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EDITORIAL

African challenges and challenges to African Studies

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The articles in this issue of ARAS offer very unique views on a range of issues that are relevant to the countries of Africa - the legacies of sexualized violence in conflict; suggestions for preventing conflict; human development; sovereignty and the role of international political and economic imperatives; and the way we understand 'world music' in the age of globalization.

In the article *Sexual Violence in the Congo Free State: Archival Traces and Present Reconfigurations*, Charlotte Mertens presents her extensive archival research conducted in Belgium, and ethnographic research conducted in the eastern region of the Democratic Republic of Congo (DRC). Mertens brings to light the ghosts of the past, still haunting this central African nation. Her focus on sexual violence during King Leopold's Congo Free State, and more recently as a result of the ongoing conflict in the DRC, draws our attention to the ongoing legacies of sexualized violence, in particular against women. Mertens argues that this current violence is intricately connected to the colonial past, and is unfortunately enduring into the future.

Obinna Franklin Ifediora argues in his article *Preventive Arbitration: Towards Strengthening the African Union's Mediation Capacity for Human Protection*, that the African Union Commission could strengthen its conflict resolution and pacifying mechanisms through 'preventive arbitration', thus offering the many stakeholders, minority and opposition groups access to relevant and timely mediation, creating enduring peace and human security. Ifediora argues that the African Peace and Security Architecture (APSA) needs to be restructured to bring 'mediation' into the role of the African Governance Architecture,

Preventive Arbitration: Towards Strengthening the African Union's Mediation Capacity for Human Protection

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Abstract

The doctrine of human protection as articulated by United Nations Secretary-General Ban Ki-moon in the Cyril Foster Lecture in February 2011 addresses immediate threats to human security. International responses to such threats are often initiated in the context of peace support operations by the United Nations (UN). These *pacific* measures available under Article 33 of the UN Charter, in particular international mediation, are fairly well developed within the UN. The role of regional organisations, particularly the African Union (AU), can be enhanced if these tools, such as mediation, are equally developed. As proposed in this article, this will involve restructuring the African Peace and Security Architecture (APSA) and African Governance Architecture (AGA) so as to bring mediation within the ambit of the latter, in line with the proposed Mediation Support Unit, and remove it from its current location under the APSA. Strengthening the AU's mediation capacity may also require developing additional pacific tools, such as arbitration. Arbitration capacities could then be integrated into a mediation mechanism for enhanced human protection. This article theorises the concept of 'preventive arbitration' as a means of strengthening the AU's pacific mechanisms for conflict prevention through peaceful means.

Introduction

One of the remarkable effects of the peaceful resolution of the Cold War on international relations was the re-establishment of the United Nations' (UN) commitment to the human rights protection instruments enacted after the Second World War. The new framing of these concerns first materialised in the concept of 'human security' (United Nations Development Programme [UNDP] 1994)); that is, the idea that individual security, described as "freedom from fear", "freedom from want", and "freedom to live in dignity" (Annan 2005: paras 25-152), is of equal importance to the security of the state. In 1999, Kofi Annan, the

then United Nations Secretary-General (UNSG), issued a landmark report entitled *The Protection of Civilians in Armed Conflict* (Annan, 1999). According to the UN Security Council (UNSC), civilian protection relates to the need to ensure compliance with international humanitarian law, to address impunity, and improve the safety of humanitarian personnel and their access to civilians in armed conflict areas, as well as to conflict prevention and cooperation with regional organisations (UNSC Resolution 1265, 1999). Furthermore, in October 2005, the UN General Assembly (UNGA) adopted Resolution 60/1 which endorsed the principles of the Responsibility to Protect (RtoP) (International Commission on Intervention and State Sovereignty [ICISS] Report, 2001), which seek to prevent the egregious crimes of genocide, ethnic cleansing, crimes against humanity and war crimes. In effect, the RtoP concept reinforces the commitment to human rights protection, particularly through peaceful means, in line with Chapters VI and VIII of the UN Charter.

In February 2011, the current UNSG Ban Ki-moon, in his delivery of the Cyril Foster Lecture at Oxford University, articulated what he referred to as the concept of human protection. He explained that human protection is a subset of the more encompassing concept of human security. Within the human security paradigm, human protection, Ban Ki-moon argued, addresses more immediate threats to the survival of individuals and groups, which can be narrowed down to the freedom from fear component of the human security framework. In essence, the concept of human protection is the latest initiative in an unrelenting effort by the UN to better protect human rights across the world. These ideas are typically inspired by the UNSG, given the incumbent's strategic position as the symbolic head of the world's premier international organisation.

The distinctive component of this latest conceptualisation of the narrower aspects of human security, the reinforcement of civilian protection and elaboration of the RtoP concept, is its emphasis on prevention through peaceful means; that is, human protection and conflict prevention. In this respect, these *pacific* tools of human protection, particularly the mediation mechanism, are prioritised over what Ban Ki-moon has referred to as the “firefighting” posture of UN responses to conflict, typically via the peacekeeping model (Ki-moon, 2011). Furthermore, the proposed human protection agenda reiterated the pivotal role of regional organisations, consistent with Chapter VIII of the UN Charter.

However, the significantly enhanced mediation capacity of the UN following the establishment of the Mediation Support Unit within the UN Department of Political Affairs (UNDP/A) has raised some questions over the ability of the UN to effectively partner with the African Union (AU) in mediating local disputes in Africa. These questions are informed by the fact that the AU is struggling to meet its responsibility to mediate local disputes peacefully as mandated by Chapter VIII. To address this, the AU Peace and Security Department (AUPSD) recently organised a roundtable meeting to help develop ideas on how to support the AU's mediation efforts in Africa. This initiative has revived the debate over the forms of support required to strengthen the AU's mediation capacity. While the roundtable proposed establishing a Mediation Support Unit (MSU) within the AU Commission, it is still in its development phase, and it is not yet clear what the MSU's role will entail. Suffice to say that the key problem with the AU's mediation efforts in Africa lies in implementing peace agreements. Fundamentally, this problem is occasioned by the process through which negotiated peace accords are concluded, which is often characterised by 'deadline diplomacy'; that is, the overemphasis on reaching an agreement without addressing the real issues that led to the conflict in the first place. This problem is also related to the fact that there is often too much attention on strategic and security concerns, which is often associated with the nature of the institution - the African Peace and Security Council (PSC), a component of the African Peace and Security Architecture (APSA) with the mandate to authorise mediation missions in Africa.

