



Save the Children



Save the Children Somalia

**MAPPING OF  
CHILD PROTECTION  
ACCOUNTABILITY MECHANISMS  
IN ARMED CONFLICT  
IN AFRICA**





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Save the Children works in more than 120 countries. We save children's lives.  
We fight for their rights. We help them fulfil their potential.

**Our Vision**

A world in which every child attains the right to survival, protection, development and participation.

**Our Mission**

To inspire breakthroughs in the way the world treats children and to achieve immediate and lasting change in their lives. We will stay true to our values of accountability, ambition, collaboration, creativity and integrity.

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# 1 List of Acronyms

<b>ACDS</b>	African Chiefs of Defence and Security
<b>ACERWC</b>	African Committee of Experts on the Rights and Welfare of the Child
<b>ACCORD</b>	African Centre for the Constructive Resolution of Disputes
<b>ACRWC</b>	African Charter on the Rights and Welfare of the Child
<b>AGA</b>	African Governance Architecture
<b>AMDS</b>	African Ministers of Defence and Security
<b>AMISOM</b>	African Union Mission in Somalia
<b>APRM</b>	African Peer Review Mechanism
<b>APSA</b>	African Peace and Security Architecture
<b>APSTA</b>	African Peace Support Trainers Association
<b>ASF</b>	African Standby Force
<b>AU</b>	African Union
<b>AUC</b>	African Union Commission
<b>AUPO</b>	African Union Policy Organ
<b>BOI</b>	Board of Inquiry
<b>CAAC</b>	Children and Armed Conflict
<b>CCTARC</b>	Civilian Casualty Tracking, Analysis and Response Cell
<b>CCP</b>	Code of Criminal Procedure
<b>CDU</b>	Capability Development Unit
<b>CEWS</b>	Continental Early Warning System
<b>CIMIC</b>	Civil Military Component
<b>CINPE</b>	Comité Intersectoriel National de Protection de l'Enfant – National Intersectorial Committee for Child Protection
<b>CNDHCI</b>	Commission Nationale des Droits de l'Homme de Côte d'Ivoire – National Human Rights Commission of Côte d'Ivoire
<b>CONOPS</b>	Concept of Operations
<b>CPA</b>	Child Protection Advisor
<b>CPU</b>	Child Protection Unit
<b>CTFMR</b>	Country Task Force on Monitoring and Reporting
<b>CSO</b>	Civil Society Organisation
<b>DDR</b>	Disarmament, Demobilisation and Reintegration
<b>DPA</b>	Department of Political Affairs
<b>DPKO</b>	Department of Peacekeeping Operations
<b>EAC</b>	East African Community
<b>EASF</b>	East African Standby Force
<b>EASFSEC</b>	Eastern Africa Standby Force Secretariat



<b>ECOWARN</b>	ECOWAS Warning and Response Network
<b>ECOWAS</b>	Economic Community of West African States
<b>ECPF</b>	ECOWAS' Conflict Prevention Framework
<b>ESF</b>	ECOWAS Standby Force
<b>FET</b>	Female Engagement Team
<b>FGM</b>	Female Genital Mutilation
<b>FOC</b>	Full Operational Capability
<b>FVRA</b>	Field Victims' Rights Advocates
<b>HOM</b>	Head of Mission
<b>IAPTC</b>	International Association of Peacekeeping Training Centres
<b>IGAD</b>	Inter-Governmental Authority on Development
<b>IHL</b>	International Humanitarian Law
<b>IHRL</b>	International Human Rights Law
<b>IMOC</b>	Integrated Mission Operational Commanders' Course
<b>IMPT</b>	Integrated Mission Planning Team
<b>IMTF</b>	Integrated Mission Task Force
<b>IPSTC</b>	International Peace Support Training Centre
<b>ITF</b>	Integrated Task Force
<b>ISDSC</b>	Inter-State Defence and Security Committee
<b>ISPDC</b>	Inter-State Politics and Diplomacy Committee
<b>KDF</b>	Kenya Defence Forces
<b>LOGBASE</b>	Logistics Base
<b>MoU</b>	Memorandum of Understanding
<b>MRM</b>	Monitoring and Reporting Mechanism
<b>MSC</b>	Mediation and Security Council
<b>MSU</b>	Mission Support Unit
<b>NARC</b>	North African Regional Community
<b>NGO</b>	Non-governmental organisation
<b>NHRC</b>	National Human Rights Commission
<b>OIOS</b>	Office of Internal Oversight Services
<b>ONUCI</b>	Opération des Nations Unies en Côte d'Ivoire - United Nations Operation in Côte d'Ivoire
<b>OPDSC</b>	SADC Organ on Politics Defence Security Co-operation
<b>PAPS</b>	Political Affairs, Peace and Security
<b>PDU</b>	Policy Development Unit
<b>PHRG</b>	Protection, Human Rights, and Gender section
<b>PLANELM</b>	Planning Element
<b>PNPE</b>	Politique nationale de protection de l'enfant – National Child Protection Policy
<b>PNPJEJ</b>	Politique nationale de protection judiciaire de l'Enfant et de la jeunesse - National Policy for Judiciary Protection of Children and Youth
<b>PoC</b>	Protection of Civilians

<b>POU</b>	Plans and Operations Division
<b>PSC</b>	Peace and Security Council
<b>PSD</b>	Peace and Security Department
<b>PSO</b>	Peace Support Operation
<b>PSOD</b>	Peace Support Operations Division
<b>R2P</b>	Responsibility to Protect
<b>REC</b>	Regional Economic Community
<b>RM</b>	Regional Mechanism
<b>ROE</b>	Rules of Engagement
<b>RPTC</b>	Regional Peacekeeping Training Centre
<b>SADC</b>	Southern African Development Community
<b>SADC SF</b>	Southern African Development Community Standby Force
<b>SEA</b>	Sexual Exploitation and Abuse
<b>SG</b>	(UN) Secretary-General
<b>SIDA</b>	Swedish International Development Cooperation Agency
<b>SNPE</b>	Stratégie Nationale de Protection de l'Enfant – National Child Protection Strategy
<b>SOFA</b>	Status of Forces Agreement
<b>SOMA</b>	Status of Mission Agreement
<b>SOP</b>	Standard Operating Procedure
<b>SRCC</b>	Special Representative of the Chairperson of the AU Commission
<b>SRSR-CAAC</b>	Special Representative of the Secretary-General for Children and Armed Conflict
<b>STCDSS</b>	Standardised Technical Committee on Defence, Safety and Security
<b>STM</b>	Specialised Training Materials
<b>TAM</b>	Technical Assessment Mission
<b>TCC</b>	Troop-Contributing Country
<b>TTT</b>	Troops-to-Task
<b>UN</b>	United Nations
<b>UNCRC</b>	United Nations Convention on the Rights of the Child
<b>UNCT</b>	United Nations Country Team
<b>UNOAU</b>	United Nations Office to the African Union
<b>UNPOL</b>	United Nations Police
<b>UNSC</b>	United Nations Security Council
<b>UNSCR</b>	United Nation Security Council Resolution
<b>UNSCWG</b>	UN Security Council Working Group
<b>UNSOM</b>	United Nations Assistance Mission in Somalia
<b>UPDF</b>	Uganda Peoples' Defence Force
<b>VRA</b>	Victims' Rights Advocate

## 2 Introduction

**Save the Children promotes the rights of children in conflicts, post-conflict and protracted political emergency situations. It has been working with armed forces in Sub-Saharan Africa since 1998 and with the African Union (AU) for the last ten years. It has also worked towards strengthening Child Protection in African Union Peace Support Operations since 2013 with support from the Swedish International Development Cooperation Agency (SIDA).**

The four key objectives of this work are:

- a) To enhance the commitment and capacity to prevent and respond to violence against girls and boys within the AU Peace and Security Department (AU PSD), Eastern Africa Standby Force (EASF), ECOWAS Standby Force (ESF), and Member States;
- b) To institute and monitor a functional accountability framework on child protection within the AU PSD, EASF, ESF, and troop-contributing countries;
- c) To increase knowledge, evidence, and collective understanding of child rights and child protection issues within Peace Support Operations (PSOs);
- d) To improve participation among girls and boys affected by armed conflict to contribute to decisions and processes of

the AU, Regional Mechanisms/Bodies, and Member States.

### 2.1 Terms of reference for mapping exercise

In line with its second objective, namely the institution and monitoring of a functional accountability framework on child protection within the African Peace and Security Architecture (APSA), Save the Children seeks to map relevant means of holding actors to account. Thus, alongside its civil society partners, it would be able to appropriately identify and focus interventions. This mapping of accountability mechanisms is to be carried out across the following tiers:

- a) National mechanisms especially for troop-contributing countries and the role of National Human Rights Institutions (Uganda<sup>1</sup> and Côte d'Ivoire<sup>2</sup> are selected as primary countries of interest with Senegal and Kenya as secondary targets);
- b) Sub-regional mechanisms such as, but not limited to, ECOWAS,<sup>3</sup> ESF, East African Community (EAC), EASF, Southern African Development Community (SADC), North African Regional Community (NARC), Inter-Governmental Authority on Development (IGAD), tribunals and special courts;
- c) Continental mechanisms at the AU<sup>4</sup> and Continental Human Rights Institutions;
- d) UNSC mechanisms such as the UN Children and Armed Conflict (CAAC) Protection Structures, United Nations Secretary-General (UNSG) Annual Report on CAAC, Monitoring and Reporting Mechanism

(MRM), and the United Nations Security Council (UNSC) Working Group on CAAC.

This work relies on accountability mechanisms defined by Conflict Dynamics International as those actions taken to achieve outcomes for children by:

- a) Imposing legitimate consequences for perpetrators;
- b) Assigning responsibility for violations committed;
- c) Preventing or deterring future violations;
- d) Reconciling and rebuilding traumatised societies and individuals.

The main objectives of the First Phase of the mapping exercise are to:

- a) Provide an analysis of existing accountability mechanisms and their effectiveness, including the structure, functions, and assessment of child protection-relevant accountability mechanisms in armed conflict at national, regional, continental and international levels;
- b) Describe the current applicable legal and normative framework, setting out their strengths and weaknesses, and outlining ongoing or planned policy agenda focused on or relevant to child protection in armed conflict within the identified institutions;
- c) Provide exemplary case studies from selected countries, institutions or contexts to examine how the accountability mechanisms are operating;
- d) Focus on the following key components of accountability:
  - **legal framework** – enforcing laws and norms;
  - **assigning responsibility** – structures in place known for this and who is in charge;

- **system reforms** – International and national legal frameworks ratified and domesticated; and
- **child safeguarding** – service delivery structures for how children are protected and how victims are supported when they need assistance.

The mapping phase of this project incorporates the following key activities:

- a) Desk research/review;
- b) Consultations with key informants and experts on CAAC, international human rights law (IHRL), and international humanitarian law (IHL);
- c) Field consultations during missions and in the development of case studies; and
- d) Submission and finalisation of the Mapping Report.

This document is a result of the completion of the Mapping Phase of this project as described above. Annex A contains the guidelines that informed the interviews conducted at national and continental levels.

## 2.2 Methodology of the study

Mapping accountability mechanisms for African Troop-Contributing Country (TCC) personnel who violate the rights of children and adolescents in situations of armed conflict requires a focus across three frameworks:

1. laws, structures and mechanisms dealing with child protection;
2. those dealing with peacekeeping (including policies regarding conduct/discipline accountability for peacekeepers); and
3. the convergence of the two in the area of child protection in situations of armed conflict.

A large volume of documents relating to these three issues was analysed in relation to international, continental (AU), regional (namely Regional Economic Communities/Regional Mechanisms (RECs/RMs), and national levels (i.e. Kenya, Uganda, Côte d'Ivoire and Senegal). These documents included adopted policies and secondary analyses of their implementation, scholarly articles on the changing nature of peacekeeping, analysis of existing training materials for peacekeepers, as well as secondary materials on existing national mechanisms (i.e. legal framework, child protection policies and mechanisms, justice system that caters for the rights of children, and role of civil society actors in children's rights advocacy).

In addition to the literature review, a few key informant interviews were conducted with individuals working in the areas of conflict resolution, training for peacekeepers, accountability of peacekeepers, and human rights prior to conducting research at national and continental levels. These informants included persons in various UN agencies dealing with child protection and human rights violations and who have conducted training of peacekeepers to understand the nature and time allocated to child protection training. These interviews also informed the development of national and continental interview guidelines.

In each of the countries selected for the study, in-depth interviews were envisaged with key government structures focusing on child protection, including social assistance and support for children, juvenile justice, as well as the representatives of the Armed Forces. In addition, the project planned interviews at national human rights institutions and key actors within civil society working in the area of child protection. The aim of these interviews was to explore existing accountability mechanisms to address violations against children in situations of armed conflict.

## 2.2.1 Methodological Limitations

### 2.2.1.1 Limited Interviews

Whereas attempts were made to conduct interviews with all the above-mentioned entities, interviews in Kenya and Senegal did not include key state actors for the mapping. Difficulties were encountered in getting commitment from various actors for interviews, some of which required in-depth knowledge of peacekeeping that a number of actors interviewed did not have. For instance, whereas interviews were conducted in Senegal with members of the Armed Forces, these representatives did not work in the area of military justice and accountability and therefore were unable to provide information about disciplinary processes, application of codes of conduct, evidence used in prosecution and of investigation processes during missions. This shortcoming was remedied for Senegal during Phase II of the project. In late April 2019, interviews were conducted in various sections of the armed forces, the investigations unit located within the Gendarmerie, the Senegalese police, and representatives from the justice system (i.e. judge and prosecutor for children's court). Annex B provides a breakdown per country of interviews conducted.

Even though Phase I was meant to include interviews at regional level with RECs and RMs, particularly EASF within EAC and ESF within ECOWAS, these interviews were not conducted. Priority was given to the national and continental levels since Save the Children has been providing training at Troop-Contributing Country (TCC) level and engaging in advocacy to influence policy at the AU, respectively. For this reason, this report does not include primary data for the regional analysis but is instead reliant on secondary data.

### 2.2.1.2 Nature of data gathered and relation to Conflict Dynamics framework

During Phase I of the project, the TORs required that data be gathered for each of the identified countries regarding existing accountability mechanisms to assist children subjected to violations in situations of armed conflict. It was for this reason that the national-level interviews focused on key entities that play a role in assisting such children. This is in line with the framework set out by *Conflict Dynamics*. However, there are two key differences in how this framework has been developed.

First, if one considers the frameworks developed by *Conflict Dynamics* for the Democratic Republic of Congo and Colombia, the data for the development of such frameworks was derived from countries where violations against children in armed conflict take place. For this study, however, the focus was on the TCCs and not the mission countries, where military contingents from Senegal, Côte d'Ivoire, Kenya and Uganda have been deployed and where such violations occur.

Secondly, the *Conflict Dynamics* framework has not been used to focus primarily on the role of military peacekeepers, which is the subject of this project. The focus on these actors brings a complexity that is yet to reflect in the *Conflict Dynamics* approach. Since accountability for the conduct and performance of peacekeepers is a national responsibility and military contingents have immunity from criminal prosecution in mission countries, this requires an analysis of existing mechanisms by troop-contributing countries to hold peacekeepers accountable. All the countries selected for this study, except Uganda, prosecute members of their contingents at home, and it is therefore important to

ascertain justice mechanisms for foreign children who might need to be part of such proceedings within the TCCs. Unfortunately, however, there has been no evidence of instances where foreign children have been asked to participate in such proceedings. Yet, support and assistance to victims of violations by such peacekeepers (ranging from reporting of violations, investigations on alleged violations, psychosocial and material assistance to child victims) largely requires an analysis of accountability mechanisms and their effectiveness in those countries where peacekeepers from identified TCCs are deployed. This aspect has not been incorporated into this project to date and therefore represents a gap in the findings. This gap might be partially explained by the timing of this project. At the time that the project was conceptualized, UNOCI was active in Côte d'Ivoire. An analysis of national mechanisms in Côte d'Ivoire to support and assist child victims of violations in armed conflict could have yielded important data since at the time peacekeepers from countries, including Senegal, had been deployed in Côte d'Ivoire. This would have led the analysis of accountability mechanisms in both countries (Senegal and Côte d'Ivoire) to cover both peacekeepers and child victims. However, by the time the project was commissioned, UNOCI had concluded its mandate in Côte d'Ivoire.

Thus, whilst some of the national-level analysis focuses on mechanisms to enhance child protection within countries (in relation to children who experience violence or lack access to basic services such as health and education), it does not provide us with data that is directly relevant to the subject of this study. It does, however, show that the role of national troops in peacekeeping missions is not prominent in the agenda of national child protection actors.

### 3 Background to children in armed conflict and peacekeeping in Africa

**Despite the broad and rapid acceptance of international legal standards to protect children in armed conflict, a significant gap remains between these standards and their implementation at the national level. The most important challenge today is translating international standards into action that can make a tangible difference on the ground.<sup>6</sup>**

The above quote, drawn from the 10-year review following Graça Machel's 1996 groundbreaking study on the impact of armed conflict on children, is a sobering reminder of the work that remains to be done with regard to children in situations of armed conflict. Despite the progress made internationally to adopt legal standards and institute monitoring mechanisms to hold perpetrators of violations to account, neither conflicts nor violations against children seem to relent in Africa.

Speaking during the *Open Debate on Children and Armed Conflict* on 9 July 2018, the Special Representative of the Secretary-General for Children and Armed Conflict (SRSG-CAAC), Ms Virginia Gamba, expressed her profound shock at the increasing number of grave violations perpetrated against children during 2017, which totalled over 21,000.<sup>7</sup> A breakdown by type of grave violation is contained in Annex A at the end of this report. The SRSG-CAAC referred

to the sharp increase in abductions coinciding with increased recruitment and use of both girls and boys in armed conflicts in Africa. She highlighted the abduction of over 1,600 children by Al-Shabaab in Somalia, threatening entire communities or targeting schools as places for recruitment.<sup>8</sup> She also reported the surge in violence in the Democratic Republic of the Congo, whilst Boko Haram in Nigeria and in neighbouring countries continued to attack both military and civilian targets using children to perpetrate suicide attacks.<sup>9</sup> A worrying trend was the continued use of children, mostly girls, by Boko Haram as carriers of person-borne improvised explosive devices, with 146 cases documented in Nigeria and 57 in Cameroon.

Grave violations experienced by children were also recorded in *Save the Children's War on Children Report*, which showed that the number of children living in a conflict zone increased by more than 75% from the early 1990s when it numbered 200 million, to more than 357 million children in 2016 – translating into 1 in 6 of the world's children. Africa is the second most affected continent, with 1 in 5 children affected by conflict.<sup>10</sup> Since 2010 there has also been a near 300% increase in the number of UN-verified cases of killing and maiming of children.<sup>11</sup> These increases are attributed to the use of increasingly brutal tactics (exemplified by the use of children as suicide bombers, the widespread use of indiscriminate weapons such as cluster munitions, barrel bombs, and improvised explosive devices (IEDs)), and the changing nature of conflict in terms of duration, complexity, and intensity.<sup>12</sup> The UN Secretary-General in 2013 echoed this concern when he expressed that:

**“the evolving character and tactics of armed conflict are creating unprecedented threats to children. The absence of clear front lines and identifiable opponents, the increasing use of terror tactics by some armed groups, and certain methods used by security forces have made children more vulnerable. Children are being used as suicide bombers and human shields, while schools continue to be attacked, affecting girls’ education in particular, and to be used for military purposes. In addition, children are being held in security detention for alleged association with armed groups. Furthermore, drone strikes have resulted in child casualties and have had a serious impact on the psychosocial health of children.”<sup>13</sup>**

The change in the nature of conflict includes the entry of new actors, many of them non-state actors, who are drivers of conflict, including criminal syndicates that target children directly. Children have thus become commodified, exchanged for a price, and subject to new violations. These changes have implications for the nature of peacekeeping, such as possibly expanding mandates to cater for the change in the context and the protection of children.

In Africa, peacekeepers continue to be called in as the first line of defence in these changed conflict situations. Africa remains central for UN

peace operations. It is in Africa where 62.5% of UN peace operations and 87% of all uniformed UN peacekeepers are located, and where more than 80% of the UN’s annual peacekeeping budget is spent.<sup>14</sup> Participation in these missions demands an upgrade of skills on the part of peacekeepers, including alertness and the ability to assess risk in a fluid and dynamic environment to be able to apply good judgment, whilst that environment poses heightened risks to their lives. In many cases, training is inadequate, rushed and unable to respond to the changed nature of conflict and peacekeeping. Be that as it may, equipping peacekeepers with adequate skills is not enough. As the choice of becoming a peacekeeper is increasingly rooted in its financial rewards rather than driven by a commitment to serve, there is an increased need to reinforce a sense of integrity and a code of conduct amongst peacekeepers to ensure that they respect the communities they are called to protect, particularly women and children.

Drawing these lines of accountability within peacekeeping missions is, however, proving extremely difficult to do because just as there is an increased diversity of actors responsible for driving conflict, so too is there a multiplicity of actors with split responsibilities and oversight that characterize contemporary peacekeeping operations. Over the past decade, the African Union (AU) and its Regional Economic Communities/Regional Mechanisms (RECs/RMs) have worked towards a coherent continental peace and security architecture, including the building of an African Standby Force (ASF), which is made up of regional standby forces supported by the RECs/RMs that individually and/or collectively have either led or contributed to peacekeeping operations in Africa. Thus, against a backdrop where children in situations of armed conflict are increasingly being targeted, where there is a change in the nature of violations that they suffer, where



there are multiple peacekeeping actors with split responsibilities and oversight and where the front lines of conflict become increasingly blurred, there is an urgent need for clear roles, responsibilities and lines of accountability for the various actors, namely the UN, AU/RECs, TCCs and personnel deployed on mission.

This report will examine the different types of mechanisms to enhance accountability that have been established at international,

continental, regional and national levels not only to safeguard the rights of children in armed conflict but also to hold to account peacekeepers who perpetrate violations against children. The report will also explore a number of gaps that exist in the implementation of such mechanisms and which limit their effectiveness. A summary of key findings is provided below.

## 4 Summary of Key Findings

### 4.1 International Findings

There is a large repository of international laws, protocols, guidelines, and principles in the areas of children in armed conflict and peacekeeping. This is accompanied by a series of UN bodies set up to specifically look at these issues and attempt to hold parties to account for such violations (i.e. MRM, SRSG-CAAC and its Annual Reports, UNSC Working Group, UN General Assembly annual debates on children in armed conflict). There is increasing mention of mainstreaming child protection issues into peacekeeping, such as the incorporation of Child Protection Advisors (CPAs) in missions; but there is limited concrete operational guidance on how this is to be carried out. For instance, the UN's 2017 Policy on Child Protection in Peace Operations devolves a number of responsibilities to CPAs and child focal points without providing guidance on how to actualise such responsibilities within a mission setting.

International policy is most developed in terms of normative and legal frameworks as well as experience. There are structures for both child protection and peacekeeping. There is also an architecture to deal with the intersection of child protection and peacekeeping – protection of children not only from violations committed as a result of armed conflict (MRM mechanism) but also from violations perpetrated by peacekeepers (troop conduct and accountability) against children. There are increasing attempts to influence child protection standards at the United Nations. One example is the recent adoption of the Child Protection in United Nations Peace Operations Policy (2017), which sets out roles and responsibilities

concerning children. It reinforces the need for mandatory pre-deployment training on child protection. There is a designation of duties for CPAs and responsibilities for all components of a mission. It further describes the mechanisms for reporting violations against children (role of Force Commander, Head of Mission, etc.).

From the research undertaken, the UN has a defining role in developing the mandate for peace operations and whether such operations include a specific child protection focus. UN structures essentially drive the process of strategic assessment and development of draft mission plans which are definitive in nature and character of the mission, as well as roles and responsibilities of the various components of national contingents deployed. In other words, if child protection is not included as a priority at the mandate-setting stage, chances are that it will not be prioritised as one of the mission objectives. Therefore, influencing the pre-assessment and the process of mandate development becomes critical to actualise a child protection agenda and operational focus in peace operations.

In operations, the effectiveness of accountability mechanisms is severely compromised when a mission mandate fails to prioritise child protection. It is from the mandate that the roles and responsibilities of peacekeepers are derived. If the mandate does not define roles and responsibilities for peacekeepers in relation to child protection, such responsibilities cannot be assigned to them. In turn, if such responsibilities are not assigned, it is extremely difficult to hold peacekeepers accountable for failing to discharge them.

There is a significant focus on training on child protection to ensure compliance and respect for the rights of children in armed conflict; however, this research has shown that the interventions must go beyond training. Accountability requires other factors for training to translate into tangible action. Training on its own is unlikely to result in a change in conduct and behaviour. A political battle must be won – political will and commitments – for training to be effective. There is need for political will and commitment at the highest level and for that commitment to be translated into policies and operational guidelines. It also requires gathering of information/complaints to trigger the body of commitments. Accountability happens when there is vertical commitment, policy and procedural guidelines, monitoring, oversight and complaints mechanisms that are known and accessible.

This disjuncture between theory and practice is particularly evident when one considers the arsenal of policies, guidelines and directives that define the conduct and discipline expected of peacekeepers in carrying out their mandates in relation to the protection of civilians, in general, and vulnerable groups such as women and children, in particular. However, there lacks clear mechanisms to assist potential victims of such violations to come forward and report them. As long as there are no complaints, there are no triggers for the accountability measures to kick in. Accessible mechanisms for victims and witnesses of violations arising from the actions or inaction by peacekeepers in defence of children in armed conflict gain increased salience within mission contexts which are often characterised by secrecy, denial, cover ups and unwillingness to tarnish a TCCs reputation.

Child protection is recognised as a significant problem, but it often does not formally feature as such. Instead, it is understood within the broader

Protection of Civilians (PoC) framework. Therefore, there is a limited specific focus on child protection as a peacekeeping objective. Child protection is often subsumed under PoC, human rights, refugee rights, or addressed in terms of particular issues affecting children (i.e. child soldiers, refugee children). Framing of PoC is very narrow at the moment. In relation to accountability, it is only seen as an external concern (i.e. something out there that troops need to act against), without being internalized to focus on the behaviour and conduct of peacekeepers as potential perpetrators themselves. At present, this internalized focus is limited to issues relating to sexual exploitation and abuse (SEA) committed by peacekeepers and as an ad hoc and 'knee-jerk' reaction triggered by specific complaints. It largely extends to violations against children insofar as such violations are related to their sexual exploitation and/or abuse.

In thinking about how child protection could move higher up on the international agenda, it is informative to look at the trajectory of how SEA influenced the UN's operational and policy agendas. SEA became prominent in the humanitarian agenda around 2003, following investigations by the UN into the sexual exploitation of refugees by aid workers in West Africa. It became a priority in the political agenda, and it was translated into policies, structures and mechanisms to enhance accountability.<sup>15</sup> In other words, it became a political issue that saw it draw the attention of the international community. SEA had a high negative reputational risk for the UN and every member country saw it as a priority – it moved up on the global agenda. It could be argued that many of the violations are particularly drastic on children, so why is it not high up on the agenda? Child protection being high on the agenda necessitates influencing by Save the Children at various levels. Key among these is

at the UNSC and AU Heads of State levels to change the narrative and inject urgency on the issue of child protection, and raise the profile of child protection in the international, continental and regional political agendas. It could involve both positive and negative pressure.

Whilst the UN's drive for 'zero-tolerance' against SEA has gained significant momentum and enabled the development of specific instruments such as MoUs and codes of conduct, such gains have not yet extended to cover the gambit of child protection imperatives, but only extend to one grave violation against children, namely that of their sexual exploitation and abuse. For instance, the UN's revised MoU contains a provision indicating that the UN reserves the right to use money to assist victims of sexual exploitation and abuse by any member of UN peacekeeping missions. This money is derived from withholding the payment due to a contingent commander who, after a UN investigation, is found to have failed to take effective action to prevent serious misconduct by members of its national contingent and who is therefore repatriated.

Accountability mechanisms that record incidences of violations against civilians and children in armed conflict include the UN's Monitoring and Reporting Mechanism (MRM) and AMISOM'S Civilian Casualty Tracking, Analysis and Response Cell (CCTARC). The MRM relies on face-to-face data gathering in the field, whereas the CCTARC allows for on-line submission of a complaint and/or incident report. Whereas the MRM data is used to feed into the SG's Annual Report, it is not clear what the CCTARC data is used for.

The data collected from the MRM is primarily submitted to the SG for preparation of the Annual Report. There is no established mechanism for the information gathered

in relation to violations to be used by other human rights oversight mechanisms such as the Committee on the Rights of the Child and the Human Rights Council. Instead, it is dependent on States to submit information regarding violations against children in armed conflict and steps taken to address them.<sup>16</sup>

Whilst the institution of the Victims' Rights Advocate (VRA) was triggered by the rise of SEA by peacekeepers predominantly against women, it provides an opportunity for the establishment of a similar mechanism to assist child victims of violations in situations of situations of armed conflict, or for advocacy efforts for the expansion of its mandate to include violations that go beyond those which are SEA-related.

The cooperation and interrelation between the UN and AU has not been as robust as it should have been but there is an increasing desire by the UN to cooperate more closely not only with the AU but also with the RECs. In particular, the SRSR-CAAC has prioritised the building of partnerships with the AU and the RECs in the area of children in armed conflict.<sup>17</sup> This presents an opportunity for key actors in the African context to influence the agenda of such partnership and cooperation and raise the profile of child protection as a key objective in peace support operations.

## 4.2 Continental Findings

The African Union has disparate elements of what could become a Child Protection Architecture and the current AU reform process presents opportunities for strengthening and enhancing this Architecture. There is, at this stage, no AU equivalent to the UN Policy on Child Protection in peace support operations. The development of such a policy based on the experiences and specific context of conflicts on

the continent would provide the nexus between child protection in relation to peacekeepers' conduct.

The AU has accepted and incorporated the notion of protection of civilians as being core to Peace Support Operations. It also recognises child protection as a guiding principle in these operations, albeit subsumed under the broader rubric of protection of civilians. As much as the AU has embraced principles of protection of civilians and child protection, operational guidelines and procedures have not yet been developed or are in draft form. Guidelines on protection of civilians are still in draft form, having been developed in 2009.<sup>18</sup> Moreover, there is still a gap in the conceptualisation of protection of civilians in terms of the application of this notion to incorporate the behaviour of peacekeepers whilst on mission, and not being limited to only protecting civilians from armed groups.

The AU has its own peace support operations doctrine, peace and security protocols and other policies related to missions such as AU TCC SOPs, including vetting and accountability mechanisms, many of which are currently under review or in the process of development in order to align them to UN standards in view of the primacy of the role of the AU in planning and executing PSOs on the Continent. In light of this shift, the AU is meant to lead in the harmonisation of legal instruments between itself and the RECs and across TCCs to ensure overall alignment with normative standards generally and on child protection in particular and thus facilitate the process of holding perpetrators accountable. Furthermore, the AU would need to establish systems of monitoring akin to the UN MRM process, documentation and information management systems to track all aspects of PSO operation under its authority. SC research and documentation would serve to

bolster AU efforts and at the very least provide critical primary and baseline data.

The AU plays a key role in the harmonization of training standards for RECs and TCCs under the APSTA platform. This process is currently underway, thus presenting a critical opportunity for SC as a member of APSTA and based on its extensive engagement with TCCs, to influence the curriculum on child protection to be adopted by the AU.

Additionally, as the AU develops a more preventative approach to managing conflicts on the continent, a critical area of focus would be the standardising and harmonising of an "Early Warning" architecture and systems that integrate existing regional mechanisms and initiatives such as the ECOWAS early warning system.

