendments to the Constitutive Act is clear that for states to be bound by the Amendment protocol they must ratify the Amendment protocol, the wording in the PSC protocol is otherwise. In this regard, it refers to the 'member states of the African Union' as opposed to 'member states of the PSC protocol' only, which is the case in the Amendment protocol. Article 3(a) of the PSC protocol appears to support this reasoning in stating that the objectives for which the PSC is established is to promote peace and security in Africa and not in state parties to the protocol only. Indeed this exception may be justifiable by the fact that the PSC protocol considers the issue of promotion of peace and security as very critical in Africa, and which all states may have an interest in. Indeed the PSC has in the past intervened in conflicts where countries have not ratified the PSC protocol for example Cote D'ivoire, Democratic Republic of Congo and Guinea Bissau.[195]

The above presenting a solution to the issue of enforcement and implementation of APRM findings having a bearing on peace and security, the issue of belatedness of action remains

---

[191]   Fombad & Kebonang (n75 above) 30.

[192]   Kenya has signed the Protocol to the PSC but has not ratified it yet.

[193]   JA Oluborade, 'The African Union Peace and Security Architecture: Can the Panel of the Wise   make   a difference?' LLM Dissertation (2008)29.

[194]   These include the Protocol on Amendments to the Constitutive Act and the Protocol to the Treaty Establishing the African Economic Community Relating to the Pan-African Parliament.

[195]   F Viljoen, *International Human Rights Law in Africa* (2007)216.

unaddressed since early warning requires early response. The following section postulates avenues in which an amalgamation between the PSC and the APRM findings may be possible.

4.2.1 APRM Reports as Key source of Information to CEWS

The issue in early warning and conflict prevention is not the signal as such. As a matter of fact, many scholars have already pointed out that there are usually numerous early warnings of impending violence.[196] It therefore follows that, rather than generating additional information on particular conflicts, efforts should be made to use the already existing information.[197] This becomes of utmost importance especially in the African context where there are various mechanisms with the capacity to generate early warning information. As has been observed earlier, a number of sub regional institutions have in place conflict monitoring units, but just like the Continental Early Warning System (CEWS) there abound challenges for the effective working of those mechanisms. The APRM therefore forms an undeniable resource from which the CEWS may draw information that will assist the Chairperson of the Commission in advising the PSC on potential conflicts and threats to peace and security in Africa.[198] In this regard, such information maybe instrumental for threat assessment[199] by CEWS in accordance with article 12(5) of the PSC Protocol which stipulates that timely information collected through the CEWS will be used to advise the PSC on potential conflicts and threats and security in Africa.

As discussed above, the CEWS is established under the PSC with the mandate to anticipate and prevent conflicts continent-wide. Within it is the situation room which is an observation and monitoring centre for purposes of collecting and analyzing data.[200] It is arguable that APRM findings throughout the review process maybe utilised by CEWS to form part of its early warning data for analysis. More so, CEWS stands to benefit from information sourced from APRM because the kind of indicators that guide the information collection process in the APRM as provided for by the Questionnaire are largely similar to those CEWS is anticipated to develop within its early warning under article 12(4) of the PSC Protocol. The CEWS early warning

---

[196]   See generally Walraven (n29 above) and Ramcharan (n38 above).

[197]   Walraven (n29 above) 163.

[198]   PSC Protocol (n7 above) Article 12(5).

[199]   AJ Boucher, 'Threat Assessments and reviews: A note on current practice' Henry L. Stimson   Centre July 2009
         <www.stimson.org/.../Stimson_Threat_Assessment_and_Review_Note_aboucher7July09.pdf>
         (accessed 3 October 2009).