This article advances the cause of human protection in Africa in the context of the AU's capacity to mediate local disputes peacefully. Its aim is to articulate ways of strengthening the AU's mediation capacity in the context of human protection in the twenty-first century. Further to the ongoing debate over how best to support the AU's mediation capacity amidst the multiple conflicts it confronts, most notably in Burundi and in South Sudan, this article proposes the *desecuritisation* of the AU's mediation tools. This proposal seeks to promote mediation as a governance venture in conflict prevention in Africa to be undertaken through the African Governance Architecture (AGA) facilities, and supported where necessary, by the APSA components. Indeed, given that mediation tools are intrinsically peaceful; this article further proposes that support mechanisms should be peaceful as well.

To this end, this article firstly theorises a mediation support concept of 'preventive arbitration'. It highlights the pacific approaches to human

protection, especially mediation tools; underlines their weaknesses and then situates the concept of 'preventive arbitration' in support of the lapses identified. Secondly, the article provides an in-depth analysis of the concept of human protection in the twenty-first century as proposed by Ban Ki-moon. Thirdly, the article discusses the *pacifist* architecture of human protection; that is, the legal and policy instruments designed to foster *pacifist* processes and measures for human protection. This will focus on the relevant Chapters in the UN Charter and the AU's Constitutive Act, as well as the AU's conflict management tools, in order to provide a better perspective of the context within which the proposed preventive arbitration mechanism may be operationalised. There is also a proposal for the implementation of hybridised tools of mediation and preventive arbitration. Fourthly, the APSA and AGA infrastructures will be analysed, providing the context for governance-driven dialogue in deploying mediation and/or preventive arbitration. The article concludes by suggesting ways the UN can strategically support and implement the proposed hybrid mechanism, by investing more in developing the AGA's *pacifist* systems of conflict prevention.

Preventive Arbitration - Human Protection by Adjudication

Adjudicatory institutions, such as international courts including the International Court of Justice (ICJ) and the African Court on Human and Peoples' Rights (ACHPR) and national courts, operate in strict compliance with the statutes upon which they are established and the procedural rules governing their proceedings. Similarly, human rights commissions with mandates to pronounce or report on violations of international human rights treaties, such as the UN Human Rights Council and the African Commission on Human and Peoples' Rights, as well as national commissions, also constitute a part of the adjudicatory systems of human protection. Parties to a dispute may only approach such institutions for peaceful resolution of their differences if they meet prescribed legal criteria. These may involve substantive matters, such as the admissibility of the claim(s) and the legal standing of the party vis-à-vis the claim(s), and/or procedural requirements that may include the appropriate timeframe within which relevant court or commission must be petitioned.

These courts and commissions, in the course of discharging their function as human protection institutions, interpret and implement international, regional and national human rights instruments (Bilder, 2007) including the International Covenant on Economic, Social and

Cultural Rights 1966 and the International Covenant on Civil and Political Rights 1966, the Universal Declaration of Human Rights 1946, and the African Charter on Human and Peoples' Rights 1981, to mention a few. However, these human protection institutions are not as effective when it comes to implementing the human rights protection tools highlighted above. There are several reasons for this ineffectiveness: some relate to the non-justiciability of certain aspects of economic, social, cultural, political and civil rights in some national constitutions; some to the lack of effective enforcement measures for court decisions; and some to inadequate state reporting or follow-up of human rights commissions' declarations (Killander, 2010; Viljeon, 2007).

Significantly, the failure to ensure human protection by adjudication in the African context is largely due to these institutions remaining inaccessible to the people (Odinkalu, 2003; Killander, 2006). Moreover, even where adjudicatory institutions are open to the people, there are often questions over their independence and, therefore, the efficacy of the protection they provide (Killander, 2010). Deprived of basic rights and the means of seeking remedy for their violation within their national and regional institutions, affected populations often turn to political violence, such as organised rebellion, which can then lead to civil war (Ocaya-Lakadi, 1992). As Zartman (2000) observed:

A perceived collective need that is denied is the basic condition for conflict. Denied need refers to a broad range of grievances, from relief from political repression to redress for economic deprivation (p. 255).

Similarly, Williams (2011) has pointed to the lack of access to justice as a basis for violence. He argued, with reference to Africa, that conflicts are fought within the "broader idea of self-determination – i.e., to make the existing states better places to live for their marginalized minorities, and thus in extreme cases, excluded groups [have been] left with little option but to use force to gain a serious say in the governance structures under which they lived" (p. 94). Collier and Hoeffler (1999) pointed to the lack of justice as a cause of civil war. For others, in countries where democratic freedoms are denied, very often citizens have had to take up arms, thereby generating conflict (Nhema & Zeleza, 2008).

Human Protection by Political and Diplomatic Dialogue

When crises break out or are imminent as a result of un-redressed violations of human rights, national, regional and global authorities often respond by initiating processes of dialogue in an attempt to defuse or avert escalation of the situation to violent conflict. To this end, in Africa, Article XIX of the Charter of the Organisation of African Unity (OAU) 1963, established the Commission of Mediation, Conciliation, and Arbitration (hereafter, the Commission) with the aim of instituting mechanisms through which to settle disputes by peaceful means.¹ In 1978, the OAU Council of Ministers adopted a resolution expressing the desire to amend the Protocol of the Commission so as to enable it for the effective settlement of disputes between Member States.² In 1991, an OAU process known as the Conference on Security, Stability, Cooperation and Development in Africa (CSSCDA)³ adopted a thematic document called the 'Kampala Document', which dropped 'arbitration' (Kampala Document, 1991, Part B) as a tool for the peaceful, political and diplomatic settlement of disputes in Africa. This was seen to be in line with what it referred to as the 'African tradition'; that is, the resolution of conflict through mutual dialogue, embodied in mediation and conciliation, rather than through the legal methods characteristic of arbitration.

Arbitration mechanisms may involve the application of law and rules⁴ to issues and facts presented by parties to a dispute by an arbitral tribunal, usually appointed by the parties, which renders a decision called an award (Bilder, 2007). Furthermore, arbitration allows parties to a dispute to choose members of the arbitral tribunal, to make the rules that will govern the arbitral process, to define the issue(s) to be resolved, to choose the venue of tribunal, and to prescribe the duration of the

¹ See also the Protocol of the Commission of Mediation, Conciliation and Arbitration, 1963

² See Resolution on the Amendments to the OAU Commission of Mediation, Conciliation and Arbitration (CM/RES.629(XXXI)- (CM/RES.620-680), July 1978

³ Under the auspices of the Conference the OAU Heads of State and Government established the Mechanism for Conflict Prevention, Management and Resolution, "The Cairo Declaration", 1993, now Peace and Security Council (PSC) of the AU.

