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The role of the Peace and Security Council in implementing the decisions of the African Commission on Human and Peoples' Rights

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Summary: *The African Commission on Human and Peoples' Rights plays a crucial role in upholding African human rights standards. However, challenges arise when it comes to implementing and enforcing the Commission's decisions by member states. This article examines the role of the African Union Peace and Security Council in implementing the findings and recommendations of the African Commission and examines the challenges faced. An extensive desktop review of relevant literature, including academic articles, reports and official documents, is conducted. The article argues that while the Commission primarily focuses on human rights, its decisions have significant implications for peace and security in member states and, through the PSC's proactive*

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involvement, the Commission can contribute to the realisation of peace, security and the protection of human rights in Africa. Additionally, effective collaboration is crucial for the African Commission to execute its mandate, especially in overseeing member states' adherence to its decisions and recommendations. This study contributes to the existing literature by proposing actionable strategies to enhance the synergy between the PSC and the African Commission, thereby improving the enforcement of human rights decisions and their impact on peace and security in Africa.

Key words: *peace; security; African Union; Peace and Security Council; human rights; peace building; implementation; African Commission*

1 Introduction

Despite the continent's various efforts in advancing human rights – those rights that are inherent to individuals by being human¹ – ongoing conflict and war continue to infringe upon the rights of its people. The African Union (AU) has made contributions to the continent's establishment of a human rights system. The AU, which is a confederation of numerous independent states, works to advance both regional political stability and economic integration.² The organisation is composed of various structures, including the Pan-African Parliament, the African Court on Human and Peoples' Rights (African Court), the Economic and Cultural Council and the Peace and Security Council (PSC).³ Most importantly, outsiders with stakes in the organisation include academics, think tanks, independent consultants and members of civil society.⁴ They support the organisation's objective of regional stability and development along with the organs.

The African Commission on Human and Peoples' Rights (African Commission)'s mandate was established by the African Charter on Human and Peoples' Rights (African Charter). As a quasi-judicial oversight body,⁵ it is tasked with interpreting, defending

1 O Nweke 'Understanding human rights' Kings University College Law Students Union Seminar Accra (2020), <http://doi.org/10.13140/Rg.2.2.20322.35522> (accessed 30 October 2024).

2 T Tiekou 'The African Union: Successes and failures' (2019) *Oxford Research Encyclopaedia of Politics*, <http://doi.org/10.1093/acrefore/9780190228637.013.703> (accessed 30 October 2024).

3 As above.

4 As above.

5 F Viljoen & L Louw 'State compliance with the recommendations of the African Commission on Human and Peoples' Rights, 1994-2004' (2007) 101 *American Journal of International Law* 1-34.

and advancing the rights enshrined in the African Charter. The African Commission conducts missions to investigate human rights violations in member states for country reports, drawing on specific complaints and general observations and offering recommendations to deal with these problems.⁶ These choices and suggestions have the potential to address human rights concerns in Africa, but that potential can only be attained through actualisation.⁷ It is significant to note that because these decisions are not legally binding, states are free to decide whether or not to implement them. There have been cooperation issues, with states failing to comply,⁸ even though all member states have expressed their commitment to upholding the African Charter's obligations.⁹ As a result, efforts are being made to address the problem of state non-compliance as it undermines the fundamental goal of the African Commission. The causes of non-compliance are the non-binding nature of the decisions, state sovereignty issues and implementation difficulties. States' non-compliance can be attributed from a global standpoint to the African Commission's limited ability to carry out follow-ups and enforcement mechanisms.¹⁰ However, the Commission does not lack internal and external stakeholders, including emerging implementation committees and bodies, that can effectively perform this function on its behalf by monitoring, advocating and facilitating state compliance with the Commission's recommendations.¹¹

The following parts advance the argument that the African Commission cannot perform its duties without effective collaboration, particularly when it comes to ensuring that its recommendations and findings are implemented by member states. As their responsibilities frequently overlap, such collaboration can involve external stakeholders with vested interests in its affairs or those of other AU organs. To ensure that the decisions made by the Commission are implemented in African states, this study specifically examines the role of the PSC, which oversees the promotion of peace and security in Africa. In this context, the article further argues that although the African Commission is primarily concerned with human rights, its decisions have broad ramifications for peace and security among

6 K Bojosi & G Wachira 'Protecting indigenous peoples in Africa: An analysis of the approach of the African Commission on Human and Peoples' Rights' (2006) 6 *African Human Rights Law Journal* 382-406.