The renewed partnership between the UN and AU is informed by two key considerations. On the one hand, the UN, in light of criticisms for the lack of accountability within its peacekeeping operations, wants to ensure that regional organisations such as the AU and the RECs/RMs, which are pivotal in enabling the UN to carry out its peace and security mandate, align to and respect the normative standards recently developed to ensure accountability of troops. This includes not only discipline and conduct standards, but also policies on the protection of civilians, the role of women in peacekeeping, and child protection. On the other hand, the AU and the RECs have repeatedly called on the UN, informed by the High-Level Panel findings, to use its contributions to fund the costs incurred by them to deploy troops. This has led to the UN increasingly using resourcing of AU peace support operations as a conditionality to ensure compliance with normative standards (i.e. UN's Due Diligence Policy and UN Revised Model MoUs). Pressure has thus been laid on the AU

and the RECs to adhere to UN standards in peace support operations. The stage is thus set for the AU and RECs to develop and align existing policies and strategies to enhance the accountability of TCCs under their structures. This, in turn, provides an opening for Save the Children to influence the drafting of standards that do not simply conform to UN standards, but are infused with the challenges and realities of the conflict context.

The African Standby Force (ASF), a key piece of the African Peace and Security Architecture (APSA), has been established. Its key operating components are the RECs whose standby forces to date exhibit different levels of readiness and capacity. The state of readiness of the ASF was scheduled for 2015 but because of these disparities it only materialised in 2017.

### 4.3 Regional Findings

There is a lack of harmonisation and streamlining of political and legal instruments, procedures and timeframes of the AU, RECs/RMs and Member States to enable and support rapid and well-coordinated responses. Unnecessary delays in deployment can result in violations of children that could have been averted with a rapid deployment.

There is limited implementation of the MoU between the AU and the RECs/RMs in the realization of APSA as a result of a number of factors: lack of a clear and shared understanding of the concepts of coordination, subsidiarity, complementarity, and comparative advantage; lack of harmonisation of policies/standard operating procedures between the AU and RECs/RMs; and lack of a monitoring system for the implementation of the MoU.

In view of the fact that command, control and responsibility lines are drawn directly between the UN and the TCCs as evidenced

by the parties to an MoU, the AU's potential monitoring and oversight role in adhering to standards and ensuring that perpetrators of violations against children are held to account has been completely bypassed. However, this is likely to change as the AU is envisioned to lead future peacekeeping missions.

Troop and police contributing countries occupy the most pivotal role in peace support operations as they provide the personnel, logistics and equipment required to give effect to the mission mandate. Yet capacity is the most limited at this level in terms of financial resources, normative frameworks, equipment and management of accountability. Importantly, countries are driven by various factors to contribute personnel to missions. One critical factor is the financial one, which enables countries and peacekeepers to receive income for deployments. Others include deploying troops perceived to be destabilising factors in their own countries. Thus, deployment is often not rooted in a commitment to serve and respect human rights but rather motivated by self-interest. Further, one aspect that does not seem to be addressed in the literature, and which is important in relation to child protection, is that peacekeepers are deployed with their own cultural understandings and biases which are not challenged as part of the deployment training and preparation and which inform their behaviour in the mission and have serious consequences for failing to act when required.

RECs are the most important component of the ASF. They vary in terms of political commitment, capacity, capabilities and political dynamics. However, they have practical experience in the area of implementation of peacekeeping operations compared to the AU. As RECs they can either lead peacekeeping operations in their respective regions or deploy under the lead of either the AU or the UN. RECs generally mirror the structure of the AU. They

have direct political influence over the TCCs that make them up and are instrumental in taking the lead in deciding whether to deploy peacekeeping missions. Whether the RECs take the lead or contribute their Standby Forces to AU or UN-led missions, they play a key role in influencing the mandate of such operations and contributing resources in terms of troops, equipment and training. The relationship between the AU and the RECs is meant to be governed by the principles of subsidiarity, complementarity and comparative advantage. However, there is no common understanding of the application of these principles and the roles and responsibilities of each, thus leading to a lack of coordination in the planning and implementation of missions.

Even if the UN pushes the AU/RECs or the TCCs for compliance with standards as a prerequisite for financial support, the reality is that the UN has limited leverage over TCCs because it is highly dependent on the current TCCs to supply the 'boots on the ground'. This finding is a serious drawback for enhancing accountability amongst peacekeepers in relation to children as the imperative to deploy forces quickly could result in TCCs' malicious compliance (i.e. 'ticking of boxes') with such standards and the adoption of disciplinary measures against perpetrators that merely remove them from the scene and re-deploy them elsewhere in another mission. This is likely to require a more active monitoring role by the AU in view of the changing relationship with the UN in relation to peacekeeping.

#### 4.4 National Findings

States have a pivotal role to play in enabling the actualization of peace support operations. First, they provide the personnel and equipment that allow missions to happen. Secondly, they are responsible to ensure that troops have the necessary training prior to being

deployed. States must ensure that the training peacekeepers receive is grounded in an understanding of international human rights and humanitarian law and child protection principles. Thirdly, states are responsible and accountable for discipline and conduct of their national contingents whilst deployed. They bear the primary responsibility for ensuring that forces involved in violations of the rights of children in armed conflict are investigated and held to account through national mechanisms. In a context where cultural norms and practices militate against the protection of children and where the culture of military and security sectors prioritises secrecy over transparency, national mechanisms that can translate into repercussions for those who are involved in such violations and in prioritizing children's protection needs acquire critical importance. The national environment provides a number of opportunities to strengthen accountability mechanisms, particularly as they relate to assisting vulnerable children who are victims or witnesses to violations.

Enhancing the accountability of military personnel who commit a violation against a child presents a unique challenge in that without mechanisms to collect information as soon as the violation happens at the mission, it is likely that the perpetrator will be removed from the mission (repatriated) but not necessarily prosecuted for his/her conduct. From the interviews conducted in all four countries of study, based on the nature of the evidence gathered, perpetrators might not be prosecuted for the act that they have committed (i.e. rape, sexual abuse) but rather for a lesser offence (i.e. abandon the post), resulting in significantly less severe penalties (if any at all).

The countries in this study have ratified and domesticated most of the major international and continental treaties dealing with the

protection and rights of children. All countries have constitutions with a Bill of Rights that protects human rights. Uganda and Kenya have Children's Acts, Côte d'Ivoire does not have one, and Senegal is in the process of adopting one.

All four countries in this study have adopted national action plans and strategies for the protection of children. However, the emphasis is on social protection and they do not explicitly address aspects of children in situations of armed conflict. In Senegal and Côte d'Ivoire challenges have been experienced with coordination mechanisms across various actors to ensure coherent implementation of the plans.

All countries in the study have juvenile justice systems that cater for the special needs of children in conflict with the law and which recognise legal capacity to act only above a particular age. These systems also include Children's Courts and child-friendly procedures to gather and give evidence. However, as much as these systems exist, it is rare that a child from a country where peacekeepers have committed a violation is brought to testify in a court case in the peacekeeper's country of origin. There are no instances where this has happened in any of the countries of study.

One country that presents a case of best practice is Uganda. Unlike other countries in this study, Uganda disciplines its troops on site. This practice serves to limit the time-lag between the commission of an offence by a peacekeeper, gathering of the necessary evidence, and the resolution of the case. Importantly, Uganda holds court sessions in the country of deployment when violations committed by its peacekeepers have public importance. This practice allows for trust and accountability to be built between peacekeepers and the civilian population. It also serves an important role in winning the hearts and minds of the local population. In

relation to the latter, Uganda has also instituted a Female Engagement Team (FET) that acts as an interface between the peacekeepers and communities and allows for interaction and sharing of information, particularly with women and children.

All countries in the study have established National Human Rights Commissions or bodies with established complaints mechanisms. In Côte d'Ivoire, the Human Rights Commission monitors cases against the military, as long as these do not proceed to the courts. However, in other countries, this arrangement does not exist. Instead, Human Rights Commissions are limited to dealing with violations that occur in country and not in another country.

Pre-deployment measures are in place in all countries of study, namely vetting of peacekeepers to form part of a contingent (although the process is not open to the public), as well as regular training of military contingents.

In some instances, investigators form part of deployed contingents, whereas in others, they are sent from national headquarters, as and when the need arises to investigate a violation. However, there seems to be no specialised training for investigators in child protection (i.e. how to question children, how to gather child-sensitive data and evidence).

The appointment of (battalion) Child Protection Officers does not seem to be standardised. Peacekeepers from two of the countries of study (Uganda and Cote d'Ivoire) mentioned the designation of Child Protection Focal Points only, whereas none are designated in Senegalese contingents.

There is a dearth of data from the peacekeeper's viewpoint in relation to experiences in the field,



training received, relevance of training, and the manner in which child protection issues manifest themselves in the field (i.e. mission). There is also limited information on public perceptions towards peacekeepers in missions. For instance, there is limited information on the impact of Uganda's FET initiative as a possible best practice.

There is limited monitoring and evaluation of training interventions of peacekeepers by Save the Children in relation to child protection and accountability of forces. Attempts are underway

to monitor and evaluate training interventions with one of the Ugandan contingents that will soon return from AMISOM.

Whereas peacekeepers from each of the countries of study undergo regular child protection training run by Save the Children, there has been limited development of SOPs for child protection once peacekeepers are deployed. Uganda has developed SOPs only for Disarmament, Demobilisation and Reintegration (DDR).



Save the Children Somalia

# 5 International Findings

## 5.1 Introduction

Since the publication of Graça Machel's report in 1996, significant improvements have been made in the adoption of laws, policies and guidelines, predominantly at the international and continental levels, to promote and focus on the need for child protection in situations of armed conflict. Notably, there has been a swell of Security Council resolutions dealing with various aspects of children in armed conflicts which have led to, amongst others, the creation of the UN Security Council Working Group (UNSCWG) on Children in Armed Conflict, the Office of the Special Representative to the Secretary-General on Children in Armed Conflict (SRSG-CAAC), and the annual publication of the Secretary-General's (SG's) 'name and shame' reports on perpetrators of grave violations against children. Taking into consideration the changing nature of armed conflict, important steps have been taken to adopt conventions and rules to control the use of small and light weapons and landmines and new international standards (including the adoption of the 'cluster' approach as a holistic response mechanism) to provide humanitarian assistance and protection to conflict-related internally displaced persons.

Important for our purposes, and triggered by the recent allegations of sexual exploitation and abuse (SEA) by UN peacekeepers, UN structures such as the Department of Peacekeeping Operations (DPKO) have also taken concrete steps to develop policies to uphold accountability amongst peacekeepers and to affirm UN commitments to mainstreaming the protection of vulnerable groups in situations of

armed conflict. Whilst some of these policies address the protection of civilians more broadly, some have begun to specifically address children, such as those prohibiting child labour in peacekeeping operations, or the handover of children separated from armed groups. The next section explores key elements of this emerging normative framework as it relates to the protection of children in armed conflict.

## 5.2 International legal instruments

### General instruments

- The Universal Declaration of Human Rights (1948)
- The United Nations Charter (1945)
- International Covenant on Civil and Political Rights (1966) and the Human Rights Committee Comment No. 35
- International Covenant on Economic, Social and Cultural Rights (1966) and the Education, Social and Cultural Rights Committee Comment No. 13

### International Criminal Law

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- The Rome Statute of the International Criminal Court (1998)

### International Humanitarian law

- The Geneva Conventions (1949), their two Additional Protocols (1977) and customary international humanitarian law
- General Assembly Resolution 46/182 on Strengthening of the coordination of

humanitarian emergency assistance of the United Nations (1991)

### **International Refugee Law**

- UN Convention Relating to the Status of Refugees (1951) and its 1967 Protocol

### **Security Council Resolutions relevant to children in armed conflict**

- Security Council Resolutions 1261 (1999), 1314 (2001), 1379 (2001), 1460 (2003), 1539 (2004), 1612 (2005), 1882 (2009), 1998 (2011), 2068 (2012), 2143 (2014), 2225 (2015), and 2427 (2018) on children and armed conflict; and 1888 (2009) and 1960 (2010) on sexual violence in armed conflict

### **Security Council Resolutions on the protection of civilians**

- Security Council Resolutions 1265 (1999), 1296 (2000) and 1674 (2006), which also explicitly refer to women and children

### **Security Council Resolutions on UN peacekeeping operations, cooperation with TCCs and child protection**

- Security Council Resolutions 2272 (2016), 2185 (2014), 2167 (2014), 2086 (2013), 1353 (2001)

### **Child Protection instruments**

- The Convention on the Rights of the Child (1989), and Child Rights Committee Comments No. 10, 13 and 14
- Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (2000)
- Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (2000)
- Optional Protocol to the Convention on the

Rights of the Child on a Communications Procedure (2011)

- International Labour Organization (ILO) Convention No.138 (1973) on Minimum Age for Admission to Employment
- International Labour Organization (ILO) Convention No.182 (1999) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, and its Recommendation No. 190
- Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000)

### **Instruments dealing with weapons**

- United Nations Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, supplementing the UN Convention against Transnational Organized Crime (2001)
- Convention on Cluster Munitions (2008)
- Convention on Certain Conventional Weapons (CCW) (1980) (particularly Protocol II and V)
- Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (“Ottawa Treaty”) (1997)
- Arms Trade Treaty (2014)

## **5.3 International standards and norms**

- The Paris Commitment to Protect Children from Unlawful Recruitment or Use by Armed Forces or Armed Groups (2007)
- The Paris Principles and Guidelines on Children associated with Armed Forces or Armed Groups (2007)
- Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict (2014)

- Safe Schools Declaration (2015)
- UN Programme of Action to Prevent, Combat, and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (2001)
- UN Guidelines for Gender-Based Violence Interventions in Humanitarian Settings Focusing on Prevention of and Response to Sexual Violence in Emergencies, (2005);
- IASC Guidelines on Mental Health and Psychosocial Support in Emergency Settings (2007);
- Guiding Principles on Internal Displacement (1998);
- International Guidelines for Landmine and Unexploded Ordnance Awareness Education (1999);
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“Beijing Rules”) (1985)
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty (“Havana Rules”) (1990)
- United Nations Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime (2005)
- United Nations Integrated Disarmament, Demobilization and Reintegration Standards (IDDRS) - Module 5.30 on Children and DDR (2006)
- Guidance Note of the Secretary-General: United Nations Approach to Justice for Children (2008)
- DPKO-DFS Policy on the Prohibition of Child Labour in United Nations Peacekeeping Operations (2011)
- DPKO-DFS Lessons Learned Study on the Impact of Child Protection Advisers in United Nations Peacekeeping Operations (2007)
- Global Good Practices Study: Monitoring and Reporting Mechanism on Grave Violations against Children in Situations of Armed Conflict (2013)

- Guidelines: Monitoring and Reporting Mechanism on Grave Violations against Children in Situations of Armed Conflict (2014)
- Field Manual: Monitoring and Reporting Mechanism on Grave Violations against Children in Situations of Armed Conflict (2014)
- Protect Schools and Hospitals: Guidance Note on Security Council Resolution 1998 (2014)

#### 5.4 Other international related policies and guidelines

- United Nations Policy on Human Rights Screening of United Nations Personnel (2012)
- United Nations Secretary-General’s Bulletin, Special measures for protection from sexual exploitation and sexual abuse (ST/SGB/2003/13, 2003)
- Aide Memoire for the consideration of issues pertaining to the Protection of Civilians in Africa (2013)
- The Kigali Principles on the Protection of Civilians (2015)
- DPKO-DFS-DPA Policy on Child Protection in United Nations Peace Operations (2017)
- DPKO-DFS Guidelines on the Role of United Nations Police in the Protection of Civilians (2017)
- Guidance Note and Operational Framework: Consolidation of Protection Functions in Peace Operations (2016)
- DPKO-DFS Note on “Reporting and follow-up obligations in response to allegations of serious human rights violations committed by international security forces” (2015)
- DPKO-DFS Policy on the Protection of Civilians in United Nations Peacekeeping (2015)
- United Nations Force Headquarters Handbook (2014)

- United Nations Human Rights Up Front Action Plan (2014)
- United Nations Infantry Battalion Manual (2012)
- Human Rights Due Diligence Policy on United Nations Support to Non-United Nations Security Forces (2013)
- Policy on Human Rights in Peace Operations and Political Missions (2011)
- DPKO-DFS Policy on Gender Equality in United Nations Peace Operations (2010)
- DPKO-DFS Interim SOP on Detention in Peace Operations (2010)
- United Nations Policy on Integrated Assessment and Planning (2013)
- Child Soldiers: A Handbook for Security Sector Actors (2013)
- UN Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice (2014)
- Report of the High-Level Independent Panel on United Nations Peace Operations ('HIPPO Report') (2015)
- DPKO-DFS Policy on mainstreaming the protection, rights and well-being of children affected by armed conflict within UN Peacekeeping Operations (2009)
- OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (1969)
- Protocol Relating to the Establishment of the Peace and Security Council of the African Union (2002)
- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa ("The Maputo Protocol") (2003)
- The African Charter on the Rights and Welfare of the African Child (1999)
- African Youth Charter (2006)
- Economic Community of West African States (ECOWAS) Convention on Small Arms and Light Weapons, their Ammunition and other Related Materials (2006)
- Nairobi Protocol for the Prevention, Control and Reduction of SALW in the Great Lakes Region and the Horn of Africa (2004)
- Protocol on the Control of Firearms, Ammunition and Other Related Materials in the Southern African Development Community (SADC) Region (2001)
- African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa ('Kampala Convention') (2009)
- The Solemn Declaration on Gender Equality in Africa (2004)
- Accra Declaration on War-Affected Children in West Africa (2000)
- Framework of Cooperation between the Special Representative on Sexual Violence in Conflict and the African Union signed on 31 January 2014
- Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights adopted on 27 June 2014 ("Malabo Protocol")<sup>19</sup>

## 5.5 Continental and Regional Legal Instruments

- African Union Constitutive Act (2000)
- African Charter on Human and Peoples' Rights ('Banjul Charter') (1981)
- Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (2004)

# 6 Key structures for International CAAC Accountability

## 6.1 Background

Over the last decade, awareness of the need to protect children caught up in violence and insecurity has increased markedly not only across UN agencies but also among UN member states. This increased awareness is attributed to the publishing of the first independent study on the impact of armed conflict on children led by Graça Machel in 1996. The Machel Report was the first comprehensive human rights, humanitarian and security assessment of war-affected children, using the UN Convention on the Rights of the Child (UNCRC) as a framework for analysis. The effectiveness of existing international protection standards was analysed, paying particular attention to children associated with armed forces and armed groups, refugee and internally displaced children, landmines, sanctions and the psychological, physical and psychosocial consequences of conflict. This landmark report has led to many of the developments to enhance the international child protection framework. In particular, the Office of the Special Representative of the Secretary-General for Children and Armed Conflict (SRSG-CAAC) was set up in 1997 on the back of a General Assembly resolution tasked with producing an annual report to the SG and the Security Council on the situation for children in armed conflict.

This increased awareness on child protection can also be attributed to the links between the 'protection of civilians' and threats to peace and security that have been forged since the late 1990s. Whilst children have often been

subsumed under the rubric of 'protection of civilians', there has been increasing recognition that the security and development pillars of the UN system need to be interlinked and mutually reinforcing in order to achieve progress in each. A number of key developments can be highlighted as contributing to this raised awareness across the UN.

The establishment of the International Criminal Court (ICC) in 1998 has served to address impunity on violations against children that constitute war crimes, crimes against humanity, and genocide. Politically, besides establishing the ICC, UN member states adopted the Responsibility to Protect (R2P) principle at the September 2005 World Summit. Thus the UN acknowledged collective responsibility to use diplomatic, humanitarian and other means to protect populations from war crimes, ethnic cleansing, and crimes against humanity. In this regard, UNSCR 1674 was an attempt to codify R2P, even if its language requires strengthening to enable states to be held to account.

The establishment of the UN Human Rights Council in 2006 was aimed at providing stronger human rights monitoring and the inclusion of children's issues when dealing with country-specific and thematic human rights concerns. This is still work in progress – ensuring that there is collation of information on CAAC from various entities and agencies (such as UNICEF, and SRSG-CAAC) in the consideration of reports by the Council.

Since October 2000, the protection of women and girls from gender-based violence,

particularly rape and other forms of sexual abuse in situations of armed conflict have also been heightened through the passing of UNSCR 1325 on women, peace and security, three subsequent presidential statements, and Security Council debates. The resolution reaffirms the role of women in the prevention and resolution of conflicts, peace negotiations, peace building, peacekeeping, humanitarian response, and in post-conflict reconstruction. It stresses the importance of their equal participation and full involvement in all efforts to maintain and promote peace and security. It urges all actors to increase women's participation and incorporate gender perspectives in all UN peace and security efforts.

The above focus on women has also gained prominence in light of involvement of peacekeeping forces in sexual exploitation and abuse (SEA). The latter has acted as a trigger for UN entities and agencies to develop a plethora of policies and new structures (such as the Victims' Rights Advocate (VRA)) to govern the conduct of peacekeepers, the vetting and recruitment of personnel for peacekeeping missions, as well as UN support for non-UN entities complicit in the commission of these violations. Whilst these policies have largely focused on support for women and child victims, and children born out of such violations, the rise in the reporting of SEA violations has emphasised the need to mainstream child protection across all aspects of peace operations and condemn any violations against children in armed conflict.

On the humanitarian side, UNICEF has shifted its focus to child protection and plays a critical role in the gathering of information for the Monitoring and Reporting Mechanism (MRM) as will be discussed further below. Whilst UNHCR has been appointed the head of the protection cluster and taken on the role to protect internally displaced persons (IDPs),

UNICEF leads the child protection sub-focus area within the cluster, thus helping to bring increased focus to matters affecting children in armed conflict.

There are numerous international actors that aim to effect the international legal frameworks that govern the area of children in armed conflict. A non-exhaustive list would include key bodies such as the UN Security Council, the SRSG-CAAC, UNICEF, DPKO, the Department of Political Affairs (DPA), OHCHR, UNHCR, OCHA, the Inter-Agency Standing Committee (IASC) - as the primary mechanism for inter-agency cooperation in humanitarian assistance - and UNDP (particularly in post-conflict situations). The sections below highlight the key UN structures that have a bearing on accounting for violations against children in armed conflict.

## 6.2 Special Representative of the Secretary-General for Children and Armed Conflict

The Office of the Special Representative of the Secretary-General for Children and Armed Conflict (SRSG-CAAC), set up in 1997, serves as the leading UN advocate for the protection and well-being of children affected by armed conflict. Its mandate was created by a General Assembly Resolution (A/RES/51/77) following the publication of Graça Machel's 1996 *Impact of Armed Conflict on Children report*,<sup>20</sup> which highlighted the disproportionate impact of war on children and identified them as its primary victims.

The role of the SRSG-CAAC is to strengthen the protection of children affected by armed conflict, raise awareness, promote the collection of information about the plight of children affected by war, and foster international cooperation to improve their protection. The SRSG-CAAC

engages in advocacy and acts as a moral voice and convener on issues related to children and armed conflict. In collaboration with other UN agencies, the SRSG-CAAC engages with offending parties (State and non-State actors) to secure commitments from them to end violations of children's rights in armed conflict through the development of time-bound action-plans.

The work of the SRSG-CAAC has been on the six grave violations affecting children in times of conflict, namely:

- Recruitment and use of children
- Killing and maiming of children
- Sexual violence against children
- Attacks on schools and hospitals
- Abduction of children; and
- Denial of humanitarian access.

The top five violations listed above act as triggers for state and non-state parties to a conflict to be listed in the SG's annual reports on Children and Armed Conflict.

The SRSG-CAAC reports yearly to the General Assembly and the Human Rights Council and raises challenges faced by children in war to political bodies, such as the UN Security Council and relevant governments to maintain a sense of urgency amongst key decision makers as well as to secure political and diplomatic engagement. It also introduces the SG's annual reports on CAAC to the SC Working Group on Children and Armed Conflict.

### 6.3 UN Security Council

The Security Council (SC) has devoted attention to the issue of children and armed conflict since 1998 when it held its first debate on the subject. Thereafter, a number of resolutions were adopted, namely: UNSCR 1261 (1999)

(resolution that requested the SG to submit a report on CAAC as an issue affecting peace and security); UNSCR 1314 (2000) (targeting of civilians, including children); UNSCR 1379 (2001) (SC requested the SG to list parties that recruit or use children); and UNSCR 1460 (2003) (SC supported SG to begin dialogue with parties that recruited or used children to develop clear and time-bound action plans to end this practice). This call for concrete action was reaffirmed in the SC's adoption of UNSCR 1539 (2004) and UNSCR 1612 (2005) which requested the SG to devise a systematic and comprehensive monitoring and reporting mechanism to provide timely, accurate and reliable information not only on the recruitment and use of children, but also other violations and abuses committed against children affected by armed conflict.

These resolutions also called on the parties listed in the SG's reports to develop concrete action plans to address the violations, failing which the SC would consider imposing targeted and graduated sanctions against such parties. UNSCR 1612 also endorsed the establishment of the Monitoring and Reporting Mechanism (MRM) to collect information committed against children and the creation of the SC's Working Group on Children and Armed Conflict to review information provided by the Monitoring and Reporting Mechanism on country situations and make recommendations to the Council on measures to promote the protection of children affected by armed conflict.

Since the creation of the above mechanisms, children's issues have gained prominence in two ways: by featuring more centrally in Security Council reports and resolutions (the mainstreaming approach) and through the Monitoring and Reporting Mechanism (MRM), as outlined in SCR 1612 (the focused approach).



## 6.4 Secretary-General's Annual Reports on Children and Armed Conflict

The SG has presented an annual report on the global situation of CAAC to the UN General Assembly since 1998, and to the Security Council since 2000. The main purpose of the report is to focus the attention of member states on grave violations against children and on the parties who commit them. The SG's annual report serves as the substantive basis of the SC's engagement on CAAC.

As mentioned earlier, over the years, the Security Council has mandated the SG to list in an Annex to his annual report, state and non-state parties to conflict who commit a number of grave violations against children. UN Annual Reports of the SG on Children and Armed Conflict (UN CAAC reports) are released by the SG using the MRM to assess the situation for children in conflicts through six 'grave violations'.

There have been concerns about the independence of the SG to enter names of parties to a conflict in the 'list of shame'. In particular, commentators point to events that took place in 2015 and 2016 when the list was altered under political pressure. Following the war in Gaza in 2014, which left more than 500 children dead, UN officials backed away from mentioning the Israeli Defence Forces on the list. Similarly, in 2016, the UN SG removed a coalition led by Saudi Arabia responsible for killing, maiming and carrying out of attacks against schools and hospitals in Yemen, out of fear that some countries would defund UN programmes.<sup>21</sup>

To address the above concerns, the current SG Antonio Guterres decided to revise the format of the report to include a more preventive aspect, which is reflected in a new section on

"developments and concerns" following every situation in the body of the report. In the revised format, each annex is divided into an "A" section, listing parties that have not put in place measures during the reporting period to address the violations, and a "B" section, listing parties that have put in place some such measures.<sup>22</sup>

## 6.5 Monitoring and Reporting Mechanism (MRM)

The MRM is a UN-led process that was formally established in 2014 and involves a broad circle of stakeholders, including the UN Security Council, national governments, various UN departments and agencies, international and local NGOs, and affected communities.<sup>23</sup> The cooperation and 'buy-in' of this broad range of actors is an important prerequisite and an 'added value' of the MRM.

The purpose of the MRM is to provide for the systematic gathering of accurate, timely, objective and reliable information on grave violations committed against children in situations of armed conflict, as well as in other situations of concern as determined by the SG. Such information forms the basis to foster the accountability and compliance of parties to conflict with international child protection standards and norms, and should lead to well-informed, concerted and effective advocacy and responses to protect and care for children. It provides information to the United Nations Security Council Working Group on Children and Armed Conflict (UNSCWG), facilitates analysis and information sharing, triggers responses at the appropriate level, and informs policy and programmes that protect children.

The implementation of the MRM is automatically triggered in all situations covered in Annex I to the annual report of the SG on CAAC.

For situations that fall under Annex II, the UN is expected to consult with the national government for the implementation of the formal MRM process.

The MRM operates at three principal levels, and effective coordination and information flow among them is critical:

1. **In-country coordination:** Information gathering, analysis and verification, preparation of reports, and advocacy and programming response;
2. **UN Headquarters:** Policy and guidance, information integration, preparation of reports, and advocacy;
3. **Security Council:** Review of information and actions to ensure compliance with international standards. The Security Council may also refer information to other entities for action.<sup>24</sup>

Once a party has been listed, an MRM must be established for the country in which the party operates, for monitoring and reporting on violations by all parties in that context. In each instance where the MRM is activated, a Country Task Force on Monitoring and Reporting (CTFMR) is established to oversee the mechanism, consisting of the UN Mission (where applicable), UN agencies, and relevant NGOs. The Task Force is co-chaired by UNICEF and the highest UN representative in the country – normally an SRSR, a Resident Coordinator, or Humanitarian Coordinator. The CTFMR sends its reports to the SRSR CAAC, and its findings provide inputs into the SG’s annual report on CAAC and separate country reports of the SG on the situation of children and armed conflict.

The CTFMR co-chairs are responsible for entering into dialogue with listed parties to conflict (which may be state or non-state entities) in order to negotiate, develop and

implement time-bound Action Plan(s), with clear benchmarks to end and prevent the violations against children for which they are listed. The CTFMR negotiates Action Plans with the support of UNICEF HQ and the Office of the SRSR-CAAC.<sup>25</sup>

Criticisms of the MRM mechanism include its limited focus on the six grave violations affecting children, limited engagement with local and international child protection NGOs during the data gathering phase, and time delay between gathering of information and report back phases which limits on-going monitoring of the violations by the SC.<sup>26</sup>

Importantly, and considering that the work of the CTFMR is aimed at providing information to the SRSR-CAAC and the UNSCWG on Children and Armed Conflict, this data should be incorporated into reviews by treaty bodies, when relevant, as they provide a valuable opportunity to raise concerns relating to violations of children’s rights in armed conflict. The treaty bodies of particular relevance to the MRM include:

- Committee on the Rights of the Child: Monitors implementation of the CRC and its three optional protocols;
- Human Rights Committee: Monitors implementation of the International Covenant on Civil and Political Rights;
- Committee Against Torture: Monitors implementation of the Convention Against Torture or Other Cruel, Inhuman or Degrading Treatment;
- Committee on the Elimination of Discrimination Against Women: Monitors implementation of the Convention on the Elimination of Discrimination Against Women.

## 6.6 United Nations Children’s Fund (UNICEF)

UNICEF, as the leading agency for the protection of children’s rights, plays a key role through its mandate to protect civilians from the impact of conflict – particularly women and children. There are three thematic areas that form the core of this mandate:

1. Children and Armed Conflict (CAAC);
2. Women, Peace and Security (WPS); and
3. Protection of Civilians (PoC).

UNICEF is a key partner in MRM implementation. The UNICEF Representative, as co-chair of the CTFMR, has a number of key responsibilities in terms of coordinating the work of the MRM, preparing and clearing products related to the CAAC agenda, and establishing a response for affected children. They are to:

- Establish the CTFMR and co-chair its meetings;
- Play a lead role in organizing a risk assessment regarding the operation of the MRM, the preparation of a strategy for risk mitigation and updates to it based on changes in the operational environment at the onset of the MRM;
- Support the operation of the MRM, through the work of UNICEF staff in country offices in the monitoring of grave violations, information management, capacity development of partner organizations, programming, advocacy, and recruitment of specialized staff and raising resources;
- Contribute and often lead the in-country drafting of reports to the OSRSG-CAAC. These reports are the SG’s Annual Report to the Security Council on CAAC, SG’s country-specific reports to the SC on CAAC, and quarterly reports to the SCWG on CAAC, called *Global Horizontal Notes*.