⁴ See for instance the Model Rules of Arbitral Procedure developed by the UN International Law Commission, 1958 and Arbitration Rules of the UN Commission on International Trade Law, 2010; and the Uniform Act Relating to General Commercial Law, 2010 of the Organization for the Harmonization of Business Law in Africa (OHADA)

arbitral process (Bilder, 2007). Some have argued that the distrust of African governments toward third-party adjudications contributed to the collapse of the OAU system (see Naldi, 1999; Amate, 1986; Kufuor, 2005). Moreover, from a constitutional perspective, some posited that this mistrust explained the reason why the OAU Charter did not grant the organisation the authority to sanction or enforce decisions or expel members for non-compliance with its decisions (Meyers, 1974).

Preventive arbitration, however, is a political and/or diplomatic tool that meets the criteria of the ‘African tradition’ because it addresses questions of arbitration legality and the potential enforcement of the AU’s decisions (arbitral awards). In the first regard, the preventive arbitration mechanism shall be deployed *ex aequo et bono* (Protocol of the Commission, Articles XXIX(2) and XXX); that is, on the basis of what the tribunal considers a fair and reasonable solution, rather than strictly on the basis of legal provisions. Statistics show that arbitral tribunals tend to decide disputes this way, seeking compromise solutions, with the result that most awards are adhered to by the parties to the dispute because the whole process is designed and initiated by the parties. For instance, Bilder (2007; see also Zack-Williams, Frost & Thomson, 2002) recorded only twenty cases of noncompliance out of three hundred arbitral awards studied between 1794 and 1936. Nevertheless, while normal arbitration remains a legal process, even where the tribunal adopts a ‘fair and reasonable solution’ the consequent arbitral award can be recognized and enforced by the courts; on the other hand, preventive arbitration is a political/diplomatic process. In other words, ‘peace’ agreements (the awards) between parties, facilitated by the AU, can only be enforced by the AU Assembly through the AU PSC. While African governments may view normal arbitration with some wary eyes because of the legal implications (this was the reason arbitration was never deployed by the OAU and was later dropped by the CSSCDA), preventive arbitration will operate on the basis of mutually agreed terms (not imposed on the parties, no matter how fair the tribunal may consider such terms) between the parties; such mutually agreed terms will only have a political and diplomatic force in relation to its implementation by the AU Assembly. Moreover, in normal arbitration, an agreement to submit a dispute to an arbitral tribunal is binding on the parties. Preventive arbitration consent will allow parties to a dispute to withdraw from the process without further consequences. In this regard, the pivotal importance of preventive arbitration is the awareness it creates about the likelihood of

an aggrieved party resorting to violence because all peaceful avenues of seeking redress would have closed. In effect, preventive arbitration - a permissive, flexible and party-driven process - will open a new channel for parties to a dispute to initiate peaceful means of settlement by petitioning the African Union Commission (AUC) to deploy the mechanism before violence breaks out.

Essentially, preventive arbitration operates on the premise that minority or opposition groups mostly resort to arms because of the absence of a credible and impartial institutional mechanism to protect their rights or address their grievances within national and regional adjudicatory institutions. In other words, it is highly likely that such groups would make use of legitimate peaceful fora within regional arrangements to attempt to remedy rights violations before turning to violent means. To this extent, preventive arbitration promises to enhance the Continental Early Warning System (CEWS) of the AU by pointing to imminent violent conflict. Furthermore, preventive arbitration can help reduce tension because its fundamental value is to create a regional forum for greater dialogue over human rights violations, including on political, social and economic grounds that have been adjudged *non-justiciable*. More than this, preventive arbitration is about empowering the people of Africa to take direct and active steps in the course of establishing governance institutions that will guarantee the protection of human rights within the states in which they live, in line with the 1990 *Arusha Charter on Popular Participation*. Preventive arbitration will also promote the rationale behind the establishment of the Pan African Parliament (PAP) and the African Citizens' Directorate, designed to bring governance closer to the people and which deals with the communications between the AU and civil society organisations (AfriMAP, 2007). Lastly, by virtue of the provisions of Article 23(2) of the AU Charter which state that the AU Assembly can sanction or expel members for failure to comply with its decisions, pronouncements rendered through preventive arbitration can be consistently implemented by the AU Assembly.

Human Protection - The Failure of 'Never Again'

For Ban Ki-moon, the idea of human protection has evolved in response to the decades-long failure of the UN "to save the succeeding generations from the scourge of war" (UN Charter 1945, *Preamble*) - a promise made at the establishment of the UN following the atrocities that took place during the Second World War. However, atrocities

committed in the 1990s, especially in Srebrenica and Rwanda, brought home the reality of the world's failure to meet the pledge of 'never again'. This failure can be attributed to: the inefficiency of the UN's collective security system (Boutros-Ghali, 1992); the parlous state of human rights protection institutions, such as legal institutions and human rights commissions; and the bankruptcy of democratic governance across the globe. In remarkable ways, this failure also stems from the inability of global and regional arrangements, such as the UN and the AU, to mobilise and deploy adequate preventive tools - including legal institutions, diplomatic and political measures, such as mediation, conciliation and arbitration, and the use of force/preventive deployment of peacekeepers - for the protection of human rights as enshrined in international and regional legal and policy instruments. These instruments include: the Universal Declaration of Human Rights (UDHR) 1948; the Covenant on Social, Economic and Cultural Rights 1966; the Geneva Conventions of 1949, especially the Fourth Convention, the Additional Protocol I relating to the Protection of Victims of International Armed Conflicts (IAC), and the Additional Protocol II relating to the Protection of Victims of Non-International Armed Conflicts (NIAC); the 1951 Convention Relating to the Status of Refugees and its 1967 Optional Protocol; and the Banjul (African) Charter on Human and Peoples Rights 1981, among others.

In the African context, this failure could be associated with weak constitutional provisions in regional and national laws and policy instruments. Corresponding institutions, such as an independent judiciary, that ordinarily constitute the bulwark of human protection are in general inadequate. The clearest example of these constitutional lapses can be illustrated by the fact that, while global human protection instruments are binding legal documents, the African Charter on Human and Peoples' Rights, for instance, is not binding; that is, states are not legally obliged to uphold the rights contained within it (Villiers, 1996).⁵ Such constitutional gaps constitute what is known in international legal jurisprudence as "directive principles of state policy" or "non-justiciable directive principles" (Usman, 2007: 644).