[200]   PSC Protocol (n7 above) Article 12(2).

module is based on clearly defined and acceptable political, economic, social, military and humanitarian indicators, which are used to analyze developments within the continent and recommend the best course of action'. Similarly, the Questionnaire outlines indicators that guide the review under the four governance pillars.[201]

Finally, it can be said that the APRM process generates credible information useful to the CEWS. As enunciated by the APRM Base document, a core guiding principle of the review is that it must be technically competent, credible and free of political manipulation.[202] In this regard information from the APRM is collected through the participation of a wide array of stakeholders which the MOU mentions to include trade unions, women, youth, civil society, private sector, rural communities and professional associations.[203] This participatory element has a high likelihood of gathering credible and up to date information thus making the APRM useful to the CEWS. Furthermore, information is collected over a considerable period in practice being between 20 to 27 months.[204] It can be argued that such a period is ample to give up to date information that the CEWS can integrate in its threat assessment mechanism as earlier discussed.

4.2.2 Other possibilities within PSC Architecture

The review process as discussed earlier on is a five stage process with the Base document mandating the APR Panel to oversee and ensure the integrity of the process.[205] In 2004, the APR Forum mandated the APR Panel to work out modalities for the establishment of relations between the Panel and other institutions in the continent in order to facilitate its work.[206] The functions of the partner institutions as envisaged were to act as advisors to the panel, share information and experiences and advice participating countries.[207] The list of partner institutions is divided between strategic partners and regional and international resource institutions. The

---

[201]   APRM Questionnaire (n151 above) 17-86

[202]   Base Document (n15 above) para 4.

[203]   APRM MOU (n14 above) para 22. Also see Country Guidelines (n154 above) which emphasises   the need for broad participatory process.

[204]   Kenya's process so far was the shortest, 20 months, whereas Rwanda and Algeria took 27 months See Herbert & Grudz (n19 above) 9.

[205]   Base Document (n15 above) para 9.

[206]   Rules of procedure para 23 as cited in Killander (n137 above).

[207]   Provisional list of partner institutions of the APRM, NEPAD/APRM/FORUM/02-   2004/listPls/Doc.7.C.

strategic partners are the organs/units of the African Union which include the African Commission on Human and People's rights, the African Committee on the Rights and Welfare of the Child, the Peace and Security Council and the Pan-African Parliament. These partners have since been approved by the APR Forum.[208] The recognition of these institutions, significantly the PSC, to work with the APR Panel throughout the review process presents an opportunity to integrate APRM early warning findings into institutions that can accordingly enforce them. Significantly, the decision of the Assembly of the African Union on the African Peer Review Mechanism, in June 2008,[209] was categorical in including APRM structures, namely the APR Forum and APR Panel and the Secretariat as part of the processes and structures of the African Union. It is arguable that this decision places the APRM review process within the scrutiny of other AU institutions such as the PSC and further serves to clarify the relationship of the APRM structures with those already within the AU.

I. Chairperson of the Commission

Flowing from above, it is most plausible that the Chairperson of the Commission would be leading the PSC as a strategic partner to the APR Panel of Eminent Persons and in the implementation of the 2008 AU decision. This is grounded on the fact that he plays a very critical role for the functioning of the PSC.

Article 10 of the PSC Protocol sets out the role of the Chairperson of the Commission to take all initiatives deemed necessary to manage and resolve conflicts, working under the authority of the PSC and in consultations with all parties involved in a conflict. Inherent in this role, is an important activity encapsulated under article 10(2) (a). As provided for under this provision, the Chairperson has a mandatory obligation to bring to the attention of the PSC any matter which he is the opinion may threaten peace, security and stability in the continent. This may be an avenue which he may explore in bringing to the attention of the PSC findings of the APRM which in his opinion threaten peace and security in a country undergoing review.

Closely linked to this is article 7(1) (q) that empowers the PSC to submit through its chairperson regular reports to the Assembly on its activities and the state of peace and security in Africa. The Assembly has stressed the need for more proactive efforts to prevent conflicts. In one of its decisions, it has specifically requested the Chairperson of the Commission to submit to it comprehensive reports on the efforts undertaken so far to prevent conflict and how best they can

---

[208]   Killander (n137 above) 88.