In addition to the above MRM-specific functions, as mentioned earlier, the CTFMR co-chairs enter into dialogue with listed parties and negotiate, develop and implement action plans. Within the action plans, UNICEF often has specific responsibilities by itself or as part of the CTFMR, particularly for supporting programme response for children but also for monitoring the implementation and compliance of the party. Importantly, UNICEF is either a signatory to Action Plans or, in certain high political risk situations, signs as a witness.

## 6.7 UN Security Council Working Group on Children and Armed Conflict

As described earlier, this Working Group was established pursuant to UNSCR 1612 (2005) to review reports on violations against children affected by armed conflict committed by parties that are listed in the annexes to the SG’s report on CAAC. It comprises all 15 members of the SC and makes its decisions by consensus. Notably, no other theme on the SC’s agenda has a working group specifically devoted to address it.

The overall mandate of the Working Group is to:<sup>27</sup>

- review the reports of the MRM;
- review progress in the development and implementation of action plans, adoption of legislation, tools and mechanisms to prevent future violations, and to hold perpetrators accountable;
- make recommendations to the Council on possible measures to promote the protection of children affected by armed conflict, including through recommendations on appropriate mandates for peacekeeping missions and recommendations with respect to parties to the conflict; and
- address requests to other bodies within the UN system for action to support

implementation of UNSCR 1612 (2005) within their respective mandates.

In addition to reviewing the SG's annual reports, the Working Group regularly receives updates from the SRSG-CAAC and from the field through a Global Horizontal Note which is presented by UNICEF. The Working Group adopts Conclusions that are issued as an official document of the Security Council and which may contain recommendations to parties to conflict, Member States, the UN system, donors and other relevant actors.

The SC has been criticized for its reluctance to use targeted measures to ensure accountability and compliance by parties to a conflict. Some have called for the SC to establish mechanisms to impose sanctions in all situations of concern on the CAAC agenda, including establishing a sanctions committee for children and armed conflict.<sup>28</sup> Others have called for more consistent efforts to work with the ICC and other international, regional, national and local justice mechanisms to ensure accountability of perpetrators.<sup>29</sup>

Additional concerns include the delay in the Working Group's issuance of conclusions due to difficulties in finding consensus, and the significant gap between reports on a country-specific situation due to delays in data gathering through the MRM.<sup>30</sup> Another concern has been the absence of any action plans on attacks on schools and hospitals, or on abductions.

Since Sweden took over as Chair in 2017, the Working Group has been able to, for the first time, honour its two-month time frame for the adoption of conclusions. Nonetheless, it could be useful for the Working Group to invite representatives from the state being considered to discuss the implementation of the conclusions. The Committee could also request

for short, follow-up reports to put pressure on specific parties engaged in violations.

## 6.8 UN Committee on the Rights of the Child

The Committee on the Rights of the Child (CRC) is a body of 18 independent experts that monitors implementation of the UN Convention on the Rights of the Child (UNCRC) by State parties. It also monitors implementation of two Optional Protocols to the Convention, on involvement of children in armed conflict (OPAC), and on the sale of children, child prostitution and child pornography. On 19 December 2011, the UN General Assembly approved a third Optional Protocol on a communications procedure, which allows individual children to submit complaints on specific violations of their rights under the Convention and its first two optional protocols. It entered into force in April 2014.

All State Parties must submit regular reports to the CRC detailing progress made towards implementing the Convention and the OPAC. The CRC examines each report and addresses its concerns and recommendations to the State Party in the form of concluding observations. This process also involves a dialogue between CRC members and representatives of the government of the state under consideration. Some observers explain that this process provides an incentive for states to implement the Convention and the OPAC more rapidly and effectively in order to report positively in follow up reports. Considering the regular reporting and appearance of states before the CRC and the existence of some overlap between the mandate of the UN CRC and that of the SRSG-CAAC, Country Task Forces for MRM implementation should regularly share information on grave violations with this treaty body to empower the CRC in assessing accountability on the six grave violations against children in armed

conflict. In this regard, recently the SRSG-CAAC welcomed the continued attention to both progress and challenges related to the impact of armed conflict on children in the reports of States parties to the CRC and the Human Rights Committee. She urged all Member States, who are listed in the SG Annual Reports on CAAC, “to include, as appropriate, specific references to information on grave violations against children, on gaps in the applicable legal and policy frameworks, and on accountability initiatives, in their own submissions to those bodies.”<sup>31</sup>

## 6.9 UN Security Council Working Group on Peacekeeping Operations

The UNSCWG on Peacekeeping Operations was established pursuant to a decision of the Security Council contained in a statement by its President (S/PRST/2001/3) made at the Council’s meeting on 31 January 2001. Since its creation, the Working Group has sought to improve cooperation between the Council and troop-contributing countries (TCCs).

Resolution 2167 (2014) expressed support for the AU’s efforts to develop policy, guidance and training, in particular in the areas of security sector reform, post-conflict reconstruction, women, peace and security and the protection of civilians, including child protection, as well as the prevention of, and response to, sexual and gender-based violence in armed conflicts. It also encouraged regional and sub-regional organisations and arrangements to help address the widespread impact of armed conflict on children, to continue the mainstreaming of child protection into their advocacy, policies, programmes and mission planning, the development and expansion of guidelines to protect children affected by armed conflict as well as the training of personnel and the inclusion

of child protection staff in their peacekeeping and field operations. Lastly, it urged them to establish child protection mechanisms within their secretariats, including through the appointment of child protection focal points.

In 2016, to ensure that civilians, in particular women and children, are protected from any form of abuse or exploitation, this Working Group issued Resolution 2272 urging all Member States deploying non-UN forces authorised under a SC mandate to:

- (a) Deliver robust SEA pre-deployment training in accordance with the terms of their memoranda of understanding and other agreements with the UN;
- (b) Take appropriate steps to investigate SEA allegations;
- (c) Hold perpetrators accountable;
- (d) Repatriate units when there is credible evidence of widespread or systemic SEA by those units; and
- (e) Report to the UN fully and promptly on actions undertaken.

## 6.10 UN Department of Peacekeeping Operations (DPKO)

The UN Department of Peacekeeping Operations (DPKO) is a critical player in developing the normative frameworks that govern the nature, scope, mandate and conduct of peace operations. DPKO provides political and executive direction to UN peacekeeping operations around the world and maintains contact with the Security Council, troop and financial contributors, and parties to the conflict in the implementation of Security Council mandates. For this report, one key aspect of DPKO is its reliance on cooperation from Member States, as potential Troop-Contributing Countries (TCCs) and Police Contributing Countries (PCCs), to carry out its mandate.

### 6.10.1 Translation of Security Council mandate into a field mission

UN Security Council mandates are translated into field missions by the efforts of the UN Secretariat and the contributions of Member States. The UN Secretariat, headed by the SG and assisted by the Special Representative of the Secretary-General (SRSG), prepares assessments that precede peacekeeping operations. Both before and after Security Council authorisation of a peace operation, the UN planning process establishes the roles and responsibilities of each component of the mission. As some commentators have noted, the planning process is critical in relation to the adoption of a child protection focus. As they have argued, “if the planning process is silent or unclear about what kinds of ‘protection’, (including child protection), will be offered to whom, from what, and within what limits, and about the capabilities the mission requires to undertake POC-related tasks, then those in the field are left to sort it out for themselves.”<sup>32</sup>

Planning assumptions take shape well before Security Council authorisation for a mission. A strategic assessment, produced by an Integrated Task Force (ITF), led by the Department of Political Affairs, with representatives of relevant UN departments and agencies, as well as the United Nations Country Team (UNCT) if one exists, outlines possible strategic objectives for the UN in a given country, the alternative strategies and scenarios for the UN role, key planning assumptions, and factors that shape UN involvement.<sup>33</sup>

Based on the strategic assessment, the SG may decide to recommend deployment of a peacekeeping or special political mission. In this case, the ITF becomes an Integrated Mission Task Force (IMTF) and reports to DPKO.<sup>34</sup> The SG issues a Strategic Planning Directive prepared by the IMTF identifying the strategic objectives and key assumptions around which subsequent

mission planning is shaped.<sup>35</sup> The IMTF generates a Draft Mission Plan to inform the work of a Technical Assessment Mission (TAM), which generally spends up to two weeks in the region assessing the conditions and consulting with parties to the conflict, officials from the host state, humanitarian actors, the UNCT, conflict-affected populations, civil society, and NGOs, amongst others.<sup>36</sup> This process results in a revised Draft Mission Plan, and the TAM issues a report outlining the conflict situation and proposing a mandate, mission structure, and broad operational concept outlining the role of each mission component. The TAM report is the basis for the SG’s report to the Security Council.<sup>37</sup> The Council’s mandate for a peacekeeping mission is a major milestone in the planning process.

Following passage of the Security Council resolution, the SRSG leads in shaping and leading the mission, together with an Integrated Mission Planning Team (IMPT) that takes over planning from the IMTF. Henceforth, the SRSG and the IMPT play the primary role in shaping the mission.<sup>38</sup>

While the military and political components have always been central to the peacekeeping planning process, planning for the civilian components of peacekeeping missions (including child protection) remains largely ad hoc. DPKO has extremely limited civilian planning capacity compared to military planning.

In relation to military planning for the protection of civilians, translating a POC mandate into concrete plans for the military component begins at the Draft Mission Plan stage. DPKO develops two key documents: the military concept of operations (CONOPS) and the Troops-to-Task (TTT) analysis.<sup>39</sup> The CONOPS sets out how a mission will apply its military resources to achieve its objectives. It lays out the basic force structure, describes the role that the military component will play in the mission strategy, and serves as a basis

for tactical planning once the mission deploys.<sup>40</sup> The TTT analysis helps develop the proposed structure, size of the military component of the mission, as well as the number, type, and capabilities of the troops needed to carry out defined tasks. These two documents shape the formal force requirements that lay out the unit capabilities needed to support the CONOPS and, thus, the mission mandate.<sup>41</sup>

Based on the CONOPS, DPKO makes available documents to potential TCCs describing the conflict situation, the mission concept, and the mission statement for the military component.<sup>42</sup> The mission mandate and the CONOPS also inform the Rules of Engagement (ROE), which govern when, how much, and for what reasons the military component may use force in carrying out its mandate or self-defence.<sup>43</sup> Lastly, the CONOPS serves to develop the Force Requirements, which identify the size and capabilities (including equipment, armament, etc.) that each unit needs, and lists tasks expected of it.<sup>44</sup> Thereafter, negotiations with potential TCCs begin, and if a TCC agrees, planning proceeds. TCCs visit the mission area of operations to assess the environment and how it could affect their ability to undertake the tasks identified for the mission. The intention is to forge consensus on any outstanding issues through this process.<sup>45</sup>

In view of the above, commentators have identified critical stages at which the protection of civilians, and more specifically a child protection mandate, should be integrated in the assessment and planning for missions, namely:

- the Strategic Assessment, where planning begins;
- the USG's Planning Directive, which forms the bridge from the strategic objectives identified by the SG to subsequent operational planning;
- the TAM Report, which checks draft plans against the realities on the ground;
- the SG's Report to the Security Council,

which shapes the mission mandate and structure in its core document;

- the military CONOPS, which shapes all aspects of the military component, from resources to logistics to ROE; and
- the briefings to TCCs, as a means to ensure the contingents deployed to the mission are able, willing, and prepared to implement the POC mandate.<sup>46</sup>

## 6.10.2 Key documents involved in the planning and conduct of missions

DPKO implements key normative frameworks, rules, policies and guidelines that govern the conduct of operations and of the military, police and civilian components, that make up a particular mission. From the research gathered, continental organisations such as the AU and regional organisations such as ECOWAS and EAC borrow heavily, if not adopt in toto, from many of these normative frameworks to govern AU-led or AU-authorized peacekeeping missions. In view of this, the following sections highlight some of these key frameworks.

### 6.10.2.1 Status of Forces Agreement (SOFA) and Status of Mission Agreement (SOMA)

The Status of Forces Agreement (SOFA) between the UN and the host state, negotiated in accordance with Article 43 of the UN Charter, defines the status, codes of conduct, privileges and jurisdictional immunities of military and civilian personnel.<sup>47</sup> The UN developed a model SOFA in 1990,<sup>48</sup> which still applies today and which is intended to be provisional but it has come to constitute the binding legal document for long periods, without the adoption of a Status of Forces Agreement that is specific to a peacekeeping mission, also known as a Status of Mission Agreement (SOMA).

As some commentators have pointed out,<sup>49</sup> reliance on a 'standard' agreement is problematic considering that currently peacekeeping operations are more large-scale than ever, and they are also increasingly authorised to use a greater spectrum of force in a greater number of situations. The complexity and range of mission mandates have also expanded dramatically to include tasks ranging from the promotion of human rights to rule of law, security sector reforms and long-term stabilization and development projects. Moreover, in view of rising attacks on UN personnel and more violent peacekeeping environments, the safety and protection of UN peacekeepers and civilian mission staff constitute one area that is not adequately addressed under the current model SOFA. Linked to this, there are shortcomings in relation to the use of force and the application of the model SOFA, which could leave military or police staff exposed, or prevent them from acting in situations where force would have been legitimate.<sup>50</sup> In this regard, some commentators have noted that legal provisions relating to the respect for international humanitarian law (IHL) and international human rights law (IHRL) need to be strengthened.<sup>51</sup> In this vein, one author contends that "the SOFA provision on the exclusive criminal jurisdiction of the sending state over military members of national contingents constitutes a major obstacle in the way of ensuring the accountability of this category of persons for crimes and serious misconduct committed in peacekeeping operations."<sup>52</sup>

In view of the above, in order to enhance accountability against perpetrators who commit violations against children in situations of situations of armed conflict, it will be necessary to explore whether the AU and RECs adapt the SOFAs to meet a particular mission's needs and whether they provide for various forms of jurisdiction over deployed personnel.

### 6.10.2.2 Memorandum of Understanding

The Memorandum of Understanding (MOU) is a binding bilateral agreement between the UN and the TCC whose purpose is to establish the administrative, logistics and financial terms and conditions to govern the contribution of personnel, equipment and services provided by a particular government in support of a UN peacekeeping mission.<sup>53</sup> The MOU, unlike the SOFA, is directly with the Government of the country that contributes personnel and bypasses both the AU and the RECs. The Model MOU was revised in 2007.<sup>54</sup> Since then, the MOU also specifies the standards of conduct that apply to peacekeeping personnel and it therefore also provides for the maintenance of discipline and good order among such personnel, jurisdiction and the investigation of, and accountability for, violations. It stresses that military and civilian national personnel who are deployed remain in national service during their assignment of a UN peacekeeping operation.<sup>55</sup>

The revised Model MOU of 2007 implemented two important changes with regard to the criminal accountability of military peacekeepers.<sup>56</sup> The first change was the introduction of a code of conduct and the behaviour that is expected from peacekeeping personnel.<sup>57</sup> The second change is the addition of several provisions relating to misconduct by peacekeepers.

Taken together, the revisions to the MOU are significant as they contain a number of commitments from the TCCs that did not exist before.<sup>58</sup> They also provide for the possibility of their expansion to include violations against children in armed conflict, beyond sexual exploitation and abuse. Despite these improvements, however, the commitments are not backed by specific procedures and/or sanctions in the event the TCCs do not exercise their jurisdiction as instructed. The MOU still lacks clear-cut assurances that sending states



will hold the military peacekeepers criminally accountable if they have committed crimes. It does not require TCCs to provide reasons if it declines to prosecute peacekeepers and also does not provide clear timelines for TCCs to provide progress reports to the UN on the prosecution of alleged offenders – mention is only made that reports should be provided on a regular basis.<sup>59</sup>

### 6.10.2.3 UN Human Rights Due Diligence Policy on UN support to non-UN security forces (HRDDP)<sup>60</sup>

Under this policy, which was formally adopted in 2011, support by all UN entities to non-UN security forces (such as those from TCCs) cannot be provided where there are substantial grounds to believe the recipient may commit grave violations of international humanitarian, human rights, or refugee law and where the relevant (national) authorities fail to take the necessary corrective or mitigating measures to prevent such violations. The policy calls for risk assessments to be carried out so that UN entities can evaluate whether substantial grounds exist to believe that there is a real risk of committing such violations. In relation to support for regional peacekeeping forces, the UN entity looks at the record of security forces of each TCC as well as seeks information about individuals in a position of command or responsibility to assess risks.<sup>61</sup>

Under the policy, if the UN becomes aware that a recipient is committing such violations, the UN entity that provides the support needs to intervene with the relevant authorities to bring the violations to an end. If the situation persists, the UN is then obliged to suspend or withdraw support as a last resort.

The HRDDP is an example of the provisions that have been imposed by external actors when providing support to AU PSOs. This policy not only has implications for continuing support

to AU or REC missions but also for vetting processes of members of national contingents. Pre-deployment training regimes and other capacity-building initiatives, as evidenced in the MOU discussion above, have also been used as requirements to improve the standards of AU uniformed personnel who are deployed to PSOs.

### 6.10.3 DPKO Policy on the Prohibition of Child Labour in UN Peacekeeping Operations (2013)<sup>62</sup>

In line with the UN Convention on the Rights of the Child, this policy, which was issued in 2013, is aimed at ensuring that children are not used for labour in UN peacekeeping operations and to promote comprehensive protection of children from all forms of exploitation. It specifically sets out that the use of children under the age of 18 for purposes of labour or other rendering of services by UN peacekeeping operations is strictly prohibited, regardless of the minimum age of child labour stipulated under the national law in the mission's area of operation, and irrespective of the involvement of compensation (in the form of a salary, food or other benefits).

The policy explicitly outlines that children should not be allowed on the premises, camps or facilities of any UN peacekeeping operation for the purpose of the provision of labour or the rendering of any services and that proper use of access control and strict identity verification measures need to be implemented to prevent the entry of children for such purposes.

### 6.10.4 DPKO Policy on Child Protection in UN Peace Operations (2017)

#### Background

This Policy, adopted in 2017, outlines the engagement of DPKO, Department of Political Affairs (DPA) and Department of Field Support

(DFS) on child protection, and underlines the obligation of all UN peace operations personnel to uphold and respect children's rights. The Policy is also a resource for regional peacekeeping forces when operating under a UNSC mandate to encourage consistency in the application of international norms and standards on child protection in PSOs mandated by the Security Council.

### **General guiding principles**

The policy highlights the importance of including child protection considerations in core mission planning, mandate implementation documents, and documents guiding the work of the military, police and civilian components. As discussed earlier, the Strategic Planning phase of a mission is a pivotal entry point to highlight a child protection mandate.

Further, the policy stresses that UN peace operations personnel must implement and respect international norms and standards for protecting children in situations of armed conflict, including the best interest of the child, non-discrimination, do no harm, confidentiality, gender awareness, and a child rights-based approach.

### **Roles and Responsibilities**

The policy delineates specific roles and responsibilities for key actors in peace operations including the SRSG/Head of Mission (HoM), Child Protection Advisors (CPAs), other civilian components, and military and police components.

#### ***Child Protection Advisors (CPAs)***

A number of SC resolutions have called for the deployment of CPAs who fulfil a crucial role in implementing the child protection mandate of UN peace operations in specific mission settings, including by advising senior mission

leadership on child protection issues; monitoring grave violations against children and engaging in dialogue with parties to the conflict on the signing and implementation of action plans; providing training, guidance and expertise on child protection issues, tools and methodologies to other components and sections of UN peace operations; promoting community-level ownership and greater protection of children through advocacy, sensitization, capacity building and training activities; and advocacy with host state governments through participation in relevant bilateral and multilateral fora.

Importantly, and echoing the importance of setting out a clear mandate, the policy notes that UN peace operations with a mission-specific SC mandate on child protection shall have a senior CPA and dedicated child protection staff, who shall have direct access to senior mission leadership as specialized advisors on the implementation of the mission's child protection mandate; shall have the political and operational space needed to engage on child protection with relevant UN and non-UN counterparts; and shall lead the mission's work on the MRM.

#### ***Military components***

The Policy highlights that military components of UN peace operations have an important role to play in protecting children and preventing violence, abuse, neglect and exploitation affecting children in the mission area, including by streamlining child protection concerns and activities in all their operations. In particular, Force Commanders are required to: promote child protection guidance by all military personnel under their command; issue SOPs on military actions in relation to children (i.e. provision of alerts on violations; handover procedures; measures to prevent violations and abuses against children); ensure that all military personnel under their command receive

in-mission induction briefings and on-going training on child protection; and designate a military child protection focal point at mission headquarters to coordinate and work closely with CPAs and child protection staff.

Additional responsibilities of military components include:

- Battalion Commanders shall appoint a full-time child protection officer within each Battalion Command Group; and
- Company Commanders shall designate a child protection focal point within Company Headquarters, tasked with, among other responsibilities, channelling alerts of violations against children to CPAs and child protection staff based on agreed information sharing protocols.

### **Provisions on Conduct and Child Protection Obligations**

The policy explicitly puts the responsibility on SRSGs/HoMs to ensure that all UN peace operations personnel are informed of their child protection obligations, including the obligation to report any allegations of violations and abuses against children committed by them through existing reporting mechanisms. The CPAs also have a duty to monitor compliance with child protection obligations and to report any allegations to senior mission leadership and relevant in-mission actors for follow-up, response and prevention.

The policy emphasizes training as a preventive measure to ensure the protection of children. It stresses that DPKO, DFS and DPA will ensure that specific training on child protection and respect for children's rights are part of mandatory pre-deployment, in-mission and on-going training for all UN peace operations personnel so as to enable them to recognize, report and respond appropriately to violations and abuses committed against children, to

respect children's rights and to effectively include child protection activities in their work.

It is encouraging that this DPKO policy places children's issues at its core, and makes explicit the conduct expected of UN personnel in peace operations, as well as the consequences that could ensue in relation to existing policies to enhance accountability in peacekeeping operations. It is of concern, however, that as much as great emphasis is placed on mainstreaming child protection across the life span of a mission, significant work is allocated to CPAs, which constitute a relatively small group of deployed staff.

### **6.11 United Nations Victims' Rights Advocate (VRA)**

As a means to put the rights and dignity of victims at the forefront of its efforts to prevent and respond to sexual exploitation and abuse, the SG appointed the first Victims' Rights Advocate for the UN on 23 August 2017.<sup>64</sup> The UN Victims' Rights Advocate (VRA) ensures that victims of SEA get the assistance and the support they need, depending on their individual situation.

The VRA works with all parts of the UN system, which comprises many departments, agencies, funds and programmes with operations in the field, Member States and a range of stakeholders, including civil society and the media, to ensure an integrated response to victim assistance in line with the Secretary-General's strategy and the existing UN strategy on assistance and support to victims adopted by the UN General Assembly in 2007.<sup>65</sup>

In fulfilment of her mandate, the VRA regularly visits field missions to gain a first-hand understanding of how SEA is addressed and to connect with victims directly, to hear their stories

and to learn from their experience in order to better support them and others. To support the work of the VRA, Field Victims' Rights Advocates (FVRA) have been established in the Central African Republic, the Democratic Republic of Congo, Haiti and South Sudan. They are the main contact for all victims on the ground and aim to ensure that a victim-centred, gender- and child-sensitive and non-discriminatory approach is integrated into the support of victims provided by the UN. The FVRA work closely with conduct and discipline teams, humanitarian actors, as well as civil society, including local human rights organizations.

Whilst the VRA was triggered by the rise of SEA by UN personnel predominantly against women, it is an important development in that it represents a potential mechanism to assist children who have been subjected to SEA violations in situations of armed conflict. The VRA has met with the SRSG-CAAC and it is envisioned that in 2019 the VRA will develop a statement of victims' rights to inform the development and strengthening of reporting pathways for victims or witnesses of violations to file complaints, victim assistance, and access to information about pending cases.<sup>66</sup>

## 6.12 International Criminal Court (ICC)

The Rome Statute of the International Criminal Court (ICC), which came into force in 2002, established the first permanent treaty-based, international criminal court. The Statute gives the court jurisdiction over the most serious crimes of concern under international law: genocide, crimes against humanity, war crimes, and aggression. Although crimes against children are covered by the general list of crimes in the Statute of the ICC, the latter explicitly sets out crimes for which the victims are children.

This focus on children has been evident since 2012 when the Office of the Prosecutor

committed to paying particular attention to sexual and gender-based crimes and crimes against children.<sup>67</sup> This commitment has been reaffirmed in its Strategic Plan 2016-2018 and in the adoption of its *Policy on Children*.<sup>68</sup>

The Rome Statute considers the conscripting or enlisting of children under the age of 15 years to be a war crime in both international and non-international armed conflicts. It recognises rape, sexual slavery and other forms of sexual violence as a war crime and a crime against humanity. Trafficking of children is recognised as a crime against humanity.<sup>69</sup> The Statute also recognises attacks against personnel of humanitarian assistance or peacekeeping missions and peace support operations as war crimes, whilst it prohibits intentional attacks on educational institutions and schools. The court has jurisdiction to investigate and prosecute the recruitment of children into armed forces, attacks on schools, forcible transfer of children from their national, ethnic, racial or religious groups, the enslavement of children, attacks against children, and intentional starvation as a method of warfare. Children below the age of 18 years are exempted from prosecution by the court, because the Court has no rehabilitative functions, which should be used with regard to children.

So far, 27 cases in eleven situations/countries have been brought before the ICC. In four situations, the Court has dealt with crimes committed against children. A number of these cases serve as a useful deterrent against child recruitment in armed conflicts. These cases are:

- Thomas Lubanga Dyilo (Democratic Republic of the Congo);
- Germain Katanga & Mathieu Ngudjolo Chui (Democratic Republic of the Congo);
- Jean-Pierre Bemba Gombo (Central African Republic); and
- Joseph Kony et al. (Uganda).



Save the Children Somalia

# 7 Continental Desk Review and Findings

## 7.1 Introduction

The African Continent continues to experience frequent protracted conflicts and crisis situations; civil wars, inter-country wars and other forms of armed violence, including terrorist activities.<sup>70</sup> The continent also has the youngest population in the world, growing at a rapid rate.<sup>71</sup> These conflicts as such have devastating effects on children. Children living in such situations are more likely to be killed, separated from their families, abducted, trafficked, sexually assaulted, maimed and recruited into armed forces and armed groups. They are less likely to be in school or to be able to meet their basic needs for health care, clean water and sanitation. They are more vulnerable to death from disease and malnutrition. These situations have disastrous consequences for the safety and wellbeing of children, their education and future development, depriving them of opportunities to develop and realise their full potential.<sup>72</sup>

Peacekeeping missions have become an important tool for conflict management and post-conflict peace building for the African Union (AU) especially since Africa remains the main location of peacekeeping operations in the world<sup>73</sup> and this in many respects validates the enhancement of the role of the AU as having primacy in the planning and execution of PSOs on the continent and the UN acting in support of the AU.

The nature of armed conflict in Africa is changing rapidly,<sup>74</sup> large-scale military engagements in Africa are being replaced by smaller, violent encounters involving multiple stakeholders

such as local militias, protesting civil society organisations, external groups such as Islamic State seeking local partners, and rebel groups are taking the place of official state-run armies as the main actors in many violent conflicts.<sup>75</sup> Somalia for example, has been heavily affected by the actions of the militant insurgency group, al-Shabaab. Notably, al-Shabaab has also extended membership to elders and unmarried girls, has reportedly intimidated, kidnapped and killed aid workers leading to a suspension of humanitarian operations and an exodus of relief agents. The organisation did not originally use suicide bombings but the increased foreign influence has led to the introduction of new attack tactics, including suicide bombings, kidnappings and assassinations.<sup>76</sup>

It is against this background that peacekeeping forces are expected to protect and prevent violations of the rights of children in armed conflict. Despite the good intentions of peacekeeping missions, peacekeepers have been associated with criminal misconduct, including sexual violence. Crimes against women and children have been reported against peacekeepers in several peacekeeping locations.<sup>77</sup> Hence the nexus between child protection and peacekeeper accountability is an important consideration, both in terms of the rights of the child and holding primary duty bearers to live up to their obligations and the fact that violations committed by peacekeepers act as push/pull factors for recruitment by armed groups and therefore have a direct impact on the efficacy of the mission.

### 7.1.1 Accountability for peacekeeper violations

A key constraint to ensuring accountability for troops under the AU mission command, TCCs that contribute troops to AMISOM for example have exclusive jurisdiction over their personnel for any criminal offenses they commit in Somalia and are therefore in charge of investigations and all criminal prosecutions. These countries are bound by memorandums of understanding signed with the AU, and international human rights and humanitarian obligations to investigate and if established, prosecute, allegations of serious violations and crimes.<sup>78</sup>

Under the status of mission agreement between the Somali government and the AU, Somalia relinquishes jurisdiction over AMISOM troops who commit crimes on Somali territory, including sexual abuse and exploitation. Primary responsibility falls on troop-contributing countries to hold members of their forces to account for misconduct, including through criminal prosecutions, as specified by status of mission agreements between Somalia and the AU, and individual MoUs between troop-contributing countries and the AU.

Soldiers of troop-contributing countries have no individual contractual link with the AU and remain administratively attached to their respective national militaries. Legal obligations of military personnel in AU peace support operations 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, including through criminal prosecutions.<sup>79</sup>

According to the AMISOM MoUs with troop-contributing countries, governments shall

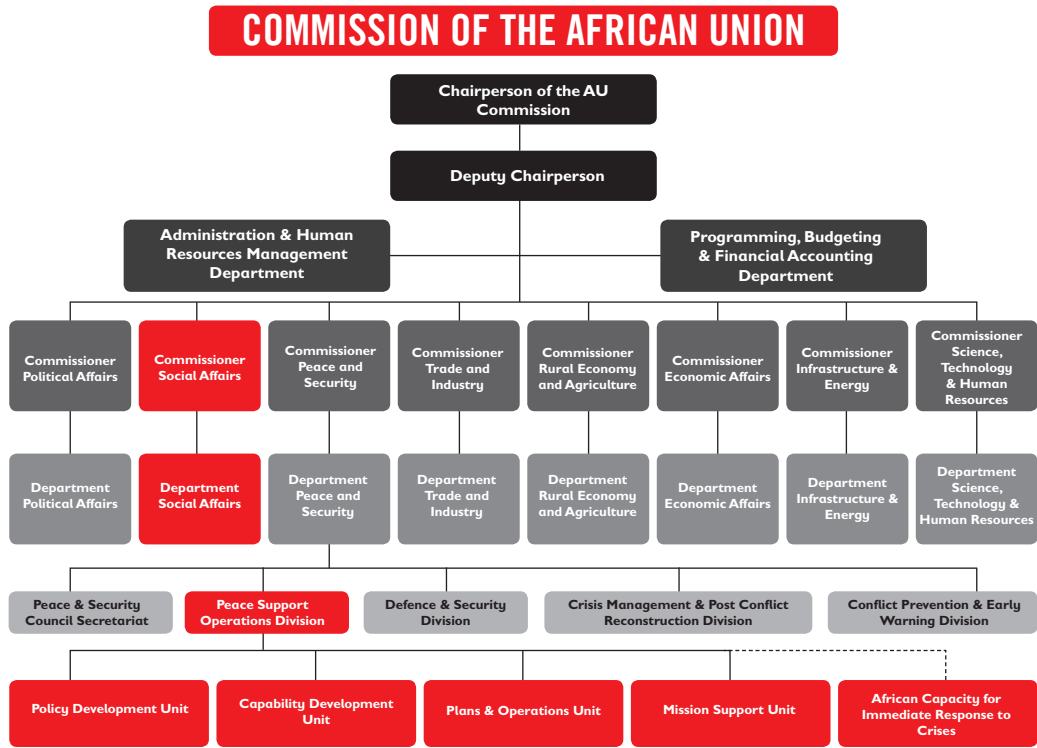
ensure that all members of their contingents comply with the AUC Code of Conduct and Discipline.<sup>80</sup>

The AMISOM troop-contributing countries' MoUs are not identical when defining sexual exploitation and abuse. For example, the Burundian MoU specifically defines sexual abuse and exploitation whereas the Kenyan and Ugandan MoUs do not. However, all explicitly state that sexual exploitation and abuse constitute serious misconduct. Significantly, the MoUs also empower the AU to initiate investigations into allegations of abuse and exploitation where the troop-contributing country is unable or unwilling to do so itself.<sup>81</sup>

In 2014 Human Rights Watch called on the AU to urge all troop-contributing countries to consider hosting military courts either permanently or on a rotating basis in Somalia. The AU had considered the recommendation, and in an April 2015 investigation report<sup>82</sup> agreed in principle to urging all TCCs to consider holding on site court martial processes. This commitment has since found expression in the AU Policy on Conduct and Discipline for Peace Support Operations.

