



# International Peace Support Training Centre Nairobi, Kenya

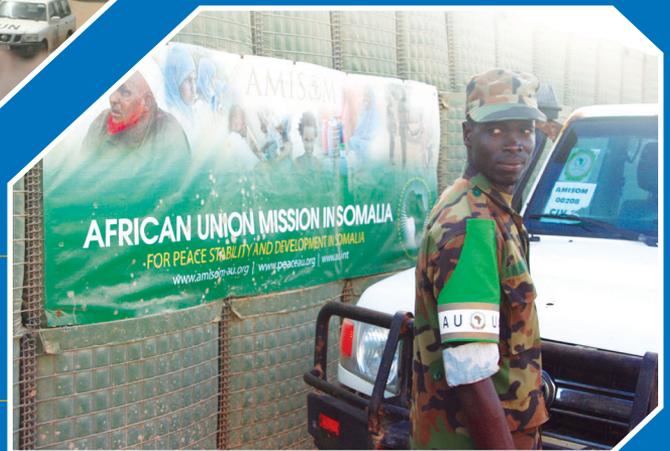
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*The UN Mission in South Sudan (UNMISS):  
Assessing its Role in IGAD Facilitated  
Agreement on the Resolution of Conflict  
in South Sudan (ARCISS), 2015*

*Enhancing Protection of Civilians in  
Peace Support Operation in Eastern  
Africa: A case study of AMISOM*



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## Foreword

The International Peace Support Training Centre (IPSTC) is a research and training institution focusing on Peace Support Operations (PSO) capacity building at the strategic, operational and tactical levels within the framework of the African Peace and Security Architecture (APSA). The centre has evolved to become the regional Centre of Excellence for the African Standby Force (ASF) in Eastern Africa.

IPSTC addresses the complexities of contemporary UN/AU integrated PSO by describing the actors and multi-dimensional nature of these operations. The research conducted covers a broad spectrum ranging from conflict prevention through management to post-conflict reconstruction. The Centre has made considerable contribution in training and research on peace support issues in the Great Lakes region and the Horn of Africa through design of training curriculum, field research and publication of Occasional Papers and Issue Briefs. The Occasional Papers are published annually, while the Issues Briefs are produced quarterly. The issue briefs are an important contribution to the vision and mission of IPSTC. The Second Quarter Issue Brief No. 3 (2016) focuses on two emerging areas which are becoming of increasing interest with respect to peace and conflict in Eastern Africa: *The UN Mission in South Sudan (UNMISS): Assessing its Role in IGAD Facilitated Agreement on the Resolution of Conflict in South Sudan (ARCISS), 2015* and *Enhancing Protection of Civilians in Peace Support Operations in Eastern Africa: A case study of AMISOM*).

The Issue Brief provides insights into the dynamics of peace and security concerns in the region that are valuable to policy makers, and aims to contribute to the security debate and praxis in the region. The articles in the Issue Brief are envisaged to bolster the design of the training modules at IPSTC. The research and publication of this Issue Brief has been sponsored by IPSTC.

**Brigadier P. M Nderitu**

**Director, IPSTC**

## Acronyms

ABA	American Bar Association
AMISOM	African Union Mission in Somalia
ARCISS	Agreement on the Resolution of Conflict in South
ARPCT	Alliance for the Restoration of Peace and Counter Terrorism
AU	African Union
BNDF	Burundi National Defence Forces
CNHPR	Committee for National Healing, Peace and Reconciliation
CRA	Compensation and Reparation Authority
CSC	Conflict Sensitive Conservation
CSO	Civil Society Organizations
CTRH	Committee for Truth, Healing and Reconciliation
FGS	Federal Government of Somalia
HAR	Humanitarian Assistance and Reconstruction
HCSS	Hybrid Court for South Sudan
ICG	International Crisis Group
ICU	Islamic Courts Union
IGAD	Intergovernmental Authority on Development
JMEC	Joint Monitoring and Evaluation Commission
MVM	Monitoring and Verification Mechanism
NATO	North Atlantic Treaty Organization
NGO	Non Governmental Organizations
NLA	Reconciliation of the National Legislative Assembly
NPPR	National Platform for Peace and Reconciliation

PCTSA	Ceasefire and Transitional Security Arrangements
PoC	Protection of Civilians
POPC	Parameters of Permanent Constitution
R2P	Responsibility to protect
REFM	Resource, Economic and Financial Management
ROE	Rules of Engagement
SCPR	Specialized Committee on Peace
SPLM/A	Sudanese Peoples Liberation Movement/Army
SPLM-IO	Sudanese Peoples Liberation Movement/Army in Opposition
SSPRC	South Sudan Peace and Reconciliation Commission
TCC	Troop-contributing countries
TJARH	Transitional Justice, Accountability, Reconciliation and Healing
TGNU	Transitional Government of National Unity
UK	United Kingdom
UN	United Nations
UNMISS	UN Mission in South Sudan Sudan
UNOAU	UN Office to the African Union
UPDF	Uganda Peoples Defence Force
US	United States

## Introduction to the Issue Briefs

This second quarter issue brief addresses two aspects key to peace and security concerns in the Eastern Africa region. The first paper examines, *The UN Mission in South Sudan (UNMISS): Assessing its Role in IGAD Facilitated Agreement on the Resolution of Conflict in South Sudan (ARCISS), 2015* and the second paper explores *Enhancing Protection of Civilians in Peace Support Operation in Eastern Africa: A case study of AMISOM*.

In *The UN Mission in South Sudan (UNMISS): Assessing its Role in IGAD Facilitated Agreement on the Resolution of Conflict in South Sudan (ARCISS), 2015*; the study explores prospects for peace in South Sudan heralded by the peace agreement and supportive role of UNMISS. The paper argues that UNMISS still suffers from credibility deficit, has frosty relations with the government of South Sudan and it's yet to understand political dynamics in the country. Peace and stability in South Sudan should be hedged on establishing a constitutional order for regime transition, separation of politics from military and international support that reinforce rather than undermine the envisioned political order.

The second paper, *Enhancing Protection of Civilians in Peace Support Operation in Eastern Africa: A case study of AMISOM*) examines capacity of AMISOM to protect civilians in Somalia focusing on the extent to which AMISOM managing protect of civilians amidst the ongoing conflict. Despite challenges of protecting civilians in active conflict areas, this paper also reviews ways to enhance civilian protection in Somalia.

Previous reviews established that the failure to protect civilians was strategically undermining AMISOM and its operational success which lead to resentment from the local civilians, reduced cooperation and probably at times contributed to the locals joining Al-Shabaab. In order to archieve protection of civilians AMISOM has to adress the various aspects of sexual violence and sexual exploitation and abuse, child protection, especially children associated with armed forces or groups, mine actions and explosive remnants and also movements of people, including internally displaced persons and refugees.

# **The UN Mission in South Sudan (UNMISS): Assessing its Role in IGAD Facilitated Agreement on the Resolution of Conflict in South Sudan (ARCISS), 2015.**

*Joseph Kioi Mbugua*

## **Introduction**

The young nation of South Sudan has gone through political challenges since independence in 2011. It has engaged in war with Sudan, and it is still going through internal civil war. The oil dependent economy has been severely affected. This situation has made it difficult for the country to realize global development goals. The majority of the citizens are yet to experience peace dividend as internal conflicts affect their livelihoods and well-being.

The conflict began in July, 2013, when the then vice chairman of Sudanese Peoples Liberation Movement (SPLM) and vice president of South Sudan, Riek Machar, announced his decision to contest chairmanship of the SPLM and the presidency in 2015 election. This was temporary halted by the ceasefire agreement in 2014 (Wassara, 2014). The conflict spread to Jonglei, Upper Nile and Unity State, pitting the Dinka and Nuer ethnic groups of the president and his deputy respectively. Major atrocities were committed.

The civil war registered some of the worst incidents of human rights abuse (African Union (AU), 2014). Within a few days, more than 600 (mostly Nuer) were killed in Juba, 90 000 sought refuge in the United Nations Mission in South Sudan, (UNMISS), more than 1 million were displaced, creating a large number of Internally Displaced Persons (IDPs), and more than 360 000 fled to neighbouring countries (Hutton, 2014). Thousands have been killed as a result of the conflict. There have been massive human rights violations and war crimes committed (Human Rights Watch (HRW), 2014, AU, 2015). The UNMISS and other UN installations, IDP camps and Mosques were not spared in the conflict (ABA, 2014). According to UN estimates, by the end of 2015, 1.6 million people had been displaced, with about 600 000 fleeing to neighbouring countries, (UNOCHA, 2015).

South Sudan became independent on July, 9, 2011, after a referendum was held in January 2011 as part of the requirements of the Comprehensive Peace Agreement (CPA) signed between SPLM/A, and the government of Sudan. The country has a population of about 12 million people and occupies an area of about 640 000 Sq. Km, (UNDP, 2012).

The country is made up of about 62 ethnic groups with the Dinka making about 40% and the Nuer 20%. South Sudan borders Kenya and Uganda to the south, Ethiopia to the East, Democratic Republic of Congo and Central Africa Republic to the west and Sudan to the north. The country is landlocked thereby relying on Sudan and Kenyan seaports.

Given the high development challenges, political transformation of SPLM/A into a viable non militarized political party remains a top priority. Managing inter-ethnic competition and conflict will be informed by the transformation of SPLM and other political parties (Minale, 2014).

This is the background that informs the nature of the current IGAD mediation process and implementation of the recent agreement, the Agreement on the Resolution of Conflict in South (ARCISS). It is more than two years since IGAD mediators led the South Sudan peace process with the aim of building consensus on the way forward for the country.

The ARCISS is a well-meaning document that encompasses critical aspects of transition from conflict such as; power sharing, accountability, truth, transitional justice, reconciliation and healing (UNMISS, 2015). However, it seems that the parties might have signed the agreement due to international pressure, rather than to the conviction on the merits of the document.

Some of the issues discussed in the negotiation include: transitional governance arrangements; parameters of permanent constitution; transitional security arrangements; resource, economic and financial management; and transitional justice and reconciliation. So far the stakeholders have reached an enforceable ceasefire agreement and a negotiated political settlement, but implementation is the Achilles heel. Since neither party has prospects of winning the war, the time was ripe for the IGAD mediation. The local delegation of stakeholders constitutes the Government of the Republic of South Sudan (GRSS), the Sudan Peoples' Liberation Movement/Army (In Opposition) SPLM/A-O, the SPLM Leaders (Former Detainees), the Civil Society Organizations and the Faith-Based Organizations.

In July, 2016 fighting broke out in Juba between forces loyal to Salva Kiir and those loyal to Riak Machar. Since then, the former vice president has been replaced by former Jonglei governor, Taban Ndeng. The peace process faces significant hurdles and unless the international community provides a viable way out, a protracted military conflict will take place to determine the supreme hegemony between the two leaders and their communities.

It is in this context that this study will examine the 2015 peace negotiations, the role of UNMISS in its implementation in South Sudan, and the extent to which they are likely to produce effective stabilization.

## Statement of the Problem

The IGAD mediation process for South Sudan has been protracted and severally faced with stalemates. Agreements have often been flouted, with armed conflict resuming soon after the signing of such agreements. Due to the magnitude of humanitarian crisis, the international community has prevailed on the belligerents to respect their commitments. Clearly, the success of implementation of current agreement will depend on many factors including the design of the agreement and third party security guarantees.