7 R Murray & E Mottershaw 'Mechanisms for the implementation of decisions of the African Commission on Human and Peoples' Rights' (2014) 36 *Human Rights Quarterly* 349-372.

8 Bojosi & Wachira (n 6); Viljoen & Louw (n 5).

9 S Keetharuth 'Major African legal instruments' in A Bösl & J Diescho (eds) *Human rights law in Africa: Legal perspectives on their protection and promotion* (2009) 163-231.

10 Murray & Mottershaw (n 7).

11 Murray & Mottershaw (n 7).

member states, highlighting how the PSC contributes to the achievement of peace, security and the preservation of human rights in Africa through its proactive involvement. This article also buttresses the PSC's obligations and the difficulties it faced in achieving this goal.

The article is structured in five parts. The second part, which follows the introduction, explores the background history of the PSC, its role and mandate in the region, the organisation of its operations and African Commission decisions and challenges. The third part explores the roles of the PSC in bridging human rights and peace building, while the fourth part explores the PSC track record on implementation of decisions and effects on African Commission decisions, including case studies. The conclusions are summarised in the concluding part, which also makes suggestions for improving the PSC's effectiveness and helping it overcome its obstacles.

2 The PSC and African Commission decisions: History and challenges

In the early 1990s a decision was made to reassess the peacekeeping efforts of the then Organisation of African Unity (OAU) after member states had elected to abstain from such endeavours.¹² The increasing frequency of intra-state conflicts and *coups d'état*¹³ that followed the era of African independence served as the impetus for this reevaluation.¹⁴ African institutions' sub-regional bodies were crucial in resolving many of these intra-regional conflicts,¹⁵ which prompted member states to question the OAU's efficacy and call for reforms.¹⁶ As a result, the OAU was reorganised into the AU, a new organisation built around a central decision-making body. The AU established the PSC.¹⁷ The PSC was established as a body responsible for peace and security issues in Africa by the Protocol on the PSC, which was adopted in 2002¹⁸ and entered into force in 2003.¹⁹ Specifically, articles 3, 4, 5, 6, 7, 8, 11, 12 and 13 of the Protocol describe the

12 P Williams 'The Peace and Security Council of the African Union: Evaluating an embryonic international institution' (2009) 47 *Journal of Modern African Studies* 603-626.

13 C Majinge 'Regional arrangements and the maintenance of international peace and security: The role of the African Union Peace and Security Council' (2010) 48 *Canadian Yearbook of International Law* 97-150.

14 As above.

15 Williams (n 12).

16 K Powell & T Tiekou 'The African Union's new security agenda' (2005) 60 *International Journal* 937-952.

17 Majinge (n 13).

18 Williams (n 12).

19 J Cilliers & K Sturman 'Challenges facing the AU's Peace and Security Council' (2004) 13 *African Security Review* 97-104.

institutional structure, authority and objectives of the PSC.²⁰ Its 15 members, who each have equal authority, are elected for terms ranging from two to three years. However, there are no permanent members. Additionally, the PSC's specific mandate is clear when it comes to handling the difficult, protracted conflicts that tragically plague and bedevil the African continent at both the interstate and intrastate levels.²¹ This is why it was established with a focus on conflict avoidance, management and resolution.