In addition, nations such as Nigeria and Ghana have adapted their constitutions to render some welfare and social services, including the right to education, employment, economic and political participation

⁵ Note, however, that the African Commission on Human and Peoples Rights can find for non-conformity with or violation of the Charter (Killander, 2010).

non-justiciable rights (see Villiers, 1996; Usman, 2007). In other words, conflicts or disputes between the governed and the government arising from non-implementation of the rights prescribed in the above instruments, whether justiciable or not, but deemed to be legitimate expectations of the people from the government, can only be resolved through diplomatic or political negotiations: that is if conditions are conducive to a peaceful resolution. As we shall see below, the peaceful protection of human rights or resolutions of violations are usually difficult to achieve through these means, particularly in Africa.

Adapting Available Tools to Emerging Conflicts

While recognising that the world and its conflicts have changed significantly since the founding of the UN, Ban Ki-moon rightly noted that the responsibility to maintain international peace and security has not (Ki-moon, 2011). This responsibility requires that new ways of utilising the instruments available under the Charter be learned in order to continue to adapt to evolving circumstances. Perhaps in an effort to address the different contexts of emerging conflicts, Ban Ki-moon categorised international responses to human protection needs into three types: 1) Protection in the context of conflict and complex emergencies, which involves the use of the peacekeeping model; 2) Human Protection and Prevention, which focuses on pacific responses, such as mediation; and 3) Human Protection and Accountability, which deals with international criminal responsibility for atrocities and consists of the use of the International Criminal Court (ICC) or special tribunals, such the Extraordinary African Chambers in the Senegalese Courts undertaking the trial of Hissène Habré (Ki-moon, 2011). One of the most illustrative examples of the UN's adaptation of its instruments to better respond to developing conflict trends lies in the area of peacekeeping, adaptations which have followed proposals contained in Boutros-Ghali's *An Agenda for Peace* (1992). Prior to the *An Agenda for Peace*, the UN's peacekeeping mechanism of conflict prevention focused mainly on interposing peacekeepers between belligerents, where there have been ceasefire agreements, and operated on the basis of consent, neutrality and non-use of force, otherwise referred to as "traditional peacekeeping" (Bellamy, William & Griffin, 2004). However, following the innovations introduced by Boutros-Ghali in 1992, peacekeeping mission mandates evolved into what is known as 'multidimensional peacekeeping'. This involves the use of peacekeeping tools in other areas, such as state-building and post-conflict reconstruction.

Furthermore, peacekeepers can now be deployed without the consent of warring parties (Olonisakin, 2000). Additionally, peacekeepers can now also use force to protect civilians and personnel, and to neutralize armed groups (UNSC Resolution 2093, 2013). Adaptation can also be seen in some of the reforms of the UN's human protection institutions, such as in the transformation of the UN Human Rights Commission into the UN Human Rights Council in 2006 (UNGA Resolution 60/25, 2006).

In Africa, (as we shall see in detail below) many of the challenges of adaptation relate to capacity building and development. Although the AU has missed its target to operationalise the African Standby Force (ASF) by December 2015, the current trend seems to be moving towards strengthening the capacity to resolve disputes peacefully, particularly in the area of mediation. The proposed merger of the African Court on Human and Peoples' Rights and the Court of Justice of the AU⁶ is also a significant step towards the better protection of human rights in Africa. In line with adapting its mechanisms for conflict prevention, the AU also appears to be shifting closer to *governance* as a dispute resolution strategy. This is reflected in the establishment of the African Governance Architecture (AGA), the African Governance Platform (AGP), the *Agenda 2063*, and *Silencing the Guns by 2020*, among other initiatives. Significantly, the concept of preventive arbitration supports this bottom-up approach to conflict prevention and the adaptation of existing preventative tools for human protection.

Building Effective Partnerships

In his speech, Ban Ki-moon stressed that the need to operationalise a concept of human protection is gaining momentum, particularly through the UNGA's continuing consideration of the concept of responsibility to protect (RtoP). In essence, where the responsibility of the state to protect populations at risk of atrocity crimes is not discharged, the international community, which includes regional arrangements such as the AU, is "morally obliged to consider its duty to act in the service of human protection" (Ki-moon, 2011; see also Deng et al., 1996; ICISS Report, 2001). In this context, Ban Ki-moon pointed out that "global power shifts have brought new voices, new partners and new opportunities to

⁶ See the AU Executive Council, Draft Protocol on the Amendments to the Protocol on the Statute of African Court of Justice and Human Rights, in the Report, the Legal Instruments and Recommendations of the Ministers of Justice/Attorneys General (AU Doc. Ex EX.CL/731[XXI]) July 2012

the effort to protect human rights”. The UN, in identifying new synergies with multilateral institutions, finds ready partners in regional arrangements based on Chapter VIII of the UN Charter. This provides a “ready framework for deeper and closer, more innovative collaboration with regional organizations” such as the AU (Ki-moon, 2011).

Ban Ki-moon (2011) also observed that the UN’s response to conflict and complex emergencies is that typical of a “firefighter”, but that efforts are underway to change this approach by working to “prevent the fire in the first place”. In essence, priority is placed on ‘protection by prevention’. While lamenting the inadequacy of the capacity of the UN firefighters (peacekeepers) to fulfil the organisation’s protection responsibilities in conflict and complex emergencies (owing to logistical problems such as transport and communication) Ki-moon expressed confidence in the ability of the UN to mediate conflicts based on its capacity to deploy mediators within 72 hours to any corner of the globe. This is ostensibly possible by virtue of the establishment of the Mediation Support Unit (MSU) within the UN Department of Political Affairs (UNDPA). In many ways, this is reflective of the fact that prevention is easier to achieve and less expensive to do. The question is, how well is it being done?

Most importantly, for the UN to effectively deploy mediators in conflict areas across the world, collaboration with regional organizations based on Chapter VIII of the UN Charter is crucial. In what the UNDP described as “productive DPA collaboration with regional organizations on mediation, conflict prevention and peacebuilding responses”, it observed that the AU had set the standard for “African ownership and priority-setting, consultative decision-making, division of labor and sharing responsibilities, and the effective use of the respective comparative advantage of the AU and the UN” (UNDPA, 2013, p. 20). It is within this context that UN support for the AU’s mediation capacity-building is being implemented based on the UN-AU Capacity Building Programme, including the UN-AU Mediation Partnership (UNDPA, 2013). Furthermore, the UN has maintained the UN Office to the AU (UNOAU) since 2011, which aims to strengthen the strategic partnership, especially focusing on policy development and enhancing long-term capacity (UNDPA, 2013). Nevertheless, there are questions over the efficacy of this partnership and capacity-building programme by virtue of the recently concluded Mediation Support Roundtable organized by the AU Peace and Security Department (AUPSD) held between August 31 and September 2, 2015 at the AU headquarters in

Addis Ababa, Ethiopia. The primary aim of the Roundtable was to advance strategic thinking within the AUC about ways to strengthen Mediation Support. The envisaged output was to have a working plan to establish a Mediation Support Unit (MSU) within the AUC.