[209]   Assembly/AU/Dec.198 (XI) Eleventh Ordinary Session, 30 June-1July, Sharm El-Sheikh, Egypt.

be enhanced.[210] It is arguable that such reports can indeed become platforms for highlighting the findings on peace and security as captured within APRM reports. Indeed, the Report of the Chairperson of the Commission at the Special Session of the AU Assembly in Tripoli, Libya in August 2009[211] attempted to draw the Assembly's attention to several instruments designed to facilitate the structural prevention of conflict that the AU has adopted, including the APRM. Other instruments included the African Charter on Human and Peoples Rights (1981) and its Protocols relating to the establishment of an African Court on Human and Peoples' Rights (1998) and the Rights of Women (1995); the African Charter on the Rights and the Welfare of the Child (1990); the AU Convention on the Prevention and Combating of Corruption (2003); and the African Charter on Democracy, Elections and Governance (2007). The citation of the APRM together with these other instruments may be viewed as recognition of its importance in articulating standards that facilitate structural prevention of conflict.

II. Panel of the Wise

The Panel of the Wise is established pursuant to article 11 of the PSC Protocol to support the PSC and the Chairperson of the AU Commission in the area of conflict prevention. Though recent, this institution is already operational with its first meeting being held in February 2008.[212] Following on the argument above, the Chairperson of the Commission under article 10(2) (b) may also bring to the attention of the Panel of the wise matters which in his opinion deserve their attention. Similarly as has been argued by Oluborode, before the dissemination of the APRM report the Panel of the Wise can contribute to the proposals into the APRM process.[213] In the same manner, after dissemination, the Panel of the wise may use information from the reports to inform its program of action on conflict prevention with regard to the country reviewed. In this regard, the Panel of the Wise would be acting as a strategic partner to advise the APR panel and eventually advise the PSC on the situation of the country in review thus prompt its action.

---

[210]   Assembly/AU/Dec.222 (XII) Twelfth Ordinary Session, 1-3 February 2009, Addis Ababa, Ethiopia.

[211]   See AU Commission Chairperson Report (n91 above).

[212]   AU Document EX.CL/438(XIII) The Assembly of the African Union Eleventh Ordinary Session 30   June-   1 July 2008.

[213]   Oluborade (n200 above)

4.3 Concluding Remarks

This chapter has attempted to probe avenues in which APRM findings on peace and security may be integrated and utilised within the AU Peace and Security Framework. In this light, it has made a case for the relevance of the APRM reports within the CEWS highlighting on the credibility of information gathered and ability in threat assessment. It has also attempted to address the question of enforcement of APRM findings by making a distinction in the treatment of peace and security findings with other findings. The final chapter will make a summary of the findings and make recommendations.

CHAPTER FIVE

CONCLUSIONS AND RECOMMENDATIONS

This study set out to investigate whether the Africa Peer Review Mechanism (APRM) has potential in early warning for conflicts in Africa and how such findings can be integrated within the AU Peace and Security Architecture for early action. This was prompted by the findings of the Kenya, South Africa and Rwanda Country Review Reports which had warned of impending conflicts. Due to inaction on the part of the state, sub-regional and regional institutions, what the reports had warned eventually ensued. Although the individual governments have the responsibility in implementing their programmes of action, this study argued that when it comes to peace and security findings, the AU pursuant to the Constitutive Act and the PSC Protocol, has the responsibility to ensure the peace and security of the continent. To this end, it has the mandate to act on the findings of APRM reports.

This chapter therefore sets out what emerges as a summary of conclusions from the study together with recommendations on the integration of APRM findings within the AU Peace and Security Architecture.

5.1 Summary and Conclusion

The link between conflict prevention and governance was first been recognized by the Organization of African Unity with the establishment of the Central Organ. Its successor the AU, built on this and subsequently, other AU instruments significantly the African Peer Review Mechanism's founding documents and instruments of review have also made this link.

In examining the Africa Union Peace and Security Architecture, weaknesses were highlighted in terms of the Continental Early Warning System (CEWS) which is created under the AU PSC for purposes of anticipating and preventing conflict. From the discussions, it is clear that the CEWS is not yet operational although there are efforts towards this. A further probing into the architecture and operation within sub-regional organizations early warning mechanisms, revealed apparent challenges including financial and capacity setbacks. It can thus be concluded that these inadequacies continue to hinder the desired cooperation between these sub-regional mechanisms with the AU in early warning.