According to article 3 of the Protocol on the objectives of the PSC, these include the facilitation and implementation of peace building and post-conflict reconstruction initiatives, the coordination and harmonisation of continental efforts to counter the multiple threats posed by international terrorism, the formulation of a unified defense policy for the Union, and the promotion of democratic practices, good governance, the rule of law, as well as the protection of human rights and fundamental freedoms.²²

In terms of its functionality, the PSC additionally acts as the cornerstone of all peace and security initiatives in Africa.²³ Since it is a vital component of the regional African human rights framework, its contribution to advancing peace and security in Africa is immeasurable.²⁴

However, rough patches of resistance are evident in the interactions between the African Commission and the AU member states. The Commission's monitoring role is constantly at odds with the role that states take on when they pledge to put its recommendations into practice. The African Commission is unable to make decisions or recommendations that are enforceable against member states, which prevents it from carrying out its mandate of advancing and defending human and peoples' rights.²⁵ The Commission tracks and identifies violations of human and peoples' rights and, based on that information, makes recommendations to states on how to strengthen

20 African Union 'Protocol Relating to the Establishment of the Peace and Security of the African Union' (2002).

21 S Gumedze *The Peace and Security Council of the African Union: Its relationship with the United Nations, African Union, and sub-regional mechanisms* (2011) 39-48.

22 African Union (n 20).

23 J Lawrence 'Africa, its conflicts, and its traditions: Debating a suitable role for tradition in African peace initiatives' (2005) 13 *Michigan State Journal of International Law* 417.

24 J Levitt 'The Peace and Security Council of the African Union: The known unknowns' (2003) 13 *Transnational Law and Contemporary Problems* 110.

25 C Okoloise 'Circumventing obstacles to the implementation of recommendations by the African Commission on Human and Peoples' Rights' (2018) 18 *African Human Rights Law Journal* 27-57.

their adherence to those rights.²⁶ The African Commission conducts promotional visits to and communicates with states, while channels for state involvement in decision making and recommendations are established. States are urged to submit biennial reports to the African Commission.

Even though the African Commission has made efforts to monitor the application of its recommendations through missions and the biennial state report, it has not suggested any appreciable changes in that application.²⁷ The Commission relies on the expectation that states will cooperate rather than try to impose their decisions in the end.²⁸ Despite the Commission's diligent efforts to focus its decisions and recommendations on the African continent, in addition to the member states' opposition, the recommendations required rigorous processes of coordination and collaboration that frequently combine the use of legal instruments, diplomatic measures, capacity-building programmes and resource allocation. The PSC and other institutions, among other stakeholders, become crucial for the African Commission's decisions to be enforced because they possess the mandate, resources and authority to ensure compliance, facilitate dialogue between member states, and mobilise the necessary political will to effectively implement African Commission's recommendations. The next part shifts its focus to the roles of the Peace and Security Council in bridging human rights and peace building.

3 Role of the PSC in bridging human rights and peace building

The promotion of international peace and security is powerfully aided by the defence of human rights. Because of this, adherence to human rights laws serves as a potent conflict deterrent.²⁹

In light of this, it is important to recognise the role played by the PSC in upholding the AU's mandate to advance human and peoples' rights. This relationship is viewed as an interdependent partnership to elevate the status of human rights as a vital tool for achieving global security, enduring peace and sustainable development. The necessity of peace and stability as a fundamental precondition for the

26 As above.

27 C Odinkalu 'The individual complaints procedures of the African Commission on Human and Peoples' Rights: A preliminary assessment' (1998) 8 *Transnational Law and Contemporary Problems* 359-406.

28 As above.

29 Gumedze (n 21).

long-term realisation of socio-economic rights is also emphasised.³⁰ For instance, by its mandate, the PSC works to support the African Commission's recommendations by promoting peace and security drills with the support of the member states. Because of this, even though Commission's main focus is on human rights, its decisions have broad ramifications for international peace and security. An example is how the PSC, in coordination with member states, acts as a mediator to implement African Commission decisions and declarations. When the Commission identifies human rights violations that could escalate into conflict or pose a risk to regional security, the PSC facilitates diplomatic efforts, peace negotiations and security interventions to prevent further deterioration of the situation.

To achieve international security, it is legitimate for states to protect their populations from human rights abuses.³¹ However, situations characterised by escalating political unrest, difficult disputes, increased use of force, rivalries and human rights violations necessitate PSC intervention. This intervention may include diplomatic mediation, the imposition of sanctions, peacekeeping operations or, in extreme cases, military intervention, depending on the nature and scale of the conflict. In article 7 of the Protocol, the PSC is given authority to handle all matters relating to peace and security over the member states. As a result, the PSC gains some of the power currently held by member states, and member states are not allowed to disagree with any decisions made by the Council. They are required by the Constitutive Act to 'accept' and 'implement' such decisions.³² In this situation, it may be determined that the PSC's involvement in member states sparks discussion that results in the adoption of policies that support human rights. This involvement promotes and facilitates the execution of initiatives aimed at defending and advancing the human rights ideals that are at the core of the African Commission agenda and mission.