### 7.1.2 Establishment of the African Union (AU)<sup>83</sup>

Successor to the Organisation of African Unity (OAU), the African Union (AU) is a multilateral institution established in 2002. The objectives of the AU, enshrined in the Constitutive Act, include fostering solidarity and respecting sovereignty, the promotion of socio-economic development, peace and security, democracy and good governance, human rights, sustainable development and global cooperation. The vision of the AU is that of an integrated, prosperous and peaceful Africa. The main decision-making and policy organs are depicted below.<sup>84</sup>



### 7.1.3 Recent African Union reforms

**Note:** The new AU structures will come into effect in 2021, till then the old structures are still in place and operational.

In January 2017, the African Union embarked on a robust process of reform of the organisation which focuses on fewer priority areas with continental scope. Five main areas are at the centre of the reform agenda:

- Focusing on fewer priority areas with continental scope;
- Institutional realignment;
- Connecting the AU with African Citizenry;

- AU political and operational management; and
- Sustainable Financing of AU programmes.<sup>85</sup>

According to AU Commission Chairperson Moussa Faki Mahamat, despite the efforts that have gone into the AU reforms, the pace at which implementation has been pursued thus far has been unsatisfactory.<sup>86</sup> For example, by mid-November 2018, close to the end of the AU's financial year, only 50% of Member States had paid their dues.<sup>87</sup>

Reforms related to child protection are aimed at establishing the Child Protection Architecture at the AU, to strengthen both the child protection focus of the AUC and further strengthen the relationship between and among the AUC and other AU Organs, bodies, institutions and mechanisms with activities related to child protection.<sup>88</sup>



### 7.1.3.1 11<sup>th</sup> Extraordinary Summit: Key Decisions<sup>89</sup>

Structure and Portfolios of Senior Leadership of the AUC

The new structure of the AU Commission shall be composed of eight (8) members, namely a Chairperson, Deputy Chairperson and six (6) Commissioners, each of them with the following portfolios:

- Agriculture, Rural Development, Blue Economy and Sustainable Environment;
- Economic Development, Trade and Industry and Mining
- Education, Science, Technology and Innovation;
- Infrastructure and Energy;
- Political Affairs, Peace & Security;
- Health, Humanitarian Affairs and Social Development;

### 7.1.3.2 Other Decisions

- The AU sanctions regime for the non-payment of contributions;
- The termination of appointment of the Chairperson and the Deputy Chairperson of the AUC;
- Enhancing performance management within senior leadership of the AUC;
- Administrative and financial reforms;
- Establishing an effective division of labour between the African Union, Regional Economic Communities, Member States, and continental organisations;
- The African Union scale of assessment and contributions.

### 7.1.3.3 AU/UN collaboration

The Joint UN-AU Framework for Enhanced Partnership in Peace and Security was signed in April 2017. In November 2017, at the joint AU/UN peace and security review, the following decisions were taken:

- The primacy of the AU in PSOs in the African continent, with the UN playing a supportive complementary role;
- An agreement to share financial responsibilities (AU contributing 25% of PSO costs, UN 75% of costs), and an operationalization of the Peace Fund to support the financing;
- The PSO departments of both the UN and AU will, moving forward, work in close collaboration with the AU taking over responsibility for training of all forces that make up the ASF across all components (police, military, civilian) of a mission;
- Precondition for UN financial support for PSOs – register for sex offenders for TCC members.

The partnership will assist in aligning the African Union's Agenda 2063 with the global 2030 Agenda for Sustainable Development.<sup>90</sup>

In furtherance of the Joint AU/UN framework agreement, the PSOD has been developing and updating the peacekeeping doctrine and range of policies and procedures to be in alignment with UN standards. Thus far, the following have been developed:

- The AU Policy on Conduct and Discipline for Peace Support Operations;
- The AU Policy on Prevention and Response to Sexual Exploitation and Abuse for Peace Support Operations;
- Concept Note on the Child Protection Architecture;
- AU Training Standards Curriculum on Protection of Civilians (PoC), which includes Child Protection and which has been piloted in SADC countries with training for military, police and civilian personnel.<sup>91</sup>

## 7.2 African Union and Peacekeeping

Since its inception in 2002, peacekeeping and peace support operations have grown considerably at the continental level. By 2017, 18 African countries had contributed approximately 80,000 military, police, and civilian personnel to UN and AU-led peacekeeping missions, making Africa the largest contributor to global peace operations.<sup>92</sup>

The African Peace and Security Architecture (APSA) is the primary AU mechanism for promoting peace, security and stability on the continent.<sup>93</sup> The main pillar of the APSA is the Peace and Security Council (PSC), supported by the Commission, the Panel of the Wise, the Continental Early Warning System (CEWS), the African Standby Force (ASF), the Peace Fund and RECs and RMs for conflict prevention, management and resolution.<sup>94</sup>

The APSA Roadmap 2016-2020<sup>95</sup> is guided by the goals and aspirations that contribute towards achieving the objectives of “Silencing the Guns by 2020” and the first 10-Year Implementation Plan of the Union’s “Agenda 2063”<sup>96</sup> at the heart of which is a fully functional and operational African Peace and Security Architecture (APSA).

### 7.2.1 The normative and institutional foundations of the APSA<sup>97</sup>

- The African Union Constitutive Act, 2002;
- The Protocol on the Establishment of the Peace and Security Council of the African Union (PSC Protocol); and
- The Common African Defence and Security Policy (CADSP).

The three documents combined emphasise a commitment to democracy and good governance, the protection of human rights,

respect for the sanctity of human life, and humanitarian law.

The APSA embraces a comprehensive agenda for peace and security comprising of:<sup>98</sup>

- early warning and conflict prevention;
- peace-making, peace support operations, peace-building and post-conflict reconstruction and development;
- promotion of democratic practices, good governance and respect for human rights; and
- humanitarian action and disaster management.

### 7.2.2 Legal Framework of African Peace Support Operations

Article 4 of the AU Constitutive Act mandates the AU to intervene in a Member State pursuant to a decision from the AU Assembly in grave circumstances. Articles 4(h) and 4(j) allow for AU intervention under the circumstances of genocide, war crimes and crimes against humanity, and Member States have the power to request intervention in order to restore peace and security in their countries. This principle creates both the legal basis for intervention and imposes an obligation on the AU to intervene to prevent or stop perpetration of heinous crimes anywhere on the continent.<sup>99</sup> Article 4 (j) of the AU Constitutive Act designates the PSC as the AU authority for interventions in some scenarios, whilst in other scenarios the authority is vested in the Assembly of the AU.<sup>100</sup> The AU is also bound by UN standards and principles in relation to peace enforcement. According to Chapters VII and VIII of the UN Charter, when regional organisations such as the AU need to use force for enforcement purposes, authorisation by the United Nations Security Council (UNSC) is required.

### 7.2.2.1 African Union Peace Support Operations Division (PSOD)

The PSOD, also referred to as the African Standby Force Continental Planning Element,<sup>101</sup> is responsible for planning, launch of, sustaining, monitoring and liquidating all Peace Support Operations (PSOs) authorised by the African Union Policy Organs.<sup>102</sup> The PSOD is composed of four units, namely, Policy Development Unit (PDU), Capability Development Unit (CDU), Plans and Operations Unit (POU), and Mission Support Unit (MSU).<sup>103</sup>

The PSOD undertakes its functions through:<sup>104</sup>

- Coordinating with the RECs, RMs, Member States and partners in the operationalisation of the African Standby Force (ASF) and PSOs;
- Developing Terms of Reference to enable the recruitment of qualified personnel for the PSOD and PSOs;
- Generating and assessing civilian, police and military personnel, equipment and assets provided by AU Member States for deployment to AU PSOs;
- Planning and coordinating all transitions of PSOs from UN to AU PSOs, UN PKOs and REC/RMs operations as directed by the relevant decisions of the AU policy organs (AUPO's) inclusive of the PSC and the Assembly as appropriate;
- Providing strategic oversight, monitoring, support, guidance and evaluation on AU-approved PSOs to the AUC including drafting of reports of the Chairperson of the AUC to the appropriate AU Policy Organs inclusive of the PSC, Specialized Technical Committee on Defence, Safety and Security (STCDSS), and the United Nations Security Council (UNSC);
- Providing strategic analysis and advice on PSOs to the appropriate AU Policy Organs, inclusive of the PSC and the African Union Commission (AUC) as appropriate;

- Being the AUC primary contact point with the RECs/RMs/Member States and AU partners on matters related to the ASF and PSOs;
- Liaising with the RECs/RMs/Member States and AU partners on matters relating to AU PSOs;
- Organizing, coordinating and providing technical support for meetings of the STCDSS on PSOs.

### 7.2.3 African Standby Force (ASF)

#### 7.2.3.1 Legal Framework

The purpose of the ASF is to provide the African Union with capabilities to respond to conflicts through the deployment of peacekeeping forces and to undertake interventions pursuant to article 4(h) and (j) of the Constitutive Act in terms of which the AU was established. The ASF is intended for rapid deployment for a multiplicity of peace support operations that may include preventive deployment, peacekeeping, peace building, post conflict disarmament, demobilisation, re-integration and humanitarian assistance.<sup>105</sup>

Once a mission is given a mandate, it is placed under the command and control of a Special Representative of the Chairperson of the AU Commission (SRCC), who is responsible for appointing a force commander, commissioner of police and head of the civilian components. The PSC is the mandate approving body. Once deployed, ASF forces are placed under AU command and control.<sup>106</sup>

The ASF comprises standby multidisciplinary contingents (civilian and military components), stationed in their countries of origin and ready for rapid deployment. Member States have the responsibility to establish standby contingents for participation in peace support

missions decided on by the PSC or intervention authorised by the AU Assembly. The strength and types of such contingents, their degree of readiness and general location is determined in accordance with established AU Peace Support Standard Operating Procedures (SOPs), and are expected to be subject to periodic reviews depending on prevailing crisis and conflict situations.<sup>107</sup>

*The ASF comprises five standby brigades, one in each of the five regions:*<sup>108</sup>

- North Africa Regional Standby Brigade (NASBRIG);
- Eastern Africa Standby Brigade (EASBRIG);
- Force multinationale de l'Afrique Centrale (FOMAC);
- Southern Africa Development Cooperation Standby Brigade (SADCBRIG);
- ECOWAS Standby Brigade (ECOBRIg) supported by civilian police (CivPol) and other capacities.

### 7.2.3.2 Operationalising the ASF

Policy documents covering doctrine, training, evaluation, logistics, command, control, communications and information systems and standard operating procedures have been developed. These define the policy frameworks, the technical and conceptual basis, and the regulatory setup for the operation of the ASF. They were adopted by the African Chiefs of Defence and Security (ACDS) and the African Ministers of Defence and Security (AMDS) at their meeting in March 2008.<sup>109</sup>

### 7.2.3.3 Regional Economic Communities, Regional Mechanisms and ASF

One of the ways in which the AU intends to achieve effectiveness in PSOs is by focusing on coordination, building strong partnerships, and strengthening relations between the AU

and RECs as a strategic priority. RECs are recognised as the 'building blocks' of APSA generally, and the ASF in particular, and they serve as the operational and tactical arms of the ASF.<sup>110</sup>

Ensuring an effective division of labour between the AU and RECs/RMs is one of the priorities of the AU reform process. In this regard, two recommendations assume importance.

- Clarification on the relationship between the AU and REC's, and to facilitate coordination and cohesion between the AU and REC's, an AU-REC coordination summit will replace the second annual AU summit in July 2019;
- The AU should be allowed to take over where RECs are not showing results in terms of peace and security.<sup>111</sup>

Additionally, the AU has developed a new African Governance Architecture (AGA) based on the African Charter on Democracy, Elections and Governance and falling under the ambit of the Department of Political Affairs (DPA). The AGA came into force in 2012. Its mandate is to provide a 'platform for dialogue between the various stakeholders' in order to promote good governance and democracy, and to strengthen the objectives of the legal and policy pronouncements in the AU Shared Values.<sup>112</sup>

Future challenges relate to improving the effectiveness and efficiency of AU operations, having established its ability to take responsibility for a stabilisation role, it needs to improve its ability to assess, plan, deploy, manage and evaluate its own operations.<sup>113</sup> The AU's most serious challenge is the capacity and capability to support its own operations.<sup>114</sup>

#### 7.2.3.4 Training - African Peace Support Trainers Association (APSTA)

Established in 2002 APSTA, a voluntary association, is the African chapter of the International Association of Peacekeeping Training Centres (IAPTC). As part of its memorandum of understanding (MOU) with the AU, APSTA serves as a framework and resource network for improving the capacity of peacekeeping training institutions, through exchange of best practices and capacity development support of peacekeeping initiatives by the AU and RECs/RMs.<sup>115</sup>

APSTA is made up of the following institutional members: AU PSOD, UN Office to the AU (UNOAU), Peace Operations Training Institute (POTI), International Committee of the Red Cross (ICRC), Save the Children, Organisation La Francophonie, Africa Institute of South Africa (AISA), Cameroon's L'Ecole Internationale des Forces de Sécurité (EIFORCES), the Rwanda Peace Academy (RPA), the Ghana Police Service Command and Staff College, and the Peacekeeping Directorate of the Nigeria Police Force.<sup>116</sup>

The APSTA Secretariat conducted the Integrated Mission Planning and Mission Support (IMP & MS) training and Harmonization and Standardization Workshop in 2014. It also undertook the harmonization of ASF and other African-led Peace Support Operations (PSO) training. It is expected to play a key role in the development of an African training architecture for peace support operations.<sup>117</sup>

## 7.3 African Union and Child Protection

### 7.3.1 Institutional Structures with a Child Protection mandate

Since its inception, the AU has championed the rights and protection of children as part of its core mandate. UNICEF and the UN Office of the Special Advisor for Children Affected by Armed Conflict (CAAC) supported the development of a Child Protection program in the AU Peace and Security Department (PSD) in 2013, to support the operational capacity of the ACERWC Secretariat to develop a CAAC program. As a result of this agreement, the AU hired its first Child Protection Adviser who developed a three-year Strategic Plan for the PSD, which was validated in February 2015.<sup>118</sup> It is however unclear whether support for this position will continue from 2019 onward.<sup>119</sup>

The African Charter on the Rights and Welfare of the Child (ACRWC) and the establishment of the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) in 2002 are the primary mechanisms for the promotion and protection of children's rights and welfare in Africa. Article 22 of the Charter calls on State Parties to take all necessary measures to ensure that no child takes a direct part in hostilities and refrain, in particular, from recruiting children into armed forces.<sup>120</sup>

The ACERWC developed Africa's Agenda for Children: Fostering an Africa Fit for Children, which elaborates the vision of Agenda 2063 in respect of children. This agenda, known as Agenda 2040, contains 10 aspirations to be met by 2040:<sup>121</sup>

- **Aspiration 6:** Every child benefits fully from quality education.
- **Aspiration 7:** Every child is protected

against violence, exploitation, neglect and abuse.

- **Aspiration 8:** Children benefit from a child-sensitive criminal justice system.
- **Aspiration 9:** Every child is free from the impact of armed conflicts and other disasters or emergency situations.
- **Aspiration 10:** African children's views matter.

#### 7.3.1.1 AU Organs with a mandate to develop standards for the protection of children:<sup>122</sup>

- the African Committee of Experts on the Rights and Welfare of the Child;
- the African Commission on Human and Peoples' Rights; and
- the African Court on Human and Peoples' Rights.

#### 7.3.1.2 AU Organs, bodies and mechanisms with a mandate to provide effective monitoring and secure compliance with standards:<sup>123</sup>

- the African Committee of Experts on the Rights and Welfare of the Child;
- the African Commission on Human and Peoples' Rights;
- the African Court on Human and Peoples' Rights;
- the African Peer Review Mechanism;
- the Pan-African Parliament; and
- AU Liaison Offices and RECs.

#### 7.3.1.3 Other AU Coordinating mechanisms:<sup>124</sup>

- the African Peace and Security Architecture and
- the African Governance Architecture.

#### 7.3.1.4 Institutions and bodies within the AU that have impact on the protection of the rights of children<sup>125</sup>

- The African Commission on Human and Peoples' Rights (ACHPR):<sup>126</sup> Monitors implementation of the African Charter on Human and Peoples' Rights and the Protocol on Women's Rights, which have a bearing on the realisation of children's rights and welfare.
- The African Court on Human and Peoples' Rights:<sup>127</sup> Has jurisdiction over the rights and welfare of children in Africa.
- The African Peer Review Mechanism (APRM): Receives and consider reports on the rights and welfare of the child and issues country-specific recommendations in its review of country reports
- The African Union Commission (AUC):<sup>128</sup> Carries out activities related to the realisation of children's rights through its Departments (including Social Affairs, Peace and Security, Gender Directorate and Human Resource, Science and Technology), and through policy development and implementation, research, education, and public information.<sup>129</sup>

Acknowledging the weak complementarity and ineffective coordination of the child protection mechanisms and instruments, the AU PSC in its 706<sup>th</sup> Meeting (July 2017) recommended the establishment of a comprehensive child protection architecture for adapting, strengthening, and streamlining the existing interventions aimed at protecting the rights of children in conflict situations.<sup>130</sup> Many of these interventions and documents subsume child protection under the protection of civilians.

### 7.3.2 Reforms related to Child Protection

Reforms related to child protection are aimed at establishing the Child Protection Architecture at the AU, strengthening both the child protection focus of the AUC and further strengthen the relationship between and among the AUC and other AU Organs, bodies, institutions and mechanisms on activities related to child protection.<sup>131</sup>

#### *Structural Components of the Proposed AU Child Protection Architecture*<sup>132</sup>

The Child Protection Architecture is expected to be hosted by the Peace and Security Department, in terms of implementation and the PSC, bearing responsibility for:

- Strategic direction, oversight, visibility, and integrating and streamlining child protection into the APSA and reporting to the Chairperson of the AU Commission;
- Managing the day to day operations of the AU Child Protection Architecture and reporting to the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) and the AU Special Envoy on Children Affected by Armed Conflict; and
- Providing technical advice and support to Member States and treaty bodies.

It is unclear what the impact of the amalgamation of the Department of Political Affairs and the Department of Peace and Security would have on the structure and framework of the Child Protection Architecture in terms of responsibility and oversight.

It is envisaged in the AU reform process that the ACERWC would have the responsibility to conduct investigations into violations committed by peacekeepers as part of the AU PSOs, not only the six grave violations against children, but also violations committed where AU missions operate. The ACERWC would report

to the policy organ of the AU and the Member State would have to defend itself. However, at this juncture, the ACERWC lacks the requisite capacity, as it does not operate on a full-time basis.<sup>133</sup> It is also envisaged that the ACERWC will be based in Lesotho as part of the AU desire to locate various aspects of the institution across the continent; however, this could result in logistical and coordination challenges.<sup>134</sup>

Over and above the envisioned reforms, the AU has already deployed the first PSO Child Protection Officer to AMISOM. It has also held several meetings with the Somali government to establish Child Protection Units (CPUs) within its security services including conducting a South-South visit to Uganda to allow the UPDF to share their experiences in protecting children with the Somali National Army.<sup>135</sup>

### 7.3.3 Protection of Civilians (PoC) and Child Protection

The AU is guided by the Kigali Principles on the Protection of Civilians, which are a non-binding set of 18 pledges for the effective and thorough implementation of the protection of civilians.<sup>136</sup> The principles are aimed at addressing the most relevant aspects of peacekeeping as well as the broader deficiencies that undermine the effectiveness of peacekeeping operations conducted in volatile situations such as peacekeeper abuse.<sup>137</sup>

In addition to the above the AU, in line with its Draft Guidelines on Protection of Civilians (2010) in peace support operations, defined protection of civilians to refer to ‘activities undertaken to improve the security of the population and people at risk, and to ensure the full respect of the rights of groups and individuals recognized under regional instruments.’

The PoC guidelines set out a four-tiered approach to protection intended to influence

how the AU designed its PSOs:

- protection as part of the political process;
- protection from physical violence;
- rights-based protection; and
- the establishment of a protective environment.

*The Aide-Mémoire on the Protection of Civilians (POC)*<sup>138</sup>

The Aide-Mémoire (2013) is a guide to all PoC actors, namely relevant government agencies, peacekeepers and humanitarian actors, which provides a shared approach to the rights of the civilian population during conflicts and post-conflict situations through the guarantee of protective environments for civilians. The African Centre for the Constructive Resolution of Disputes (ACCORD), in partnership with the AU and the Institute of Security Studies (ISS), facilitated the creation of the Aide-Mémoire.<sup>139</sup>

These efforts at institutionalising the AU commitment to the protection of civilians in conflict, recognises the fact that civilian security is critical to the legitimacy and credibility of peacekeeping missions. Protection of Civilians has become one of the most important aspects of the mandates of peacekeeping operations and is a key underpinning principle of the African Peace and Security Architecture (APSA).<sup>140</sup>

## 7.4 African Union Mission to Somalia (AMISOM)

AMISOM is an active, regional peacekeeping mission established by the African Union Peace and Security Council in January 2007 and mandated by the UNSC under Resolution 1744 (2007).<sup>141</sup> The mission provides an excellent point of reference to assess the efficacy and challenges between the theory and practice of the AU's PSO doctrine development and complexities associated with political and military strategies that evolved over time in response to the contextual realities in mission.

Of the 55 African Union (AU) members, 6 countries contributed troops to AMISOM: Uganda (2007), Burundi (2007), Djibouti (2011), Kenya (2012), Sierra Leone (2013) and Ethiopia (2014).<sup>142</sup>

The Head of Mission of AMISOM is the Special Representative of the Chairperson of the African Union Commission for Somalia (SRCC), Ambassador Maman S. Sidikou, who was appointed in July 2018.<sup>143</sup>

### 7.4.1 Mandate

In terms of UNSC Resolution 2372 (2017), AMISOM is mandated to pursue the following strategic objectives: to support transitional governmental structures, implement a national security plan, train the Somali security forces, assist in creating a secure environment for the delivery of humanitarian aid and support the Federal Government of Somalia forces in their battle against al-Shabaab militants.<sup>144</sup>

In July 2018, the UNSC unanimously approved Resolution 2431 authorising the AU to maintain the deployment of AMISOM until 31 May 2019, and in the interim begin reducing the number of troops gradually, depending on the capabilities of Somali security forces.<sup>145</sup> The troop-contributing countries of AMISOM have all called for a halt in the mission's troop withdrawal. They argue that the plan, as mandated under UN Security Council Resolution 2372, would lead to a reversal of the gains that the mission has made against al-Shabaab. This sentiment was also expressed by the head of UNSOM.<sup>146</sup>

### 7.4.2 Protection of Civilians (PoC) mandate

Protection of Civilians is the responsibility of the whole peacekeeping mission, with each component playing a role. The main ways in which this responsibility is implemented are: (i)



Protection through dialogue and empowerment, (ii) Providing Physical Protection, (ii) Establishing a Protective Environment.<sup>147</sup>

At the inception of AMISOM, an explicit mission-specific PoC mandate was not developed. The mandate lacked specific mention of PoC and instead had a set of rules of engagement that allowed for the use of force in certain situations, such as affording protection to civilians under imminent threat of physical violence.<sup>148</sup> Nevertheless, the mission had an obligation to respect and uphold IHL in its operations and the responsibility to contribute to the protection of the civilian population at risk in the areas of its operation. The development of the mission-specific PoC strategy was approved by the AU PSC in June 2013.<sup>149</sup> The PoC strategy and the implementation plan draws from the Draft AU PoC Guidelines and other policy documents being developed under the PoC project, as well as provide contextual and specific guidance for AMISOM, contributing towards the mainstreaming PoC considerations into its operations.<sup>150</sup>

The mission's PoC tasks were introduced through the mission-wide PoC strategy, approved by the AU PSC in 2013, and later iterations of its CONOPS. In addition, the structure of AMISOM's civilian component includes a human rights, protection and gender cluster. In 2016, the mission also established a Civilian Casualties Tracking, Analysis and Response Cell (CCTARC), which represents an important mechanism for reinforcing civilian protection as a key *raison d'être* of AU PSOs.<sup>151</sup>

### 7.4.3 Child protection mechanisms

Protection of children forms part of the broader framing of PoC within the AU framework. Children and women are regarded and

recognized as key vulnerable groups that benefit directly from the AU strategy of mainstreaming of PoC in all activities of the mission.

The first Child Protection Advisor (CPA) to AMISOM was deployed in 2015, in collaboration with the Dallaire Initiative and UNICEF.<sup>152</sup> The CPA works within AMISOM to strengthen the protection of children's rights by the mission and its partners in Somalia through training, advocacy, advising, and coordination.

The Child Protection Advisor functions within the mission's Protection, Human Rights, and Gender section (PHRG) to lead the capacity building and the mainstreaming of child protection in the operations and activities of AMISOM.<sup>153</sup>

The key tasks of the Child Protection Focal Point appointees includes coordination with all stakeholders involved in the protection of civilians, especially children, as well as the identification of children in the process of capture and handover.<sup>154</sup>

After the first two and a half years of the deployment of the CPA within AMISOM, considerable progress has been made in protecting the rights of Somali children and preventing the recruitment and use of child soldiers.<sup>155</sup> Most notably, the CPA has improved the reporting of and response to violations by AMISOM troops, reducing impunity; established child protection focal points throughout the mission; established an anonymous toll-free phone line for reporting conflict-related sexual violence; increased coordination between Somali, AU, and UN agencies responsible for protecting children; and ensured that AMISOM forces do not conduct operations with Somali security forces that recruit and use children.<sup>156</sup>

### 7.4.3.1 AMISOM Action Plan on Child Protection

As part of giving effect to its stated commitment to “zero tolerance for child abuse, AMISOM developed an action plan on Child Protection in 2014 to ensure that no violation takes place in all its operations and as a mission commits itself to the implementation of effective mechanisms to prevent and address all forms of abuse against children.<sup>157</sup>

### 7.4.4 AMISOM Accountability Mechanisms

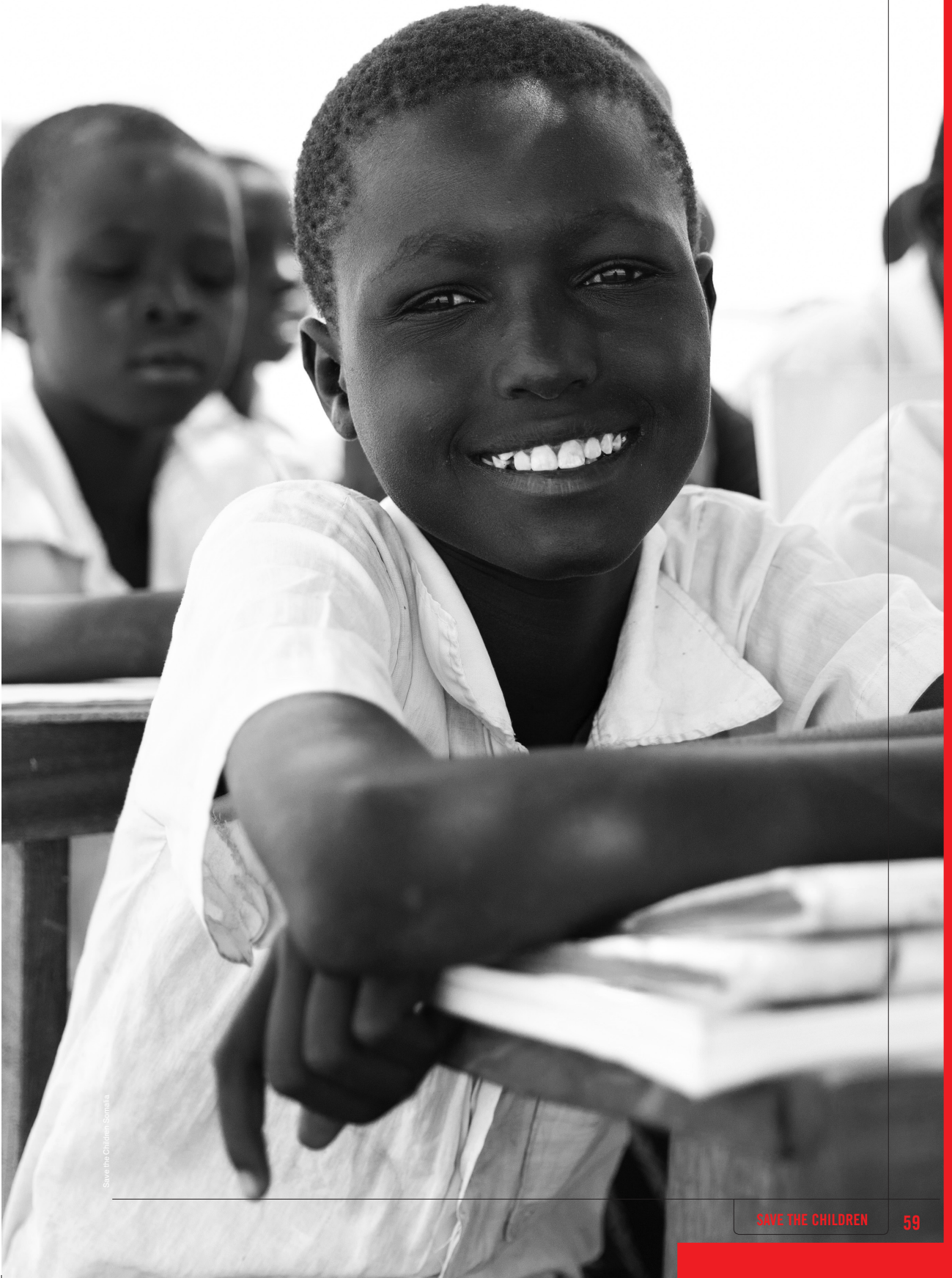
The Board of Inquiry (BoI), AMISOM’s investigative, administrative and quasi-legal platform is charged with handling disciplinary issues that arise in the mission area. The BoI is the instrument that AMISOM deploys to investigate allegations of serious misconduct in the mission area and to take disciplinary measures against erring officers.<sup>158</sup>

#### 7.4.4.1 Civilian Casualty Tracking, Analysis, and Response Cell (CCTARC)

A Civilian Casualty Tracking, Analysis, and Response Cell (CCTARC) was established under the authority of the African Union Peace and Security Council in 2016. It is located in the Protection Human Rights and Gender Unit (PHRG) of the mission, based at the AMISOM Force Headquarters.