Another key conclusion is that the APRM is an important tool to the AU Peace and Security Architecture and specifically potent for early warning for conflicts. Certainly, flowing from the analysis on the AU Peace and Security framework on early warning and the shortcomings therein, the study demonstrated that the APRM has a diagnostic potential. APRM reports for Kenya, Uganda and South Africa were very clear in highlighting issues raging from ethnic differences, socio-economic disparities and land issues as sources of conflicts in those countries and as shown, conflicts ensued in these countries that were linked to these findings. However, the mechanisms in place to integrate such findings within the PSC are too protracted and therefore frustrate the early warning characteristic of APRM reports.

5.2 Recommendations

In light of the above, in order for early warning findings of APRM to be utilized within the AUPSC, the following recommendations are suggested:

1. In view of the impact APRM early warning findings have on the peace and security of the continent especially when there is delay in communication to the PSC, the APRM mechanism should be reviewed to provide for the integration of findings to the PSC throughout the process.

2. Whilst acknowledging the efforts in the operationalisation of the CEWS the same should be fast tracked and all resources channeled towards it as a means towards strengthening the PSC's mandate of conflict prevention.

3. Appreciating the AU's decision to include the APRM Structure within the AU organs, the AU should clarify by way of a decision or resolution on the how the APRM reports should be handled by organs like the PSC.

4. The AU should adopt a broader interpretation of the PSC's preventative mandate while relying on Article 4(h) on intervention to take action in situations that may also lead to the grave circumstances mentioned therein form occurring. This is in view of the prevalent nature of conflicts in Africa for instance election related conflicts.

5. Member states of the APRM should accord the same political will they extended when acceding to the process to quick implementation of findings especially when they threaten intra state and inter state security.

6. Ongoing process on reviewing the questionnaire and other APRM procedures must be accelerated to include better opportunities for conflict analysis.

Overall, the study has endeavored to answer the questions set out at the beginning. Certainly, for the effective integration of APRM findings on peace and security within the AU peace and security framework, it calls upon the recommendations above to be followed. This will contribute immensely to the promotion of peace, security and stability in Africa.

Word Count – 16,852 (Excluding table of contents and bibliography).

BIBLIOGRAPHY

Books

Francis, DJ (2006) *Uniting Africa, Building Regional Peace and Security Systems*,

Herbert, R & Grudz S, (2008) *The African Peer Review Mechanism, Lessons from Pioneers*, South African Institute of International Affairs.

Heyns and Killander (eds) (2007) *Compendium of Key Human Rights Documents of the African Union* Pretoria University Law Press.

Heyns and Stefiszyn (eds) (2006) *Human Rights, Peace and Justice in Africa: A Reader* Pretoria University Law Press.

Levitt, J (ed) (2003) *Africa: Selected Documents on Constitutive, Conflict and Security, Humanitarian and Judicial Issues.*

Mwaura, C and Schmeidl, S (eds) (2002) *Early Warning and Conflict Management in the Horn of Africa*, Red Sea Press.

Murithi, T (2006) *The African Union Pan-Africanism, Peacebuilding and Development* Ashgate.

Peck, C (1998) *Sustainable Peace: The Role of the UN and Regional Organisations in preventing conflict* Lanham; oxford: Rowman & Littlefield.

Ramcharan, BG (1991) *The International Law and Practice of Early warning and Preventive Diplomacy: The Emerging Global Watch*, Martinus NIJHOFF.

Viljoen, F (2007) *International Human Rights Law in Africa* Oxford University Press.

Walraven, K Van (ed) (1998) *Early Warning and Conflict Prevention: Limitations and Possibilities*, Kluwer International Law

Chapters in Books

Cilliars, J 'The Continental Early Warning System of the African Union, What Role for Civil Society?' in Nhema, A & Zeleza, PT (eds) (2008) *Resolution of African Conflicts: The Management of Conflict Resolution & Post-Conflict Reconstruction*.