In a broader context, the partnership between the UN and the AU, especially in the areas of peace and security, also needs further development (see Boutellis & Williams, 2013; Williams & Dersso, 2015). As Ban Ki-moon (2010) observed, without truly a “strategic relationship and clear guidance, our efforts to work together will continue to be short-term, *ad hoc*, more complicated and often more costly” (p. 55). The Chairperson of the AUC, Nkosazana Dlamini-Zuma (2013), has also lamented the lack of appropriate consultation in the areas of peace and security in Africa. The friction between these two powerful organisations is reflected in the ongoing situations in Mali, Burundi, Libya and Sudan. However, while these differences remain, in other instances, such as in South Sudan, Kenya and Côte d’Ivoire, the partnership has shown promising signs of greater cooperation and collaboration.

Strengthening the AU’s Mediation Capacity

In response to the challenges of collaboration facing the UN-AU partnership, the AU Peace and Security Department (AUPSD) has galvanised efforts to find ways to improve the Commission’s capacity for mediating conflicts in Africa. Arguably, the AU’s aim is to develop its infrastructure to better manage, mediate and resolve conflicts in continental Africa entirely on its own, or in true practice of the principle of subsidiarity upon which its relationship with the UN is based, in line with Chapter VIII of the UN Charter. Consistent with this motive, the initiative to establish an MSU within the AUC is timely. However, as this article proposes, in order to strengthen the AU’s pacific tools for human rights protection, the AU Assembly (AUA), through the PSD, needs to *desecuritize* (Wæver, 1998) its architectural framework for conflict prevention for human protection. This article adopts the view that conflict prevention and management is a question of governance, and could better be advanced through the African Governance Architecture (AGA) and complemented, where necessary, by the African Peace and Security Architecture (APSA).⁷ This will bring the

⁷ Though, in an operational context, the AU Commission initiates, deploys and supports the AU mediation missions across the continent on behalf of the AU PSC.

AU's mediation practices and processes in line with global standards, as exemplified by the contemporary structure within the UN system wherein the UN Secretariat authorises and mandates international mediation missions through the UNDPA. Moreover, this article argues for flexible methods of dialogue over disputes in Africa under the auspices of the AGA. To these ends, this article advances the concept of preventive arbitration, which can be hybridised with mediation. The underpinning idea is that these methods of arriving at a negotiated agreement essentially facilitate adherence to the negotiated terms and improve the chances of sustainable and durable peace cum long-term human protection. Additionally, in the spirit of the African tradition, mutual dialogue will be better promoted by the ordinary people of Africa, well represented within the AGA structure.

The Architecture of Human Protection: Global-regional Dimensions

The United Nations

Chapter VI of the UN Charter makes elaborate provision for pacific tools for human protection. This is reflected in the overriding objective of the organisation; that is, "... to save the succeeding generations from the scourge of war..." (UN Charter, Preamble) Thus, pursuant to Article 33, parties to a dispute likely to endanger international peace and security are encouraged, first of all, to seek a solution to their differences by the following methods: negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice. In relation to interstate conflicts—that is, in relation to the original “parties to dispute” referred to in Article 33—most of these mechanisms are fairly well developed and deployed in situations of concern across the globe. In contrast, in relation to state-insurgent conflicts—the source of most challenges to human protection in the twenty-first century—the UN continues to learn “new ways of utilizing the instruments available under the Charter” in order to adapt to “evolving circumstances” (Ban Ki-moon, 2011). Reference to “resort to regional agencies or arrangements” in Article 33 demonstrates that such organisations are

That the AU Commission undertakes the AU's mediation exercises supports the proposition that the structural framework needs to be reworked to promote a governance outlook to the AU's mediation mechanism.

considered, primarily, pacific tools available to the UN to maintain international peace and security. This is also confirmed in Article 53 (Chapter VIII, Regional Arrangements), which provides that “no enforcement action shall be undertaken under regional arrangements or by regional agencies without the authorization of the UN Security Council”.⁸ In this context, and within the purview of the concept of preventive diplomacy (Boutros-Ghali, 1992), the UN has been responding to intrastate conflicts with mediation and negotiation tools, often in partnership with relevant regional and/or subregional organisations.

The most recent example of this effort is the case of South Sudan, where the mediation was largely led by a subregional arrangement, namely the Intergovernmental Authority on Development (IGAD) and later IGAD-Plus, comprised of East African IGAD countries, five members of the AU High-Level Ad Hoc Committee, the AU Commission, the United Kingdom, China, the United States, the UN, Norway, and the EU. In many ways, therefore, developing and strengthening the pacific tools available to the AU and other Regional Economic Communities (RECs) should be taken as *sine qua non* for the purposes of human *protection and conflict prevention*.

The African Union

From a global perspective - that is, in relation to the maintenance of international peace and security or in the context of the collective security system - the AU derives its recognition, mandate and authority from Chapter VIII of the UN Charter, which outlines the role of regional arrangements in maintaining international peace and security. It is on this basis that the AU receives funds from the UN Assessed Contribution for some of its peace support operations in Africa, for instance in Mali under the African-led International Support Mission in Mali (AFISMA) (subsequently re-hatted to become the UN Multidimensional Integrated Stabilization Mission in Mali

⁸ In practice, however, this is not usually the case. For instance, the AU took enforcement action in Darfur, Sudan before forging a multidimensional force with the UN. The AU also undertook similar action in Burundi. The Economic Community of West African States (ECOWAS) took enforcement measures in Liberia and Sierra Leone in the 1990s by deploying the ECOWAS Monitoring Group (ECOMOG), without first seeking the UNSC’s authorization. It is widely now acknowledged that such authorization can be obtained after the fact

[MINUSMA]). Constitutionally, however, the AU was established and acquired its powers by way of the Constitutive Act of the AU. By virtue of Article 3(h), one of the primary objectives of the AU is the protection of human and peoples' rights. Undoubtedly, therefore, the concept of human protection is clearly stipulated in the Constitutive Act of the Union. Furthermore, Article 4(e) provides for the peaceful resolution of conflicts among member states of the Union through such means as may be directed by the Assembly of the Union.⁹

The Assembly, pursuant to Article 5(2) of the Constitutive Act, established the Peace and Security Council (PSC)¹⁰ with the primary objectives of promoting peace and anticipating and preventing conflicts in Africa (see the AU PSC Protocol, Article 3[a-b]) among others. Moreover, Article 4(a-b) emphasises the need for peaceful settlement of disputes and early response to crisis situations so as to prevent them from developing into full-blown conflicts. To achieve these objectives, Article 6(b-c) prescribes preventive diplomacy and peacemaking, including the use of mediation, which is the AU's preferred tool for self-pacification (Mottiar & Jaarsveld, 2009). Unlike the Charter of the UN, the Constitutive Act of the AU anticipated the use of mediation in state-insurgent struggles and other forms of conflicts in Africa. The most successful use of mediation by the AU in the context of human protection occurred during the post-election violence in Kenya between 2007 and 2008, albeit with the crucial support of the international community, represented by the UN (see Lindenmayer & Kaye, 2009).