South Sudan is a nascent nation established in 2011. The young nation is among those with the lowest democratic and development indicators in the world (UNDP, 2014). The country is yet to establish internal legitimate political and economic dispensation that enjoys trust among all communities. The military culture inherited by the ruling party (SPLM/A) is antithetical to democracy. Conflict within South Sudan has taken more prominence with the split of SPLM/A, than previously anticipated (de Waal, 2012).

Given the current ruling politico-military elites and the long history of armed struggle in the country, the strong inclination towards the use of force among competing groups hinders expedient enculturation of democratic values, practices and implementation of negotiated peace agreements. Transitional periods are volatile and unpredictable as witnessed in the Arusha Peace Process for Burundi, Rwanda, and the CPA for Sudan. South Sudan post-independence peace process will not be different.

The UNMISS has had a difficult experience in dealing with conflict in South Sudan. During and after the 2013 internal war, it was perceived as leaning towards the Sudanese Peoples Liberation Army in Opposition (SPLM/A-IO) and it was therefore not included in the peace negotiations (ICG, 2015). UNMISS was caught off guard by the conflict and therefore lacked preparedness to deal with the aftermath. With the appointment of the new head of mission, it would be expected that UNMISS has learned lessons of the past experiences, and, is well prepared to support implementation of the new agreement.

The fragile peace in the country requires a supportive and impartial UN mission to implement the delicate agreement negotiated under the IGAD support. Identifying sources of weakness in the past years and understanding the current political dynamics

is crucial in order to position the organization to deliver effective services towards stabilization of the country. Lack of supportive international community may create room for political elites to renege on their commitments thereby jeopardizing the fragile peace.

## Focus and Scope

This paper assesses the preparedness of UNMISS in assisting South Sudan to achieve peace and security consolidation after the IGAD facilitated Peace Agreement of 2015.

## Objectives

- a) To assess UNMISS commitment to promote peace and security consolidation in South Sudan after the IGAD Led Peace Agreement of 2015?
- b) To identify limitations faced by UNMISS in coordinating other partners towards that endeavour including the Government of the Republic of South Sudan (GRSS)?
- c) To identify operational/contextual challenges facing UNMISS?

## Research Questions

- a) How is UNMISS committed to promote peace and security consolidation in South Sudan after the IGAD Led Peace Agreement of 2015?
- b) What limitations has UNMISS faced in coordinating other partners towards that endeavour including the Government of the Republic of South Sudan (GRSS)?
- c) What operational/contextual challenges does UNMISS face?

## Literature Review

The question of why some conflicts end up in negotiation while others do not has confounded scholars for a long time. Between 1940 and 1992, only a third of all negotiations to end civil wars resulted in successfully implemented peace agreement, (Barbara, 2001). In most cases where a third party did not enforce the agreement, combatants returned to war.

There are a number of dominant strands in civil wars literature that seek to explain why parties enter into negotiations and why some agreements succeed or fail. One school

of thought maintains that economic, military and political factors determine onset of negotiations, (Zartman, 1989; Stedman, 1991). Another school of thought hold that the ability of parties to resolve the underlying conflict of interest determines success of peace agreements (Witman, 1979; Mason & Fett, 1996, Mason et. al, 1999). Both of these arguments do partially explain success of civil war termination.

Proponents of balance of power theory also explain prevalence of peace or an end to conflict through deterrence effect of two strong parties who can inflict severe damage to their opponents, (Schwarzer, 1998). Democratic peace theorists also argue that the ability of parties to end conflict will depend on the democratic development level of their polities, (Gurr, 1993; Mesquita & Lalman, 1991). Where leaders cannot be easily held accountable by their constituencies, civil war prolongs. A general view of the geography of civil wars reveal that they are more prevalent in the developing world and in Africa, regions with significant democratic deficit.

Civil wars based on ethnic or religious identity are more difficult to resolve due to indivisibility of the contested stakes. The Sudan conflict took more than 22 years due to perceptions of disregard of Southern communities by the north and due to imposition of Islamic values and practices. The perceptions of Dinka-Nuer conflict though significant is not as deeply entrenched as the previous conflict. Scholars have also examined the characteristics of a mediator that determines success or failure of negotiations, (Bercovitch & Rubin, 1992).

Some literature have focused on third party mediation, examining the nature of the mediator and strategies/choices made (Gartner & Bercovitch, 2006; Sumbeiywo, 2006; Schwarzer, 1998; Kydd, 2006; Bercovitch & Schneider, 2000; Svensonn & Wallenstein, 2010). Mediation is usually handled by regional organizations but if they fail, the UN takes over, Bercovitch & Jackson, (1997). De Rouen & Bercovitch, (2012) observes that formulation and facilitation are more common strategies than manipulation. (Bercovitch & Gartner, 2006b), argue that high intensity conflict with high casualties attract third party intervention since they pose greater threat to international security.

Successful implementation of peace agreement is determined by a number of factors: When the number of warring parties is high it becomes difficult to meet demands of all parties; the presence of armed groups who are not party to the agreement who can act as spoilers; if the agreement was signed through international pressure rather local agreement, collapsed or failed states provide obstacles due to lack of institutions;

Demobilization Disarmament and Reintegration (DDR) is hampered by large numbers of armed groups; if rebels have access to valuable easily exploitable resources the stakes are high and capacity to sustain civil war is heightened; if there are hostile neighbouring states with vested interests they can jeopardize peace making; and well-resourced international missions can raise capability for supporting implementation, (Stedman, 2001).

UN missions effective support for implementation of peace agreements is predicated on several factors: role of international actors during mediation, nature of peace agreements, neighbouring states, nature of UN mandate, strategies and responses, resources, troops, among others, (Stedman, 2001). The role of the UN Mission fades overtime when other factors such as effectiveness of new leaders or change in the states take precedence.

Peace agreements are not an end in themselves but a means of creating frameworks for resolving disputes (Kasfir, 1977). There is inadequate literature on evaluation of tested international mediation and implementation practices in South Sudan. This study will add value to role of third parties with specific reference to UNMISS as a case study of implementing peace agreements in fragile states.

## **Theoretical Framework**

### **Credible Commitment Theory**

This proposition hold that for the success of civil war negotiations, parties in conflict require security guarantees especially from third parties when they set out to implement agreements especially to disarm. The implementation period provide alluring opportunities for combatants to take advantage of various interpretations of the agreement and dynamics of the implementation environment.

Design and oversight of credible guarantees on the terms of the agreement is a necessary condition for successful implementation of peace agreements and termination of civil wars (Barbara, 2001; Fearon, 2004). An examination of a number of past cases (1940-1992) indicate that where third parties assisted in implementation, negotiations mostly succeeded irrespective of the actors and the nature of the conflict, Barbara, (2001). Parties in conflict require security guarantees during the uncertain and vulnerable period of disarmament and demobilization. They also need to be fully incorporated into the new governance system where power sharing is provided for.

There are a number of case studies that demonstrate the effect of this theory such

as Mozambique (1992), Zimbabwe (1979), Cambodia (1991). However outside security guarantees are necessary in the short term while institutions building will deliver a more sustainable political order (Barbara, 1999).

This theory does not explain all the necessary conditions for effective negotiations and implementation of peace agreements. However it focuses on the crucial role of third parties. This perspective will inform assessment of UNMISS role in implementation of the peace agreement for South Sudan. The inquiry will review how UNMISS has responded to perceptions of partiality among parties in conflict, capacity to support GRSS and to protect civilians and coordination with other partners.

## Ripeness Theory

The core argument of the proposal is that there is a perfect time for rational decision makers in conflict situations to choose negotiation (either bilateral or mediated) as opposed to continue fighting since the war may be ‘mutually hurting’ all the parties or there is a presence of a ‘mutually perceived way out’, that is both parties can foresee a fair and just way out of the conflict (Zartman, 1989). This theory was first proposed by William Zartman in 1985 and improvements have been made to date. The Oslo agreement between Israel and Palestinian Liberation Organization (PLO) in 1993 illustrates the positions of both parties and the need for settlement, (Druit, 1995).

A rise in the number of casualties can be a significant indicator of a ripe moment. Conflict researchers, (Mooradian & Druckman, 1999), observed that during the Nagorno-Karabakh war between Armenia and Azerbaijan a sudden dramatic rise in the number of casualties preceded negotiations. There are a number of human psychological predispositions that favour continuation of war; pride, negative images, desire for revenge and militant ideology, (Zartman, 2000). The cost of war must be high enough to overcome such impediments, thereby making some wars prolong longer than would be expected. Such costs may be brought about by shocking events such as Cuban Missile Crisis of 1962 pitting the US against the Soviet Union, Mitchell, (2000). Emergence of new leaders may also provide the missing opportunity (Lieberfeld, 1999; Stedman, 1991).

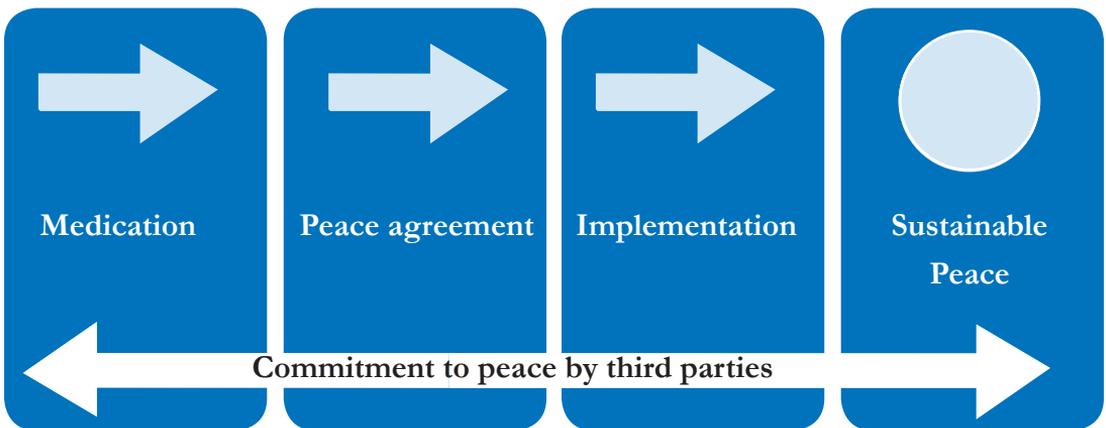
This can be well illustrated by the resolution of the apartheid conflict in South Africa by President F.W De Klerk and Nelson Mandela in 1994 and Mikhael Gorbachev’s resolution of the Cold War conflict in 1989. In 2006, President Salvar Kiir was able to negotiate with some rebel groups who accepted to lay down their arms and join government after

the death of President John Garang. Third party intervention can also assist parties in conflict to realize the ripe moment through introducing new view points and encouraging trust building, (Druit, 1995).

## Conceptual Framework

There are a number of factors that determine success of mediation including nature of the mediator, power and identity of the parties in conflict, main contested issues among others. Also a number of factors determine progression of mediation into a peace agreement. For mediation to lead to sustainable peace, the nature of implementation including security guarantees from third parties is vital.