The CCTARC is a mission specific mechanism controlled by AMISOM to capture and record reported events and incidents of civilian casualties within the mission’s area of operation through a comprehensive electronic database.<sup>159</sup> CCTARC is a preventative measure to protect the Somali population, reduce the incidents of civilian casualties and to help the Federal Government of Somalia to restore peace, security and stability in the country.<sup>160</sup>

The number of deaths that can be directly attributed to AMISOM remains a point of contention due to a lack of data collected over the years of the mission’s existence.<sup>161</sup> According to a UN Assistance Mission in Somalia (UNSOM) report, civilian deaths due to AMISOM for the period under review (2016-2017) were 4% or 178 of the total civilian casualties over a year and a half whereas 60% - roughly 1,200 - were killed by al-Shabaab during that same period.<sup>162</sup> The AU rejected the UN’s findings and argued that the report contained significant misrepresentations and that the UN report ignored conclusive investigations carried out by the AU Mission’s internal investigative organs, such as the BoI, without presenting any hard evidence to substantiate the report’s conclusions.<sup>163</sup>



Save the Children, Somalia

## 8 Regional Economic Communities/Regional Mechanisms (RECs/MCs)

### 8.1 Eastern Africa Standby Force (EASF)

#### 8.1.1 Background and Context

The Eastern Africa Standby Force (EASF), formerly the Eastern Africa Standby Brigade (EASBRIG), was established in 2007 as one of five regional mechanisms of the military component of the AU's overall continental peace and security architecture. Established to address threats to peace and stability in Eastern Africa and the Horn of Africa, the EASF reached its full operational capability (FOC) in 2016.

The EASF has a broad ranging membership in terms of geographic location and regional organisations with overlapping memberships. It comprises larger member states (Sudan, Ethiopia and Uganda), coastal countries in the Horn of Africa (Djibouti, Somalia and Kenya), small landlocked Central African states (Rwanda and Burundi), and island states (Seychelles and the Comoros). South Sudan has been given observer status, with a view to assuming full membership in the future.<sup>164</sup>

The role of the EASF stretches into countries that are members of the East African Community (EAC), the Inter-Governmental Authority on Development (IGAD), and the International Conference on the Great Lakes Region (ICGLR). As such, the EASF straddles political and security related dynamics of three regions: the Horn of Africa, East Africa, and Central Africa.

#### 8.1.2 Mandate of the EASF<sup>165</sup>

Article 13 of the Protocol relating to the establishment of the Peace and Security Council of the African Union (AU), signed in 2002, directs the EASF to carry out the following functions:

- observation and monitoring missions;
- other types of peace support missions;
- intervention in a Member State in respect of grave circumstances or at the request of a Member State in order to restore peace and security, in accordance with Article 4(h) and (j) of the Constitutive Act;
- preventive deployment in order to prevent a dispute or a conflict from escalating, an on-going violent conflict from spreading to neighbouring areas or States, and the resurgence of violence after parties to a conflict have reached an agreement;
- peace-building, including post-conflict disarmament and demobilization;
- humanitarian assistance to alleviate the suffering of civilian populations in conflict areas and support efforts to address major natural disasters; and
- any other functions as may be mandated by the Peace and Security Council or the Assembly.

The detailed tasks of the EASF and its modus operandi for each authorized mission are considered and approved by the Peace and Security Council upon recommendation from the AUC.

## 8.1.3 Organizational Structure

### 8.1.3.1 EASF Decision Making Organs and Structures

- The Assembly of Eastern Africa Heads of State and Government
- The Eastern Africa Council of Ministers of Defence and Security
- The Eastern Africa Committee of Chiefs of Defence Staff (EACDS)
- The EASF Secretariat: EASF coordination mechanism

***The EASF is further composed of four main sets of structures, which are split over two locations, namely Addis Ababa (Ethiopia) and Nairobi (Kenya).***

- The EASF Secretariat is co-located with the EASF Planning Element (PLANELM) in Nairobi, Kenya.
- The EASF logistical base (LOGBASE) and the EASF Headquarters (HQ) are both co-located in Addis Ababa, Ethiopia.

The Eastern Africa Standby Force Secretariat (EASFSEC) serves as the executive secretariat for the organisation, coordinating all EASF activities in consultation with concerned Member States and the AU. It is led by a Director and Heads of Departments (Finance and Administration, and Peace Operations Department), who are appointed by the Council of Ministers of Defence and Security. The Secretariat is mandated to implement all EASF policies, develop and review EASF policy documents to be approved by the Council of Ministers, and to mobilize financial and other resources in collaboration with the AU, RECs and other partners. It also manages the EASF Fund, disseminates information, and carries out public relation activities.

#### ***Planning Element***

The Planning Element (PLANELM) of the EASF is constituted as a “multinational

and multidimensional full-time planning headquarters” based in Nairobi, Kenya. PLANELM’s main function is to establish a Force that is capable of planning and preparation for complex Peace Support Operations (PSOs) provided for in the six EASF mission scenarios. PLANELM is tasked with concept development, training coordination, reconnaissance, mission planning, mounting, deployment, employment and sustainment, as well as recovery for/of the Military, Police, and Civilian Component.

PLANELM comprises a military, police and civilian component with personnel appointed by the EASF member states. In addition to the Heads of Components who lead respective components, a Joint Chief of Staff coordinates all three components.

- The Military Component of the PLANELM has been active since 2004, focusing on force preparation and pre-deployment planning of EASF. The head of the component is designated at the level of a Chief of Staff, a military officer or Colonel.
- The Police Component of the PLANELM was established in 2008 and is tasked with the development of a fully functioning Police Component for PSOs carried out in Eastern Africa or any other African region. The head of this component is designated at the level of Assistant Commissioner of Police.
- The Civilian Component of the PLANELM was established in 2008 and undertakes the planning of most civilian functions and procedures in a PSO. The Civilian Component is responsible for the management of all political affairs, planning and coordinating of civilian activities, giving legal advice, informing the public and media, executing electoral management and observation, as well as dealing with all matters of civil affairs, child protection, and protection of civilians. This component is led by a civil

servant with the required qualifications and experience. The rest of the personnel for the PLANELM are seconded by the member states for a minimum period of one year.

**Force Headquarters (EASF Force HQ)**

The EASF Force Headquarters (EASF Force HQ) functions as the command headquarters for both preparation and operational command of the military arm of the multidimensional force - the “Standby Brigade”. It is situated in Addis Ababa, Ethiopia. The Force HQ is composed of military and civilian staff seconded by the EASF member states. In the event of deployment, the African Union (AU) or United Nations assumes the operational control of the Brigade. EASF Force HQ works in close collaboration with PLANELM to prepare the structure and plans for a mission headquarters. The deployment of the EASF is either mandated by the Assembly of EASF or the AU. If the AU mandates the deployment, the Peace and Security Council (PSC) of the AU is responsible for the appointment of the commander of the HQ. Each Member State seconds officers to the EASF Force HQ for a period of two years.

**Logistics Base (LOGBASE)**

Co-located with the Standby Brigade HQ in Addis Ababa, Ethiopia, the EASF Logistics Base functions as the central base for all logistical procedures of the Force - that is to maintain, store and manage the logistical infrastructure. Member States dispatch personnel, material and other resources to the Logistics Base to be maintained and provided for purposes of training and operations of the Force. If necessary, the base performs under the mandate and direct control of the African Union.

**Mission scenarios**

The Policy Framework for the establishment of the African Standby Force (ASF) (May 2003) mentions six scenarios for the deployment of the regional contingents of the Force in Peace

Support Operations (PSOs), ascending in their complexity of structures, management efforts, and resources for deployment and sustainment.

- **Scenario 1:** AU/Regional military advice to a political mission
- **Scenario 2:** AU/Regional observer mission co-deployed with a UN mission
- **Scenario 3:** Stand-alone AU/Regional observer mission
- **Scenario 4:** AU/Regional peacekeeping force for Chapter VI and preventive deployment missions (and peace-building)
- **Scenario 5:** AU peacekeeping force for complex multidimensional peacekeeping missions, including those involving low-level spoilers
- **Scenario 6:** AU intervention, e.g. in genocide situations where the international community does not act promptly

**8.1.4 East African Standby Force (EASF) - State of readiness for deployment**

The EASF reached full operational capability (FOC) in November 2014. Recently the EASF undertook the FTX-17 field training exercise/s and an Integrated Mission Planning Course (IMPC) in November 2017. The course aimed at developing the Planning and Operational Capability of the EASF Mission Headquarters’ staff to ensure effective execution of complex Peace Support Operations (PSOs). A total of 1,029 participants drawn from the 10 Member States took part. The purpose of the exercise was to test EASF’s operational readiness on how to plan force generation, deployment, sustainment, and recovery of a multinational and multidimensional force.

**Accountability and peacekeeping**

Accountability for violations caused by peacekeepers deployed on a mission falls under the national ambit. The national Troop-Contributing Country (TCC) is expected to

lead the investigation and mete out discipline in compliance with national standards.

### 8.1.5 Training in child protection

The EASF launched the Child Protection Training Curriculum in Peace Support Operations (PSOs) in partnership with Save the Children International in 2017. The objective of the training curriculum is to promote child-friendly practices to PSOs and EASF personnel and enhance the protective role of PSO personnel during deployment in peacekeeping missions. This programme constitutes the first harmonised child protection curriculum on the continent. The new curriculum forms part of the capacity building programme of the EASF. The curriculum design is geared towards protecting the welfare of children during conflict and is accompanied by a training toolkit for personnel serving in PSOs on issues related to vulnerability of children during conflict.

The launch of the curriculum played the added role of convening several institutions currently involved in capacity building and training on child protection issues including representatives from the International Peace Support Training Centre (IPSTC) in Nairobi, Southern Africa Development Community (SADC), African Peace Support Trainers Association (APSTA), Ethiopia Peace Support School, Rwanda Peace Academy, Sudan Peace Support Training School, Uganda Peoples' Defence Forces, and the African Union Mission in Somalia (AMISOM). The EASF has been working in partnership with Save the Children since 2013 on a programme to implement harmonised training standards on Child Protection for the EASF. The collaboration between the EASF and Save the Children was

supported by all 10 EASF member states. The EASF has adopted the training curriculum and used it in the Ugandan training programme.

## 8.2 Economic Community of West African States (ECOWAS)

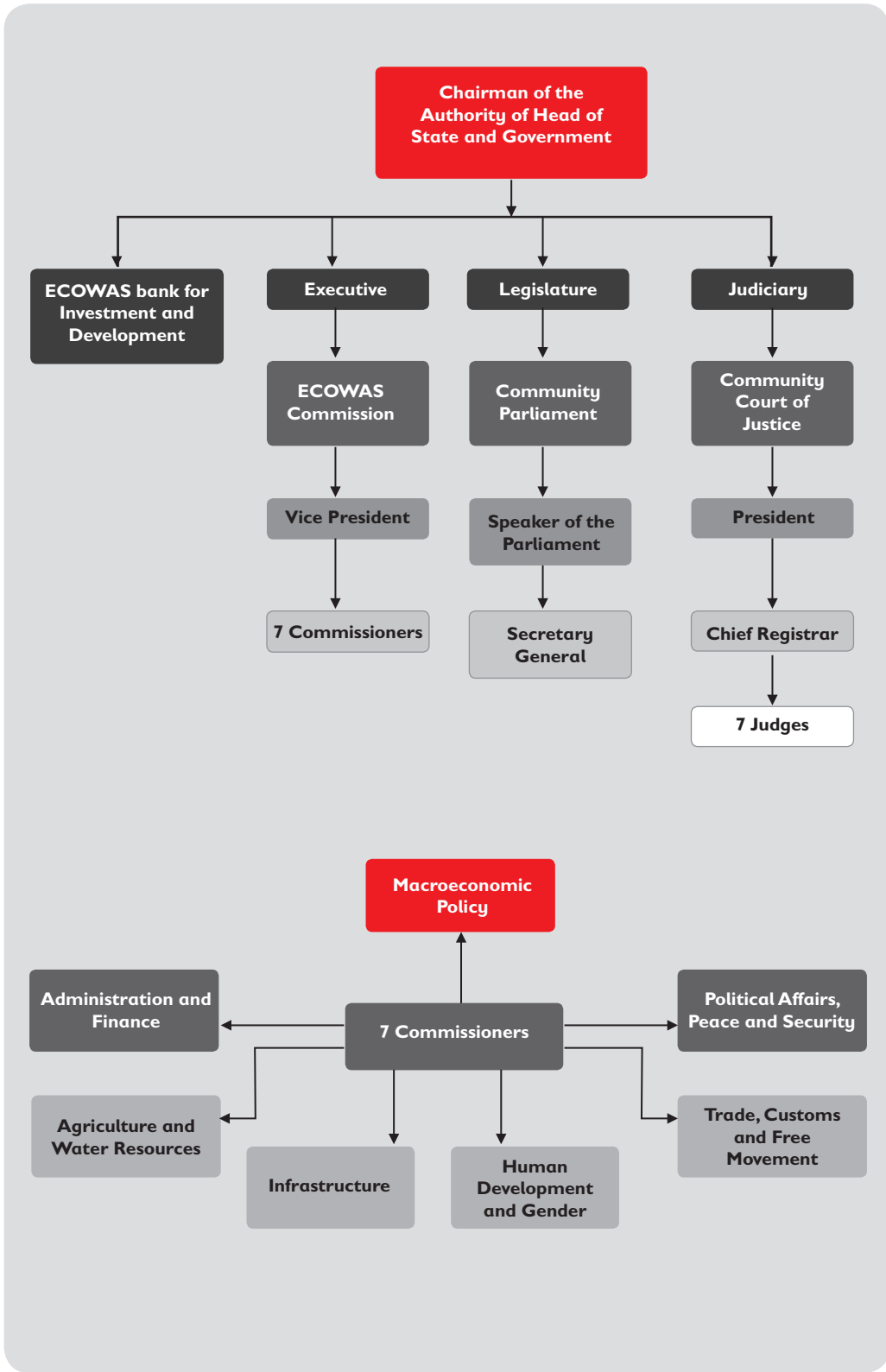
### 8.2.1 Introduction

The Economic Community of West African States (ECOWAS) was created in May 1975 to promote economic integration across the region. The current 15 member states are: Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, and Togo.

ECOWAS is made up of three arms of governance namely, the Executive, the Legislature and the Judiciary. The head of the organization is the Chairman of Authority of Heads of State and Government, who is appointed by other Heads of State to oversee the affairs for a period of one year. The Authority is responsible for general direction and control of the Community and meets at least once a year.<sup>166</sup>

As shown in the figure below, at the top of the Executive branch is the Commission of ECOWAS, headed by a President appointed by the Authority for a non-renewable period of 4 years.<sup>167</sup> The Vice President and the following 7 Commissioners assist the President:<sup>168</sup>

- Administration and Finance
- Agriculture and Water Resources
- Human Development and Gender
- Infrastructure
- Macroeconomic Policy
- Political Affairs, Peace and Security
- Trade, Customs and Free Movement





The legislative branch is made up of the Community Parliament, chaired by the Speaker and below the Speaker is the Secretary-General, who is responsible for the administrative functions of the institution. The Parliament has 115 seats, which represent the 15 Member States. Each of them has at least 5 seats and the rest are shared in proportion to each country's population.<sup>169</sup> The following table shows the seats of each member state:

Member State	Parliament Seats
Nigeria	35
Ghana	8
Cote d'Ivoire	7
Burkina Faso, Mali, Niger, Senegal	6 each
Benin, Cape verde, Gambia, Guinea-Bissau, Liberia, Sierra Leone, Togo	5 each

The judicial branch consists of the Community Court of Justice, chaired by a President. The Court Registrar, who handles the administrative functions with the support of other professionals, assists the president. The Court ensures the interpretation and application of Community laws, protocols and conventions.<sup>170</sup>

Though primarily an economic union, ECOWAS was forced to step into the security realm to avoid the regionalisation of domestic wars. The intensity and complexities of conflicts in the 1990s—particularly in Liberia (1989–97 and 1999–2003), Sierra Leone (1991–2002), and Guinea-Bissau (1998–99)—called for urgent interventions to stop mass atrocities, killings, destruction of property and state institutions, and the total collapse of society.<sup>171</sup> More recently, in January 2017, ECOWAS, following unsuccessful attempts at mediation with the incumbent President Jammeh of

The Gambia to accept electoral defeat and relinquish power, ECOWAS forces were able to “restore democracy” in The Gambia by using the threat of force without using any actual physical violence.<sup>172</sup>

The 1990s saw the development of a quite impressive formal architecture to facilitate regional peacekeeping, peace support operations, and conflict management interventions. The Revised Treaty of ECOWAS (1993) conferred the status of supra-nationality on ECOWAS and commits Member States to cooperate with the Community to reinforce mechanisms to ensure the timely prevention and resolution of inter and intra-state conflicts. Specifically, the treaty provides for “the establishment of a regional peace and security observation system and peacekeeping forces where appropriate”.<sup>173</sup>

### 8.2.2 Peace and Security Architecture within ECOWAS

Within the ECOWAS Commission, the Office of the Commissioner for Political Affairs, Peace and Security (PAPS) is responsible for peace and security issues through the Directorate of Peace Keeping Operations and Regional Security as well as overseeing the Directorate for Early Warning and Monitoring Centre (ECOWARN).<sup>174</sup> The operational arm consists of the ECOWAS Standby Force (ESF), which is a building block of the African Standby Force (ASF) under the APSA.

The first landmark security protocol was the 1999 Protocol relating to the ‘Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security’. This mechanism sought to strengthen the sub-region’s conflict prevention, management and resolution capacity, as well as build effective peacekeeping, humanitarian support and peacebuilding capabilities. It established a ‘Mediation and

Security Council' (MSC) made up of nine Member States able to decide with majority rule upon all required measures and possible sanctions (including military interventions in Member States).<sup>175</sup> Article 10 of the Protocol authorises all forms of intervention. Article 25 permits the Council to be active "when and where a democratically elected government is overthrown or will be overthrown".<sup>176</sup> This clearly amounts to introducing a strong element of supra-nationality into the system.

### 8.2.2.1 The Mediation and Security Council (MSC)

The Mediation and Security Council (MSC), made up of Heads of State and Government, Ministers of Foreign Affairs and Ambassadors, makes decisions on matters of peace and security and the deployment of peacekeeping/enforcement troops. ECOWAS requires the approval of the AU and the UN before starting any intervention, even though there are provisions in its framework to enable it to act independently as it did in the past.

Membership to the MSC is on a rotational basis and comprises nine states that are elected for a two-year period with no permanent seats. To facilitate the MSC's work, a Committee of Ambassadors (CA) with dual accreditation to ECOWAS and Nigeria and a Defence and Security Commission (DSC) made up of defence chiefs and security technocrats work out the details of an operation and make recommendations to the MSC.<sup>177</sup>

The preventative focus of ECOWAS is also embodied in ECOWAS' 2001 Protocol on 'Democracy and Good Governance',<sup>178</sup> which demonstrates a policy shift within ECOWAS towards issues of human security and good governance. It explicitly formulates democratic requirements for Member States including "zero tolerance for power obtained by unconstitutional

means."<sup>179</sup> The possibility of intervening in the case of coups against a democratically elected government is underlined in Article 45. Whilst there are still cases of bad governance in the sub-region, governance generally appears to be improving across West Africa. ECOWAS has also been tough on some of its members who have displayed blatant disregard for democratic principles. For example, Guinea and Niger were suspended following military coups. The regional body also took the bold step of recognising Alassane Ouattara as the winner of the November 2010 Ivorian elections.<sup>180</sup>

ECOWAS' Conflict Prevention Framework (ECPF),<sup>181</sup> ratified in 2010, further refines this architecture. It aims to strengthen ECOWAS' conflict prevention capacity and integrate existing initiatives of ECOWAS institutions and mechanisms responsible for conflict prevention and peacebuilding. These aims are to be achieved through a set of 14 components covering a broad spectrum of areas that enhance human security, as well as Early Warning and the ECOWAS Standby Force. To enable its implementation, the ECPF calls for resource mobilization to support peace and security efforts, cooperation with the AU, UN, Member States and civil society, and participative monitoring and evaluation.<sup>182</sup> In 2015, the Secretariat of the ECPF was constituted.

Engagement with civil society is an encouraging feature of the ECOWAS Peace and Security Architecture. The West African Civil Society Forum (WACSOF), the West African Network on Small Arms (WANSAs), and the West African Network on Peacebuilding (WANEP) have played key roles within this architecture.<sup>183</sup>

The ECPF is a comprehensive framework document that addresses a key limitation of earlier security mechanisms – the failure of coordination amongst various departments

and institutions within ECOWAS and Member States responsible for peace and security programming. It also provides a strong conceptual understanding of conflict prevention, which goes beyond the prevention of imminent outbreak of violence to addressing the fundamental causes of conflict and human insecurity in the region.<sup>184</sup> It identifies what one commentator describes as two approaches to conflict prevention: (i) operational prevention, which entails the use of early warning/actions, mediation, conciliation, preventive diplomacy and, if necessary, the preventive deployment of the ECOWAS Standby Force; and (ii) structural prevention as part of peacebuilding activities, such as the promotion of political and institutional governance or socio-economic development.<sup>185</sup> This represents the first time that a link has been established between the two approaches in West Africa.

### 8.2.2.2 Early Warning and Response Network (ECOWARN)

An early warning system has been established with a regional observation network and observatories. These observatories undertake risk mapping, observation and analysis of social, economic and political situations in the sub-region, which have the potential of degenerating into conflict and present appropriate threat perception analysis. The reports from four different geographical zones inform the ECOWAS Commission President and the MSC in devising response strategies. The focus on conflict prevention and early response is a step in the right direction. However, the placement of one of the observatories in Burkina Faso, a country notorious for supporting insurgencies in the sub-region, could impair the ability of the observatory to gather and disseminate critical information.<sup>186</sup> Moreover, reforms are currently underway to address challenges experienced as a result of the unwillingness of governments to act on the information gathered through

broadening the number of actors involved in information gathering away from government actors and ensuring national responses through the creation of a 'National Agency for Response'.<sup>187</sup>

### 8.2.2.3 ECOWAS Standby Force

#### **Background**

In June 2004, the ECOWAS Defence and Security Commission renamed ECOMOG as the ECOWAS Standby Force (ESF). The force is made up of 6,500 highly trained soldiers drawn from national units and structured around two infantry components, one western battalion led by Senegal, and one eastern battalion led by Nigeria. It includes a rapid reaction Task Force of 1,500 troops which has the capability to be deployed within 14 days, whilst the entire brigade could be deployed within 90 days. Despite the absence of a formalised MOU between its Member States, there is a strong commitment by ECOWAS members to provide troops.<sup>188</sup> The ESF attained readiness in 2015 and it continues to take steps to maintain such readiness. ECOWAS is the only REC that has undertaken a partial self-financing of its security forces through a dedicated budget and a levy system.<sup>189</sup> However, due to competing national priorities, a number of states have failed to apply this levy, thus forcing ECOWAS to rely on external donors to fund its peace and security mechanism.

The ESF forms part of the ASF and is under the operational control of the AU. To enhance the force's strategic, tactical and operational readiness, ECOWAS implements a training programme consisting of a series of specialised modules consistent with UN standards that are delivered in three designated Centres of Excellence, all of which have signed MOUs with ECOWAS. The *National Defence College* in Abuja, Nigeria is the strategic centre; *Kofi Annan International Peacekeeping Centre* in Accra,

Ghana is the operational centre; while *l'Ecole du Maintien de la Paix* in Bamako, Mali is the tactical centre. A Peace Support Operation Planning Course was conducted from 13 to 24 April 2015 in Abuja, Nigeria. In October 2016, ECOWAS collaborated with the ICRC on a 5-day workshop to incorporate International Humanitarian Law and International Human Rights Law into ESF training and operations. In November 2017, 40 ESF members received this training.

In terms of capacity building for the police component, the Police Planning Element of the ESF conducted a workshop in Abuja from 25 to 27 March 2015 to validate the findings of the Training Needs Assessment Exercise that was carried out on police personnel from 2013-2014. Police training experts from ECOWAS Member States and Training Centres of Excellence outlined a Training Plan, which now informs the commencement of training of the Police Component of the ESF, a middle-level management course.

ECOWAS has also organised military exercises to enhance the peacekeeping capacity of troops and harmonise strategies and equipment. Some of these include the Command Post Exercise in Dakar and Accra in June 2006 and December 2007 respectively; the West Battalion Exercise in Thies, Senegal, December 2007; the Command Post Exercise in Bamako, Mali, June 2008; and 'Operation Cohesion' in Benin in April 2010. It participated in Exercise Western Accord 15 in July 2015 and Exercise Amani Africa II in October-November 2015. In July 2018, the ESF was expected to undertake a Command Post Exercise (CPX)-JIGUI IV to assess the full operational capability of the ESF to conduct strategic and operational planning for multidimensional operations and to exercise Command and Control of deployed forces on a simulated ECOWAS/AU-mandated PSO.

However, this training was postponed and is expected to be conducted in 2019.<sup>190</sup>

ECOWAS continues to be the only regional organisation that regularly threatens Member States with military intervention in the case of norm violation and has also effectively used the various institutions and tools to intervene in a range of conflicts in the last two decades. Decision-making processes on peace and security matters depend largely on the dynamics between Member States and the use of their regional body. Challenges of reaching unity on issues of peace and security often arise out of opposing positions, which fall along the cultural-linguistic divide or on the basis of having different interests. Yet, despite some of these tensions between ECOWAS Member States, to the outside, ECOWAS manages to uphold unified positions publicly and can have a fairly strong and principled response.

### **Recent Peace Support Interventions led by ECOWAS**

#### *ECOWAS mission in Liberia (ECOMIL)*

ECOMIL was a peacekeeping force sent by ECOWAS to Liberia at the end of the Second Liberian Civil War. It began deploying outside Monrovia from 9 September 2003, with 3,563 troops from Nigeria, Benin, Gambia, Ghana, Guinea-Bissau, Mali, Senegal, and Togo. The UNSC approved conversion of ECOMIL into a UN International Stabilisation Force from 1 October 2003, at which time these troops were reassigned to UNMIL (United Nations Mission in Liberia) as peacekeepers. The mandate was completed on 30 March 2018.

#### *ECOWAS mission in Côte d'Ivoire (ECOMICI)*

The ECOWAS force, which originally comprised approximately 1,200 troops from Benin, Ghana, Niger, Senegal, and Togo,<sup>191</sup> was increased to 3,411<sup>192</sup> and tasked to keep factions of the civil

war separated while the January 2003 Linas-Marcoussis Agreement was implemented. In May 2003, the UN Mission in Côte d'Ivoire (MINUCI) was set up to complement the mission of existing French and ECOWAS forces. On 4 April 2004, MINUCI was replaced by the UN Operation in Côte d'Ivoire (UNOCI), which ended in June 2017.

*African-Led International Support Mission in Mali (AFISMA) (2013)*

Approximately 6,000 forces from eight ECOWAS Member States (Benin, Côte d'Ivoire, Ghana, Guinea, Liberia, Nigeria, Senegal, and Togo) and Chad served under AFISMA between January and June 2013, before the UN Security Council approved the creation of a Multidimensional Integrated Stabilisation Mission in Mali (MINUSMA), and AFISMA was transformed into a UN mission on 1 July 2013.<sup>193</sup>

*ECOWAS Intervention in the Gambia (2016-2017)*

With leadership from key states in ECOWAS, the REC came together with the AU and the UN to ensure a constitutional change of government. Whilst initial efforts to persuade Jammeh to leave were diplomatic, they were undertaken against a background of military preparations by ECOWAS so that when Jammeh missed a deadline on 19 January 2017, ECOWAS forces primarily from Senegal, Ghana and Nigeria entered Gambia and were ready to intervene.<sup>194</sup> Through the use of regionally focused coercive diplomacy, violent conflict was averted.

### 8.2.3 Normative Framework and Focus on Child Protection within ECOWAS

In the early 2000s, ECOWAS progressively integrated child protection into its policies and institutions, including through the adoption of the Accra Declaration and Plan of Action on

War-Affected Children in 2000. It established a child protection unit in its secretariat and endorsed an agenda for action for war-affected children in West Africa at the ECOWAS Summit in 2003.<sup>195</sup> In 2009, ECOWAS adopted a Child Policy, as well as an action plan for the period 2009-2013.<sup>196</sup>

The Child Policy contains, as one of its goals, the protection of children from violence and ensuring that children are protected from recruitment into the armed forces or armed groups.<sup>197</sup> In this regard, the policy strives to develop a regional approach to the protection of children during conflict and to their protection and reintegration into the society when released from armed forces or armed groups.<sup>198</sup>

Whilst the Child Policy is a useful tool, little progress has been made by ECOWAS to monitor implementation progress by Member States. Further, as much as it contains particular provisions for the protection of children in armed conflict, there is room for its scope to be expanded beyond the recruitment of children as armed soldiers. Similarly, whilst the Policy only refers to training of security forces in IHRL and refugee law,<sup>199</sup> there is nonetheless an opportunity for its scope to incorporate a broader child protection focus.