The previous paragraphs provided insight into the roles of PSC in bridging human rights and peace building. The PSC's track records on the implementation of African Commission decisions and the impact on Commission decision forms the focus of the following part. To support the claims, it specifically highlights a few case studies.

30 F Viljoen *International human rights law in Africa* (2012) 469-514.

31 Gumedze (n 21).

32 African Union (n 12); Williams (n 12).

4 PSC's track record on implementation of decisions and effects on African Commission decisions

To achieve the pan-African Vision of 'an integrated, prosperous, and peaceful Africa, driven by its citizens, representing a dynamic force in the international arena', as well as Agenda 2063's goal of 'a peaceful and secure Africa', the PSC is essential to the AU's efforts to defend human rights, particularly when there are serious or widespread violations on the African continent. According to the recommendations of the African Commission, the PSC can address such violations as a consequence of its mandate. Article 19 of the Protocol concerning the PSC establishes a mechanism for information sharing between the PSC and the African Commission. The question then arises as to whether the African Commission can utilise the institutional support of the PSC. With the help of the Council, the Commission can work together to raise awareness of important issues that are under the PSC's purview by creating recommendations, enforcing sanctions, keeping an eye on compliance through follow-up procedures, and acting in conflict areas to safeguard human rights.

The peace and security that the PSC is committed to promoting and preserving are jeopardised by these issues that are typically raised. In practice, the PSC's compliance with its mandates results in the execution of the suggestions and directives approved by the African Commission. In other words, this results in the PSC mainstreaming human rights throughout its conflict states. The PSC's role in implementing the recommendations and decisions of the Commission involves a variety of activities, including the formulation of recommendations, promoting peace through missions, diplomacy and mediation, as well as the imposition of sanctions on AU member states. These actions are a result of the power provided by article 7 of the Protocol. Preventing, mitigating and ultimately resolving conflicts is the overarching goal of these strategies. The PSC effectively shapes the landscape of human rights, which are not only related to the African Commission,³³ but also to peace and security by integrating these conflict resolution mechanisms.³⁴

The follow-up mechanism of the PSC is one of its duties. This mechanism takes on a role in overseeing and assessing the execution of the PSC's decisions, recommendations and resolutions.³⁵ As a result, the area of preventing, managing and resolving conflict includes

33 B Gawanas 'The African Union: Concepts and implementation mechanisms relating to human rights' in Bösl & Diescho (n 9) 135-163.

34 Okoloise (n 25 above).

35 Murray & Mottershaw (n 7 above).

this follow-up mechanism. The Protocol established the continental early warning system (CEWS), which keeps tabs on events in African nations and provides the Council with information and advice.³⁶ Most of the PSC's decisions are based on this. Serious human rights violations may necessitate the heads of state and government's attention and collective action, as provided for in article 58 of the African Charter. This provision serves as a mechanism for increasing awareness of such violations.

This clause enables the African Commission to recognise early indicators of regional insecurity using its communicative tools.³⁷ The provision enables the Commission to carry out missions, examine the current situation and offer recommendations. The AU has several organisations that can monitor and guarantee that states follow the African Commission's recommendations. The PSC can then evaluate the Commission's recommendations as indicators within its early warning system. Using this information as a foundation, the PSC, therefore, can monitor and follow up on the implementation of these recommendations in the context of conflict prevention.³⁸

For instance, the PSC requested the African Commission to send a fact-finding mission to Burundi in 2015.³⁹ In 2015 there were demonstrations against former President Pierre Nkurunziza's bid for a third term in office.⁴⁰ Human rights violations had been brought to this governing body's attention. Following the mission, the Commission put together a report on its findings and advised the state and non-state actors to resolve the issue through negotiation.⁴¹ In response to this fact-finding mission, the PSC took action to ensure that the parties settled an open inter-Burundian peace dialogue, which influenced the political development of the nation and contributed to the holding of a successful election in 2020.⁴² Refugees' gradual

36 H Solomon 'African solutions to Africa's problems? African approaches to peace, security, and stability' (2015) 43 *Scientia Militaria: South African Journal of Military Studies* 45; Levitt (n 24).