Commitment of third parties to provide support to mediation and offer security guarantees during implementation is a constant requirement. Sustainable peace in this context means that there are sufficient guarantees for the warring parties to receive protection from third parties and accept disarmament. It means acceptance of political means of resolving disputes rather than resorting to violence.



*Source: Author's conceptualization, 2016*

## Definition of Key Concepts

### Mediation

This is a process of conflict resolution whereby two or more parties are facilitated by a third party to voluntarily bargain on contested issues without using violence or reference to the law (Bercovitch, Anagnoson and Wille, 1991). Mediation in this context apply only to armed conflicts and not labour and family disputes.

## Legitimacy

This refers to citizen's acceptance of state authority. It refers to popular acceptance of a regime or system of government. It provides the basis for rule by consent rather than coercion, (OECD, 2010).

## Implementation of Peace Agreement

After signing the agreement, the difficult path of actualizing the written word begins. There are a number of factors that determine successful implementation of peace agreements including the context and environment such as hostile neighbouring states.

## IGAD Facilitated Agreement on the Resolution of Conflict in South Sudan (ARCISS), 2015

A new political dispensation in South Sudan should produce a legitimate authority based on political settlements, governance solutions applicable to the specific country's case, including state-society-relations.

## IGAD Mediation Process

Many IGAD led piece meal agreements have been signed and flouted since January, 2014 in Addis Ababa. By the end of 2014, the conflict had reached a stage that Zartman, (2000) describes as a mutually hurting stalemate. . This means that none of the parties by then had chances of an outright military victory.

Ethiopia accepted the responsibility of hosting the mediation process. The mediation was spearheaded by former Ethiopian Foreign Affairs Minister, General, Ambassador Seyoum Mesfin, assisted by Kenya's Lazarus Sumbeiywo and Sudan's General Mohammed al-Dabbi. The team was overseen by the IGAD heads of states. The warring parties were represented by President Salva Kiir and the SPLM representative, Nhial Deng Nhial and SPLM-IO leader Riek Machar and his party representative, Taban Deng Gai. At the periphery there were also representatives of civil society, other opposition political parties and religious leaders. The partisan role of Uganda in the conflict reduced the effectiveness of IGAD (Apuuli, 2014).

The GRSS called for relocation of the talks to Nairobi and replacement of Mesfin with Sumbeiywo in 2014, but Ethiopia did not accept this proposal. In April 2014, IGAD

established a Monitoring and Verification Mechanism (MVM) assisted by an East African Protection and Deterrent Force (PDF), made up of Ethiopian, Rwanda and Kenyan forces. Ugandan forces withdrew in October, 2014 as demanded by the UN Security Council. The organization expanded the negotiation framework as IGAD – PLUS in March, 2015, to include Algeria, Chad, Nigeria, Rwanda, South Africa, AU, UN, US, UK, EU, Norway, China and the IGAD Partners Forum (IPF). This new framework provided the necessary political weight and security guarantees to convince warring parties to stop fighting.

IGAD's mediation has been hampered by lack of coherent strategy among member states and reliance on heads of states to drive the process. For example, Uganda unilaterally sent forces in support of the government. There has also been limited participation of stakeholders beyond the political elites. A collective backing of this latest peace initiative should convince the elites in Juba that the international community is united and determined to raise the cost of non-compliance among the signatories.

The IGAD mediation has the highest potential, after the Comprehensive Peace Agreement (CPA), to redefine governance parameters and the future of South Sudan. It can be an avenue for justice, healing and reconciliation. The current agreement and cessation of hostilities provides the right atmosphere to examine such issues. The process should also provide political and economic justice through addressing perceived exclusion, marginalization and discrimination (AUCISS, 2015). The massive destruction of the social fabric will require a lot of investments in peacebuilding beyond the cease fire.

The independent dialogue efforts by Tanzania and South Africa in 2015 did not provide the much needed boost to mediation. They tended to undermine the IGAD mediation and were perceived to be pro-government, however they provided modalities for intra-party dialogue. IGAD remains the institution with the highest credibility to address conflicts in the Horn of Africa due to its track record. Due to its role as a midwife to the Sudan conflict, it is the strongest option for international mediation in the South Sudan civil war.

## **Intergovernmental Authority on Development (IGAD)**

IGAD was established as Inter Governmental Authority on Drought and Development (IGADD) in 1986. Transformation to IGAD came ten years down the line with the realization of the critical role of conflict management for development in the region.

IGAD is the custodian of regional joint inter-state peace-making efforts. Article 7 (g) of IGAD treaty states that the main objective of the organization is to promote regional peace mainly through dialogue and negotiation. It is the equivalent of the UN at the global level and the AU in the continent. Due to its track record of spearheading the CPA of 2005 for Sudan and the peace process for Somalia that established Transitional Federal Government (TFG) in 2004, it has enjoyed credibility and support from the international community.

The neutrality of Kenya in the previous peace processes provided the trust required by the parties. IGAD has often supplemented its low institutional capacity through support of regional diplomats and bold actions of heads of states, (Sumbeiywo, 2006).

## **Civil Society Organizations (CSO)**

Civil society organizations had been pushing for participation since mediation began. IGAD consulted CSO in May, 2014. In June, CSOs were incorporated into a multi-stakeholder forum that selected 7 negotiators. However, the SPLM/IO, objected the new approach citing the domination of the government and the CSOs in the expanded peace process (Poni, 2014). It appeared that progress would be achieved through negotiation of the fighting groups in the short run while bringing a more representative large group to deal with long term peacebuilding such as constitutional review.

## **The Peace Deal**

### **IGAD Facilitated Agreement on the Resolution of Conflict in South Sudan, 2015**

The latest agreement was signed on August, 17, 2015 between the Government of the Republic of South Sudan, Armed Opposition, other opposition parties, former detainees and other stakeholders representing CSO, Women, Faith based leaders and Eminent personalities. The parties agreed to establish a Transitional Government of National Unity (TGNU). The parties agreed on power sharing, completing a new constitution, protection of civilians and IDPs, securing access to humanitarian relief, rebuilding and reconciling the country and overseeing credible elections (IGAD, 2015).

The agreement is divided into a 8 key pillars: formation of TGNU, establishment of Permanent Ceasefire and Transitional Security Arrangements (PCTSA), creation of

Humanitarian Assistance and Reconstruction (HAR), launching of Resource, Economic and Financial Management (REFM), conception of Transitional Justice, Accountability, Reconciliation and Healing (TJARH), preparation of Parameters of Permanent Constitution (POPC), formation of Joint Monitoring and Evaluation Commission (JMEC) and implementation of the supremacy of the agreement and procedures for amendment, (IGAD, 2015).

Parties to the conflict (the SPLM/A government led by president Salva Kiir Mayardit and SPLM/A-IO, led by Riek Machar) entered a peace agreement on 15th, August, 2015. The new government was to be made up of these two parties plus the ‘Group of ten or former detainees’ and non-armed opposition parties. IGAD mediators were to witness the process of forming the new government. The Executive branch of the government was to comprise the President, First Vice President, Vice President, Council of Ministers and Deputy Ministers. Other sections describe how power will be shared. It also contains agreement on sharing of oil resources, establishment of a hybrid court for war crimes, the truth commission and other key issues (IGAD, 2015).

## **Formation of the Transitional Government of National Unity**

The TGNU power sharing ratio for the Executive is: 53% (GRSS), 33% SPLM/A-IO, 14% (Opposition and Others). This was one of the most contested issues driving the conflict since there were perceptions of ethnic domination in the cabinet, in the rank and file and senior officer positions in civil service and military, (Ruach, 2015). Sharing power in Greater Upper Nile region was 46% GRSS, 40% SPLM/A-IO, 7%, Former detainees, 7% Opposition and others. The GRSS was given 85% control of the other 7 states, a situation that does not reflect allegiance on the ground and could be a source of conflict (Ruach, 2015).

## **Permanent Ceasefire and Transitional Security Arrangements**

This entailed withdrawal of foreign fighters such as the Ugandan Peoples Defence Forces (UPDF) supporting GRSS and other militias supporting SPLM/A-IO. Progress has been registered on the ground as UPDF withdrew and fighting stopped in Greater Upper Nile region. Unification of forces will take place according to the laid down arrangements. Disarmament, Demobilization and Re-integration (DDR) will be a long term process as provided for in the agreement. This is an area where the security guarantors will be required to provide necessary oversight and support to avoid delays and disagreements.

Past lessons of DDR failures in South Sudan should inform implementation of the proposed plan.

The transformation of the SPLA into a national non-political military has not yet been achieved, and, it is one of the driving factors of the conflict (Zambakari and Kang, 2014). The ethnic composition that is dominated mainly by the Nuer and Dinka does not also augur well for national cohesion and post conflict political order (Sudd Institute, 2014). The transformation agenda in the peace agreement takes precedent over power sharing in the long run where constitutional review and social transformation are key pillars. Revitalization of infrastructure, health and education services to create conditions favourable for durable peace is vital. Inclusion of international community and the CSO is crucial in pushing the ruling elites to respond to the core needs of the citizens.

## **Humanitarian Assistance and Reconstruction**

This is a critical component of the agreement. The TGNU is expected to provide the necessary environment for provision of humanitarian aid, including enacting legislation enabling operation of Non- Governmental Organizations (NGOs), protection, repatriation, resettlement, reintegration and rehabilitation of Internally Displaced Persons (IDPs) and refugees. The TGNU will establish Special Reconstruction Fund (SRF) with support of the international community to support reconstruction of the war affected regions.

## **Transitional Justice**

There has been an accumulation of unaddressed human rights abuses since the war of liberation began in 1983. Many communities fought each other and atrocities were committed. The recent conflict added wounds to the unhealed situation. War crimes constituting violations of Common Article 3 to the Geneva Convention and additional Protocol II, as well as customary international law were committed. Crimes such as murder, torture, rape and other acts of sexual violence, cruel and degrading treatment, attack on civilians and protected property were also committed (AUCISS, 2014). Given that sustainable peace cannot be achieved without coming to terms with the past in a process of justice and accountability, there is still a lot to be done for the country to reconcile.

In April, 2014 the National Platform for Peace and Reconciliation (NPPR), consisting

of three national bodies (Committee for National Healing, Peace and Reconciliation (CNHPR), the South Sudan Peace and Reconciliation Commission (SSPRC) and the Specialized Committee on Peace and Reconciliation of the National Legislative Assembly (SCPR/NLA) was formed to spearhead peace and community reconciliation across the country. This initiative is however government led and therefore a more comprehensive effort that includes armed opposition and civil society is required.

The IGAD-facilitated mediation agreement has proposed formation of Committee for Truth, Healing and Reconciliation (CTRH) and a Hybrid Court for South Sudan (HCSS) to investigate cases of genocide, violation of human rights, war crimes and other serious crimes. However the CTRH begins from July, 2005 while HCSS covers the period from December, 2013 (IGAD, 2015). The Compensation and Reparation Authority (CRA) was also established to provide justice to individuals and families who lost heavily during the war.

There is still a need for capacity building of Dinka and Nuer traditional, spiritual leaders and chiefs to spearhead community reconciliation. Documentation of human rights abuses during the war was hardly realized given the security situation. The AU Commission of Inquiry into atrocities committed during the war and the American Bar Association (ABA) report, provides indicators of the atrocities committed. The success of the proposed implementation of the mediated peace agreement will highly depend on arresting the ghosts of the past abuses that continue to inform intercommunal relations.