Dorn, W 'Early and Late warning by the UN Secretary General of Threats to Peace: Article 99 Revisited', in Shnabel, A and Carment, D (eds), *Conflict Prevention, From Rhetoric to Reality* (2004).

Sutterlin,J S 'Early Warning and conflict Prevention: The Role of the United Nations' 121 in Walraven, K Van (ed) (1998) *Early Warning and Conflict Prevention: Limitations and Possibilities*, Kluwer International Law

Articles

Alston, P 'Ships passing in the night: The current state of the human rights and development debate seen through the lens of the Millennium Development Goals' (2005b) 27 *Human Rights Quarterly* 755-829

Chukwumerije, O 'Peer Review and the Promotion of Good Governance in Africa' (2006) North Carolina Journal of International Law and Commercial Regulation.

Cilliars, J 'Towards a Continental early Warning System for Africa', (2005) Institute for Security Studies Paper 102.

Cilliars, J & Sturman, K 'Challenges facing the AU Peace and Security Council' (2004) 13 (1)African Security Review.

Fombad, CM & Kebonag, Z 'AU, NEPAD and the APRM: Democratization Efforts Explored' (2006) 32 Current African Issues.

Grudz, S 'Peace, Security and the African Peer Review Mechanism: Are the tools up to the task?'(2007) African Security Review 16.3 Institute for Security Studies.

Grudz, S 'The African Peer Review Mechanism: Assessing Origins, Institutional Relations and Achievements' Ocassional Paper No. 29 (2009) South African Institute of International Affairs.

Gutto, S B O 'The New Mechanism of the Organization for African Unity for Conflict Prevention, Management and Resolution, and the Controversial Concept of Humanitarian Intervention in International Law', South African Law Journal.

Herbert, R 'The Survival of NEPAD and the African Peer Review Mechanism: A critical analysis', (2004) 11.1 South African Journal on International affairs.

Ikome, F 'Rocky courtship to an African marriage', 13.2 Global Dialogue, August (2008)20

Killander, M 'The African Peer Review Mechanism and human rights: The first reviews and the way forward' (2008) 30 *Human Rights Quarterly* 41-75

Kindiki K '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 (2003) 3 African Human Rights Law Journal.

Mathoho, M 'An African Peer Review Mechanism: A Panacea for Africa's governance challenges?' (2003) Johannesburg Center for Policy Studies, Policy Brief.

Nhara, WG 'Early Warning and Conflict in Africa' (February 2006) Occasional Paper No. 1, Institute for Security Studies.

Nmehielle, VO 'The African Peer Review Mechanism Under the African Union and its Initiative: The New Partnership for Africa's Development' (2004) American Society of International Law.

Nmehielle, VO 'The African Union and African Renaissance: A New Era for Human Rights Protection in Africa?' (2003) Singapore Journal of International and Comparative Law.

Osamba, J 'Violence and Dynamics of Transition: State, Ethnicity and Governance in Kenya', (2001) XXVI Africa Development.

Rechner, JD 'From OAU to AU: A Normative Shift with implications for Peacekeeping and Conflict Management, or just a name Change?' (2006) Vanderbilt Journal of Transitional Law.

'Regionalism and conflict resolution: Lessons from Kenya's crisis' (2009) Journal of Contemporary African Studies, vol 27 issue 3 July

Unpublished Papers

Boucher,AJ 'Threat Assessments and reviews: A note on current practice' Henry L. Stimson Centre July 2009
<www.stimson.org/.../Stimson_Threat_Assessment_and_Review_Note_aboucher7July09.pdf>
(accessed 3 October 2009).

Boyle, K and Simonsen, S 'Human Security, Human Rights and Disarmament', (2004) Disarmament Forum, United Nations Institute for Disarmament Research, <http://www.unidir.org/pdf/articles/pdf-art2137.pdf> (accessed 24 September 2009).

Cilliars, J and Sturman, K 'Challenges Facing the AU Peace and Security Council' Commentary.