Mediating for Human Protection

Mediation has been defined as a process of conflict management, where those in conflict seek the assistance of, or accept an offer of help from, an outsider (who may be an organisation), to change their perception or behaviour, and to do so without resorting to physical force or invoking the authority of the law (Bercovitch, 1997). The AU-led mediation in Kenya's post-election violence—where the then AU Chairman and former Ghanaian President, John Kufuor, helped mediate the initial agreement towards a power-sharing deal between the parties,

⁹ The Assembly of the Union is the supreme organ of the AU and it is composed of the Heads of State and Government of the Union. See *Article 6* of the AU Constitutive Act

¹⁰ See the Protocol Relating to the Establishment of the Peace and Security Council of the AU, 2002

prior to the Panel of the Wise,¹¹ led by former UNSG, Kofi Annan, taking over the mediation process—was a significant development in human protection approaches through the pacific model. Furthermore, the mediation effort has been recognised as one of the most outstanding developments in the implementation of RtoP through peaceful means by a regional arrangement (Lindenmayer & Kaye, 2009). Apart from the fact that the mediation helped stop the violence, it also facilitated Kenya’s sustained constitutional reforms and established, although tentatively, a *locus classicus* for accountability for international crimes by serving Heads of State and Government before the ICC at The Hague.¹² Similarly, the just concluded IGAD-Plus peace agreement in South Sudan is showing, to the extent that the two-year war has ceased, signs of success in mediating for human protection. Nevertheless, it is too early to officially declare mediation’s success in forging a path to the sustainable peace and democratic reforms much needed in the country; indeed some analysts are doubtful of the long-term prospects of the peace deal (Loewenstein, 2015).

Some situations, for example in Burundi and Sudan, have so far defied multilateral efforts at mediation. While conditions in Darfur, Sudan have polarised the UN and the AU (Ifediora, 2015), events in Burundi are simply not amenable to mediation. Instead, the AU has deployed human rights monitors. It is against this backdrop that the AUPSD convened a Mediation Roundtable, where the consensus emerged that the AU requires capacity for a Mediation Support Unit within the AUC. Even though this move is highly commendable, a much larger challenge relates to implementing mediated peace deals, such as in the recent case of South Sudan. Indeed, a significant number of mediated peace agreements in African conflicts are found to be ineffectual in the long-run, (see Zack-Williams, Frost & Thomson,

¹¹ The Panel is composed of five respected African personalities, and is one of the ‘critical pillars’ of the APSA. See Article 11 of the AU PSC Protocol.

¹² Even though Uhuru Kenyatta and William Ruto, the president and vice-president of Kenya respectively, were indicted by the ICC before they assumed office, the continuation of proceedings against them reflected on the existing issue of trials of sitting Heads of State and Government of African descent, such as the case of Omar Al-Bashir of Sudan who had been indicted by the ICC for atrocity crimes. This question has been the most fractious in the UN-AU partnership, which affects multilateral efforts in the fight against impunity and RtoP implementation in Africa. See Ifediora (2015). Note that the ICC has discontinued the case against Uhuru Kenyatta.

2002; Tull & Mehler, 2005; Mottiar & Jaarsveld, 2009; Stedman, 1991; Licklider, 1995) which has led some to argue that the Kenyan success is a rare case of conflict prevention by mediation in Africa (Lindenmayer & Kaye, 2009).

Nathan (2009b) explained this by distinguishing between a peace agreement signed by the parties and a genuine and sustainable peace, with reference to cases of the Democratic Republic of Congo (DRC), 1999 and 2003; Somalia, 2004; Darfur, 2006; Burundi 2000, 2006; and Zimbabwe 2008, and noted that none of these agreements had in fact achieved peace and stability, with dire consequences for the people of those countries. There are several reasons why most mediated peace deals eventually collapse. These include the presence of what has been referred to as ‘spoilers’ (parties to conflicts not at the table; that is rejectionists, such as government-sponsored militias, individual extremists and ideologues, or criminal warlords opposed to ending the conflict through negotiation (Sisk, 2009, p. 3; Høglung & Zartman, 2006; Newman & Richmond, 2006) and corrupt political elites (Loewentein, 2015).

There are further issues that pose challenges to implementing mediated agreements. These include: the imposition of peace agreements by mediators on the parties to a conflict (Sisk, 2009; Africa Review, 2015; ICG, 2015); the ‘quick fix’ or short-sighted orientation of some mediation processes (Nathan, 2009b) that render peace deals easy to renege on by the parties (Hoffman, 2015; Brahimi & Salman, 2008; ICG, 2015); mediators’ bias (Svensson, 2007); and the suggestion that mediation is not suitable for state-insurgent struggles (Frei, 1976; Pillar, 1983), although the AU does not make such distinctions (Windhoek Declaration, 2015). Evidently, mediation is not a perfect mechanism; rather, it requires strengthening. The crucial question is, how best can AU mediation tools be supported so as to help engender sustainable peace agreements?

As Sisk (2009) aptly observed, “international mediation or ‘peacemaking’ in UN parlance, far from being neutral, passive, and unbiased, must confront the stark reality of political violence” (p. 3). In other words, mediators must be clearly assertive, that is, powerful. On the one hand, Sisk is right -mediators often have to deal with ongoing conflicts, which entail confronting political violence - on the other hand, the attempt to confront political violence by mediators raises important questions. Surely, it is in the attempt to use mediation to confront political violence that critics of the tool have found it most vulnerable.

This is because in the aim to persuade belligerents to sign a peace deal, mediators often ignore crucial elements of successful agreements, such as the popular and inclusive participation of the people and the meeting of their primary concerns. For instance, in Mali, the International Crisis Group (ICG) noted that the Mali peace agreement failed to address key grievances of the people, such as jobs and justice (ICG, 2015). Similarly, a recent study on the crises in Guinea and Cote d'Ivoire, among others, concluded that regional organisations' efforts were typically directed towards finding negotiated political solutions which were short-term and focused on preventing election-related violence, without devoting sufficient attention to protecting civilians (Streitfeld-Hall, 2015).