Transitional justice for South Sudan is a herculean task since some of the people accused of past human rights abuses (Riek Machar and Lam Akol – Bor massacre, 1991) are senior political figures and SPLM/A is still the mainstream leader in the country with no political will to account for its violations.

Previous transitional justice projects failed due to politicization. Faith based organizations-led reconciliation is preferred to politicians' led one, (SUDD, 2013). Coming to terms with the past atrocities in the country is a key pillar of security and stabilization. Though most South Sudanese people agree on the need for reconciliation, the nature of the process will determine its success. Key among areas of concern is reconciling people who were divided by wars of liberation, strained ethnic relations and violence, atrocities committed by security services and organized armed groups, injustice/impunity, inequality in access to national resources and relations between state and citizens, (SUDD, 2013). The peace guarantors will have to keep a close watch on implementation to avoid perceptions of political bias.

## Security Guarantees

The IGAD agreement provides a number of security guarantees to ensure implementation of the Addis Ababa agreement for South Sudan. The Joint Monitoring and Evaluation Commission (JMEC), brings together the government, international community and civil society (IGAD, 2015). The Joint Monitoring and Evaluation Commission (JMEC) was established by IGAD-led Mediation. It is made of the signatories to the agreement including regional and international guarantors. The regional guarantors are the IGAD member countries while international guarantors comprise of; China, Norway, United Kingdom, United States, European Union and IPF, IGAD (2015).

Domestically, the IGAD agreement will be incorporated into the Transitional Constitution of the Republic of South Sudan (TCRSS) before a permanent constitution is put in place. The HCSS will be overseen by African Union Commission (AUC). This is an important security guarantee to make sure the commission is above board, impartial and that it is not used to settle scores by political players. HCSS also has provision for lustration whereby people convicted of violations of human rights and other serious crimes will be barred from serving in the public service. Other than the AUC oversight of the hybrid tribunal for transitional justice, there are security guarantees from IGAD, individual IGAD member countries, IGAD Partners Forum (IPF), UN, Troika and AU. JMEC will oversee the implementation schedules, timelines and all transitional institutions and mechanisms created by the agreement.

## UNMISS and Implementation of the Peace Agreement

The UN has been a steady supporter of the IGAD process. The UN Security Council has held a number of discussions on the current conflict in South Sudan, during which, it has urged warring parties to support the peace process and threatened the use of force on recalcitrant members. The recent sanctions against six generals in the country did not capture the prevailing mood in the country nor assist the negotiation process (ICG, 2015). The UN can advance the peace process through support to IGAD mediation in the form of sanctions, arms embargo, and the use of Chapter VII force and development assistance.

The United Nations Mission in South Sudan (UNMISS) was established in 2011 through a Chapter VII mandate, UNSC, (2011). It took over from UN Mission in Sudan (UNMIS) that oversaw the implementation of the Comprehensive Peace Agreement (CPA) between

2005 and 2011. In 2013, the UN increased its peacekeeping forces in the country by 5,500, making a total of 12,500, and amended the mandate to focus more on protection of civilians. By the end of 2015, it comprised about 12,250 troops, and, was providing protection to over 200,000 IDPs in specific sites.

UNMISS was envisaged as a peacebuilding mission to support the government to consolidate peace and security through capacity building. Because not all regions were secure at independence in 2011, protection mandate was prioritized. Conditions in the country deteriorated in 2013 hindering the peacebuilding aspect and raising the need for protection. Unpreparedness and lack of foresight in political developments in the country, made UNMISS an insignificant party to the resolution of the conflict. This situation has continued to erode its political legitimacy especially in the eyes of the government. UNMISS was overwhelmed by the humanitarian crisis, particularly, the number of IDPs seeking protection on its sites after violence outbreak in 2013 (CIVIC & BWC2015).

Though the mandate provides for supporting implementation of the peace agreement, there is general perception that the mission is unable or unwilling to engage the government of South Sudan and the opposition. There are many IDPs receiving protection in six UNMISS camps (169,983), a figure that increased after the recent violence (UNSC, 2016). The force does not have the capacity to provide protection in all deserving areas (IRRI2015). Many people are vulnerable as they move in and out of the camps to the market. Some troop contingents within UNMISS are also seen as unwilling to protect civilians. There have been reports of violations of Status of Forces Agreement (SOFA) with UNMISS by government agencies (UNSC, 2016). The regular emergence of violence hampers the ability of UNMISS to fulfil its mandate and protect civilians.

Though the TGNU was formed on 29, April, 2016, it has not been effective in implementing the agreement. The recent flare up of conflict in July, 2016 increased the number of IDPs by thousands. The overwhelming number of refugees, and the departure of Machar from Juba partially meant the collapse of ARCISS. The hope for much expected restoration of security and stability was dashed, while confidence between political leaders and their communities has been shattered. In this climate, UNMISS has little room for manoeuvre. The envisaged Security Sector Reforms (SSR) and the DDR programs are in jeopardy, and the possibilities for mushrooming of other armed groups has become high (Jok, 2016).

Ethnic groups have been politicized even within UNMISS camps, for example, the Nuer

and Dinka associated with different political groups hardly share same camps. This reinforces divisions and hinders effective provision of UNMISS services (IRRI2015). UNMISS cannot offer support to transitional justice processes given the current conflict dynamics. There is a need for the international community to prioritize stability over justice in the short run in order to develop a conducive environment for transitional justice (Nhial, 2016).

There are still ongoing media reports of rape and other human rights abuses (July, 27, 2016) near UN protected camps in Juba. UNMISS peacekeepers have been accused of neglecting their protection duties as such atrocities take place within their view. For example, some foreigners were raped in close proximity of UNMISS premises in Juba. Many ethnic Nuer women in Juba face ethnic persecution for their perceived political support to Machar. A large number of Nuer have since moved to Uganda. Riak Machar is no longer in government and he has been replaced by his former chief negotiator, Taban Deng. Fighting has been reported in Upper Nile between forces affiliated to Machar and the government. The international community spearheaded by United States (US) is pushing for a regional protection force under the command of UNMISS.

The GRSS is ambivalent in accepting a further proposed regional 4000 troop force, citing fears of erosion of sovereignty. Though the UN Force Implementation Brigade (UNFIB) deployed to rout out M-23 rebels in eastern DRC was successful, it is doubtful whether such a model can be replicated in South Sudan. The government of the DRC and the local population welcomed the intervention. Tanzania, South Africa and Malawi were seen as impartial in the conflict. Inclusion of neighbouring countries troops such as Uganda and Ethiopia may elicit different perceptions among the parties in conflict. Given the numerical size of the South Sudan armed groups, the intervention force may make little headway without appropriate diplomatic and political solution to the conflict.

## **Commitment of Other Third Parties**

There are a number of strategies and options open to the international community in support of IGAD mediation process. Among these are: the carrot and stick option, use of force, sanctions, criminal accountability, development and security aid and political guarantees (ICG, 2015). IGAD has had a long experience of working with outside partners in the Sudan and Somalia peace process. Western donor partners have been accused of practicing ‘deadline diplomacy’, tied to financing (IGAD, 2007a). However there are occasions when belligerents respond more to Western threats of sanctions than to pleadings from IGAD.

## African Union

The AU has been supporting the mediation process through the Peace and Security Council. AU established a fact finding mission for atrocities committed by both warring parties and released the report in late 2015. The report blamed both parties for human rights violations short of genocide. The AU also appointed five heads of states and government, among them, Chad, South Africa, Rwanda, Algeria and Nigeria, and the former AU secretary general, Alpha Konare to support the peace process.

## The United States (US)

Having been a firm supporter of the CPA, the US has maintained a close relationship with South Sudan. Currently, it is supporting the IGAD mediation process and has threatened to use sanctions against leaders derailing the peace process. Through the IGAD-PLUS and UNSC, the US has supported international community's support to the peace process.

In May, 2015, the US imposed sanctions on opposition commander Peter Gatdet and head of presidential guard, Marial Chanuong. The EU followed suit and imposed travel bans and asset freeze on Gatdet and SPLA commander, Santino Deng.

## China

China has renewed and strengthened its relations with Africa over the last 20 years. The new strategy seems to favour long term development and security. China has peacekeeping forces in Darfur (Sudan). China has been pursuing peace for both Sudan and South Sudan to protect its oil interests. In early 2015, China signed an agreement with both countries on the protection of oil infrastructure. China has an interest in the success of IGAD mediation to provide the macro-economic environment suitable for its economic interests.

## Challenges

It has been observed that unlike previous CPA mediation that evolved with incremental achievements, this mediation attempts to cover all the issues within unrealistic deadlines (Garst, 2015). The agreement covers governance and demobilization including power sharing between the president and his proposed First Vice President, Riek Machar.

The agreement grants veto powers to Machar over a number of issues including declaration of war or state of emergency, a fact that may derail decision making and create paralysis when disagreement arises (Garst, 2015). Granting equal powers between elected and rebel leaders may also go against democracy through rewarding parties willing to take power by force. Power sharing is often a temporary political solution, since parties have a tendency to consolidate power or secede. The agreement gives veto powers to the First Vice President on key presidential decisions and prerogatives, a situation that might lead to procrastination and paralysis of government when faced with contentious issues. Paralysis might provide political advantage to the former as a demonstration of the president's poor leadership especially before a general election.

Restoration of trust and mutual assurance will take time, given the number of people killed and atrocities committed against warring groups and civilians. During the signing of the agreement, parties were required to sign before the August, 17th, 2015 deadline amidst veiled threats of sanctions, a situation that pushed the parties to sign even when they had reservations and therefore increased chances of renegading on agreed articles. CSO need to be more involved in the implementation and monitoring of the peace agreement. Civil society in the country acts as a bridge between the community and government and they create awareness about the peace process and reconciliation. They also lobby government and development partners to effect change and they provide technical capacity for monitoring the peace process.

The peace process has been hampered by parties attempt to gain more ground through fighting as a strategy of increasing their bargaining power. Whereas the CPA was composed of a number of independent protocols/agreements, that provided progressive confidence building and comprehensive coverage of the issues at stake, the current agreement attempts to cover all issues at once. Pressure from outside is also viewed as more directed to the government than the opposition since the latter has more to gain through power sharing, (Garst, 2015).

The return of Machar to the government in early 2015 after prosecuting an armed insurrection may strengthen a political culture well established in South Sudan that access to power depends on marshalling violent forces more than garnering electoral votes. This will continue to strengthen the military-political culture of SPLM/A leadership thereby undermining emergence of a nascent democratic culture and encouraging continuation of armed political opposition. His subsequent rebellion in Juba and Upper Nile region does not also bode well for stability in South Sudan.

Engaging with the divided security sector, with entrenched ethnic and political rivalry will remain a challenge. Impunity for human rights abuses committed during ongoing conflict and mistrust of the population towards security forces will continue to hinder UNMISS effectiveness. The capacity of the state in South Sudan to govern and provide public services across the land is limited. Peace may be achieved at the national level without corresponding trickle-down effect on the ground. Lack of funds and well trained personnel, poor infrastructure and breakdown of traditional social structures may hinder successful implementation of the peace agreement.