In addition to adopting the Child Policy, ECOWAS adopted a Declaration on the Decade of the Culture of the Rights of the Child in West Africa (2001-2010) which affirms the critical role of children in the future of the region, and acknowledges that investing in children will ensure peace, stability, security and sustainable development.<sup>200</sup> It has also adopted the ECOWAS/ECCAS Inter-Regional Agreement to Combat Trafficking in Persons especially Women and Children.<sup>201</sup>

Whilst the above documents aim to highlight areas of child protection, this is done in broad and general terms without a specific focus on children and armed conflict or on the conduct expected of personnel deployed in peace-keeping missions. One document that has sought to bridge this gap is the Code of Conduct for the Armed Forces and Security Services in West Africa, which was adopted by ECOWAS in 2011.<sup>202</sup> Article 7 requires armed and security personnel to provide adequate protection, refuge and assistance to all persons in need, including women, children, the elderly, and people with disabilities. Article 17 provides for the regulation of the conduct and operations of the military in relation to relevant provisions under international humanitarian law, national laws, the ECOWAS Protocol on Democracy and Good Governance, and the Code of Conduct.<sup>203</sup>

According to the ECOWAS Annual Report for 2015, the ESF has initiated the review of some of its strategic documents due to the changing realities as well as emerging challenges in the region. These documents include the ESF Doctrine, Operational Framework and SOPs for the ESF, Proposed ECOWAS Counter Terrorism Doctrine, ESF Logistics Concept and Force Generation Policy Guidelines.<sup>204</sup> This presents a window of opportunity to infuse a child protection focus into the ESF Doctrine and other key documents. In the presentation of its annual report in January 2018, the SRSG-CAAC recognised the advances made by ECOWAS and committed to contribute to further progress by supporting the re-establishment of many of the instruments and mechanisms and creating new partnerships to leverage the tools of a broad range of sub-regional organisations.<sup>205</sup>

## 8.3 Southern African Development Community (SADC)

### 8.3.1 Introduction

The SADCC was transformed into SADC on 17 August 1992 in Windhoek, Namibia with the adoption of the SADC Treaty which redefined the basis of cooperation among Member States from a loose association into a legally binding arrangement.<sup>206</sup> The Southern African Development Community (SADC) is a Regional Economic Community comprising 16 Member States: Angola, Botswana, Comoros, Democratic Republic of Congo, Eswatini, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Tanzania, Zambia and Zimbabwe. It is committed to regional integration and poverty eradication within Southern Africa through economic development and ensuring peace and security.<sup>207</sup>

### 8.3.2 The SADC Organ on Politics Defence Security Co-operation (OPDSC)

The OPDSC, provided for under Article 2 of the 2001 SADC Protocol on Politics, Defence and Security Cooperation, is aimed at promoting peace and security in the region, and to prevent, contain and resolve inter and intra-state conflict by peaceful means.<sup>208</sup> The OPDSC presents a framework upon which member states coordinate peace, defence and security issues. It comprises two committees: the Inter-State Defence and Security Committee (ISDSC) and the Inter-State Politics and Diplomacy Committee (IPDC). To encourage accountability and collective ownership amongst member states, the annual SADC Summit elects the chairperson of the Organ for a term of office restricted to one year only. The Chairperson of the Organ is responsible for the overall policy direction and the achievement of the objectives of the Organ, however this can only be done in

consultation with the other two members of the Troika in charge of the Organ – the Incoming and Outgoing chairs.<sup>209</sup>

### 8.3.3 SADC Secretariat

The SADC Secretariat is the principal executive institution of SADC, responsible for strategic planning, facilitation and co-ordination and management of all SADC programmes. It is headed by the SADC Executive Secretary and is located in Gaborone, Botswana.<sup>210</sup>

### 8.3.4 Southern African Development Community Standby Force: (SADC SF)

SADC countries are active contributors to UN and AU PSOs, which include military observers and troops, civilians and police. A significant number of civilians are also serving in AU and UN operations on an individually recruited basis.<sup>211</sup>

The SADC SF was established by the SADC Summit through a Memorandum of Understanding (MoU) that was signed on 17 August 2007 in Lusaka, Zambia.<sup>212</sup> Article 3 of the MoU provides for a standby force that consists of military, police and civilian components. The Force's main function is to participate in peace support missions as envisaged in Article 13 of the Protocol Establishing the PSC of the AU.<sup>213</sup> The SADC Brigade was established in 2008 as the regional component of the AU's Standby Force. SADC SF has a functional planning element co-located at the SADC secretariat in Gaborone, Botswana.<sup>214</sup>

#### 8.3.4.1 SADC-SF State of Readiness

The SADC-SF attained Full Operational Capability (FOC) in July 2016. The SADC Secretariat has ensured that all components, military, police and civilian are ready for

deployment. To ensure full operationalization of the Civilian Component, a series of awareness workshops have been conducted in SADC Member States. These workshops have been organized by the SADC Secretariat/ SADC SF PLANELM to raise awareness among civilian experts in the SADC Region on the role of civilians in Peace Support Operations and also encourage experts to become members of the SADC SF Civilian Roster.<sup>215</sup>

#### 8.3.4.2 Development of Peacekeeping Doctrine

The SADC SF is in the process of developing and updating a common doctrine, operational guidelines, standard operating procedures and logistics concepts.<sup>216</sup> The SADC Regional Peace-Keeping Training Centre (RPTC) has been mandated to enhance and continually build regional PSO capacity of the SADC Standby Force (SF). The Centre is an integrated unit whose operations are coordinated through the SADC Secretariat Organ Directorate and works in close collaboration with the SADC Planning Element in pursuing their joint mandate.<sup>217</sup>

The SADC SF Planning Element (PLANELM) is charged with the responsibility of planning for peace missions and exercises as well as generating and preparing the civilian capacity needed for potential AU and SADC PSOs. In order to achieve this objective, the PLANELM has been undertaking activities in order to enhance awareness, build capacity and consequently fully operationalize the component.<sup>218</sup>

The readiness of the Civilian Component to deploy largely depends on the availability of experts who are qualified and ready to participate in PSOs. In this regard, special attention has been given to the process of populating the Civilian Roster of the SADC Standby Force also known as African Standby

Capacity (ASC) Database/Roster. The roster is being populated with civilian experts who are willing and able to be deployed in PSOs in the SADC region and the continent at large. These experts, once registered as roster members, are required to undergo training in order to enhance their skills and prepare them for PSO whenever the need arises.<sup>219</sup>

#### 8.3.4.3 SADC SF Policies and Frameworks

SADC SF policies and legal frameworks are out-dated and, in some instances, not available. In this regard, the Secretariat has been tasked to ensure that necessary policies and legal frameworks including SOPs, MoUs and SOFAs are available, updated and finalised for adoption.<sup>220</sup>

The Secretariat is currently engaged in reviewing the 2007 MoU to accommodate its multidimensionality including emerging and contemporary PSO dynamics. This review process presents an excellent opportunity for SCI to engage SADC with a view to sharing the EASF experience and resources developed in this regard. The review process could have the effect of profiling child protection as a key priority akin to SEA violations.<sup>221</sup>

While there has been much progress in the sphere of the military, the civilian and police components of the SADC SF have been lagging behind. Indeed, Operation Golfinho has also made it clear that this is also preventing effective synergy from developing between the military, police and civilian components. Ultimately this undermines the multidimensional character of the force and undermines success if deployed.<sup>222</sup>

Given the resource constraints among some countries, South Africa has come to occupy a dominant role within the SADC SF. For example, no medical battalion group, no maintenance unit

or field workshop was offered by any SADC country towards the standby force. As such the SANDF agreed to provide these during Operation Golfinho over and above its other pledges.<sup>223</sup> In a similar vein, whilst Tanzania pledged a brigade headquarters in 2009, it was never operationalized, compelling the SANDF to also pledge a brigade headquarters for command and control purposes. Sensitive to member states' fears of South African domination, the SANDF has ensured that the Deputy Commander, staff officers and military observers emanate from other member states.<sup>224</sup>

#### 8.3.4.4 Training for PSOs

The Regional Peacekeeping Training Centre (RPTC) coordinates peace support training in the SADC region. The training courses target military, civilian, police and correctional officers nominated by their respective SADC member states, who are being prepared to perform as training focal points within their institutions or organizations of origin.

The Integrated Mission Operational Commanders' Course (IMOC) course offered at the Training Centre is a purely SADC PSO course tailored on the basis of lessons learned from UN and AU peace missions, and bridges the gap between the Senior Mission Leadership (SML) course pioneered by the AU and various middle management PSO courses that have been running in various Training Centres.

The Civilian Component of the SADC Standby Force (SADC SF) conducted a maiden Civilian Foundation Course (CFC) exclusively for SADC SF Civilian Roster members at the SADC Regional Peacekeeping Training Centre (RPTC) in Harare, Zimbabwe from 22 October to 04 November 2017. The training provided an orientation on basic and foundational SADC/AU PSO issues to prepare rostered



personnel to effectively contribute to mandate implementation when deployed in SADC/AU PSOs; increased awareness and understanding of the role of the Civilian Component of the African Standby Force (ASF)/SADC SF; and enhanced skills of the SADC SF Civilian Roster members.

According to the African Standby Force (ASF) standby roster system, the SADC Standby Force will be on standby at the continental level from June to July 2019. This means that the SADC SF has to be fully prepared and ready (in all three components of the SADC SF) to be deployed anywhere on the continent whenever needs arise. It is therefore critical that the Civilian Component is operationally ready and hence the conduct of such training.

In the last quarter of 2018, the AU PSOD facilitated training on child protection for the joint military, police and civilian contingents in SADC countries.<sup>225</sup>

#### 8.3.4.5 Accountability for violations committed by peacekeepers

South African peacekeepers were found guilty of more than 1,000 cases of misconduct between 2002 and 2006 in Burundi and the DRC. More than half of these violations involved absence without leave, disobeying lawful commands and drunkenness. Included in these statistics are also 230 criminal cases, in which South African peacekeepers were found guilty of assault, indecent assault, theft, rape and murder.<sup>226</sup>

In 2015 South Africa recalled 50 of peacekeepers for alleged “security breaches”. Currently nine other cases against SA peacekeepers are in process.<sup>227</sup> Information related to the outcomes of disciplinary processes against the implicated troops, is not readily available in the public domain.

### 8.3.5 Child Protection and SADC

Most states in the SADC region have signed or ratified international child rights protection instruments, with the exception of DRC, which is yet to ratify the ACRWC.<sup>228</sup> Zambia has yet to ratify the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography as well as the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict. Majority of the SADC member states have ratified and integrated the African Youth Charter into their country development plans.<sup>229</sup>

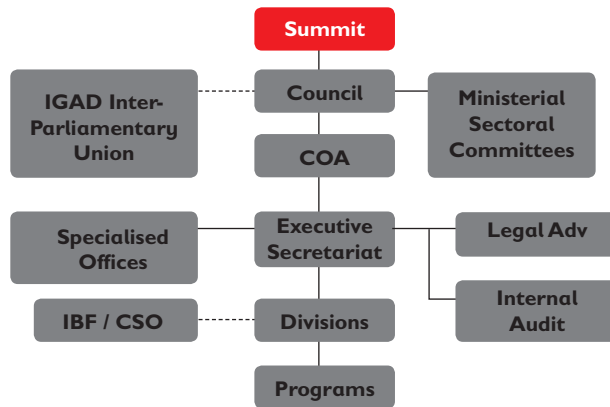
In the SADC region, most issues affecting children are viewed as cross-cutting and thus are scattered over various thematic concerns of the regional body. Consequently, there is no single instrument on child protection for the region.<sup>230</sup>

## 8.4 The Inter-Governmental Authority on Development (IGAD)

### 8.4.1.1 Background and Context

The Intergovernmental Authority on Development (IGAD) was created in 1996 to supersede the Intergovernmental Authority on Drought and Development (IGADD), which was founded in 1986 to mitigate the effects of the recurring severe droughts and other natural disasters that resulted in widespread famine, ecological degradation and economic hardship in the region.<sup>231</sup> IGAD is made up of seven East African countries with the stated ambition to achieve peace, prosperity and regional integration among the member states.<sup>232</sup>

## IGAD'S ORGANISATIONAL STRUCTURE



### 8.4.1.2 IGAD Structure

IGAD is composed of four hierarchical policy organs:<sup>233</sup>

**The Assembly of Heads of State and Government** is the supreme policy-making and regulatory organ of IGAD. It determines the objectives, guidelines and programmes for IGAD and meets once a year. A Chairman is elected from the Member States in rotation.

**The Council of Ministers** is composed of the Ministers of Foreign Affairs and one other Focal Minister designated by each member state. The Council formulates policy and approves the work programme and annual budget of the Secretariat during its biannual sessions.

**The Committee of Ambassadors** comprising IGAD Member States' ambassadors or plenipotentiaries accredited to Djibouti.

**The Secretariat** is headed by an Executive Secretary appointed by the Assembly of Heads

of State and Government for a term of four years, renewable once. The Secretariat assists Member States in formulating regional projects in the priority areas, facilitates the coordination and harmonisation of development policies, and mobilises resources to implement regional projects and programmes approved by the Council. The Executive Secretary is assisted by four Directors responsible for: Agriculture and Environment; Economic Cooperation and Social Development; Peace and Security; and Administration and Finance.

In addition to the four divisions and sections at the Headquarters in Djibouti, IGAD has a number of specialized institutions and Programmes hosted by other Member States. These include the IGAD Conflict Early Warning and Response Mechanism (CEWARN), the IGAD Security Sector Programme (ISSP), the IGAD Centre for Pastoral Area and Livestock Development (ICPALD), IGAD Climate Prediction and Applications Centre (ICPAC), and the IGAD Regional Aids Programme (IRAPP).

### 8.4.1.3 Child Protection Policies

IGAD developed a regional social protection strategy, the status of which is unknown. This strategy advanced a unified approach to addressing cross-border social vulnerabilities and regional poverty reduction. Participants in the drafting were from line ministries bearing responsibility for social protection and related issues, specifically Women and Children's Affairs, Agriculture, Social Security and Labour in the member states. Women and children are viewed as cross cutting issues across IGAD focus areas.<sup>234</sup>

### 8.4.1.4 IGAD Peace and Security: Peacekeeping

The institution has developed a peace and security role that works locally on the ground. IGAD plays an important role in contributing to stability in the Horn of Africa, ranging from mediation to conflict-prevention to capacity-building between member states. IGAD was heavily involved in the Sudan peace process that culminated in the Comprehensive Peace Agreement (CPA). In the run-up to South Sudan's independence, IGAD facilitated talks that eventually helped deliver the South Sudanese referendum. IGAD has held a long-standing role in the re-establishment of sovereign government in Somalia.<sup>235</sup>

One significant capability of IGAD is its work in Conflict Prevention Management and Resolution (CPMR) through the Conflict Early Warning and Response Mechanism (CEWARN). CEWARN is an IGAD institution dedicated to securing peace and stability in the region. This is differentiated from IGAD's mediation role, as CEWARN's CPMR mechanism investigates peace and security at a lower level in member states as opposed to higher level multi-country negotiations.<sup>236</sup>

In relation to military intervention, IGAD forces intervened during the 2006 Islamic Courts insurgency in Somalia. The IGAD Peace and Support Mission in Somalia (IGASOM) was the precursor to the AU Mission in Somalia (AMISOM). IGAD member states are the chief contributors to IGAD security forces. IGAD holds a role investigating emerging crimes.<sup>237</sup>

## 8.5 North African Regional Capability (NARC)

### 8.5.1 Background to the establishment of the NARC

The North African Regional Capability (NARC) was established in 2007 as a Regional Mechanism (RM) for the African Standby Force to fill the void created by the failure to establish a Regional Economic Community (REC), namely the Arab Maghreb Union (AMU) in North Africa. The NARC-members consist of Algeria, Egypt, Mauritania, Libya and Tunisia. The NARC Secretariat coordinates the development of the Northern African capabilities for the Standby Force consisting of military, police and civilian components but it is questionable whether the NARC will achieve full operational capability.

The AMU was originally formed in 1989 as a trade-promoting organisation. Its members currently are Algeria, Libya, Mauritania, Morocco and Tunisia. Originally, it was envisioned that the AMU would develop in two phases: one which involved the free movement of people, goods and capital between the members while phase two sought common diplomatic, military and economic policies.<sup>238</sup> However, few of the AMU's original goals have been reached mainly as a result of the political and military rivalries between two of its more powerful states, namely Algeria and Morocco. Both sides have vested interests in the conflict in Western

Sahara. Even though the AMU has engaged in some joint projects, it is far from fulfilling its original ambitions to establish a genuine cooperation for joint security policies. This was highlighted when AMU was initially asked to set up the North African Standby Brigade. Besides being plagued by the tension between Algeria and Morocco, the NASBRIG project was stillborn in the hands of the AMU due to the fact that Morocco, until January 2017, was not a member of the AU while Egypt is not a member of the AMU. In view of these difficulties, the North African Regional Capability (NARC) was formed solely to organise the military contribution of the North African states to the African Standby Force.

### 8.5.2 NARC's current situation

Given that it is a regional mechanism with a military focus, unlike other RECs, NARC has no history of diplomatic or political intervention in on-going conflicts. However, it was formed in a comparatively rich and military strong region. These riches, until approximately 2010, allowed Algeria, Egypt and Libya to push active agendas in the AU as they each contributed 15% of the AU's general budget. Further, the North African countries share common goals in their respective security policies: terrorism, smuggling, trafficking and armed conflicts in bordering states. They also possess military capacity that is unmatched by other RECs; there is no lack of hardware or equipment; general military training standards are higher in the NARC states than in many other African states while some of the NARC contributors also have experience in the field of peacekeeping.

In view of the region's military strength and shared security concerns, an effective development of the NARC would provide the ASF with a significant capacity boost. However, the rift between Morocco and Algeria over

Western-Sahara continues to complicate the region's possibility of political cooperation. As a direct consequence of this conflict, Morocco has not participated in the building of the NARC.

As mentioned earlier, NARC was established in 2007 through a Memorandum of Understanding (MoU). Libya voluntarily played a coordinating role during the initial phase of starting up NARC, which lasted for three years (2005-2008). But the NARC has encountered challenges in that constitutional and legal regulations in some member states, coupled by the reluctance of some to sign the founding documents, delayed the ratification of the NARC MoU. Moreover, the on-going dispute over Western Sahara continues to complicate the operationalisation of the NARC: four of the six members of NARC do not recognise the Sahara Arab Democratic Republic (A.D.R).<sup>239</sup> Due to the tensions in the region and the inefficiency of the AMU, military harmonisation has been virtually impossible.

By 2008 the NARC bloc was lagging far behind the rest of the RECs in its efforts to meet the deadline for the readiness of the African Standby Force. In the subsequent years, some progress was made through the signing of a ministerial agreement establishing the headquarters in Libya, the Planning Element (PLANELM) in Cairo, and Egypt also nominated the Cairo Peacekeeping Training School as a regional training centre. In late 2008 Algeria followed suit and agreed to act as host nation for NARC's training headquarters and in early 2009 the regional headquarters in Libya was officially inaugurated.<sup>240</sup>

Despite these efforts, by 2013, the Independent Panel of Experts who assessed the operational capability of the African Standby Force concluded as follows:

**The Panel is of the opinion that the NARC region will not be able to achieve FOC [full operational capability]. ... However, most countries in the region have considerable national capacities that can be mobilised for peace support operations, including strategic airlift. The region also has a centre of excellence... The Panel thus recommends that the AUC remains closely engaged with the NARC PLANELM, CCCPA and individual member states in the region, to ensure that they remain engaged in the ASF project.<sup>241</sup>**

Following such recommendations, the Cairo International Centre for Conflict Resolution, Peacekeeping and Peacebuilding (CCCPA), one of the designated training centres, undertook several training sessions focusing on the civilian component and the development of a

civilian standby roster, with forces from NARC countries in Egypt prior to December 2015, the deadline for the ASF to be ready. However, there has been limited progress ever since a number of the countries in the region have faced grave internal and external challenges.<sup>242</sup> In this respect whereas between 2009 and 2010, 66.36% of the total AU budget was financed by only five countries (Algeria, Egypt, Libya, Nigeria, and South Africa), these contributions have decreased markedly, thus pushing AU's dependence on partner financing from 45% of the budget in 2010 to over 70% in 2016.<sup>243</sup>

For some commentators, it is unlikely that the NARC will develop full operational capability in the long-term,<sup>244</sup> partially due to the fact that countries like Libya and Egypt are more likely to turn to the West and the Middle East than to the AU for support, and because they have not participated in AU PSOs, thus removing the AU's sense of urgency to assist in building NARC capacity and capability.<sup>245</sup> Instead, as noted by the Panel of Experts, it is likely that individual North African states will be asked to assist with specific PSOs.

# 9 National Desk Review and Findings

## 9.1 Uganda

### 9.1.1 Background

According to 2018 estimates, Uganda is one of the countries with the youngest populations in the world, based on age median. Comprising approximately 44.27 million people, the majority of whom (84%) reside in the rural areas, close to half the population (48.47%) are children between the ages of 0 to 14 years, and of these children, 55% of them are under 5 years of age.<sup>246</sup> 3.7 million children live in situations of extreme poverty and deprivation and experience multi-dimensional poverty effects and violations such as access to many of the basic services and fundamental rights (health care, nutrition, education, water, sanitation, shelter and information) they require to develop to their full potential.<sup>247</sup>

#### 9.1.1.1 Child Protection Challenges-categories of most vulnerable children:

- Child marriage and Female Genital Mutilation (FGM)
- Child labour and exploitation including trafficking of children
- Homeless children
- Physical and sexual violence in school, the home & community.
- Child poverty, coupled with limited access to basic needs (food, clean water and sanitation, shelter, medicines and health care)
- Juvenile delinquency
- Out of school children
- Orphaned and abandoned children, and child-headed households

- Children affected by HIV/AIDS, malnutrition and stunted growth
- High infant mortality

#### 9.1.1.2 Civil Society

Uganda has an active civil society focusing on child rights and human rights mainly in the domestic context. CSOs play mediating roles through the provision of services to the public toward claiming their rights and oversight roles in terms of monitoring and reporting on compliance of the State to its obligations.

CSOs and the media play an active role in monitoring the conduct and behaviour of the key actors in the criminal justice system; in particular, on-going and systematic monitoring of police conduct in relation to children and adults is well established. Monitoring of the military in terms of conduct is not as comprehensive or consistent. Monitoring and reporting by local civil society on the behaviour and actions of Ugandan peacekeepers deployed in PSOs is wholly lacking.

This is driven by a lack of awareness on the role of the UPDF in peacekeeping operations and the concept of the in-mission justice system by CSOs and the media alike. In interviews, complaints from civilians against the military were noted to be rare due to the inaccessibility of the military and the lack of public information on military accountability procedures.<sup>248</sup> In contrast, civilian complaints against the police are much more prevalent in the public domain.<sup>249</sup>

A more robust engagement with the media would be required to influence the current

narratives in terms of raising the public profile of the issues related to the UPDF and PSOs, which in turn would contribute to the accountability body of knowledge.

International organisations such as Human Rights Watch<sup>250</sup> and Amnesty International,<sup>251</sup> for example, undertake in-depth research that focuses on the behaviour of deployed troops in conflict countries such as Somalia.

### 9.1.2 Ratification of International and Regional instruments

As set out in Annex C, Uganda has ratified and acceded to majority of the international and regional instruments, the following instruments have not been ratified as yet:

- Optional Protocol to the Convention on the Rights of the Child, on the Sale of Children, Child Prostitution and Child Pornography
- Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure
- Minimum Age for Marriage and Registration of Marriages
- Convention on Cluster Munitions
- Arms Trade Treaty
- Convention for the Protection of Cultural Property in the Event of Armed Conflict
- UN Convention on the Reduction of Statelessness

### 9.1.3 National laws and mechanisms relevant for child protection

#### 9.1.3.1 The key National Legal instruments for child protection in Uganda Legislation:<sup>252</sup>

- The Constitution of Uganda, 1995- Provides for children's rights to basic education and health, parental responsibilities, protection

from exploitation, rights of child offenders, and protection of orphans and other vulnerable children.

- The Children's Act - Cap 59 Provides for the rights of the child, roles of local authorities, procedures for dealing with children in conflict with the law, care and protection of children including alternative care arrangements (foster care placements, adoption and institutional care).
- The Penal Code Act – Cap 120 (as amended); Prevention of Trafficking in Persons Act (2009); The Prohibition of Female Genital Mutilation Act (2010) - Defines criminal violations including violations against children and provides for sanctions. Amendments provide for the charge of child-to child sex, child sexual exploitation, child sacrifice, child labour, child abduction. Criminalizes FGM/C and provides sanctions for persons who carry out FGM/C on another, persons who self-mutilate, and persons who aid/abet FGM/C and those who participate in the actions/activities related to FGM/C.
- International Criminal Court Act (2010) - Prohibits forceful recruitment and abuse (especially sexual abuse) of children during armed conflicts.
- The Domestic Violence Act 2010 –Addresses physical, sexual and psychological abuse occurring within households.
- Police Act (1994) and Amendment (2006)
- The Uganda People's Defence Forces Act (CAP 307) 1992: Protection of children from conscription into the UPDF
- The Births and Deaths Registration Act (CAP 309) 1973
- The Uganda Registration Services Bureau (URSB) Act (Cap. 210)
- The Local Government, Act (Cap 243) 1997
- The Employment Act 2006
- Occupational Safety and Health Act (OSHA) (2006).

- The Labour Dispute and Settlement Act (LDSA) (2006).
- The Education Act (2008) - Provides for the rights of children to education.
- The Persons with Disability Act (PWD) 2006 - Provides for the right to quality education, health, and rehabilitation services and prohibits discrimination against PWD including children.
- The Refugee Act (2006) - Provides for the rights of refugee children to elementary education and entitles them to the same rights as all other Ugandan children as provided for in the Children's Act and other international child rights instruments.
- The Amnesty Act (CAP 294) - Provides amnesty to persons participating in hostilities towards the government including for children and provides for the rehabilitation and re-integration of children associated with armed groups.

Combined, the above legal framework establishes an institutional mechanism, outlines roles and responsibilities, and clearly prohibits and regulates certain acts/actions.

### 9.1.3.2 Key policies related to child protection

The National Child Participation Strategy aims to break the silence and amplify the voices of children across all spheres of decision making that have an impact on their lives. The National Child Participation Strategy is based on three core principles that children should be valued, that they should be visible and that they should have a voice. The strategy also identifies key initiatives and priority activities to unite efforts and expertise across ministries, institutions and communities to help make change happen.<sup>253</sup>

- The National Orphans and Vulnerable Children Policy (NOP) (2004)
- The Child Labour Policy (2006)
- The National Universal Primary Education Policy (1997)

- The Health Policy (1999)
- The National ART Policy (2003)
- The National Youth Policy (2000)
- The National Policy for Internally Displaced Persons (2004)
- The National Policy on Disability in Uganda (2006)
- The National child helpline as provided for by the Children (Amendment) Act, 2016 providing for mechanism to report child abuse and providing immediate response.

### 9.1.3.3 Key structures involved in child protection

The nodal institution for child protection in the country is the Department of Youth and Children Affairs. The child protection mandate is also spread across other departments, notably that of Gender and Women Affairs, Culture and Family Affairs, Labour and Industrial Relations, the Ministry of Internal Affairs, Ministry of Justice and Constitutional Affairs, Ministry of Education and Sports and Ministry of Health.<sup>254</sup>

The Community Services Department has the mandate for child protection at the district level. Other pivotal actors in the child protection sector are local and international non-governmental organisations, international agencies such as UNICEF and the Ugandan Human Rights Commission. The media (local and international) are also considered to be key actors in terms of their public exposure role.<sup>255</sup>

The effectiveness of the accountability mechanisms for child protection is limited by several factors, including:

- limited enforceability of the recommendations of key treaty monitoring bodies;
- limited financial resources and limited Human Resource capacity;
- limited public awareness;
- the lack of clear child protection standards for measuring performance;



- limited involvement of children; and
- weak coordination and quality assurance mechanisms for CSO interventions.

#### 9.1.4 Legal enforcement: oversight, complaints and monitoring mechanisms

- *The Directorate of Public Prosecutions (DPP)* directs and supervises investigations of crimes including those committed by and against children; and prosecutes offenders including child offenders.
- *The Uganda Registration Services Bureau (URSB)* is responsible for civil registration (including births, deaths, adoption orders granted by courts, and marriages among others).
- *The Uganda Human Rights Commission (UHRC)* investigates human rights violations, monitors government's compliance with international instruments; makes binding orders in case of human rights abuses, conducts training, civil education and research on human rights issues; and makes recommendations to parliament and the executive on human rights issues.
- *The Uganda Law Reform Commission (ULRC)* ensures regular revision of laws including laws on child protection and simplifies/ translates specific laws to enhance understanding of these laws in an effort to increase access to justice.
- *The Professional Standards Unit (PSU)* was set up to receive complaints against police officers. It has however been noted that accountability is very low due to lack of follow-up prosecutions and the allegations of corruption within the unit.<sup>256</sup> The PSU releases quarterly and annual reports on the number of complaints received, completed, and those still on-going; however, this information is not in the public domain, as there are no laws requiring the unit to publish such information<sup>257</sup>

#### 9.1.5 Juvenile Justice<sup>258</sup>

***There are three levels of jurisdiction to deliver juvenile justice in Uganda:***

- Local councils;
- Children and family courts; and
- High Court.

Local councils play a central role in the administration of juvenile justice legislation. Children and Family Courts (FCC) established by the Children Act, have the jurisdiction to hear and determine most criminal charges against a child except capital offences. Children charged with capital offences are heard in the High Court, and provided with lawyers and legal aid if required. Provision of psychosocial support for children is limited and civil society actors play a big role in providing support in this regard.

##### 9.1.5.1 Police Child and Family Protection Units

An internal police review process, catalysed by CSOs, which focused on reforms related to police accountability and the improvement of the handling of family and children's cases by the Ugandan Police Force, led to the establishment of a Directorate of Human Rights and Legal Services.<sup>259</sup> This Directorate aims to mainstream human rights within the police force as well as the formation of Child and Family Protection Units (CFPUs).

The CFPUs have a nation-wide presence with personnel present in all police stations across the country. Civil society organisations such as SCI were instrumental in supporting this initiative. However, it was noted that CFPUs persistent challenges related to the lack of deliberate efforts to enable the reporting of cases by children; inadequate capacity within the police force to handle cases related to children from the complaints stage; under-resourcing of the units to enable them to carry out their

duties effectively; lack of public awareness of the CFPUs which limits their use by the public; and the transfer of specially trained officers to other units which has depleted the skills base of the CFPUs.

Interviews with CSO representatives noted that the Ugandan legal framework was strong and comprehensive. However, it lacked necessary facilitative and remedial mechanisms to protect and guide children through the legal system to ensure their cases are heard and finalized. With respect to access to justice for children, a key challenge is the fact that children are mainly reached through their mothers, many of whom are constantly moving from one location to the next and unable to commit to a long-term process.<sup>260</sup>

Other challenges mentioned include the limited resources within the justice system to respond to and sustain the numbers of cases; lack of rehabilitation centres for children which has led to children being incarcerated together with adults; low rates of follow-up of cases in conflict areas and the absence of a witness protection law which is still in draft form.<sup>261</sup>

One of the CSOs interviewed, which is active in providing services to women and children, has interventions in Gulu and the Karamoja region focusing on women and children born following abductions of women by the Lord's Resistance Army (LRA). It was noted that responses to the vulnerabilities of children in these locales were mainly through informal justice systems, supported by CSOs in the provision of legal aid and reintegration activities.<sup>262</sup>

### 9.1.6 Peacekeeping Profile

Uganda is recognised as a leading troop contributor to AU peace operations and was one of the first countries to deploy troops to Somalia as part of the AU Mission in Somalia

(AMISOM) in 2007.<sup>263</sup> Uganda is also the largest troop contributor, providing over 6,000 troops and Police Officers. The Ugandan Military component has a longer history and experience in PSOs as compared to the Police component. Until very recently, the current, as well as the four previous AMISOM Force Commanders, were Ugandan officers.<sup>264</sup> At the beginning of this year, Uganda handed over the Force Command to Ethiopia.<sup>265</sup>

In addition to being a leading contributor to AMISOM, Uganda plays an instrumental role in the development of the Eastern Africa Standby Force (EASF). The director for EASFCOM is a Ugandan officer, and Uganda has also developed its Rapid Deployment Capability (RDC) to support future AU/EASF missions.<sup>266</sup>

Uganda hosts the UN's Regional Service Centre (RSCE) and a peace operations support hub based in Entebbe. This base provides logistics and administrative support to UN missions in Africa and it runs peacekeeping training courses to missions in the region.<sup>267</sup>

### 9.1.7 Legal framework

Decision-making protocols regarding all military deployments and activities such as peacekeeping are provided for in the Ugandan People's Defence Force (UPDF) Act of 2005.<sup>268</sup>

The President of Uganda as Commander in Chief (CiC), together with the military High Command and Defence Forces Council, determines UPDF deployments. The Defence Council comprises the Minister of Defence, Chief of Defence Forces (CDF), Deputy CDS, Joint Chief of Staff (JCOS), Service Commanders, and Divisional Commanders. Security advisers, the Chief Political Commissar, Inspector General of Police (for police deployments) and other senior security figures are also involved in the deliberations.