37 G Wachira & A Ayinla 'Twenty years of elusive enforcement of the recommendations of the African Commission on Human and Peoples' Rights: Possible remedy' (2006) 6 *African Human Rights Law Journal* 465-492.

38 Murray & Mottershaw (n 7); Wachira & Ayinla (n 37).

39 African Union 'Fact-finding mission of the African Commission on Human and Peoples' Rights to Burundi' 15 December 2015, <https://www.peaceau.org/en/article/fact-finding-mission-of-the-african-commission-on-human-and-peoples-rights-to-burundi> (accessed 30 October 2024).

40 B Ayuk 'ACHPR urges Burundi to prosecute perpetrators of extrajudicial killings, torture during 2015 popular protests' 19 June 2023, <https://www.ihrda.org/2023/06/achpr-urges-burundi-to-prosecute-perpetrators-of-extrajudicial-killings-torture-during-2015-popular-protests/> (accessed 30 October 2024).

41 AU (n 39).

42 African Union 'Report of the Peace and Security Council on its activities and the state of peace and security in Africa, for the period from February 2019 to February 2020' 10 February 2020, Addis Ababa, Ethiopia.

return to the nation also helped to address humanitarian issues. In particular, the term of office was one of the commitments to the rule of law made by the President.⁴³ Additionally, the nation acted on its own through several consultations with non-state actors and the creation of an independent electoral commission. The joint effort of the PSC and the African Commission enabled the successful completion of the elections in Burundi in May 2020, protecting both the country's peace and security as well as the political and social rights of its citizens. Notably, the PSC actively oversaw the application of the recommendations made by Commission because of a fact-finding mission that the PSC encouraged. As a result, Burundi was able to effectively implement the Commission's recommendations, supporting the PSC's overarching mission to advance peace and security.

The African Commission's recent recommendation for Burundi and its historical violations of human rights calls for the same course of action. The law enforcement response to the protest that occurred in Burundi in 2015 resulted in the torture and disappearance of civilians.⁴⁴ In its resolution from that year, the African Commission urged the government to carry out the advice provided following the fact-finding mission.⁴⁵ According to the Commission's 2018 report, the Burundian government should investigate and prosecute those who violated human rights back in 2015. The African Commission took no further action and, in most cases, the responsible civil society organisations or the parties that filed the complaint will undertake further action for investigation and prosecution.⁴⁶ Therefore, it was not surprising that a complaint was made to the Commission about this non-compliance by some organisations, and the Commission once more urged the government to address this.⁴⁷ It is even more essential for compliance because these forms of torture continue to be used.⁴⁸ This is a red flag that the relative stability Burundi has enjoyed in recent years might be in jeopardy. As it relates to its primary mandate of peace and security, the PSC could continue to take the lead, as it has in the past, by keeping track of and overseeing this recommendation's implementation.

43 As above.

44 Ayuk (n 40).

45 African Commission on Human and Peoples' Rights Draft Resolution: Burundi ACHPR/Res 9 April 2018, 396 (LXII) 2018, <https://achpr.au.int/index.php/en/adopted-resolutions/396-draft-resolution-burundi-achpres-396-lxii-2018> (accessed 30 October 2024).

46 Murray & Mottershaw (n 7).

47 Ayuk (n 40).

48 L Mudge 'African Commission calls for justice in Burundi' 9 March 2023, <https://www.hrw.org/news/2023/03/09/african-commission-calls-justice-burundi> (accessed 30 October 2024).

The Protocol's Rules, specifically article 7(3) of the Protocol Relating to the Establishment of the Peace and Security Council of the African Union, make the PSC's decisions binding on member states. This article states that 'the member states agree to accept and implement the decisions of the Peace and Security Council, in accordance with the Constitutive Act'. This arrangement results from the shared understanding that council members permit the body to act on their behalf, encouraging cooperative engagement.⁴⁹ The binding nature of the decisions of the PSC is in direct contrast to the nature of decisions made by the African Commission.