## **Towards Effective UNMISS Support for Peace in South Sudan**

According to South Sudanese political analyst, Jok Madut Jok, the IGAD mediation was expected to lead the combatants to a resolution of fundamental differences in the SPLM political movement, other political parties, the army, other security forces and armed groups. It was expected to offer solution to power distribution and governance including reconciliation of communities. Other issues that need consideration include: constitutional review process, system of government, gender, management of diversity and transitional justice, (Jok, 2014).

The challenges of state and nation building facing South Sudan are not new and the country can benefit from well-established strategies and measures that have been applied in countries such as South Africa (constitutional guarantees of minority rights), Kenya (devolved government to address marginalization), Ethiopia (recognition and accommodation of ethnic nations through regionalization) and Mozambique (accommodation of the major armed opposition into mainstream politics).

IGAD, UN and the international community should support the parties in the implementation of the peace agreement in order to resolve emerging disputes and build confidence among the political leadership. The UN Security Council arms embargo against parties that derail the peace agreement and secondary sanctions against those who facilitate and profit from illicit arms transfer, alongside regional enforcement and oversight by UN Panel of Experts is required (ENOUGH, 2015). There is also a need for the UK, US and other members of the international community to assist in stemming corruption through tracing and seizing stolen properties and funds. Other accountability measures such as supporting emergence of credible and strong civil society and an independent media are required to enhance transparency.

International security guarantees can be further buttressed by ending foreign military assistance, firm oversight, continuous dialogue, setting benchmarks to ascertain progress, widen the peace pie by supporting security and development projects, supporting regional and grass root based inter communal peace process and enhance protection of human rights.

South Sudan has a golden opportunity to create a nation based on unity in diversity rather than ethnic hegemony that led to protracted wars in Angola and Mozambique. This means creating strong devolved system in the current regional state structure. It also means improving governance through respect for rule of law and constitutional order and establishing a credible process of holding a new election. The signatories to the peace agreement should continue the dialogue process, bring more parties on board, create a favourable environment for emergence of unarmed political parties, create sharp distinctions between military and political leadership and define parameters of power distribution in a revised constitutional order of a new South Sudan.

## Conclusion

Given a history of peace process failures at the county and national level, the leaders should be legitimate, credible, committed and the agreement should be anchored in the constitution or supreme law with a clear and verifiable evaluation framework. Making peace at the national level should find ways and means of cascading the message to the community level. Community peacebuilding including the traditional structures should translate national reconciliation into peace dividends on the ground.

The success of implementation of this agreement will also be highly dependent on institutional capacity and reforms especially the security sector for effective dispensation of justice and security. Experience in other countries such as South Africa, Kenya, Rwanda, Burundi sends mixed signals on pacing peace and justice processes. Political settlement in the short term supersedes provision of justice and reconciliation services.

## Recommendations

### UNMISS

- Should analyse political dynamics in South Sudan and plan accordingly to influence Security Council decisions and coordinate diplomatic relations with regional organizations
- Raise capacity for conflict analysis/threats assessments to enable forward planning for resources, capabilities and troops
- Forge strong relationships with the security sector and civil society to advance peacebuilding
- Foster political dialogue and reconciliation. Though the situation remains volatile and unpredictable, it should plan for effective protection of civilians, enhance political dialogue and reconciliation
- Provide support for regional peacekeeping and dialogue initiatives.
- Understand ethnic/armed group political alignments and avoid perceptions of partiality. Enhance dialogue with the government to remove mistrust
- Sub contract DDR and SSR services to independent entities to cushion it from political fall outs, (Sharland and Gorur, 2015).

## United States and International Community should:

- Use the carrots and stick/sanctions as the last resort to avoid ‘neo-imperialist’ perceptions.
- Target the specific areas/personalities that can induce good political behaviour with limited negative effects on civilians. Raise the cost of non-adherence to reduce impunity and provide hope to the South Sudanese population.
- Not take sides among armed political groups.
- Support regional peace enforcement without making them appear ‘hired boots/foreign lackeys/mercenaries’; a perception that may elicit armed opposition akin to General Aideed’s resistance in Somalia in the early 1990s
- Provide humanitarian relief assistance to most deserving groups to create goodwill among the population
- Support governance reforms – constitutional, political parties, separation of powers – Accountable Executive, Independent Judiciary and Assertive parliament, Non-political security forces, Civil society and Independent media as a long term peacebuilding trajectory in South Sudan

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# Enhancing Protection of Civilians in Peace Support Operation in Eastern Africa: A case study of AMISOM

*Kemunto Chweya and Oliver Mshilla*

## Introduction

To restore sustainable peace in Africa requires more than just ending overt fighting. The African Union (AU) emphasis on “African Solutions for African problems”, has generated a growing interests on the nature of African Peace Support Operations (PSOs). Specifically, this study reviews the African Union Mission in Somalia (AMISOM) on the role the operation plays in the protection of civilians. According to (Holt et al., 2009), United Nations (UN) peace missions did not have specific guidelines for protection of civilians until late 1990’s. There continues to be cases of violence against civilians in many areas in conflict where peace keepers would otherwise have intervened. The genocide in Rwanda in 1994 reminds us of the gross impact of failure to protect civilians in conflict situation (UN, 2000).

Conflict-affected areas are normally fragile and challenging environments.

People in conflict areas live very unstable and unpredictable lives, more so in the horn of Africa where the AMISOM is based, and even in other developing countries (World Bank, 2011). Civilians in these regions need protection twice as much compared to those in other places because of rampant poverty, illiteracy and poor infrastructure which restricts mobility among other factors that constraints the basic understanding of their rights, according to International Human Rights regulations.

Civilians in AMISOM manned areas and more specifically Somalia face a lot of challenges. They are displaced and absent from their homes. Their education and professional development is often disrupted, resulting in low levels of knowledge and life skills. Furthermore, they are sometimes directly targeted during conflict, which reduces their capacity to alleviate the impact of conflict or crisis. They often require psycho-social support, which is not always available (Zakharia and Bartlett, 2013).

All of these conditions make civilian protection a cause for concern in AMISOM because it deals with a population it hardly understands. Language barrier is also an obstacle to

effective stabilization because it can worsen perceptions of inequality and exclusion, and intensify conflict. All this is compounded by the fact that There is no data from which to draw information with regard to the population because there has been no census in the country for decades and the available data is out of date, (Zakharia and Bartlett, 2013). It is against this background that this paper wishes to look into ways in which civilian protection could be enhanced in PSO in Eastern Africa.

The paper also seeks to provide a better understanding of the mandate and obligations of PSO in the protection of civilians, particularly the case of AMISOM.

## Objectives

1. To establish the extent to which AMISOM is achieving its goal of enhancing civilian protection.
2. To assess AMISOM capacity to protect civilian in the complex conflict environment.
3. To identify challenges and opportunities for enhancing effectiveness of AMISOM in PoC.

## Statement of the Problem

Both the levels of civilian protection in Somalia and AMISOM capacity to protect civilians are limited thus exposing civilians to life threatening risks. Civilians in Somalia are often more worried about the presence of violence either from AMISOM or al Shabaab. Even when a territory is successfully liberated at minimum civilian costs, it does not necessarily reduce the threat to civilians from insurgents because they will then have stronger incentives to use violence (Beadle, 2012).

Further, threats constantly shift to other places in the event that a particular area has been pacified. The biggest challenge for AMISOM therefore, is to mainstream protection into its operations in ways that do not merely reduce the threat of civilian attacks from AMISOM's own forces, but also provide protection against the threat from al-Shabaab controlled areas. This requires a specific strategy for protecting civilians that considers why and how the al-Shabaab use violence against civilians in the first place (Beadle, 2012). Studies have shown that people who fear for their lives tend to support whoever can provide some form of security either perceived or real, regardless of ideological conviction (UNSC, 2013).

## Fondations of Civilian Protection

The concept of Protection of Civilians (PoC) in armed conflict is rooted in International Humanitarian Law (IHL) also known as the Law of Armed Conflict. This is a body of laws that call on belligerent actors to minimise harm to civilians and civilian properties in the conduct of hostility. It also calls for the protection of civilians from violence which applies to all armed actors when engaged in armed conflict. Hence PoC is no longer just limited to the humanitarian component but it has also become a key task for military forces in PSO (Davies, 2015).

From its IHL origins, protection has taken on a new tone following the horrific attacks on civilians in Srebrenica and the genocide in Rwanda, which were both witnessed by UN peacekeeping contingents that had neither the mandate nor the capacity to put a halt to them. These experiences led the UN to question its responsibility, authority and limits of its capacity to protect civilians under threat. In 1999, the UN Assistance Mission in Liberia (AMSIL) mandate – authorising the deployment of peacekeeping operation in Sierra Leone - became the first to authorise peacekeepers to use force in order to protect civilians under imminent threat of violence. The protection of civilians under Chapter VII is a pertinent development in the context of the mandate of a peacekeeping operation (DPKO, 2008).

The Responsibility to Protect (R2P) differed from the older concept of humanitarian intervention. As per the UN Security Council (UNSC) the principle of R2P rests on three equally weighted and nonsequential pillars. These mainly entails : (i) the primary responsibility of states to protect their own populations from the four crimes of genocide, war crimes, ethnic cleansing and crimes against humanity, as well as from their incitements (ii) the international community's responsibility to assist a state to fulfill its R2P and (iii) the international community's responsibility to take timely and decisive action in accordance with the UN Charter in cases where the state has manifestly failed to protect its population from one or more of the four crimes (UN, 2009).

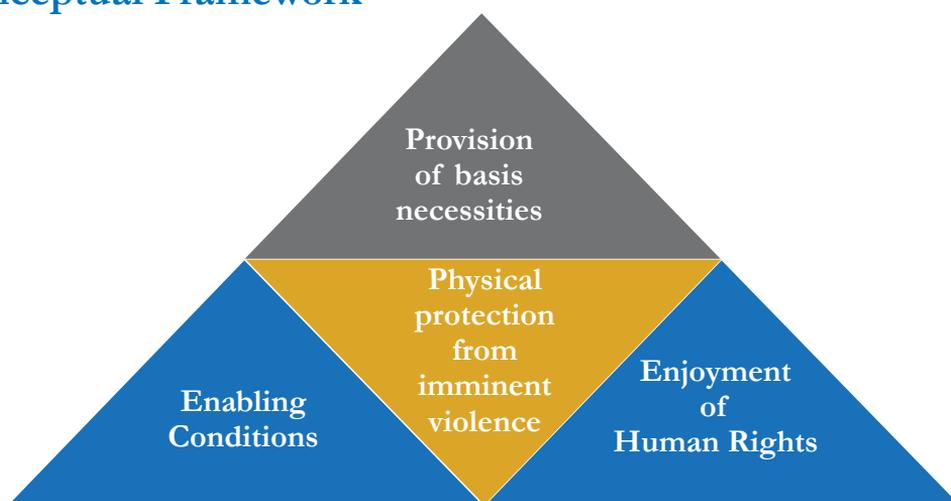
According to Sahoun & Evans (2001), the R2P has to meet the threshold of a just cause amongst the principles of humanitarian intervention. It is a military intervention for human protection purposes. It is an extra-ordinary measure that can only be warranted where there are irreparable cases of harm occurring or likely to occur to human beings.