Once deployed, the CDF has strategic oversight of UPDF deployed forces. The Ministry of Defence derives its mandate from Article 208 of the Constitution of the Republic of Uganda, 1995. Article 209 of the Constitution spells out the primary functions of the Uganda People's Defence Forces (UPDF). Parliament is meant to regulate and oversee UPDF activity including peacekeeping as stipulated in the Constitution. The President, security advisers, and UPDF high command are the key decision-makers for peacekeeping deployments.<sup>269</sup>

### 9.1.8 Uganda People's Defence Force (UPDF) – Peace Support Operation Strategy

Ugandan peace operations are informed by a pragmatic strategy based on protection of national interests and security, framed by the ideological lens of Pan-Africanism.<sup>270</sup> Current conflicts on the continent are categorized as high intensity combat operations, which effectively means that not many countries are willing to contribute troops in such a high-risk environment. Thus those countries willing to contribute are more likely to be those with strategic national interests in securing stability in the conflict country.<sup>271</sup>

Ugandan deployments and contingents cover the broad spectrum of civilian and uniformed components, which include staff officers, police, prison officers and civilian experts. Uganda is recognized as one of the largest military troop contributors in peace support operations<sup>272</sup> and has been deploying police officers in Somalia since 2012.<sup>273</sup> While both the police and civilian components have been incorporated in PSOs, the two are yet to reach their full capability, and are lacking in doctrinal development as well as logistical support.<sup>274</sup>

#### 9.1.8.1 UPDF Pre-deployment and vetting

Basic requirements to be selected for deployment to a mission include: serving officers (not new recruits) undergo a medical and full background check where previous disciplinary violations are taken into consideration.<sup>275</sup> Pre-deployment measures are in place in the UPDF while the vetting of selected officers does not include the views or input from the public.<sup>276</sup>

#### 9.1.8.2 Training and deployment

After the initial decision to deploy has been made, forces are trained at the Peace Support Operations Training Centre at Singo on either a collective or individual basis depending on the mission. Child Protection forms part of the training curriculum as a separate component for both troops and senior officers. The UPDF has trained over 3000 soldiers in Child Protection (CP), supported by Save the Children to date.<sup>277</sup>

The last trained contingent that was deployed as part of AMISOM is scheduled to return from their tour of duty imminently.<sup>278</sup> An evaluation and assessment of the impact of the training from the perspective of the returning troops that underwent the training will be imperative to gain immediate insights. These insights should be coupled with an on-site impact and perception assessment of local perspectives of peacekeeper violations in relation to children. Combined, the assessment could be instrumental in framing the UPDF/Save the Children collaboration as an application for best practice in child protection in PSOs.

#### 9.1.8.3 Standard Operating Procedures (SOPs)

In order to operationalise child protection as a specific focus and not only as part of the broader framework of "Protection of Civilians", the development of Standard Operating



Save the Children Somalia

Procedures (SOPs) focused on child protection is a requirement to ensure general compliance. The UPDF developed SOPs for DDR at the time of the LRA insurgency and Uganda was listed in the Secretary-General's report for recruitment of children.<sup>279</sup>

The UPDF has been granted the authority by the Ministry of Defence to expand the current SOPs beyond DDR to cover all aspects of Child Protection.<sup>280</sup> This provides an opportunity for Save the Children to engage the UPDF in this process through the provision of technical support to enable a more comprehensive approach to child protection during missions.

#### **9.1.8.4 Accountability for violations committed by Ugandan Peacekeepers**

Institutionally a Directorate of Human Rights was established to deliberately profile human and child rights considerations within the military establishment and in its operations. Under the Military Intelligence Command, a desk focusing on disseminating and raising the profile of International Humanitarian Law (IHL) and a gender office tasked with handling issues related to sexual exploitation and abuse against children are in existence. Personnel from the gender office are deployed to AMISOM for example, to interact with children. This is viewed as empowering children outside of the court system.<sup>281</sup>

Uganda, like all TCCs, has the option of investigating and prosecuting members of the Ugandan contingent alleged to have committed violations against civilians while on mission in the home country or establish a field court consistent in all respects with the Ugandan law and prosecute suspects during missions.

Uganda has chosen to constitute a rotational court in field to deal with prosecutions of its

members. Investigators are either dispatched from Uganda to carry out investigations and interview victims or witnesses in field, or investigators may form part of the deployed contingent. A Judge Advocate and Prosecutor are part of the Ugandan contingent. As noted, the calibre of the legal personnel deployed in PSOs constitutes senior-level professionals.<sup>282</sup>

The efficacy and strategic benefits of hosting accountability processes in the host country have been recognised by many quarters including the AU. As such, the Ugandan case study becomes worthy of further inquiry to establish prospects for replication by other TCCs. In this regard, key issues pertaining to the practical operation in terms of cost implication as well as child friendliness of the model needs to be further interrogated.

The Divisional Court Martial is constituted by the UPDF High Command and the court processes in field are open to the public and the media. Witnesses are provided with witness protection, if needed. The decision by Uganda to hold its members accountable for violations committed in the host country is both victim-centred and contributes to the legitimacy and levels of trust in the mission by the host community.

From interviews conducted, less serious disciplinary infractions are dealt with in-house in the mission, and a rotational court is established in the event of high profile cases, which may attract a public outcry.<sup>283</sup>

These efforts are further reinforced by mission monitoring through the Civic Military Component (CIMIC), which comprises Female Engagement Teams (FETs) who form part of the contingent at all the three levels. Their primary tasks are to engage civilians and act as liaison between the mission contingent and the public,

to raise public awareness on the roles and responsibilities of peacekeepers, independently assess troop behaviour and to encourage the reporting of violations by peacekeepers.

#### **Female Engagement Team (FET)<sup>284</sup>**

Members are those of senior rank, experience and maturity to develop trust-based relationships and rapport with the local women in particular and children on a proactive basis.<sup>285</sup>

They are functional community engagement and liaison teams - they do not have a combat function - but if found in a hostile situation they are trained to react appropriately.<sup>286</sup>

In AMISOM, the Uganda Peoples' Defence Force (UPDF) FET comprises female members of the UPDF, with the rank of political commissar,<sup>287</sup> deployed alongside the Ugandan Contingent's CIMIC component<sup>288</sup> and they also carry out CIMIC duties. The role of the FET is to engage the local community, particularly women, through awareness-raising regarding health and education, facilitating community access to the UPDF-run health and education facilities.

A study by the Council on Foreign Relations has shown that the presence of women in peacekeeping operations can make a positive difference in improving access to the local population, enhancing local communities' acceptance of the peace mission and improving the behaviour of male members of the mission.<sup>289</sup>

The role played by the UPDF FET in AMISOM is a possible case study to consider in terms of replication for future missions, particularly in terms of its "non-military" role. Engaging communities and winning hearts and minds is a critical component to the stabilization of a country in conflict and their role can be said to be a component of strategic communications of the mission to influence public perceptions.

#### **Deployment of Child Protection Officers and advisors**

Interviewees noted that their deployment was initially dependent on the EASF rostering process. However, it has since been clarified that the EASF rostering process was limited to the civilian component of PSOs. The deployment of a child protection focal person by the UPDF is at the behest of the Chieftaincy of Personnel.<sup>290</sup>

#### **Challenges to accountability**

TCC accountability mechanisms are triggered by the registering of a complaint. In this regard, host communities may disregard the lodging of a complaint, in favour of local remedies and culture, i.e. the imposition of a fine may be the local norm as opposed to the criminal prosecution process. The implication is that, without a charge being laid, Uganda is unable to pursue the matter. In Somalia, reparations for violations may be more appropriate culturally than prosecution and the survivor may choose to negotiate a settlement and not report the matter. In the case of violations against children, the parents, who are often the ones that engage the authorities and not the child, may choose to settle matters out of court thus making it difficult to track and monitor violations.

Additionally, with regard to paternity cases handled by the general court martial, interviewees noted that despite the UPDF having the capacity to handle such cases as evidenced by investigations conducted and perpetrators charged, some cases are still pending before the court, for example in relation to UPDF deployment in the Central African Republic.<sup>291</sup>

Accountability is linked to levels of awareness and knowledge by peacekeepers of the Code of Conduct and other mission directives. As such, the UPDF should consider assessing troop awareness on a regular basis. This would allow for timely corrective action by the UPDF.

### 9.1.8.5 Oversight mechanisms during missions to track troop behaviour

#### *Civilian Casualty Tracking Analysis and Response Cell (CCTARC) reporting system - AMISOM<sup>292</sup>*

Within the context of AMISOM, troops in the mission are subject to the Civilian Casualty Tracking Analysis and Response Cell (CCTARC) reporting system. Civilian harm tracking, analysis, and response is an internal mission process by which data on civilian harm caused by its operations is tracked and analysed to improve operations and properly respond to civilian losses. Data can come from a variety of sources including formal and informal reporting chains among troops, investigations of alleged incidents of civilian harm, and external sources such as civil society, hospitals, and the media.

Data is fed into a centralized, professionally-staffed information system or 'cell' which houses, analyses, and disseminates findings. This analysis informs decision-makers and operational military commanders and allows them to adjust their planning, tactics, and training to address these challenges. The UPDF contingent deployed in AMISOM is expected to comply with the CCTARC process.

In interviews with the UPDF, it was noted that where there are allegations of civilian harm possibly involving the UPDF, the UPDF is given the opportunity to respond to the allegations before possible disciplinary measures are taken.<sup>293</sup> However, there is still a lack of clarity regarding the link between monitoring of troop behaviour and discipline by the contingent and the consequences arising from the CCTARC monitoring of incidents involving civilians.

#### **Monitoring and reporting of cases by the media**

Information regarding the behaviour of troops deployed in missions is not readily available;

such information is considered to be security sensitive and is kept out of the public domain.

In Uganda, local media focus on the behaviour of troops in missions or accountability processes tends to be inconsistent. Nevertheless, the media has been key in disseminating information on the field-based prosecution processes, undertaken by Uganda, thereby raising public awareness on the issue.

Notwithstanding the context, the UPDF has taken the approach of publicizing cases of misconduct and violations brought against members of the UPDF contingent. Uganda has suspended or publicly prosecuted soldiers who have committed crimes in Somalia as outlined below:

- **October 2009:** UPDF soldier jailed for 1.5 years for violating rules regarding romantic relationships while on duty in Somalia<sup>294</sup>
- **March 2011:** Three UPDF soldiers sentenced for two years for shooting civilians at KM4 junction in Mogadishu<sup>295</sup>
- **May 2011:** three UPDF soldiers sentenced for shooting incident at KM4 junction in Mogadishu<sup>296</sup>
- **April 2012:** UPDF soldier on trial for murdering his colleague over a dollar
- **May 2012:** UPDF soldiers sentenced to one year in jail for selling bullets to a Somali boy the previous March<sup>297</sup>
- **July 2013:** UPDF commanders suspended and under investigation for selling rations to Somalis.
- **October 2013:** UPDF soldiers accused their bosses of illegally selling fuel and ammunition, not paying salaries, and overall maltreatment; many of the accused were suspended<sup>298</sup>
- **February 2015:** UPDF officer jailed for six months for selling fuel illegally in Somalia
- **May 2015:** Ugandan general somehow is acquitted in long case where a UPDF soldier admitted to being involved in a conspiracy to sell fuel illegally in Somalia

- **May 2015:** Ugandan officer is given a reprimand (censure) after spending one year in jail during a fraud case
- **August 2015:** three Ugandan soldiers charged over wedding attack in Marka, Somalia<sup>299</sup>
- **September 2015:** Uganda suspends officers for “not being alert” before al-Shabaab’s mass raid attack at Janaale; one senior officer was later court martialled<sup>300</sup>
- **October 2015:** UPDF officer sentenced to 18 months in jail in the aforementioned fuel scandal<sup>301</sup>

### 9.1.9 Uganda Police Force (UPF)

The Ugandan Police component in any PSO comprises Formed Police Units (FPUs) and Individual Police Officers (IPOs).

The Police components play a markedly different role from the military component in PSOs. In the context of AMISOM, the Ugandan Police component provides mentoring and advisory support to the Somali Police Force (SPF) on police duties such as human rights observation, crime prevention strategies, community policing, search procedures and investigations; with the aim of transforming the SPF into a credible and effective entity.<sup>302</sup>

#### 9.1.9.1 Legal Framework

The Ugandan Police derive their legal mandate from the Police Act 1994 and the Police Amendment Act 2006, the Penal Code Act 1950 and the Constitution of the Republic of Uganda 1995.

The Directorate of Peace Support Operations (PSO), one of the directorates that makes up the UPF, has as its main role and function to prepare the Ugandan police force to effectively fulfil Uganda’s regional and international obligations in PSOs and develop systems, plans and procedures for effective PSOs in liaison with the AU and the UN.

#### 9.1.9.2 Recruitment and selection process

With respect to the mode of selection for recruitment, interviewees noted that the selection process is a rigorous and competitive one, with the selection criteria informed by AU/UN policies and involves processes such as a national call for applications circulated within the police force, pre-assessment, and medical assessments including psychometric tests.<sup>303</sup>

The selection of police officers is mainly done from the Public Order Management Section within the police, supported by other sections such as logistics and engineering, counter-terrorism, medical, and training providing personnel. The heads of all the relevant directorates within the police administration are involved in the selection process.

With regard to gender parity in the selection process, interviewees noted that the number of women recruits remains low, due in part to the fact that many police women do not possess a driving license and defensive driving is a key skill that is required of all police recruits for PSOs.<sup>304</sup>

#### 9.1.9.3 Vetting

The Professional Standards Unit in the police force undertakes the vetting of recruits after shortlisted officers have completed an examination. The second assessment is then offered and undertaken by the AU/UN.

#### 9.1.9.4 Pre-deployment training

Once selected, police officers undergo basic training for a period of six months prior to the pre-deployment training, which takes place over a two-week period. The basic training for the FPUs includes a module on vulnerable people, which covers women, children, and persons with disabilities.



The pre-deployment training of individual police officers is not restricted to taking place solely in Uganda, as they are distributed across training centres of excellence on the continent. Like the UPDF, the Ugandan police component undergoes pre-deployment training that includes modules on protection of civilians with rudimentary sections on child protection. They also undergo in-mission induction training, which focuses on conduct and emphasises professionalism and integrity.

Interviewees noted that the pre-deployment training of both categories of police officers does not include comprehensive child protection modules.<sup>305</sup>

#### 9.1.9.5 Dealing with misconduct during missions

In the event of violations committed by members of the police contingent whilst deployed, such violations are addressed during missions. A Disciplinary Court headed by a chairperson is formed to hear and determine issues involving minor offences while gross violations are handled at the mission headquarters. The disciplinary court process is open to the public.

Peacekeeper immunity may be waived in instances of gross violations. The perpetrator is usually arrested, handed over to the local police jurisdiction and thereafter tried as an ordinary local citizen. It was however noted in interviews that the general practice has been that perpetrators are repatriated to Uganda and that such repatriation only takes place after trial by the Conduct and Discipline Unit (CDU) at the mission headquarters.<sup>306</sup> The CDU has the capacity to determine whether the offence committed by the police officer is serious enough to warrant hand-over of the perpetrator to the local police, the withdrawal of immunity and having the person tried under the local laws.

Victims and witnesses to violations committed by the police contingent member are not brought over to Uganda to participate in the judicial proceedings; however, the in-mission trial processes serve to ensure the involvement of victims and witnesses.

Upon conclusion of the in-mission trial process, the perpetrator is then repatriated to Uganda and the disciplinary processes ensue. It was noted in interviews that there have been instances where Ugandan police officers deployed in mission have had their immunity withdrawn and tried under local laws.<sup>307</sup>

#### 9.1.9.6 Challenges in-mission, with particular regard to children

According to interviewees, the lack of holding facilities for children in conflict with the law and the difference and sometimes conflicting social cultural norms between the deployed police and citizens of the host country represent two key challenges in ensuring the protection of children during missions. Another aspect is linked to the lack of specialised training on child protection.<sup>308</sup>

To address this disjuncture, the Ugandan police have requested for manuals, and train the trainer trainings (ToT trainings) on child protection; technical support for standardised training for police officers, and joint training for the police and military components at the Peace Support Operations Training School at Singo to enhance the cohesion between the various PSO components from Uganda. The Police Force also made a request for support for the operationalization of the police peace support training centre in Uganda.<sup>309</sup>

## 9.2 Kenya

### 9.2.1 Background

By 2018, Kenya had an estimated population of 50.95 million, 50% of the population lives below the poverty datum line according to a UNDP multidimensional poverty index and the national unemployment rate stands at approximately 40%.<sup>310</sup> Children below 18 years make up 49% of the population; 62% of the population is below 24 years of age.<sup>311</sup>

Over 75% of children and adolescents experience one or more deprivations of their rights, including limited access to safe water and improved sanitation, education, health and nutrition services.<sup>312</sup> Children in poor households and those living in the arid and semi-arid lands and in urban informal settlements are the most likely to experience multiple deprivations. Over 1 million children are out of school, over 2 million are orphaned and 700,000 children live with a disability. The abuse of children, including forced labour and prostitution, remains a serious problem. Female genital mutilation (FGM) is widespread, despite 2001 legislation against the practice for girls under 16.<sup>313</sup>

Kenya has an active civil society in the child rights and protection sector, including both local and international organisations. However, interviews revealed that local Kenyan civil society is not as engaged in monitoring or reporting on violations committed by Kenyan troops deployed outside the country. Nevertheless, those interviewed expressed a keenness to be engaged by Save the Children on the issue, to enable them to develop a focus on the issues related to peacekeeper accountability outside of the home country.

### 9.2.2 Ratification of International instruments and regional instruments

As set out in Annex C, Kenya has ratified or acceded to most of the international and regional instruments. The following instruments have not been ratified and the Optional Protocol to the Convention on the Rights of the Child, on the Sale of Children, Child Prostitution and Child Pornography has been signed but not ratified as yet.

- UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others
- Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure
- Convention on the Consent for Marriage, Minimum Age for Marriage and Registration of Marriages
- UN Convention Relating to the Status of Stateless Persons
- UN Convention on the Reduction of Statelessness
- Convention on Cluster Munitions
- Convention on Certain Conventional Weapons (CCW)
- African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)
- Minimum Age for Marriage and Registration of Marriages

### 9.2.3 Main child protection issues

Despite the ratification of the leading international and regional instruments, the passing of national legislation such as the Children's Act and a progressive Constitution, Kenya continues to grapple with the practical implementation of policies. The following is a list of repeated violations raised by more than one international mechanism:<sup>314</sup>

- Female genital mutilation
- Early marriage and uncertain minimum age for marriage
- Child labour
- Trafficking and prostitution of children
- Violence against children
- Corporal punishment
- Torture and other cruel, inhuman or degrading treatment or punishment of children
- Inadequate juvenile justice system, particularly with regards to the detention of children
- Children sentenced to death
- Malnutrition
- High infant and child mortality
- Children living on the streets
- Internally displaced children
- Inadequate education provision
- Inadequate alternative care provision
- a centralized management information system that ensures regular information on both prevalence and knowledge of child protection issues; services and responses that are effectively regulated, including accreditation and licensing of care providers; adequate and appropriate resource allocation; effective regulation including standards; monitoring and evaluation;
- a committed workforce with relevant competencies and mandates; and opportunities for children to express their views and be involved. The interdependence in a child protection system is both horizontal and vertical.
- Other efforts include the development of specific policies and programmes to address specific rights, such as the provision of free and compulsory primary education, and the Cash Transfer Programme to assist orphans and vulnerable children.
- The Kenya Vision 2030 through the Medium Term Plans also highlights the flagship projects to be undertaken towards the realization of children's rights.

## 9.2.4 Child Protection System

### 9.2.4.1 National legal and policy framework

- Chapter IV of the Bill of Rights in the Constitution of Kenya, 2010 provides that “the State shall enact and implement legislation to fulfil its international obligations in respect of human rights and fundamental freedoms”. Additionally, Article 53 of the Constitution is specific to children.
- The Children's Act, 2001.
- Framework for the National Child Protection System (2011). The key components of the child protection system include:
  - a set of laws and policies that protect children from violence and exploitation and ensure response in the best interests of the child when violations occur;
  - a central government coordination mechanism that brings together government departments and key stakeholders at all levels;

### 9.2.4.2 National Plan of Action for Children in Kenya 2015-2022

In May 2015, the Government of Kenya launched its National Plan of Action for Children (2015-2022) which provides an operational framework to guide stakeholders and funding partners in coordinating, planning, implementing and monitoring programmes for children. It outlines agreed priorities and interventions necessary for progressive realization of children's rights in Kenya. It incorporates the following legal instruments:

- Convention on Protection of Children and Co-operation in Respect of Inter Country Adoption;

- The International Covenant on Economic, Social and Cultural Rights (UNCESCR);
- The International Covenant on Civil and Political Rights (ICCPR);
- The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography (CRC-OPSC);
- The Optional Protocol to the Convention on the Rights of the Child on Involvement of Children in Armed Conflicts (CRC-OPAC);
- The International Labour Organization Conventions 138 (Minimum Age Convention, 1973) and 182 (Worst Forms of Child Labour Convention, 1999).

#### 9.2.4.3 Key Structures for Child Protection

Ministry of Gender, Children and Social Development

The Ministry of Gender, Children and Social Development is charged with the responsibility of safeguarding the welfare of children in the country and is expected to:

- Establish, promote, co-ordinate and supervise children services in the country;
- Ensure full implementation of all child welfare activities countrywide;
- Maintain updated records and data on children and services provided; and
- Ensure implementation of decisions made by the National Council for Children's Services (NCCS).

#### **National Council for Children's Services (NCCS)**

The NCCS was established to exercise general supervision and control over the planning, financing and co-ordination of child rights and welfare activities and to advise the Government on all aspects thereof. The core roles and functions of the NCCS include:

- Defining and formulating policies on children's issues;

- Coordinating and supporting child rights issues;
- Planning, monitoring and evaluation of children's activities;
- Being a source for, and coordinator of, resources for child welfare activities; and
- Advocating for child rights' issues.

In addition to the above, to protect children, the police have standing orders to identify children as the most vulnerable in emergencies. The National Police Service has established children and gender desks and child protection units in some police stations.

The Ministry of Labour, Social Security and Services caters for children in need of care and protection through the Department of Children Services. The Department of Civil Registration is responsible for registering births and deaths. The judiciary has also established children's courts with special magistrates.

#### 9.2.5 Juvenile Justice System

Under the Kenyan Constitution, Children are permitted to bring cases in civil courts to challenge violations of their rights under the Civil Procedure Rules with the assistance of an adult "next friend". Children also have a specific right under the Constitution to bring, or have proceedings brought on their behalf, when any of their rights or fundamental freedoms in the Bill of Rights "has been denied, violated or infringed, or is threatened". Alternatively, judicial review proceedings may be launched to challenge the action of a public body. Children are not entitled to legal assistance in bringing civil cases, but legal aid is guaranteed to children who are accused of committing an offence if they have no other recourse.<sup>315</sup>

The primary law in Kenya concerning children in conflict with the law is the Children and Young

Persons Act (CYPA). The CYPA establishes juvenile courts for the purpose of hearing all charges against persons under eighteen years of age, except in cases where children are charged jointly with adults (these cases are heard in regular adult courts). The jurisdiction of juvenile courts extends to both criminal matters and to non-criminal “protection or discipline” matters.<sup>316</sup>

Juvenile courts must sit in a different building or on different days or at different times from regular courts for adults, and are closed to the public. Juvenile courts are regular courts that process children’s cases on an ad hoc basis. In practice, the special protections accorded to children under the CYPA are often disregarded, as children are often tried in regular adult courts without cognizance of the fact that they are children.<sup>317</sup>

In 2016 the European Union (EU) and the Government of Kenya completed a project focused on improving the Kenya juvenile justice system. The project refurbished basic infrastructures of ten statutory institutions, six children courts and nine police stations. It also engaged about 1000 children in violence against children monitoring and reporting procedures while 114 children with disabilities were identified, assessed and provided with related services including special education and medical support. Furthermore, 538 Department of Children Service officers were provided with certificates for studies in counselling, education and social work. Ninety children magistrates were trained on child-friendly practices. This has enabled fast-tracking of children’s cases by involving community structures and hence protecting children from unnecessary exposure to the long judicial processes.<sup>318</sup>

During the closure of the Improving the Kenya Juvenile Justice System project conference

on July 20, 2016 the National Committee on Administration of Justice (NCAJ) launched the survey report which showed that neglect of children rights, including physical, psychological and sexual violence are still a big part of children’s lives across all stages of Kenya’s justice system.<sup>319</sup>

## 9.2.6 Oversight, monitoring and complaints reporting mechanisms

Kenya promulgated a new Constitution in 2010 that provided for civilian oversight. The Constitution has a Bill of Rights with provisions affecting key areas such as access to information, the right to basic services such as water, health, education, housing and other individual rights. These provisions are aimed at increasing citizen participation in public affairs, widening the political space and in turn enriching governance practices in the country.

### 9.2.6.1 The Independent Policing Oversight Authority

The Independent Policing Oversight Authority was established through an Act of Parliament published in November 2011 to provide for civilian oversight over the work of the police in Kenya. The functions of the Authority are to conduct impartial and independent investigations, inspections, audits and monitoring of the National Police Service to prevent impunity and enhance professionalism in the interest of the public.

### 9.2.6.2 The Kenya National Commission on Human Rights (KNCHR)

The KNCHR is an autonomous national human rights institution created by Article 59 of the Constitution of Kenya, 2010 and established by the Kenya National Commission on Human Rights Act, 2011. It is a successor to the body

of the same name established by an earlier Act of Parliament in 2002.

### 9.2.6.3 The Commission on Administrative Justice (CAJ)

The Commission on Administrative Justice, also referred to as the Office of the Ombudsman, was created by Article 59 of the Constitution of Kenya, 2010 and established by the Commission on Administrative Justice Act, 2011. The function of the Ombudsman is to ensure that public authorities respect the sovereignty of the people of Kenya in terms of the Kenyan Constitution. Pursuant to Article 59(5) (b) of the Constitution, the Ombudsman has the powers equivalent to the Human Rights and Equality Commission as provided for in the Constitution including proactive and reactive investigative powers.

## 9.2.7 Kenya and peacekeeping

Kenya is a key supporter of UN peacekeeping efforts in the international system. Kenya has over the years remained receptive to requests to contribute to peace operations based on the consent of the parties in the host state.

### 9.2.7.1 Background

Apart from UN peace operations, the most significant deployment of Kenyan troops to date has been in Somalia. The initial deployment occurred on 16 October 2011 when Kenyan troops entered Somalia to launch a military offensive against al-Shabaab. In mid-2012, the Kenyan troops were re-hatted into AMISOM following UN Security Council Resolution 2036.

### 9.2.7.2 Legal Framework for peacekeeping deployment

The primary decision to deploy for regional or international peace support operations is made by the National Security Council (NSC) as stipulated in Article 240(8) of the Constitution of Kenya, 2010. Section 18(c) of the Kenya Defence

Act, 2012 stipulates that deployments for regional and international peace support operations can only be done with the approval of the National Assembly. Based on the advice of the NSC, the President of the Republic of Kenya, who is also the Commander-in-Chief of the Kenya Defence Forces (KDF), remains the most crucial decision-maker regarding the deployment of troops for peacekeeping purposes.

### 9.2.7.3 Military Doctrine

Arising from the national values and principles of governance set out in the Constitution, Kenya has set out a foreign policy containing a clear set of objectives and endeavours to ensure maximum protection and promotion of the national interest.

### 9.2.7.4 Training of peacekeepers

The International Peace Support Training Centre (IPSTC), located in Karen, was established in 2001 as part of the Kenyan Defence Staff College. The centre initially focused on preparing Kenya's national forces for deployment to UN peacekeeping missions. Since its founding, the centre has become an independent regional hub embracing not just training but also research and education.<sup>320</sup>

The IPSTC became one of the most important training centres for AU missions. In addition to preparing Kenyans for both UN and AU peace operations, the centre also trains personnel for two standby forces: the African Standby Force (ASF) and the Eastern Africa Standby Force (EASF). It is now one of the oldest, largest and most established centres on the continent.<sup>321</sup>

The centre has also invested in researching and adapting to mission-specific challenges, including violent extremism and the prevalence of explosives. For instance, the centre has a Mine Action and Disarmament Program. The centre is also developing a C-IED (Counter Improvised

Explosive Devices) wing, in response to the fact that the mines and explosives are among the most significant threats to peacekeepers in the Horn of Africa and other settings.

Kenya has strengthened its peacekeeping centre through the establishment of partnerships with other countries and international organizations. Since 2011, the centre has signed 15 partnerships, including with Canada and UN Women. Moreover, it has accumulated more than 30 clients, from the Rwanda National Police to Save the Children, who sign up for courses offered at the centre. In order to diversify its partnerships, the centre has also looked to other troop- and police-contributing countries for knowledge exchange and innovative solutions.

#### 9.2.7.5 Pre-deployment training

The deployment of Kenyan officers to peace operations is done after fulfilment of peace operations training consisting of three months' pre-deployment training for units and personnel. The importance of training the military in human rights is emphasized. International Humanitarian Law is built into all training programs at all levels. Conducted at the KDF Headquarters, the training curriculum is dedicated to attitudinal reorientation with an emphasis on impartiality, negotiation, mediation, among others. Child rights and protection forms part of the pre-deployment training of peacekeepers and of the national training curriculum.

### 9.2.8 Military Justice mechanisms

Amidst a growing sense of insecurity in parts of Kenya and the broader region over the past few years, the Kenyan army has been growing in visibility and importance. The Kenya Defence Force (KDF) has been deployed to fight al-Shabaab in Somalia; it has had to respond to Islamist militants' devastating attacks in areas such as those at Garissa University and

Westgate Mall. It has been deployed to maintain security after communal clashes in a number of regions around the country.<sup>322</sup>

Kenya's military has been accused of human rights violations during its operations in Baringo, Mount Elgon, Garissa and Mandera among other areas, and its officers are rarely held accountable. Part of the problem is that there is no direct, easy and accessible mechanism for reporting violations and seeking redress.<sup>323</sup>

Military personnel that stand accused of violating the Kenyan Constitution and military code of conduct are tried in open court martial proceedings. The accused are allowed to have their own legal defence. Unfortunately, since no interviews with the military were conducted with the KDF, it is not possible to provide detailed information on military justice for perpetrators of violations.

## 9.3 Côte d'Ivoire

### 9.3.1 Background

As the world's leading cocoa and cashew nut producer and an oil exporter with a major manufacturing sector, Côte d'Ivoire wields considerable economic clout in the sub-region. In 2017, Côte d'Ivoire continued to be one of Africa's most vibrant economies, with a growth rate that is expected to hold steady at around 7.6%.<sup>324</sup> Despite these rates of economic growth, Côte d'Ivoire experiences massive inequalities in wealth. Between 1985 and 2011, the depth and severity of poverty increased considerably, moving from approximately 10% to 51% of the population.<sup>325</sup> It exhibits one of the world's highest gender inequality rates borne out by its ranking (171 out of 188 countries) in the UN Gender Equality Index.<sup>326</sup>

Côte d'Ivoire is a country that is still recoiling from the widespread post-election violence that it experienced in 2010-11. As one commentator

expressed, the conflict in Côte d'Ivoire changed relations between citizens as the violence perpetrated, especially the rapes, torture and massacres by the armed forces and groups have left an indelible mark.<sup>327</sup> This has resulted in a situation where sections of Ivorian society are characterised by latent tensions and a process of social transformation is required to enable people to trust each other again. As part of this process, the consolidation of the Ivorian legal system is urgently needed to ensure that democracy and peace are not undermined by impunity.<sup>329</sup> As a sign of commitment to a process of reconciliation, President Ouattara passed Order No. 2011-167 of 13 July 2011, which sets up a Truth and Reconciliation Dialogue Commission. However, the process of rendering justice to the victims of conflict has been slow and perpetrators have not been held to account for their actions.<sup>330</sup> In this regard, a recent report by a UN independent expert on the field of human rights noted delays and alleged irregularities by the government in the registration of victims for purposes of assistance and compensation.<sup>331</sup> Moreover, whilst the report welcomed the publication of the Commission's report in October 2016 – two years after it was due – it nonetheless warned about one of the recommendations for a possible amnesty for perpetrators of violations committed during political conflicts and noted instead that “in cases of serious violations of human rights and international humanitarian law, justice should always have its say.”