Fanta, E 'The Capacity of African Organisations in Peace and Security' paper presented at ERD Workshop: Transforming Political Structures: Security, Institutions, and Regional Integration Mechanisms' (Florence 16-17 April 2009).

Gottschalk and Schidt, 'The African Union and the New Partnership for Africa's Development: Strong Institutions for Weak States', South African Institute of International Affairs, APRM Tool Kit (February 2008).

Herbert, R and Corrigan, T 'Alternative self- assessment questionnaire' unpublished South African Institute of International Affairs working draft (2006).

Keyserlingk, von N and Kopfmuller, S 'Conflict Early Warning Systems: Lessons Learned from Establishing a Conflict Early Warning and Response Mechanism (CERWARN) in the Horn of Africa' (October 2006)

Killander, M 'The Role of the African Peer Review Mechanism in Inducing Compliance with Human Rights', draft LLD Thesis University of Pretoria (August 2009) (on file with the author)

Mukamunana, Rachel 'Challenges of the New Partnership for Africa's Development (NEPAD): a case analysis of the African Peer Review Mechanism (APRM)', unpublished PhD thesis, University of Pretoria (2006).

Oluborade, JA 'The African Union Peace and Security Architecture: Can the Panel of the Wise make a difference?' LLM Dissertation University of Pretoria (2008).

Office of the Special Advisor on Africa, 'The Emerging Role of the AU and ECOWAS in Conflict Prevention and Peace Building' (2007) Background paper prepared for Expert Group meeting.

Powell, K 'The African Union's Emerging Peace and Security Regime: Opportunities and challenges for delivering the Responsibility to Protect (2005) www.nsi-ins.ca/english/.../NSI_AU_RRP_Working_Paper_May_05.pdf (accessed 25 September 2009).

Tchomavi, MB 'A Critical Assessment of the Possible Role of the African Union in Achieving the right   to National and International Peace and Security in Africa' LLM Dissertation University of Pretoria (2005).

Wulf, H and Debiel, T 'Conflict Early Warning and Response Mechanisms: Tools for Enhancing the Effectiveness of Regional Organisations? A Comparative Study of the AU, ECOWAS, IGAD, ASEAN/ARF and PIF' Crisis States Working Papers Series No. 2 (May 2009)

Internet

Briefing of the World Economic Forum Meeting-Millennium Africa Renaissance Programme implementation issues.
<www.thepresidency.gov.za/show.asp?type=sp&include=president/2001/tm0128.html>
(accessed 6 October 2009).

Interview with Augustin Sagna, Head of ECOWARN Zone Office IV (May 2009)
<http://www.oecd.org/documents/59/0,3343,en_38233741_38242551_42930299_1_1_1_1,00.html> (accessed 26 September 2009).

Institute for Security Studies, 'Is There Hope for ECCAS' October 2007 <http://www.iss.co.za/static/templates/tmpl_html.php?node_id=2700&slink_id=5080&slink_type=12&   link_id=4057> (accessed 25 September 2009).

Institute for Security Studies, Profile for ECCAS
<http://bibliotecavirtual.clacso.org.ar/ar/libros/iss/pdfs/eccas/ECCASProfile.pdf> (accessed 19 October 2009).

Press Release: ECOWAS Early Warning and Early Response (ECOWARN) System Sensitization Workshop, Ange Hill Hotel, Accra, March 27, 2007 (accessed 26 September 2009)

PSC Secretary Dr. Kambudzi Addresses Barizi Forum on 12th AU Summit
<http://paxafrica.org/events/psc-secretary-dr.-kambudzi-addresses-barizi-forum.html> (accessed 14 October 2009).

APRM Secretariat, 'Country Self –Assessment for the African Peer Review Mechanism,' (APRM Questionnaire) Midrand, South Africa, undated (2004).

Uganda: Address Diversity to Prevent Ethnicity- APRM Report
<http://allafrica.com/stories/printable/200910020444.html> (accessed 13 October 2009)

World Summit Excerpts, President Paul Kagame, Rwanda
<www.responsibilitytoprotect.org/.../**2005**%20**World**%20**Summit**%20Excerpts%20R2P%20Chart .> (accessed 10 September 2009)

<www.uneca.org/aprm/CountriesStatus.asp (accessed 10 October 2009)>

Regional Instruments and Documents

African Charter on Human and Peoples' Right (1981).