Such may include but not limited to large scale loss of life, whether with intent of genocide or not, which is the product either of deliberate state action, or state neglect or inability to act, or a failed state situation; or large scale ‘ethnic cleansing’, whether carried out by killing, forced expulsion, acts of terrorism or rape.

Due to the challenges and failures faced by the AU missions in relation to the protection of civilians as well as deployment of AU missions into operational environments where the protection of civilian population is considered to be a major concern, the AU Commission in 2010 developed Draft Guidelines for the PoC in African Union Peace Support Operations. These guidelines were developed to provide guidance at the strategic level and are intended to assist in the formulation of guidance at both the operational and tactical levels. They are also used to assist mission in the design and implementation of protection strategies and activities (AU, 2010).

According to the AU, PoC is undertaken in all activities to improve the security of the population and people at risk. In this context, the role of AMISOM PoC is to protect the Somalia population in their area of jurisdiction, and to ensure the full respect for rights of groups and of the individuals recognized under regional instruments. These instruments mainly include the African Charter of Human and Peoples Rights, the African Union Convention for the Protection and Assistance of Internally Displaced Persons (IDP) and the Convention Governing the Specific Aspects of Refugee Problems in Africa including International Law, as well as humanitarian, human rights and refugee law (Stian et al, 2011).

## Conceptual Framework



*Figure: civilian protection “pyramid”*

In this conceptual framework, the pyramid is used to show what is considered under the concept of PoC and the relationship of these components to ensure maximum protection of civilians. The physical protection from imminent violence is at the core of the pyramid. This approach combines both short-term and long-term approaches in the protection activities around these particular engagements. The practice of human rights, creating enabling environments and provision of basic necessities can enhance physical protection from violence.

## Literature Review

This section will highlight previous accounts of the framework of UN, AU PoC, operational experiences, challenges and current status of AMISOM PoC. Previous studies have revealed that the UN has a broad definition of protection of civilian in its peacekeeping operations, for instance viewing it as reducing all kinds of ‘threats to civilians based on three pillars: protection through political process; protection from physical violence; and establishing a protective environment’ (Beadle, 2010).

After the 1994 Rwandan genocide, the international community began to discuss protection as the responsibility of sovereign states and more importantly question the concept of sovereign inviolability when the states failed in this role. In 2005, the unanimously adopted World Summit Outcome document affirmed that states have responsibility to protect the populations within their territories and that the international community through UNSC is prepared to take collective action, including military action, to protect civilians if the host state is manifestly failing to do so (Holt, 2006).

Over the past decade, the number of people in need of international humanitarian assistance has tripled (UNSC, 2015). The overwhelming majority of those people are civilians affected by armed conflict or complex emergencies, which account for about 80 per cent of the crises requiring an international humanitarian response. Approximately 42 per cent of the world’s poor now live in conflict-affected and fragile States like Somalia, and that figure is expected to rise to 62 per cent by 2030. Protecting those people from harm and preserving their dignity, in particular by upholding international law and seeking accountability for violations, should be at the very top of the international community’s agenda. This is one mission within which the AMISOM operates under the mandate of the UN (UN, 2015).

According to UNSC (2015), upholding humanity is at the core of humanitarian action and that of the Charter of the UN. This means that civilians caught in armed conflict are among the world's most vulnerable and have a right to be protected. The commitment and ability of the international community to protect civilians in conflict and preserve their dignity is however being challenged at every turn. Over the past 16 years, the Security Council has established a robust normative framework on the protection of civilians embodied in various resolutions and presidential statements and founded on the principles of international humanitarian, human rights and refugee law. The Council has also significantly strengthened the protection and human rights mandates of many UN peace support operations.

This has been bolstered by the regular updating of the *aide-memoire* for the consideration of issues pertaining to PoC and the establishment of the Council's informal expert group on PoC. The establishment by the Council of thematic mandates on children and armed conflict and conflict-related sexual violence has been crucial in garnering political momentum and promoting responsive action on those issues. The AMISOM operates within these principles in order to enhance civilian protection in Somalia (UN , 2015).

## Somalia's History

The history of Somalia is one that is complex in nature. Civil war in Somalia can be traced from Siad Barre's autocratic regime which largely alienated and manipulated the clans, over militarized the society by applying military solutions to economic, social and political problems. His ideology which sought to create a Pan – Somali state that transcended the colonial borders by uniting French Somaliland (Djibouti), Kenyan Somaliland (North Eastern region of Kenya) and the Ethiopian Somaliland (Ogaden) was a major contributing factor to the balkanisation of Somalia. Following the defeat by Ethiopia during the Ogaden war, Barre lost the popular support, and his army disintegrated, as most of his army officers defected to form clan based insurgent groups (Martin, 2005)

The phenomena of clan politics and competitions for power, wealth and status as the main underlying causes of the conflict in Somalia, compounded by other factors such as environmental degradation, internationalization of conflict across the Horn of Africa, negative effects of globalization such as international terrorism and the high levels of piracy along the Somalia coast, have protracted the conflict (Bereketeab, 2013). It is evident that clannism and clan cleavages are the main causes of conflict which fuel the

endemic clashes over resources and power used to mobilize militia, and make broad based reconciliation and the dream of sustainable peace very difficult to achieve. Despite the overthrow of Barre, peace was not attained in Somalia. As Makumi Mwangi (2008) observes, conflicts are dynamic, organic and have a life of their own which changes from one form to another. This assertion applies in the context of Somalia, which has witnessed the transformation of the conflict actors from military dissidents to the mushrooming of the Islamic Courts Union (ICU) and eventually to the Al-Shabaab militants.

By the time of international intervention in the crisis in Somalia, it was estimated that over 200,000 people had starved to death due to famine, while between 30, 000 - 51, 000 civilians had been killed in fighting from November 1991 to March 1992. The war and famine received a lot of attention globally including by human rights organizations consequently creating interest of the UNSC in the conflict. This prompted formation of three peacekeeping operations to Somalia, including UNOSOM (April 1992 – March 1993), UNITAF (December 1992 – May 1993) and UNOSOM II (March 1993 – May 1995) (UN, 2016).

## History of AMISOM

In this section, we shall look at the history of AMISOM, the justification of AMISOM to carry out operations in Somalia, the policies and legal framework for those operations and the success of AMISOM.

AMISOM is a regional peacekeeping mission working under the AU with the approval of the UN. It was created by the African Union's Peace and Security Council (AU PSC) on 19th January 2007, initially with a six month mandate. After the exit of the UN in Somalia, the Inter-Governmental Authority on Development (IGAD) with massive international support continued to pursue peace in the troubled nation. These IGAD's efforts in peacemaking preceded deployment of AMISOM, which was established in March 2007 by the UNSC, under the adoption of resolution 1744 (2007)13, (AMISOM, 2015)

AMISOM comprises of troops from Djibouti, Uganda, Sierra Leone, Kenya, Burundi and Ethiopia whose mandate is to: Support dialogue and reconciliation in Somalia, provide protection to the Transitional Federal Institutions (TFIs) to enable them carry out their functions, assist in the implementation of the National Security and Stabilization Plan

of Somalia, provide technical and other support to the disarmament and stabilization efforts, monitor the security situation in areas of deployment of its forces, facilitate humanitarian operations, including the repatriation and reintegration of refugees and the resettlement of internally displaced persons and Protect its personnel installations and equipment and uphold the right of self defence (Hull & Svensson, 2008).

In October, 2014, the Security Council under Resolution 2182 /2014 gave a go ahead for the continuation of the AMISOM to continue its operation in Somalia until 30th November, 2015. The African Union mission was also mandated to take all measures appropriate, to carry out support for dialogue and reconciliation by assisting free movement, safe passage and protection of all those involved in a national reconciliation congress mainly involving all stakeholders, including political leaders, clan leaders, religious leaders and representatives from civil society organizations.

The Security Council extended the AMISOM mandate up to 30 May 2016 which was welcomed by the Federal Government of Somalia, noting that the progress in the country since 2012 transition had been strong and that Al-shabaab is becoming weaker and controlling less territory. But it was not until May 2013 that AMISOM adopted a mission-wide protection of civilians strategy (UN, 2015).

## Defining Protection of Civilians

Protection of civilians may be defined differently by different actors, be they political and military actors. However, any effort to ‘mainstream’ it into the operations of a mission must define the type of threat one is meant to protect civilians from (Beadle, 2012).

PoC does not only entail protection from imminent violence but also full respect and enjoyment of human rights especially the basic human rights such as the right to life, liberty and security. The concept of human rights based protection is mainstreamed by the AU in all the activities of PSOs. It mainly involves monitoring and reporting of human rights violations in the area of operations of the mission, and provision of support and development of local capacities to promote and protect human rights. The actual measures can include conducting investigations into the human rights violations, supporting the establishment of transnational justice mechanisms, and also to provide technical expertise to the host state and civil society human rights organisations to promote and implement human rights standards (OHCHR, 2011).

Also in the concept of PoC, there are enabling conditions such as the creation of a

secure and comprehensive environment which entails peacebuilding measures over the long term. It begins with activities aimed at early recovery and should lead to sustainable solutions over the long term, which are not necessarily reliant on external support. Mainly during this phase, the military is tasked with Disarmament, Demobilization and Reintegration (DDR) activities, Security Sector Reform (SSR), which entails capacity building for local security actors and other measures aimed at establishing a secure environment for the long term (DPKO, 2015). Also the military is supposed to ensure, in the long run, that the civilian population can easily access places like schools and hospitals among others in order to improve their livelihoods.

A PoCs mandate basically entails the sum total of the protection concerns reflected above in the PSO to enhance the level of protection accorded to civilians in the operation area. The concept of PoC requires a multidimensional and coordinated approach within the mission, outlining clear and differentiated roles and responsibilities for the military, police and civilian components of the operation (AU, 2012).

## **African Union PoC Framework**

Most of the UN peace keeping mandates have included the protection of civilian concept dating from 1999, but the implementation at the operation and tactical levels continue to vary depending on the interpretation of the individual commanders on the ground. Hence at the tactical level, UN PSO have increasingly been required to produce mission-wide PoC frameworks and strategies to reduce the confusion. Specifically in 2010, the DPKO-DFS developed operational concept for the protection of civilians in UN PSOs which became the first concrete articulation of what was meant by the term “protection” in PSOs (DPKO, 2010).

The AU has taken up steps that mirror and in some cases anticipate the UN developments with regards to protection of civilians. In particular there has been a focus on the military physical aspect of protection which entails recognizing the distinct threats faced by the civilians populations in conflict zones in Africa. In 2010, the AU Commission developed *Draft Guidelines for the Protection of Civilians* whose purpose is to provide strategic guidance for missions tasked with implementing protection at the operational and tactical levels. Like the UN, the AU looks at protection broadly as reducing all kinds of threat to civilians, through a political process; protection from physical violence; through a protective environment; and an extra tier on top of that of the UN, which is protection through

respect for human rights (Beadle, 2012).