As indicated in Bercovitch & Jackson (1997) definition above, the mediation mechanism is devoid of legal coercion or physical force. Quite appropriately, the UN has developed other instruments to respond to violent conflicts where mediation proves ineffective, using what Ban Ki-moon has characterised as 'firefighters', that is, peacekeepers deployed to either keep the peace, enforce the peace or to create the peace (Olonisakin, 2000). A recent example is the deployment of an "intervention brigade" by the UNSC in the Congo in 2013 to "neutralize and disarm" the March 23 Movement (M23) rebels (UNSC Resolution 2098, 2013). In December 2015, the AUPSC declared its intention to deploy an African Prevention and Protection Mission in Burundi (MAPROBU) after its mediation efforts failed. It is pertinent to underline the point that mediation is essentially a pacific instrument designed to promote dialogue, confidence-building and quiet diplomacy. Therefore, it is only appropriate that in order to support the AU's mediation endeavours in African conflicts, for long-term human protection purposes, a similar pacific instrument, such as the proposed mechanism for preventive arbitration, offer some real practical solutions to the above highlighted challenges facing the (AU's) mediation efforts (in Africa).

Hybridising Mediation and Preventive Arbitration

Integrating preventive arbitration into mediation is consistent with the contingency model of conflict management which involves alternating two similar but different mechanisms to support a particular process (Fisher & Keashly, 1991; 1996). Such a method has been alluded to in discussions of peacemaking strategies in Africa, including mediation and arbitration (Nathan, 2009a). In the Sudanese case in

1972, where a hybrid mediation-arbitration mechanism was deployed in the negotiations between the Sudanese Army and the Anya-Nya insurgents, Emperor Haile Selassie of Ethiopia acted as arbitrator, and the World Church Council (WCC) and All Africa Conference of Churches (AACC) as mediators. The case indicated the use of an arbitrator merely as a guarantor. Several accounts of the negotiations documented the effectiveness of the Emperor's authority as an arbitrator to direct the course of the negotiations when the mediation process, under the guidance of the WCC and AACC, became deadlocked (Rothschild, 1997; Rothschild & Hartzell, 1993). Moreover, Rothschild (1997) argued that "external guarantors (arbitrators) can provide an indispensable incentive for minority groups' cooperation by holding out the promise of protection in the event that the state backslides on its agreement" (p. 241). Rothschild and Hartzell (1993) contended that the Emperor's success in arbitrating the dispute largely depended on a "substantial amount of implied coercive capacity" (p. 84). However, the recent coup d'état in Burkina Faso in September 2015, where the East African Community (EAC) had been the guarantors of the 2000 Arusha Accord - the basis of the ongoing transition - raises some practical questions as to the usefulness of the role of such guarantors. The precarious peace deal in South Sudan, reached in 2015 with the IGAD-Plus as guarantors, reinforces the question mark over effectiveness of the use of arbitrators in this context.

On the other hand, hybridising preventive arbitration and mediation presents a system that allows the parties to a dispute to seek a peaceful political and diplomatic settlement through regional arrangements, before ever resorting to violence. In other words, preventive arbitration precedes mediation. It creates a docket at the AUC to draw-up a complaint by aggrieved groups who are dissatisfied with state policies because such policies violate their human rights. This is important where there are no realistic adjudicatory means, either within national or regional systems, to remedy the wrong complained of. Of course this system is not water-tight; states may be reluctant to endorse it or it could become politicised and thus ineffectual, but it will help establish a clear basis for further action, dampen tension, and galvanise regional action as early as possible. Accordingly, consistent with the consensus to establish an MSU within AUC and the need to continue adapting available instruments within the UN Charter for pacific human protection missions, preventive arbitration offers a sustainable pathway to arriving at implementable peace deals because it is party-led,

inclusive, permissive, flexible¹³ and, most importantly, backed by a pacifist power; that is, the authority of the AUA as continental sovereign (Ifediora, 2015) with its firm commitment to the peaceful resolution of conflict and ensuring human protection by peaceful means in Africa.

Re-architecting for Human Protection

As highlighted above, the aim of the AUPSD Mediation Roundtable was to advance strategic thinking within the AUC around ways to strengthen mediation support and to create a working plan to establish an MSU. The roundtable built on the outcome of the high-level seminar on *Strengthening Mediation in Africa*, organised by the African Centre for the Constructive Resolution of Disputes (ACCORD) and the AU and held on May 4, 2015 in Addis Ababa, Ethiopia. The foci of the seminar included: international mediation against the backdrop of evolving conflict dynamics; assessments of the concepts and practice of subsidiarity, coordination, and cooperation during mediation interventions; and efforts to improve how the AU, UN, RECs, international partners and non-state actors undertake and collaborate on international mediation in Africa.

Ideas on restructuring the AUC in the service of a strengthened and effective capacity for mediation began to emerge about a decade ago. In a rather confusing proposal, however, Nathan advocated for mediation to be subsumed either under the Panel of the Wise (PoW), one of the pillars of the AU PSC (a component of the APSA) or within the AUC (an AGA facility) (Nathan, 2005; Nathan, 2007). As a matter of fact, the AU PSC is mandated to operationalise the Union's pacific tools, including mediation, for conflict prevention cum human protection by virtue of Article 6 of the AU Constitutive Act. Article 2(2) provides that the PSC shall be supported by the PoW and the AUC in carrying out its functions. However, in a rather bold proposal a few years later, Nathan argued for the mediation capacity to fall within the ambit of the AUC (a component of the AGA) (Nathan, 2009a). In contrast, proposals have been presented for entrenching and institutionalising mediation support within the APSA framework (Mottiar & Jaarsveld, 2009). The roundtable clearly agreed to establish an MSU within the AUC. In

¹³ One major problem facing the successful use of mediation in Africa is its lack of flexibility. Accordingly, finding ways of making it "highly flexible" is critical (Govender & Ngandu, 2009, p. 17).

practice, the principal operational mechanism of mediation in the AU is the AUC, which implements mediation interventions and takes decisions regarding their composition and nature. The AUC also takes advice on mediation envoys from the PoW. Support, usually research and logistics, for mediation comes from the Conflict Management Directorate (CMD) of the Commission.