To make the African Commission's recommendations binding, it was proposed that the AU adopt them. However, the AU might have established a similar enforcement mechanism for the Commission through the provision of article 19 of the Protocol,⁵⁰ which should allow the policy-making organ to supplement the work of the Commission by enforcing the judgments and suggestions of the Commission. According to the premise that state non-compliance opens the door to questions about the effectiveness of both the organ in question and the AU as a whole,⁵¹ it is essential to advance the AU's overall mandate by having the PSC adopt the African Commission's recommendations that deal with the relevant issues.

The PSC also has the authority to impose penalties or take other legal action against people who violate peace and security. The provisions of article 7(1)(g) of the Protocol of its establishment give the PSC authority to exercise this jurisdiction. Although the follow-up mechanism has value, adding an enforcement framework is encouraged.⁵² This authority was used in 2010 when Laurent Gbagbo of Côte d'Ivoire lost the election but refused to resign, which led to its suspension from the AU.⁵³

Since its inception, the PSC has had a remarkably successful track record of enforcing sanctions. Most of these cases have been the result of *coups*, most notably in Togo (2005), Mauritania (2005, 2008), Guinea (2008) and Madagascar (2009).⁵⁴ Nevertheless, the situation in Sudan serves as a better illustration because it has resulted in significant humanitarian problems and has required AU military and diplomatic intervention.⁵⁵ Most of the nation's history has been

49 Okoloise (n 25).

50 Wachira & Ayinla (n 37).

51 Okoloise (n 25).

52 Wachira & Ayinla (n 37).

53 Majinge (n 13).

54 Williams (n 12).

55 Majinge (n 13).

marked by crises, but the conflict's height, which affected Sudan's northern, western and southern regions, occurred in 2003.⁵⁶ As a result, victims from different tribes suffered horrific atrocities such as rape, murder, kidnappings and extensive destruction of property.⁵⁷ Due to widespread protests that broke out because of the economy's decline in 2018, Sudan's stability faced a serious threat. To protect the rights of civilians, the African Commission urged the government to address its security concerns.⁵⁸

Then, in 2019, a military *coup* overthrew the government led by President Omar Al-Bashir.⁵⁹ Following its authority, the PSC expelled Sudan from all AU activities due to its unconstitutional change of government.⁶⁰ The Forces for Freedom and Change, which were established by the Constitutional Declaration Agreement, and the military agreed to share power after the PSC intervened.⁶¹ After that, the suspension was lifted.⁶² However, that power-sharing agreement was soon compromised, as tensions between the civilian and military factions resurfaced. This led to renewed instability, undermining the progress made by the PSC and resulting in further political upheaval.

General Abdel Fattah Al-Burhan, Sudan's *de facto* President, and General Muhammad Hamdan 'Hemedti' Dagolo, commander of the Sudanese Armed Forces (SAF), are currently engaged in a bitter conflict in Sudan. Conflicts broke out on 15 April 2023, because of the intended transition to civilian government not being followed and tensions between these military factions.⁶³ With increasing human rights abuses and a worsening humanitarian crisis, there was a need for the government to quickly restore constitutional order. As a result, it was not unexpected that Sudan's participation in AU affairs was suspended for the second time since the fall of the al-Bashir regime in the country. It was clear that the African Commission and the PSC worked together, but it is important to emphasise that the Sudanese situation presented difficulties that might have put the PSC's mission in danger. Each action taken by the PSC appeared to emphasise how important the African Commission's conclusions and suggestions

56 J Hagan & A Palloni 'Death in Darfur' (2006) 313 *Science* 1578.

57 J Brosché & D Rothbart *Violent conflict and peacebuilding: The continuing crisis in Darfur* (2013).

58 African Commission (n 45).

59 E Pichon & A de Martini 'Sudan crisis: Developments and implications' European Parliamentary Research Service (2023), <https://www.erps.ata.org> (accessed 30 October 2024).