The issue of military intervention for human protection purposes came up in the international community majorly because of the gap between the needs and distress being felt on one hand and on the other hand the codified instruments and modalities for managing world order. There has been a parallel gap between the codified best practice of international behaviour as laid down in the UN Charter and actual state practice as it has evolved overtime since the signing of the Charter. While there is no strong basis to claim the emergence of a new principle of customary international law, growing state and regional organization practice as well as the norms of the Security Council suggest an emerging principle, “The Responsibility to Protect”, (Taylor, 2009).

Despite all the legal foundations and other international human rights and human protection agreements, which comprise of; fundamental natural law principles; the human rights provisions of the UN Charter; the Universal Declaration of Human Rights together with the Genocide Convention; the Geneva Conventions and Additional Protocols on international humanitarian law and the statute of the International Criminal Court, challenges do arise when it comes to the effective implementation of the missions mandate on protection of the civilian population during peace support operations (Okechukwu & Osakwe, 2014).

These different views by different actors bring us to the question as to whether there exists a standard procedure or procedures that should guide peace keepers when it comes to the important matter of civilian protection and also if AMISOM is working within that mandate. Because of this kind of scenario, there have been claims and counter claims of violations of human rights in Somalia by AMISOM. Considering the fact that the concept of PoC in armed conflict is rooted in International Humanitarian Law and that AMISOM forces have taken a clear offensive peace enforcement posture for the most of the operation engagement in Somalia, PoC becomes even more critical (Weir, 2013).

Apart from the draft guidelines, AU documents and statements have highlighted a growing AU commitment to PoC and more specifically, what the AU expects of AMISOM soldiers. In 2010 the AU Peace and Security Council made a commitment to adhere to IHL in all PSOs, and in 2011 AMISOM implementation plan mentioned PoC in terms of a commitment to adhere to and implement IHL. Also in 2010 AMISOM

ROEs iterations included the imminent threat discourse and specified that AMISOM soldiers were authorized to use force, including deadly force to protect civilians including humanitarian workers under imminent threat of physical violence. This formulation parallels the language used in UN chapter VII PoC mandates, (Hurvitz, & Singer, 2014). Although AMISOM took an offensive posture that is peace enforcement and thus became a party to the conflict, it has viewed protection as a by-product of stabilization, of winning the war and establishing of a stable peaceful environment (Weir, 2013). In May, 2013, AMISOM adopted a wide PoC strategy (Williams, 2013).

## Discussion of the Objectives

In this section, the study reviews the operations of AMISOM in achieving the objectives outlined in this paper. The relationship between AMISOM and other actors like the international community will also be examined against the operation's mandate.

### AMISOM and the Question of Achieving its PoC Objectives?

AMISOM's initial ROE were primarily intended to set out circumstances under which force could be used in self-defense, pre-emptive self defense and in other situations. One element the ROE clearly specified a basic tenet of IHL that:

*“When force is used all necessary measures would be taken to avoid collateral damage.”* This would include avoiding harm to civilians. But also AMISOM's ROE stated its troops could use force in situations beyond that of self defense including; *“To afford protection to civilians under imminent threat of physical violence”*. However, it was not clear to what extent force should be used. Furthermore, it was difficult to determine whom a civilian is from a combatant, particularly given cases in which some of the civilians were used as human shields by these armed groups, as happens in the case of Alshabaab in Somalia. Also it drew a thin line between upholding IHL and proactively protecting civilians from threats as opposed to the imminent threat of physical violence (Bronwyn & Paul, 2014).

Due to this uncertainty, the ROE were revised in 2010 as exemplified in ROE No 1.7 which states that: *“You are authorized to use force up to and including deadly force to protect civilians, including humanitarian workers, under imminent threat of physical violence”*. It is thus important to note that at the tactical level AMISOM troops did not have an explicit PoC mandate but were given a set of ROE which authorized them to use deadly force to protect civilians

(Williams, 2013).

According to the report of the African Union Commission on the strategic review of the AMISOM 2013, the situation in Somalia has undergone fundamental changes with the transfer of power from the Transitional Federal Government (TFG) to the Federal Government of Somalia (FGS) with the election of a new President in September 2012. This would not have been successfully implemented, except for the huge commitment and enormous sacrifices made by the Somalia National Security Forces (SNSF), AMISOM, the Ethiopian National Defense Forces (ENDF) and other international partners like the USA, to enhance security. These significant developments in Somalia have made it necessary for the AU and its international partners to undertake a strategic review of AMISOM.

The reviews undertaken include how best AMISOM can further contribute to the stabilization of Somalia and align its activities to the priorities of the FGS and the greater horn of Africa, Secondly, the AU Commission appointed a five-member team of experts chaired by Professor Ibrahim Gambari in 2012. The purpose of the team was to consult with different stakeholders and partners in Somalia's peace and security to assess AMISOM's effectiveness in enhancing civilian protection as laid down in the UNSC mandate (AU, 2013).

The review team noted that major security gains in Somalia over the last 18 months have created an enabling environment for the successful completion of the transitional period and the establishment of the FGS. These developments presented a strategic opportunity for the international community to support, in creative and concrete ways, the FGS to consolidate the peace process. There was peaceful transfer of power to the FGS in September 2012 bringing a successful end to the 8 year transition period that began in 2004.

The new political reality and the recent military gains against the Al Shabaab provided the FGS, the AU and the international community with a strategic opportunity to consolidate the political and security gains made thus far. This was done by investing in the restoration and extension of state authority through effective governance, rule of law and the delivery of peace dividends (AU, 2013).

The Review Team established that the Government articulated a Six Pillar Policy

Framework and that it is planning to review the National Security and Stabilization Plan framework outlined by the President of Somalia for the stabilization and reconstruction of Somalia, around which the AU and the international community could base its support. The pillars are: Supremacy of the law and good governance, which incorporates rule of law and security; economic recovery that includes livelihoods and economic infrastructure; Peace building -Social reconciliation through building bridges of trust; Service delivery which includes health, education and environment; international relations - building collaborative relations and polishing the national image; and the unity and integrity of the country which aims at striving together for a better future (AU , 2013).

On Security matters, the situation in Somalia has significantly improved in those areas that have so far been pacified, but this is still fragile and the gains can be reversed if not consolidated. The main risks are the absence of effective government institutions that are capable of delivering state services and managing inter-clan conflict. Al Shabaab is increasingly under pressure due to heavy losses, internal leadership wrangles as well as inability to pay its fighters as a result of loss of key revenue sources. On the main, safety and living conditions have improved in the recovered areas, and attacks on humanitarian workers have significantly declined. There is a noticeable increase in economic activities. Many people are returning to Mogadishu and other areas, and some are reconstructing their homes and are engaging in business activities, (AU , 2013).

More recently, the UN through its Political Office for Somalia facilitated the transition. The Review Team has noted further that there is need for enhanced coherence and predictability in the support provided by the international community to Somalia, including for AMISOM. So far, it has remained on course as far as enhancement engaging the Al Shabab and protection of civilians is concerned, (AU , 2013).

AMISOM forces have taken a clear offensive peace enforcement posture for most of the mission engagement in Somalia. This illustrates the view of protection as a by-product of stabilization, of winning the war and establishing a stable peaceful environment, (Weir, 2013).

## Challenges Experienced by AMISOM in PoC

Lack of authoritative legitimacy poses one question that the AU and sub-regional organizations have to answer any time they plan to deal with the issue of humanitarian intervention. This is because all these nations are formally bound by the UN Charter that requires countries and regional organizations to seek authorization from the UNSC in order to legally launch any peace operation. The failure to protect civilians was strategically undermining AMISOM and its operational success which lead to resentment from the local civilians, reduced cooperation and probably at times contributed to the locals joining Al-Shabaab or even to provide the terrorist group information about AMISOM, (Williams, 2013).

It is also worth noting that *Human Rights Watch* documented a number of sexual exploitation and abuse by some unethical AMISOM soldiers which occurred on two AMISOM bases in Mogadishu, an area which was largely controlled by the UPDF and the BPDF contingents. Given the entrenched poverty, limited humanitarian assistance, and dire living conditions most especially for the displaced communities, some Somali women and girls are compelled to engage in sexual activities with soldiers in exchange for money, food and medicine because they are considered to be their families sole breadwinners. The victims fear reporting these incidences to the authorities because of stigma, reprisals from family, police and the insurgent group Al-shabaab because they believe they have destroyed their honour. Also they presume that the authorities would not be able to take any effective action and feel powerless. All members of AMISOM including the locally recruited Somalia personnel are immune from prosecution in the local Somalia justice system for all acts performed in their official capacity, (Human RightsWatch, 2014).

Violence against women and children in Somalia continues to grow due to the ongoing conflict. Women and girls from the minority clans are particularly more vulnerable. These victims are exposed to assault, rape, female genital mutilation and forced marriages. A contributing factor is lack of awareness of their rights, particularly those living in rural areas hence the dire need for additional protection (HRW, 2014).

Another challenge faced by the AMISOM is the issue of regional power dynamics. The process of launching a regional operation in Somalia was severely delayed by disagreement

over the appropriateness of allowing neighboring states such as Djibouti, Ethiopia and Kenya with vested interest in the conflict to contribute troops. This has remained an issue, with the transitional government calling for the pullout of the AMISOM, (Wiklund, 2015).

Also AMISOM faces the challenge of dual sources of mandate. AMISOM is an AU operation but mandated by the UNSC. This technically means that AMISOM mandate is periodically reviewed. The practice is that the AU renews the AMISOM mandate, but forwards the same to UNSC for ratification. The UN on the other hand, will then draft their own mandate for AMISOM. This becomes a challenge in that the mandate given by AU is not often the same as the mandate forwarded by the UN. This leads to ambivalence by players in the field. The result is that, at the tactical level, contingent commanders and the operational commanders will tell you they do not have protection of civilian mandate because the UN has not endorsed it (Coning & Cedric , 2013).

The troops from both Kenya and Ethiopia were eventually incorporated into AMISOM in 2012 and 2014, respectively, but are reported to still largely act autonomously. This kind of experience provides an example of how UN norms and principles for peace operations may be weakened by regionalization of peace operations. Such operations not only pose a potential challenge to the principle of impartiality, but may also blur the lines between aggressive and defensive action, (Ingerstad, 2015).

The size and scope of AMISOM did not match the situation on the ground. Because the AU lacked resources, troop-contributing countries (TCCs) were expected to be financially and logistically self-sustaining. Given the limited resources of the prospective TCCs, force generation to AMISOM proved an absolute failure for several years; two years into the mission's deployment, the force strength was not even half the authorized number. Only those TCCs which could secure assistance from external partners, including airlifts, equipment, logistics support and sustenance, could in fact deploy, (Boutellis, 2013).

As the AU's largest and most complex operation, AMISOM has starkly exposed the limits of AU material, financial and bureaucratic capabilities to manage peace operations. The AU's dependency on external support to manage operations is however a general challenge to the regionalization of peacekeeping in Africa, (Williams& Boutellis, 2013).

Another challenge mainly faced at the tactical level is the difficulty of distinguishing civilians from combatants, especially in an asymmetric war, in an urban environment. The worrying part is the complicity of civilian population against the multinational forces. From 2012 Al-shabaab abandoned conventional confrontation with AMISOM and resorted to asymmetric attacks. Al-Shababs *modus operandi* entailed planting of Improvised Explosive Devices (IEDs) and Victim Operated Improvised Explosive Devices (VOIEDs) in very highly populated areas. They have shelled AMISOM's position from civilian houses, mosques, hospitals and schools making it difficult for AMISOM to respond appropriately. Instinctive reaction of any trained military personnel, is to respond to where the attack on them is coming from, but in this case, this might result to civilian casualties, (UN, 2013).