As this article argues, pacific responses to conflicts, such as with mediation and/or preventive arbitration mechanisms are governance interventions, because often at issue are questions of justice, deprivation and inequality. Accordingly, sustainable capacity building for human protection should be conceived in the context of building lasting institutions for good governance. This can be better promoted through the mutual dialogue or brokered dialogue represented in the peaceful instrument of mediation, supported by preventive arbitration. After all, the promotion and protection of human rights, and the encouragement of good governance were the major drivers for the formation of the AU (Makinda & Okumu, 2008). To be sure, a focus on governance would involve a continuing process through which conflicting and diverse interests may be accommodated and co-operative action taken. Moreover, a governance approach would describe the structures, rules, and institutions which African people have established for managing their political, cultural, economic, and social affairs (Commission on Global Governance, 1995; Khadragala, 2015; Makinda & Okumu, 2008). In this context, the AU has established a system called the African Governance Architecture (AGA)¹⁴ to coordinate the activities of AU institutions towards achieving democratic governance and enhancing respect for human rights and the rule of law. The AGA has three principal pillars, the first being a vision of and norms of governance embodied in legal and policy instruments, standards, principles and practices. These include, the Constitutive Act of the AU, African Charter on Democracy, Elections and Governance, the African Charter on Human and People's Rights 1999, the OAU Algiers Declaration on Unconstitutional Changes of Government 2000, the Lomé Declaration for an OAU Response to Unconstitutional Changes of Government, the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, the African Union Convention on Prevention and Combating Corruption, and the OAU/AU

¹⁴ See, the Assembly of the Union Decision at its 15th Ordinary Summit, AU Doc. Assembly/AU/Dec.304 (XV), 2010

Declaration on Principles Governing Democratic Elections in Africa, etc.

Pillar two involves the institutional framework for implementing the norms and vision, which is constituted by the African Union Commission (AUC), the African Court on Human and People's Rights (AFCHPR), the African Commission on Human and People's Rights (AFCHPR), the Pan-African Parliament (PAP), the Department of Political Affairs (DPA), the Secretariat of the African Peer Review Mechanism (APRM), the New Partnership for Africa Development (NEPAD) Planning and Coordinating Agency (NEPAD Agency), the Economic, Social and Cultural Council (ECOSOCC), the AU Advisory Board on Corruption, and Regional Economic Communities. The final pillar involves the mechanisms and processes for interaction that will facilitate information flow, exchanges, dialogue, synergies and joint action among the various AU governance institutions and actors with a formal mandate in governance. To monitor compliance with and implementation of the major governance instruments and commitments, an African Governance Platform (AGP) has been established. It is also envisaged that the AGP will enhance coordination, harmonisation and implementation of the AGA.¹⁵

The essence of the AGA, therefore, is to provide an opportunity to engage and develop appropriate capacity and responses to governance challenges in Africa. To put it succinctly, the AGA is the Union's norm entrepreneur, norm developer, and norm enforcer. It embodies the pacific norms and instruments for human protection in Africa, which it fulfils by mobilising continental governance initiatives. Most conflicts in Africa are shadowed by governance deficits, social inequalities, and struggles for resources and wealth redistribution. As Deng et al (1996) have argued, "[w]hether conflicts result from the crisis of national identity, disparities in political participation, or inequalities of distribution, the critical factor is one of management through governance" (p. xii). Moreover, as Annan (2012) concluded, in the context of RtoP:

The long-term protection of civilians depends upon the peaceful structures and institutions under which they live,

¹⁵ For further reading see, The African Governance Architecture: Towards a Joint EU-Africa Strategy, AUC/UNECA europafrika at: <http://europafrika.net/2011/03/10/the-african-governance-architecture/>.

their stability and robustness in the face of the subversive efforts of those who would do evil to others. The Responsibility to Protect, properly defined, is above all about ensuring lasting institutions ... for the peaceful safeguarding of human lives and human rights (p. 132).

This is the context within which mediation, preventive arbitration, and other pacific tools for human protection should be conceived, developed and deployed. These instruments, currently *securitised*, because they are subsumed under the APSA remit, should be relocated and embedded into the AGA umbrella, specifically within the AUC, for much broader, strategic and constructive management of conflicts in Africa and toward the end of sustainable human protection. Furthermore, a *securitised* mediation tool (or the militarisation of politics) (Stedman, Rothschild & Cousens, 2003), portends security measures that are often rushed and inherently over-politicised, with the effect that the essential ingredient of conflict prevention and resolution by peaceful means—that is, dialogue—is obviated. Indeed, it runs counter to the African tradition of mutual dialogue when mediation tools prioritise strategic or security concerns.

Conclusion

Transitioning from ‘firefighting’ to ‘preventing the fire in the first place’ requires global-regional governance approaches to conflict management that address the needs of the people. But to understand the needs of the people, global-regional fora for dialogue between competing groups are imperative. At the moment, the only officially recognised mechanism for promoting such dialogue is through mediation. Mediation can be strengthened by operationalising preventive arbitration, which offers a more participatory space for minority or opposition groups to be involved in discussions relating to how they will be governed. The best platform for such consultations at the regional level is within the AUC.

It is imperative to point out that the *raison d’être* for establishing the PAP in the AUC was to promote greater participation in governance by African peoples. This shift began in 1990 with the Arusha Charter on Public Participation—the outcome of the OAU, UN and African Civil Society-organised International Conference on Popular Participation in the Recovery and Development Process in Africa, in Arusha, Tanzania. The gist was to create a regional forum for ordinary African peoples,

who may be deprived of such opportunities in their states, to contribute to building governance structures either at the state or continental level. Similarly, emerging from the Arusha conference was the conviction that the most comprehensive set of conflict prevention measures involves the development and maintenance of a democratic state in which, among other things, civil society is vibrant, there is effective justice and the rule of law, there is equitable access to political power and economic resources by all citizens and groups, the various regions of the country are treated fairly and equitably in matters of public concern, and there is sufficient economic growth and development to ensure reasonably decent livelihoods or at least realistic hope for social progress (Ocaya-Lakadi, 1992). The clearest expression of the Arusha conclusions has been the establishment of the AGA, within which exist bodies such as the African Citizens' Directorate and the PAP. The UN and development partners should make greater contributions to developing and enlarging these systems for greater human protection in Africa.

Moreover, international mediation and preventive arbitration in conflicts in Africa should also aim to achieve the above ideals as they are the surest path to sustainable peace and stability in the continent and within states. In this context, the AGA is the most suitable framework to operationalise mediation and hybrid mediation-preventive arbitration within the AUC. States and insurgents will be more receptive to genuine dialogue initiated by the political and governance organs of the AU. Note that the UN mediates through the UNDPA, not through the Security Council. Indeed, the APSA's role, as well as the Assembly, should be left to—only when necessary—the implementation of negotiated governance deals. This is the surest path to a long-term, sustainable guarantee for human protection in Africa.

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