African Peer Review Mechanism Memorandum of Understanding, March (2003).

African Peer Review Mechanism, Country Review Report of the Republic of Kenya, May (2006).

African Peer Review Mechanism, Country Review Report of the Republic of South Africa, September (2007).

African Peer Review Mechanism, Country Review Report of the Republic of Uganda, (2008).

African Peer Review Mechanism Base Document (2003).

APRM Secretariat, Country Self –Assessment for the African Peer Review Mechanism, (APRM Questionnaire) (2004).

Audit Report of the African Union, Addis Ababa, Ethiopia, December 2007.

Charter of the Organisation of African Unity (1963).

Concept paper, Meeting the Challenge of Conflict prevention in Africa-Towards the Operationalisation of the Continental Early Warning System, Meeting of Governmental Experts on Early Warning and Conflict Prevention, 17-19 December 2006, Kempton Park South Africa.

Constitutive Act of the African Union (2000).

COPAX Protocol (2000)

Citizenship Rights in Africa Initiative (CRAI) 'Tolerating intolerance: Xenophobic violence in South Africa,'
<http://www.citizenshiprightsinafrica.org/Publications/2009/CRAISAReport.July2009.pdf>
(accessed 30 September 2009).

Declaration on Democracy, Political, Economic and Corporate Governance (2002).

Decision on the Report of the Peace and Security Council on its Activities and on the Peace and Security Situation in Africa, Assembly/AU/6(XIII), Adopted by the Thirteenth Ordinary Session of the Assembly of the African Union, Sirte, Great Socialist People's Libyan Arab Jamahiriya on 3 July 2009.

Decision on the Implementation of the Sirte Summit Decision on the African Union, AHG/Dec.1(XXXVII) <www.africa-union.org/Official_documents/> (Last accessed 20 September 2009).

Decision on the Activities of the Peace and Security Council of the African Union and the State of Peace and Security in Africa, Assembly/AU/Dec 177 (X), Adopted by the Tenth Ordinary Session of the Assembly of the African Union, Addis Ababa, Ethiopia 31 January- 2 February 2009.

Decision on the African Peer Review Mechanism, Assembly/AU/Dec.198 (XI), Adopted by the Eleventh Ordinary Session of the Assembly of the African Union, Sharm El-Sheikh, Egypt 30 June- 1 July 2008.

ECOWAS Protocol on the Mechanism for Conflict Prevention (1999)

Objectives, Standards, Criteria and Indicators of the APRM (2003).

New Partnership for Africa's Development Declaration (2001).

OAU Declaration on the Establishment for Conflict Prevention, Management and Resolution (1993).

Protocol Relating to the Establishment of the Peace and Security Council of the African Union, 2003.

Protocol on Amendments of the Constitutive Act (2003).

Report on The Role of the APRM in Strengthening Governance in Africa: Opportunities & Constraints in Implementation', UN Expert Group Meeting 15-16 November 2007, Addis Ababa, Ethiopia.

Report of the Chairperson of the Commission, Enhancing Africa's Resolve and Effectiveness in Ending Conflict and Sustaining Peace, Special Session of the Assembly of the Union on the consideration and Resolution of conflicts in Africa, Tripoli, Lybia (30-31 August 2009).

Report by the Commission of Inquiry into Post Election Violence, often referred to as the Waki Report, after the Chairman Judge Phillip Waki <http://www.kenyalaw.org/Downloads/Reports/Commission_of_Inquiry_into_Post_Election_Violence___.pdf> (accessed 29 September 2009).

SADC Protocol on Politics, Defense and Security Cooperation (2001).

Treaty Establishing ECCAS (1983).

UNECA 'Africa/OECD Ministerial Consultation Big Table II, Amsterdam, 14-16 October 2001', Summary Report, <www.uneca.org/thebigtable/bigtable2.htm> (accessed 21 September 2009).