Another challenge that AMISOM faces is the collapse of Somalia institutions. The UN has mandated AMISOM to work together with the Somalia national army, and the UNSC recognizes the sovereignty of Somalia. Yet, since 1991 the criminal justice system has collapsed, there is no correctional system and the treatment of captured soldiers, the principle of *non-refoulement*, also there a number of fighters who may be subjected to inhuman and degrading treatment even torture if this individuals were to be handed over to Somalia authorities. Also AMISOM has no mandate or capacity to hold the ex fighters indefinitely, (Kareema, 2015).

Lastly PoC is restricted to armed conflicts only. There is significant controversy here because if PoC includes the Geneva Conventions and other articles of IHL, then it includes a constraint on crimes against humanity and recent international criminal courts have consistently expanded this term to explicitly include actions taken outside armed conflicts, as noted by (Ottawa, 2001).

Alternatively, if PoC is the type of protection viewed as a reason precipitating UN and AMISOM actions, then again we find the purview including acts of genocide outside those

occurring in armed conflict narrowly construed. That is, we find cases of genocide, ethnic cleansing and so forth occurring. There is also need to note that according to the UNDP Somalia '*Access to Justice Project*', AMISOM has been conducting capacity building for the Somali justice system after the adoption of explicit PoC mandate in 2013, (DPKO, 2010).

## Enhancing Effectiveness of PoC by AMISOM

In response to the growing concern on the impact on civilians due to the ongoing conflict in Somalia, AMISOM should stress the following factors in order to ensure and determine their success in the aspect of PoC in their mandate and in IHL:

### **Intensify Coordination Between AMISOM and Humanitarian Actors**

There is a need to ensure that issues related to gender-based violence and child protection which are considered to be the humanitarian protection priorities are systematically integrated and mainstreamed into AMISOM's operational responses. In order to archive this, AMISOM protection of civilians has to address the various aspects of; sexual violence and sexual exploitation and abuse, children protection, especially children associated with armed forces or groups, also mine actions and explosive remnants and also movements of people, including internally displaced persons and refugees. An elaborate specific structure on PoC should be established within the humanitarian civil – military coordination framework to specifically focus on addressing protection issue and to purposely serve as an advocacy and information sharing platform, (UNOCHA, 2014).

The African Union Commission (AUC) code of conduct with which AMISOM troop contributing countries are required to comply, which prohibits sexual exploitation and abuse should be strictly enforced. AU signed a Memorandum of Understanding (MOU) with the UPDF and BPDF which describe sexual exploitation and abuse as serious misconduct, therefore compliance should be enforced, (HRW, 2014).

The troop contributing countries should effectively take primary responsibility for ensuring that as their personnel carry out their mission, they respect the rights of the civilian population. Legal obligations of military personnel in the AU PSOs are governed by MoUs agreed to between the AU and each troop- contributing state. These MoUs hold troop contributing countries responsible for the training and discipline of their forces and for holding their forces to account for misconduct through criminal prosecutions, (HRW, 2014).

AMISOM Gender section and the UNSOM Human Rights and protection Group advocates the work the government of Somalia is doing on disseminating the legislation on

sexual offences throughout the country. Hence AMISOM should increase their capacity particularly in the additional protection of Women and children to ensure effectiveness as per their PoCs mandate, (OHCHR , 2016).

## **Intensifying the Capacity of CCCTARC**

The established Civilian Casualty Tracking, Analysis and Response Cell (CCCTARC) which is tasked with gathering and analyzing information on civilian harm in AMISOM's areas of operation capacity should be amplified to ensure that all civilians affected by the conflict are able to be assisted as opposed to the then mission mandate where by in terms of protection AMISOM was mandated to protect only the government officials, (AMISOM , 2015)

CCCTARC is composed of AMISOM military, Police and civilian representatives. In a joint effort, they capture and record reported events and incidents of civilian casualties within AMISOM area of operation through a comprehensive electronic database. This can assist in the reduction of civilian casualties in that one can easily assess the areas of operation where the number of civilian casualties is high and put in place the appropriate preventative measures to reduce these incidents and assist the FGS in restoring peace, security and stability in the country. This can be easily implemented since CCTARC is owned and exclusively controlled by AMISOM, (AMISOM, 2015).

## **Enhancing Local Ownership of the Operation**

AMISOM's mission is literally tied to the development of the institutional capacity of the FGS. This is meant to ensure that key state institutions are operationalized to ensure justice, rule of law, effective governance and the provision of basic public services. This approach has made the population in Somalia to own the operation and see it as one that is meant to bring order to the disjointed Nation and not adversarial and foreign as portrait by the many militia in the country, (AU, 2013).

The same is a replica for the African mission because it is not viewed as emanating from the West or the USA, with which many Somalis, because of their religious affiliations, mostly do not wish to be associated. Also, the role of any future peace support operation in Somalia would be to support the FGS in its efforts to provide effective governance by contributing to conducive political and security environment that enables the

enhancement of security, rule of law and the provision of basic services, (AU , 2013).

This will in essence build confidence in the government by the population and work to bring about democratic governance in the subsequent years. The envisaged end state would be a significantly depleted military and related capacity of Al Shabaab and the threat it poses to Somalia and the sub-region; enhanced capacity and cohesion of the SNDF and Public Safety Institutions to be responsibility for the security of the state and its citizens. This will then facilitate the expansion of the FGS's authority across the country and enable the creation of a stable, secure Somalia whose citizens enjoy access to justice and the rule of law, (AU, 2013).

With regard to gender, AMISOM works with the FGS and its partners to harness resources for programmes and projects so as to ensure the promotion of the role of women in the peace process. The promotion of women's rights, and enhancement of the protection of civilians against all forms of sexual and gender-based violence should also be enhanced, (UN, 2016).

## Conclusion and Recommendations

AMISOM has increased capacity to protect civilians through mandate and pre-deployment training especially after the adoption of the PoC mandate. This is witnessed in that indirect fire will only be used to protect civilian population where a clear military objective is identified and where the military advantage gained is far superior to the potential risk of harm to the civilian population. Indiscriminate attacks are always forbidden.

The troops are trained on IHL and International Human Rights Law among others hence are reminded of their obligations under these rules. Also the training include how to humanely treat fighters who voluntarily surrender or are captured by force, (Kareem, 2015). AMISOM can succeed in preventing its forces from harming civilian while protecting civilian from Al Shabaab attacks is still a tall order.

In the AMISOM case, African actors have come to act as a first responders. They have provided initial stabilization missions which are launched into environments where the UN cannot yet go. They have functioned as a vanguard force conducting initial operations until a UN mission can be mobilized to manage a broader operation.

One crucial issue that should be resolved though is that of predictable and sustainable funding by the AU in order to enhance capacity not just to protect civilians but also manage and transform conflict as well.

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## Highlight of Key Messages in the Issue Briefs

This factsheet is a quick reference guide regarding issues discussed in the two papers.

The key messages in the first paper, The UN Mission in South Sudan (UNMISS): Assessing its Role in IGAD Facilitated Agreement on the Resolution of Conflict in South Sudan (ARCISS), 2015 are:

- Though the latest ARCISS peace agreement for South Sudan is a major leap forward for stabilization in the country, lack of effective third party support especially from UNMISS, will undermine peace and stability in the country
- For sustainable peace in the country, a constitutional framework for regime transition and complete de-politicization and professionalization of the armed forces/security sector is a *sine qua non*
- Third party interveners must have a comprehensive understanding of internal political dynamics including ethnic power balance and fragmentation, political hegemony, competing nation building narratives, multiple regional and international interests
- UNMISS should follow a bit of the UN Force Implementation Brigade (UN FIB) model strictly in the area of force composition (drawing forces from countries with a clear understanding of context and high degree of sacrifice) but not the peace enforcement element, which will be counter-productive in the South Sudanese militarized context
- If an independent peace enforcement brigade is to be introduced in South Sudan, it must enjoy legitimacy from government and opposition parties alike and it must strictly act as a buffer between warring groups or provide preventive protection of civilians and not become partisan combatants in the conflict
- The envisioned transitional justice model in South Sudan should correspond to local political dynamics and African experiences where peace and stability are prioritized over retributive justice. Political settlement in the short term supersedes provision of justice in the short run while justice and reconciliation in the long run are necessary for sustainable peace

The key messages in the second paper; Enhancing Protection of Civilians in Peace Support Operation in Eastern Africa: A case study of AMISOM are:

- The African Union Emphasis on “African solutions for African problems” has generated interests in the nature of African peace support operations. Initially they did not have specific guidelines for protection of civilians in their mandate. AMISOM provides a case study of challenges and lessons learned
- Civilian population specifically the women and children still suffer immensely in the conflict in Somalia as Al-shabaab resorted to asymmetric attacks which takes place in densely populated areas making it difficult for AMISOM to differentiate the combatants from non-combatants.
- The concept of protection of civilians does not only entail physical protection from imminent violence but also involves creating enabling conditions such as provision of basic necessities and enjoyment of human rights of the people of Somalia.
- Despite some progress of AMISOM in the context of protection of civilians more needs to be done to prevent loss of lives in Somalia. This may include intensifying coordination between AMISOM and humanitarian actors, and reinforcing the capacity of CCCTARC in the tracking, capturing and recording of incidents of civilian casualties within area of operations in order to establish preventive measures.
- AMISOM should enhance its capacity not only to protect the civilians but also manage and transform the conflict as well.

## About the Authors



**Mr. Joseph Kioi Mbugua** is a researcher at IPSTC. He has published a number of articles in the IPSTC occasional papers and issue briefs. Mr. Mbugua has over twenty years' experience in peace and security research, training and facilitating in peace building and as a writer and editor in media and publishing industry. Mr. Mbugua has done consultancy work for a number of organizations including UNDP, UN Women, National Council for Gender and Development (NCGD), Security Research and Information Centre (SRIC), Ministry of Youth Affairs and Sports, National Steering Committee on Peace building and Conflict Management, GIZ, PACT-Kenya, COPA, Kenya Institute of Governance (KIG), NPI-Africa, and Practical Action, among others. He has facilitated peacebuilding training for District Peace Committees (now County Peace Committees) in Moyale, Marsabit, Isiolo, Samburu, Meru North, Trans Nzoia, Kajiado, Nairobi, Bungoma, Uasin Ngishu and Turkana. Mr. Mbugua is a graduate of the University of Nairobi and holds an M.A degree in peace and justice from the University of San Diego in California, and is also a recipient of the prestigious Fulbright and Rotary Ambassadorial Scholarships from the United States.



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Currently he is an intern at the International Peace Support Training Center (IPSTC) under the Peace and Security Research Department (PSRD). At IPSTC he is involved mainly in conducting desk-top research on issues pertaining to peace and security primarily focusing on Eastern Africa. He has participated in various workshops and symposiums at IPSTC, the most recent one being on Child Protection in Peace Support Operations organized by IPSTC and Save the Children. He also attended several other courses including Child Protection in Peace Support Operations course and Election Observation Course.



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