60 AU (n 42 above).

61 Pichon & De Martini (n 59).

62 AU (n 42).

63 C Winsor & A Al-Tawy 'What is happening in Sudan?' *ABCNews* 31 May 2023, <https://abcnews.go.com/International/sudan-conflict-2023-explained/story?id=98897649> (accessed 30 October 2024).

were in this case. Notably, the PSC's use of its sanctioning power helped the Commission's decisions to be implemented by member states by encouraging their adherence. The PSC also seeks to persuade and/or influence its intended audiences, especially those involved in conflict or crises, by strategically using official pronouncements and mechanisms to articulate the AU's perspective on issues of peace and security, such as sanction and enforcement.⁶⁴

Conflict prevention, management and resolution are the main duties of the PSC. Through efforts to mediate disputes, encourage communication between parties and promote respect for human rights during peace negotiations, the PSC can step in before human rights violations turn into fully-fledged conflicts. The Protocol established the Panel of the Wise to aid in preventive diplomacy. The personality of the Panel is essential as a conflict-prevention strategy, because it will affect the way in which parties to a conflict view the panel.⁶⁵ Thus, the Protocol emphasises its membership, which consists of five well-known African leaders. The PSC has used the Panel's support in the case of Sudan.⁶⁶

However, while the PSC plays a significant role in carrying out its mandate regarding human rights violations, several difficulties remain. These include a lack of resources, political limitations and member state differences in interests. Additionally, coordination issues between the PSC and the African Commission may occasionally prevent recommendations from being implemented. Political will is the determination of political leaders to address issues despite obstacles. According to the Institute for Security Studies' Peace and Security Report,⁶⁷ the commitment of member states is one factor that affects the effectiveness of the PSC. Without the states, the organisation will not be effective. This emphasises the significance of political will for the PSC. Even though article 7(1) of the Protocol gives the PSC the power to impose sanctions on member states in the event of unconstitutional changes of government, this power is limited in cases where non-compliance issues do not involve a change of government. It appears that member states still have the option to follow or disregard the PSC's decisions and recommendations, even though they are binding.⁶⁸

64 Williams (n 12).

65 Levitt (n 24).

66 Majinge (n 13).

67 Institute for Security Studies 'Going digital is an early highlight as the PSC Secretariat navigates peace and security challenges' 26 July 2023, <https://iss.africa.org/pscreport/psc-insights/psc-interview-innovative-approaches-for-a-dynamic-environment> (accessed 30 October 2024).

68 As above.

First, states' willingness to abide by a decision appears to depend on how highly they regard the body that made the decision.⁶⁹ The composition of the PSC is crucial, and the selection criteria stated in article 5(2) of the Protocol make the Council respectable. However, this questions the PSC's current membership, arguing that the members do not meet the criteria for election. Uganda, Chad and Rwanda were elected between 2008 and 2010, but there is a claim that these nations had a history of violating human rights and, in the case of Sudan, it had an ongoing crisis on all fronts.⁷⁰ More so, states' willingness to participate in a decision is determined by the respect they show to the person making the decision.⁷¹ How, then, were they chosen for a council that upholds peace and stability? Additionally, political consideration refers to the strategic choices made by member states based on their domestic and international political priorities. So, how can members who disobey the mandate they seek to serve offer recommendations for another country to follow? Therefore, the AU member states' ability to implement decisions made by the PSC may also depend on how closely those decisions align with their interests.⁷²

The Council's restricted budget is yet another obstacle that has an impact on its operations. Technical know-how and financial backing are necessary for a stronger PSC mission. Despite efforts, member state contributions fall short of what is needed.⁷³

The PSC undertook a mission in Sudan in 2004 to aid in bringing about peace in the Darfur region.⁷⁴ The assumption that the state would provide financial support for the mission led to problems. The size of the mission changed, placing a burden on the PSC's financial resources. The United Nations (UN) later took on the financial responsibility and supported this mission.⁷⁵ The funds given are occasionally not used to their full potential, which results in a sub-par mission carried out by the Council. In the case of the mission sent to the Central African Republic, the operation failed because of insufficient use of the funds provided by the European Peace Facility. Due to human resource issues brought on by the limited budget, the ability to complete the work is also constrained.⁷⁶

69 Murray & Mottershaw (n 7).

70 Majinge (n 13).

71 Murray & Mottershaw (n 7).

72 Majinge (n 13).

73 ISS (n 67).

74 Majinge (n 13).

75 AU (n 42).

76 ISS (n 67).

Another difficulty that has been raised is related to the ambiguity in the PSC Protocol and policy. Starting with the establishment of the Council and continuing through the development of its Protocol, it has been argued that the institution's Protocol lacks a sound legal foundation.⁷⁷ The observation that the wording and clauses of the Protocol are subject to different interpretations, which could result in inconsistencies in their actual application, gives rise to this issue.⁷⁸ The PSC Protocol, for instance, states in article 16(1) that the AU 'has the primary responsibility for promoting peace, security and stability in Africa,' while article 17(1) states that the UN Security Council 'has the primary responsibility for the maintenance of international peace and security'.⁷⁹ The two articles appeared to take somewhat different positions on the subject, which led to a problem. While the PSC plays a key role in supporting the African Commission's enforcement efforts, we contend that if the Protocol that establishes the PSC lacks a strong legal framework as identified, this may limit the PSC's ability to effectively carry out its responsibilities, which in turn affect its capacity to assist the African Commission. Determining the precision and clarity of the Protocol, which are both essential for successfully guiding the PSC's operational initiatives, must be done immediately in light of this challenge.

The previous paragraph covered the track records of the PSC and the few difficulties the PSC has in carrying out its duties. The recommendations offered in the next part will help the PSC and the African Commission to be more effective and continue to carry out their respective mandates.

5 Recommendation and conclusion

The PSC's work and activities, in particular the African Standby Force (AFS) and Continental Early Warning System (CEWS), require both technical and financial strength to be completed. In that case, member states must increase their payment to the Peace Fund. Furthermore, the Peace Fund's funding should not be heavily dependent on its member states, each of which has its financial issues. It is important to diversify the sources of these funds, making international contributions a 'must' source rather than a 'could be' source.

77 Williams (n 12).

78 Levitt (n 24).

79 Williams (n 12); AU (n 42).

The PSC should be able to help itself first before it can help other organs. The PSC should be able to use sanctions and incentives to penalise non-compliance and reward compliance, although it has resources such as diplomacy, dialogue, follow-ups and leveraging of international organisations at its disposal. This ought to apply not only in the event of an unconstitutional change in power, but also in cases where the goal of maintaining peace and security is compromised. Additionally, it is important to strictly follow the criteria used to choose PSC members. As was stated, the composition of a body and its suitability for its intended purpose can influence whether states are willing to abide by its decisions.

Additionally, the CEWS's main task of gathering and analysing data from all member states can only be accomplished with qualified personnel. However, the technology that can be used to complete the task is just as important as training and skill development. To complete the task, it is necessary to train staff members and supply the necessary technical infrastructure.

In addition, the framework within which the PSC executes its duties needs to be reorganised because global challenges are dynamic in nature. Global problems, such as wars, terrorism, political instability and humanitarian crises are ever-changing. To restructure the framework, it will be necessary to review its decision-making procedures, improve its mechanisms for preventing and resolving conflicts, enhance its coordination and communication with member states, and revise its plans for preserving peace and security on the continent.

Following the recommendations of the African Commission, the PSC of the AU has enormous potential to address grave human rights violations. More so, as an organ of the AU, several sections of the African Commission have implications for peace and security, and PSC support for the Commission boosts the political monitoring and implementation of decisions. The PSC can play a significant role in promoting peace, security and the protection of human rights throughout the continent by mainstreaming human rights standards and principles in conflict prevention, management and post-conflict restructuring by making the most of its mandate. Therefore, in the spirit of 'working together', the African Commission needs the support of the AU organs, including the PSC. However, several factors, such as the lack of political will on the part of member states, technical and financial challenges and inherent contradictions in the PSC Protocol, can make the PSC's contribution to the effectiveness of the African Commission less effective. Promoting political commitment, increasing and diversifying the PSC's funding sources, utilising

technological advancements, and reorganising the PSC's operational framework are all methods that can improve the effectiveness of the PSC. These actions may enhance the PSC's function and guarantee the organisation's ongoing work to make Africa a safer, more peaceful place for all its citizens.