Côte d'Ivoire is in a state of change, but the context is fragile as armed forces refuse to return to the barracks.<sup>332</sup> Despite these challenges, and in view of the relative stability, consolidation of peace, and the successful presidential and legislative elections, the Security Council decided to close the UN Operation in Côte d'Ivoire (UNOCI) in June 2017. According to UN figures, as at 31 January 2018, Côte d'Ivoire

has contributed a total of 244 personnel to UN peacekeeping operations, 231 of which were male and 13 female.<sup>333</sup>

### 9.3.2 Ratification of International and Regional Instruments

As set out in Annex C to this report, Côte d'Ivoire has acceded to or ratified most of the key international and regional treaties and conventions with the exception of the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, which it has only signed. In addition, Côte d'Ivoire has ratified the Revised ECOWAS Treaty of 1993 and the Protocol relating to the Court of the Economic Community of West African States.

### 9.3.3 Main child protection issues in Côte d'Ivoire<sup>334</sup>

Total population (in thousands)	23,696
Annual population growth (%)	2.50
Population 15-24 years (in thousands)	4,797
Population aged 14 years and younger (in thousands)	10,089
Rural population (% of total population)	44
Total fertility rate (births per woman)	4.90
Infant mortality rate (per 1,000 live births)	66
Life expectancy at birth (years)	54
Prevalence of HIV (% of population aged 15-49 years)	2.70
Poverty headcount ratio at 3.10 PPP\$ a day (% of population)	55.10
GDP per capita - PPP\$	3,496
Annual GDP growth (%)	7.80
Total debt service (% of GNI)	4.40
GDP in billions - PPP\$	96



### Socio-economic indicators<sup>335</sup>

As of 2016, Côte d'Ivoire had a population of 23.6 million, 43% of which is below the age of 14 years.<sup>336</sup> Fertility stands at an average of 5 children per woman, with disparities between rural (6.3) and urban areas (3.7). Recent poverty measures reveal that 55% of the population still lives below the poverty line, up from 48.9% in 2008. It is a country that is affected by both infant and maternal mortality. The latter is particularly high with 614 deaths per 100,000 live births. Côte d'Ivoire is also affected by malnutrition and, despite a decrease in HIV/AIDS prevalence (from 4.7% in 2005 to 2.7% in 2016), it still has one of the highest prevalence rates in West Africa. Whilst the net school enrolment rate went up from 55% in 2006 to 68% in 2012, there are still persistent disparities (64% for girls and 72% for boys). In numbers, there are 1.2 million children aged 6–11 and 0.8 million age 12–15 years who are out of school, the majority of whom are girls.<sup>337</sup>

The widespread and accepted nature of violence against children is of particular concern. Among children aged 2–14 years, 87% of them are victims of emotional violence and 21% victims of severe corporal punishment.<sup>338</sup> One mother/tutor out of three considers corporal punishment as a means for education; social norms justify violence against women within the family as evidenced by the acceptability of wife beating. In the household, 25% of girls aged 15–17 are victims of domestic physical violence.<sup>339</sup>

In institutions such as schools, children are highly exposed to violence: 70% of child students face physical violence, with no significant gender disparities. Almost half (46%) of child students are hit by their teachers but younger child students are twice more exposed than their elders; and 30% of child students, boys in particular, are victims of humiliating punishments. With regard

to exposure to sexual violence, 7.6% of girls aged 15–17 are victims of sexual violence from their intimate partners; 38% of child students are victims of sexual harassment; 10% are victims of sexual abuse and 18% are victims of rape (i.e. 469,472 children). Most of this violence is committed by peers (51%), but sexual violence from teachers is recognized as an issue. Sexual abuse of girls can lead to early pregnancy and/or HIV/STI, with severe consequences on the girl in terms of health risks, education and life opportunities. The majority of child victims of violence and abuse keep silent and do not seek assistance (65% of girls 15–17; 51% of child students) nor do they access formal services, while perpetrators remain unpunished.<sup>340</sup>

According to the most recent national survey on child labour, 1.4 million children aged 5–17 years old (20%) are engaged in child labour.<sup>341</sup> They work an average of 51 hours a week with about 49% working in the agricultural sector and 38% working in the services sector. Child labour affects more girls than boys, whether they are in urban or rural areas, and is mostly family based. Boy workers (74%) tend to work in the agriculture sector while most girl workers are mainly in the domestic and agriculture sectors (38% / 37%); and trade (22%).<sup>342</sup>

In addition to various forms of violence and child labour, approximately 33% of young Ivorian women are married before attaining 18 years of age and 10% before reaching 15 years; if current trends continue, the rate of child marriage could still be 30% in 2030.<sup>343</sup>

These marriages result in serious health consequences for the young women as they are not psychologically prepared nor do they understand all the responsibilities and consequences involved in marriage. Furthermore, these young women are neither mentally nor physically ready for pregnancy

and often suffer sexual and reproductive health complications due to having babies before their bodies are ready.<sup>344</sup>

### 9.3.4 National Child Protection Laws and Mechanisms

#### 9.3.4.1 Background

Côte d'Ivoire adopted a new Constitution in 2016. This Constitution affirms the country's determination to build the rule of law upon which human rights, public freedoms, human dignity, justice and good governance are promoted, protected and guaranteed; and expresses its commitment to promoting equality between men and women.<sup>345</sup>

Côte d'Ivoire does not have a self-standing Children's Act. However, the government has adopted a Child Protection National Policy (*Politique nationale de Protection de l'enfant - PNPE*) and the National Policy for the Legal Protection of Children and Youth (*Politique nationale de protection judiciaire de l'enfant et de la jeunesse - PNPJEJ*), which are national reference frameworks for the protection of children in the country.<sup>346</sup> The PNPE and the PNPJEJ provide for a national and decentralized system that coordinates multi-sectoral services to prevent and manage children who are victims of violence and exploitation as well as children in conflict with the law in an integrated manner. Children in conflict with the law are covered under the Sub-Directorate for Combating Child Trafficking and Juvenile Delinquency that provides assistance to minors. The aforementioned Sub-Directorate falls within the Directorate of Criminal Police, which reports to the Ministry of the Interior.

Other committees that have been established to address various issues affecting children include the National Committee against Violence against Women and Children (CNLVFFE); the Committee to Combat Child Trafficking

and Labour; and the National Monitoring Committee on Actions to Combat Slavery, Exploitation and Child Labour established in 2011.<sup>347</sup>

#### 9.3.4.2 The Sub-Directorate for Combating Child Trafficking and Juvenile Delinquency

This Sub-Directorate, which used to be known as the '*Brigade de Mineurs*' (Brigade for Minors), works with minors between 0 to 18 years who are victims, witnesses or are in conflict with the law. Even though the Sub-Directorate has only a physical presence in Abidjan, it has national competency. Without local representation, the Sub-Directorate works with focal points (gendarmes and police stations) in the rest of the country. Thereafter, resources permitting, representatives from the Sub-Directorate travel to various locations.

Based on interviews conducted with representatives from this Sub-Directorate,<sup>348</sup> the Sub-Directorate forms part of the National Monitoring Committee on Actions to Fight Trafficking, Exploitation and Child Labour, presided by the First Lady Dominique Ouattara. As a result of this relationship, the Sub-Directorate has access to social workers who conduct interviews and hearings with children – this is not done by the police. Children can only be referred to the Monitoring Committee by an adult (parent, guardian, neighbour). If there is no adult, a social worker assists the child to lodge a complaint. Complaints can also be lodged via telephone, including anonymously. After an investigation is concluded, the Sub-Directorate works with the prosecutor who provides directives/instructions to the police. If a case has merit, the prosecutor requests the file for further investigations, which is beyond the purview of the Sub-Directorate.

According to the information gathered,<sup>349</sup> police officers do not receive specific child rights and child protection training as part of their basic training. Such training is provided when officers join the Sub-Directorate. This view was however contradicted by the National Human Rights Commission of Côte d'Ivoire (*Commission Nationale des Droits de l'Homme de Côte d'Ivoire* - CNDHCI),<sup>350</sup> which indicated that in the training centres for police and gendarmes, there is training on the rights of children. This also applies to social workers and members of the judiciary as all training centres have a module on child issues.<sup>351</sup>

In 2016 the Sub-Directorate received a total of 825 complaints on violations including sexual violence, rape, exploitation of children and trafficking.<sup>352</sup> It is, however, extremely under-resourced with a limited budget that does not cover basic supplies, transport to travel to various locations and has a minimal number of staff (2 police commissioners; 5 police officers; 3 social workers and 19 sub-officers). Instead, a number of the services provided by the Sub-Directorate are financed by donors/ international organisations - a factor which does not reflect prioritisation by the state in terms of budget allocation.<sup>353</sup>

### 9.3.4.3 National Child Protection Policy (PNPE)

The PNPE is complemented by a child protection action plan (2015-2018) for the implementation of the Policy that has been extended until 2020 to align it to the country's National Development Plan.

According to interviews conducted,<sup>354</sup> the general objective of the PNPE, which is administered by the Ministry of Women and Children, is to combat violence, abuse and exploitation against children. It is thus expected that the general result will be a reduction in

the incidence of cases of violence, abuse and exploitation. The prevention axis pursues a lasting change in mentalities so that adults refrain from abusive behaviour towards children. In terms of prevention, the policy is focused on two key interventions: the establishment and popularisation of a free helpline to report incidents of abuse (line 516) linked to a referral system made up of community social, judicial and security structures that provide support in service delivery and community sensitisation activities.

Due to absence of mechanisms to prevent and assist in case of violations of children's rights at the local level and zero tolerance for violence at family and community level, the Ministry plans to carry out awareness on the need to respect children's rights.<sup>355</sup> These interventions are aimed at changing beliefs and practices that regard beating a child, denying them the right to school or forcing them to get married early or against their will as acceptable. Through this process of community consultations, the aim is to set up Child Protection Committees located within communities, which monitor and report on possible violations (such as approaching the police/gendarmerie in the case of rape). The local committee's role is to inform the local structures in the community (public authority – police, gendarme, teacher, health worker) of a particular violation so that action can be taken.

In order to provide care to victims of violations, the Ministry has adopted a platform at both national and regional levels, which brings together representatives from government departments that have a bearing on child protection with NGOs and other actors. At present, a regional mapping has been undertaken of the various organisations and the services that they provide.<sup>356</sup> In this regard, UNICEF provided support to the Ministry of Women and Children in 2017 to draft a

decree on the creation of the National Child Committee.<sup>357</sup> Despite these developments, coordination is still weak. Regional state and civil society partners decide when to meet. This occurs independently from national Child Committee meetings to fill the gap of formally-established coordination mechanisms at all levels (local, regional, and national, including an Inter-Ministerial Committee). The decrees to enhance coordination have not been adopted since 2013. Moreover, at this stage, the state does not subsidise civil society organisations that render services on behalf of the state. The Ministry has developed two documents specifying requirements that would need to be met by civil society organisations and families who are willing to assist with the placement of children who need to be removed from their homes as a result of abuse. Whereas the documents have been drafted, they have yet to be formally adopted and applied nationwide. As pointed out by representatives from the Ministry, their adoption would enable the state to subsidise organisations that assist it in rendering services to children. When asked about the delays in the formalisation of structures and organs, the Ministry highlighted that since 2013, there have been four Ministers who have headed the Ministry, with the most recent Minister having only started in July 2018.

#### **9.3.4.4 National Policy for the Judiciary Protection of Children and Youth (PNPJEJ)**

Whereas the National Policy and accompanying action plan for implementation have been developed, they are yet to be formally adopted. The general objective of the PNPJEJ, which is administered by the Directorate for the Judicial Protection of Children and Youth (DPJEJ) in the Ministry of Justice, is to protect all children in contact with the judicial system and to offer them opportunities for family reintegration. Its prevention axis focuses on the reduction

of recidivism whilst the policy also includes a commitment towards working with children who are authors of crime and victims. Despite the absence of a formal strategy and action plan, the Directorate supports juvenile court judges in making decisions in civil and criminal cases to ensure that social and educational factors are taken into account in the decisions reached by juvenile court judges as part of a process whose fundamental objective, in criminal cases, must be rehabilitation rather than punishment.<sup>358</sup> In 2017, UNICEF supported capacity development of social centres and judiciary services in six regions. Ninety-six magistrates, judicial child protection educators and social workers were trained on national standards of the administrative and judiciary protection of children.<sup>359</sup>

In discussions with the Ministry of Women, Family and Children,<sup>360</sup> it was noted that adoption of the strategy is critical for their focus on fighting national impunity. The Ministry has noted that there are a number of legal issues that need to be addressed to enhance child protection. For instance, the Family Code and other pieces of legislation tend to prioritise the rights of the family over those of children. In terms of the Family Code, girls can marry from the age of 18 years and boys from the age of 21 years, whereas girls can consummate a marriage from the age of 16 years. There are problems with children born out of incest and adultery. In this regard, the father of a child born from incest is not required to give his name to the child, a practice that effectively punishes girls who are subject to these practices. There are also problems in qualifying cases of rape as a crime in terms of existing laws; only recently, the Minister of Justice said that rape should be considered a crime. Lastly, victims of sexual violence continue to be asked to produce a medical certificate before being allowed to report cases since this is a requirement in the

Criminal Code. According to the information gathered, this practice continues despite the fact that the Minister of Justice recently affirmed that the production of such a medical certificate should not be an obstacle that prevents victims from reporting such cases.

### 9.3.5 Access to justice for children

In Côte d'Ivoire, the juvenile justice system is governed by articles of the Code of Criminal Procedure (CCP), the Civil Code and the Criminal Code. They favour measures of protection, support, supervision and education adapted for children in conflict with the law before deprivation of liberty.

According to interviews conducted,<sup>361</sup> the DPJEJ assists children who are in danger, witnesses, victims as well as authors of crimes. However, there is currently limited juridical protection for victims and witnesses of crimes; this aspect has been identified as a weakness in the current legal framework.<sup>362</sup> The DPJEJ runs centres at various tribunals for the judicial protection of children and youth. Through these centres, the DPJEJ guides parents and their children in understanding their rights and in lodging complaints. It also carries out community awareness campaigns to encourage the reporting of violations against children.

Ivorian law defines three categories of crime with different sentence brackets for each. These are minor offences (contraventions), misdemeanours (*délits*) or crimes (*crimes*).<sup>363</sup>

#### 9.3.5.1 Law enforcement mechanisms in criminal matters

Law enforcement is not framed in the Constitution. In terms of the CCP, in criminal matters, law enforcement is vested in the

Judicial Police (*police judiciaire*), which falls under the Minister of the Interior and is responsible for preventing and investigating crime, gathering evidence and identifying perpetrators. The Office of the Prosecutor is in charge of leading criminal prosecutions; and the Investigating Judge (*Juge d'instruction*) is responsible for criminal investigations. The investigating judge systematically intervenes in cases of crimes and, on an optional basis, in cases of misdemeanours.<sup>364</sup>

The Ivorian judicial system is pyramidal, with 44 first instance courts (*Tribunaux de première instance and sections de tribunal*) at the lowest level, followed by three appellate courts (*Cours d'Appel*) and the Supreme Court at the top. In addition, the Jury Court (*Cour D'Assises*) has jurisdiction over crimes. There is no possibility to appeal the Jury Court's judgments, except with a cassation appeal in the case of acquittal or in the interest of law.<sup>365</sup>

The Ivorian Constitution states, in general terms, that it is the state's duty to protect children (as well as the elderly and the disabled) but does not give further indication as to what this general duty entails.<sup>366</sup> The CCP sets the age of criminal capacity at 10 years of age and regards children to be anyone younger than 18 years old. Ivorian legislation is silent on the arrest, police custody or police interrogation of children. The trial of children is regulated by a separate chapter of the Ivorian CCP. A children's judge (*Juge des enfants*) will conduct the investigation and is responsible for determining the age of the child and informing his or her parents or guardians of the criminal proceedings taken against the child.

Children are tried for minor offences (contraventions) and misdemeanours (*délits*) before a Juvenile court (*Tribunal pour enfants*) and for crimes (*crimes*) before a Juvenile Jury Court (*Cour d'assises pour mineurs*). In addition, children

must be tried separately from adults, except those aged 16 and older charged with a crime, who may be tried with their adult co-accused. All hearings before juvenile courts are held in camera except those before the Juvenile Jury Court. Children cannot choose their own legal representative; instead, a legal representative will be appointed by the prosecutor or the chairperson of the Bar. If there is no lawyer in the area where the minor is detained, the prosecutor may appoint a suitable person. Despite these efforts, the provision of legal assistance is often limited since private lawyers are often not available and may not receive full remuneration for their services. Representatives from the DPJEJ<sup>367</sup> also mentioned that in some instances, the representation rendered is not adequate; lawyers do not represent children well.

The CCP also provides for specific appellate courts and appeal proceedings for judgments made against children.<sup>368</sup> If the child has a legal representative, the latter submits the appeal on behalf of the child.

### **Sentencing of children**

The Ivorian Criminal Code provides clear rules regarding the sentencing of children. Any child aged 10 to 13 may be found guilty but cannot have a criminal sentence imposed on him or her; he or she can receive only measures of protection, assistance, supervision or education. In some cases, children aged 11 to 13 might be sent to the Centre for the Observation of Minors (COM) if they have committed violations that are not considered serious if their parents cannot be found. The DPJEJ and civil society organisations such as DDE-CI often assist with the location of parents to prevent children from having to stay at COM. Children aged between 13 and 16 years may be exempt from receiving a criminal sentence; alternatively, due to their status as children, they might benefit from a

shorter prison sentence than what is provided for adults. From the age of 13 years upwards, and if they have committed grave violations, they can be sent to the adult prisons. Children aged between 16 and 18, depending on the case, may benefit from an exemption of criminal sentence or from a shorter prison sentence. Children aged 13 to 18 and charged with a crime may be held in remand as a measure of last resort, in which case they must be separated from adults.

Children may also receive a prison sentence, as a measure of last resort, in a separate facility or wing of the prison. However, such a sentence may be imposed only if the child is younger than 21, at which age the young person must be either released or transferred to the general prison population. This decision is made by the judge in his or her ruling. Finally, infants and young children can stay with their mothers in detention until the age of two years. The law also regulates minors in detention.<sup>369</sup>

Despite the fact that children must be separated from adults whilst in detention, numerous actors repeatedly point to the fact that authorities continue to hold juveniles with adults in some prisons, as well as hold pre-trial detainees with convicted prisoners. Moreover, despite the fact that the COM is meant to be a separate facility for children, it is located in the same premises as the prison for adults. COM also lacks facilities for girls who are detained; consequently, girls stay with female inmates in the adult prison during the evenings and return to the COM daily for activities. Some commentators have also noted that children of female inmates often lived with their mothers in prison, although prisons accepted no responsibility for their care or feeding.<sup>370</sup>

At present, the Ministry of Justice, Human Rights and Civil Liberties, is undertaking a reform of the standard legislative texts, including the Civil

Code, Criminal Code and Code of Criminal Procedure. Some of the reforms include the reform of the assize court, the definition of certain offences contained in the Criminal Code and the establishment of alternatives to imprisonment for the punishment of minor offences. However, as noted earlier, these processes are experiencing significant delays.

Another aspect raised during the course of interviews in Côte d'Ivoire<sup>371</sup> relates to the training of children's judges and officers of the judicial police. According to some interviewees, such persons do not receive specialised training on children's rights. Moreover, the designation of a judge as a children's judge is not linked to the specialised training of a judge but rather to the designation of a particular court as a children's court. Once a court becomes designated as a children's court, the judge presiding it becomes a children's judge.

### 9.3.6 Military Justice Mechanisms

The government of Côte d'Ivoire is still taking steps to exercise its control over its armed forces, carefully trying to manage members who were supporters of the previous President. In 2017, the country experienced two attempted mutinies by its armed forces. In the first half of 2018, the government negotiated for approximately 2000 of its 25000 strong army to accept voluntary retirement.<sup>372</sup>

The security and defence forces of the country, falling under the Ministry of Defence, are made up of the Armed Forces of Ivory Coast (FACI). The FACI are made up of air, land, maritime forces, and the Gendarmerie. The national Gendarmerie, headed by a commander, mainly covers rural areas, outside of major urban centres, and is primarily mandated to maintain public order.

The military police and military tribunal are responsible for investigating and prosecuting alleged internal abuses perpetrated by the security services. This includes abuses perpetrated by military members deployed outside the country as part of peacekeeping missions. In view of this, it is relevant to ascertain measures that exist to ensure that members of military contingents who are deployed on missions can be held accountable for violations perpetrated against children in such situations.

Research indicates that in 2015 the military tribunal remained operational during the year, and there were some high-profile convictions for offenses committed during or after the post-electoral crisis. In August 2015, the Military Court of Abidjan convicted a major, formerly in charge of the protection of Simone Gbagbo, of murder, assault and battery. He received a 20-year prison sentence and was barred from the gendarmerie. Trials also progressed for additional security officials affiliated with Laurent Gbagbo, with charges ranging from military desertion to various violent crimes.<sup>373</sup>

The Code of Military Procedure (*Code de procedure militaire*) and the Military Function Code (*Code de la fonction militaire*) are pieces of legislation that govern the existence of military justice and tribunals. Recently, a law on military planning for 2016-2020 has also been adopted, whilst a draft decree on the status of military judges is due to be signed by the Ministry of Defence and the Ministry of Justice. This new status would give greater independence and authority to military judges in exercising their functions.<sup>374</sup> The armed forces have also adopted a charter of ethics and a code of military conduct. A revision of this charter and code is currently under way.

### 9.3.7 Engagement with the military and accountability mechanisms

Based on the interviews conducted,<sup>375</sup> it was established that during the period 2015-2016, whilst the United Nations Operation in Côte d'Ivoire (ONUCI) was still present in the country, the armed forces of Côte d'Ivoire were extensively trained on issues related to international standards of protection in relation to children and sexual violence and what to do in instances where soldiers come across children who are part of armed groups or forces. This training was one of the requirements for Côte d'Ivoire to be delisted from the Secretary-General's report at that time.<sup>376</sup> The training included the training of trainers. Some interviewees corroborated that the modules have been integrated into the basic training of the armed forces and also mentioned that there seems to be a law/decreed stating that the modules have been integrated. Another development is the designation of child protection focal points within the armed forces.

#### 9.3.7.1 Training of Armed Forces

Commentators noted that the armed forces lack an understanding of child protection issues and require appropriate initial and in-service human rights training. To remedy this state of affairs, in 2016, Save the Children partnered with the Ivorian Armed Forces Chief of Staff to prevent violations of the rights of the child before, during and after armed conflicts. In this partnership, Save the Children formed a pool of trainers composed of 30 focal points on rights and protection of the child. These focal points have been designated as such by the Chief of Staff and are distributed in the four (4) military regions of the Ivory Coast. To achieve lasting change of behaviour among the Military, modules of training on the rights and protection

of children have been introduced in the Military Training Curriculum. Save the Children has developed these modules in conjunction with the military. The modules incorporate both theoretical knowledge and practical scenarios to assist troops to understand how to react in the presence of children. Besides the basic training, Save the Children also carries out on-going workshops/conferences with officers and captains as opposed to focusing on pre-deployment training, since it is often unknown when the next contingent will be deployed. Importantly, the next contingent to be deployed (to CAR) will be the first contingent to have been fully trained by Save the Children.

#### 9.3.7.2 Existing measures to ensure accountability of peacekeepers in relation to children's rights

Interviews were conducted with troops, including senior officers who have been deployed on mission.<sup>377</sup> The interviews highlighted that in addition to enhancing the capacity of troops to understand the framework for child protection, there are a number of factors that may influence conduct beyond capacity-building, including experience, age, and psycho-social support (debriefing) to support deployed military members. These are discussed below.

#### 9.3.7.3 Requirements for peacekeepers to be deployed

According to the information gathered, in order to be deployed, peacekeepers are expected to have a clean disciplinary record, be in good health, have a military diploma, have completed training on international humanitarian law and human rights law and to have served for a period of at least three (3) years in the military.

In general, eight months prior to deployment, the projected pilot battalion comes together to undergo training on IHL and IHRL and expected



conduct whilst on mission. Further, and based on the mandate for the mission, pre-deployment training covers specific areas such as protection of civilians and child protection as well as the rules of engagement (i.e. use of force).

It was noted that even though UN documents outline that TCCs are expected to be consulted on the definition of mission mandates, this generally does not occur. It is common practice for TCCs to accept the mandate and rules of engagement as presented to them.<sup>378</sup>

#### 9.3.7.4 Vetting process

As part of the vetting process, the Human Resources division of the armed forces examines the record of each officer selected for potential deployment and liaises with the military tribunal and civil courts to establish if the officers have any criminal record or cases pending. The armed forces have a database that includes information about any violations or cases pending against officers. If officers have convictions, they are not selected for deployment. It was indicated that if a member of the armed forces rapes anyone or receives a sentence of five years or more, such person is dismissed from the Army.

Unfortunately, the armed forces do not publicise the list of names of the members of the armed forces that will be deployed on mission. This is of concern as civil society organisations are unable to provide information about any transgressions that such members might have committed but which do not amount to a conviction, and which could influence the selection of members to be deployed on mission.

It was further indicated that, in the case of UN missions, once the Ivorian Armed Forces conclude their vetting procedures of potential members to be deployed, the list is sent to the UN which undertakes its own vetting process and often shortens the list of members to be deployed.

#### 9.3.7.5 Child Protection during missions

In discussions with members of the armed forces it was noted that as much as there might be Child Protection Advisors (CPAs) within a mission (dependent on the mandate), such Advisors and Child Protection Officers (CPOs) do not form part of a national contingent. They are often found at the mission HQ. It was suggested that this practice should be changed to allow for a Child Protection Officer to be integrated into the national contingent with a view to providing on-going, permanent support to the deployed forces.<sup>379</sup>

Importantly, the interviews highlighted that as a result of training received, members of military contingents are well versed on the rules, international law and conventions that govern child protection in situations of armed conflict. However, challenges arise with the duration and routine of a mission. As explained by one interviewee, the challenges arise when members of a contingent are in the field for two or three months. Whilst initially they are disciplined and eager to serve, as time begins to pass and the routine of the terrain sets in, the attention of soldiers and the training they have received begins to wane. This is regarded as one of the reasons why there are SEA violations and misconduct amongst members of a contingent.<sup>380</sup>

A critical factor that impacts on the above is the age of deployed members. As it was noted in the interviews, soldiers who are in their 20s have different physiological and psychological needs from soldiers who might be 50 years old. They have different reactions and needs. It was suggested that, in order to ensure conduct is maintained within a contingent, medical staff, who can provide psychological support, form part of the contingent to assess behaviour and be available for debriefings, counselling,

assistance with stress management and support to contingent members.

### 9.3.7.6 Dealing with misconduct during missions

Based on the interviews conducted,<sup>381</sup> under the UN system, every member of a national contingent is expected to report all forms of transgressions and misconduct. Upon arrival in a mission, it was noted that there is an induction training where soldiers are told about standards of conduct and their duty to report any wrongdoing. Contingent members are also told that if they do not report someone who has violated the rules or the rights of others, there are grave consequences (i.e. disciplinary procedures, possible repatriation, etc.). Yet, it was recognised that despite these warnings, there are members who fail to report and hide information about violations. Battalion heads and company commanders monitor conduct and do regular reporting directly to the mission's HQ and to the TCC.

In cases where there is an allegation of wrongdoing, it was noted that there is often a cell, Human Rights, Child Protection and Protection of Civilians, which carries out preliminary investigations in all sectors (military, police, civilian component) sometimes in collaboration with the UN's Office of Internal Oversight Services (OIOS). This cell also engages in monitoring of all components. If there is a violation, this structure, together with United Nations Police (UNPOL), generally opens a docket and there can be immediate sanctions against those involved such as suspension of salary, arrest and repatriation. This docket is then submitted to the Division of Military Justice in Côte d'Ivoire. It is possible that investigators might be sent to the mission from the TCC. They come from the army but they do not form part of the deployed contingent. It was suggested<sup>382</sup> that such investigators should form part of the

contingent so that they are familiarised with the terrain and the context of the mission. Further, it was suggested that there should be someone to deal with issues of justice/misconduct as part of the contingent, as is the case with the UPDF in Uganda.

If a person is repatriated, then there is a commission of enquiry that looks into the issue. A military prosecutor decides whether there is a case to prosecute. This is done within the Ministry of Defence. How the matter is pursued depends on the nature of the case – there are a number of transgressions that are included in the Military Code and the Code of Conduct. However, if the transgression is not covered by these codes, then the legal matter proceeds to the civilian (as opposed to military) criminal courts. If the member is convicted, then he or she would need to serve time in civilian prisons. If a matter is handled within a military tribunal, proceedings are not open to the public. However, in Côte d'Ivoire, press conferences by the military prosecutor are held every three months to inform the public on violations and the progress in handling such violations. UN structures also demand follow-up and progress on the case regarding measures taken against a particular person.

### 9.3.8 Existing Oversight mechanisms to enhance child protection

Côte d'Ivoire has two mechanisms that have relevant oversight powers for child protection purposes: the National Human Rights Commission and the Ombudsman. However, the state does not have an Ombudsperson dedicated to children.

### 9.3.8.1 National Human Rights Commission of Côte d'Ivoire (NHRC)

Since it was established in 2012, the NHRC has had a central role to play in re-establishing a culture that promotes and protects human rights. The role of the NHRC has become increasingly more salient in view of the departure of UNOCI and the end of the Independent Expert of Human Rights' mission in June 2017.

The Commission has been involved in a number of areas, including:<sup>383</sup>

- (a) the protection of children in conflict with the law;
- (b) the monitoring of violations committed by the armed forces;
- (c) the monitoring of important trials concerning national reconciliation;
- (d) the situation of persons with disabilities; and
- (e) land conflicts and their impact.

In the area of monitoring of violations, the Commission has established a mechanism for coordinating with the armed forces of Côte d'Ivoire to document and follow-up on progress of violations committed by the military, as long as such matters are not being dealt with in the courts as the Commission cannot interfere with legal processes. This monitoring mechanism meets every month to review the situation on the ground. The meetings are held nationally and regionally. The documenting of identified cases has made it possible for appropriate measures to be taken against perpetrators and sanctions to be imposed. The Commission indicated that plans are underway to extend this monitoring mechanism to the national police and the gendarmerie.

However, there is still a need to bring the NHRC in conformity with the Paris Principles, in terms of independence and effectiveness.<sup>384</sup> The NHRC needs adequate resources to fund its activities

and work independently. Even though the Commission is a nongovernmental, independent body, its funding is fully reliant on approval by the Ministry of Justice.

### 9.3.8.2 Ombudsman

Title X11 of the Constitution establishes the Office of the Ombudsman, or *Mediateur*, who is appointed by the President of the Republic for a non-renewable six-year term upon recommendation of the President of the National Assembly and the President of the Senate. The Constitution states that the Ombudsman may not be prosecuted, arrested, detained or tried in connection with opinions or acts performed in the exercise of his official duties.

Even though the mandate of the Ombudsman is wide, it does have a sub-division geared towards the protection of children (*Service de protection de l'enfance*), through which the Ombudsman aims to raise awareness about the country's obligations in relation to the UN CRC and the ACRWC and empower children to know their rights. In 2017, the Ombudsman launched a programme to select Child Ambassadors for children's rights based on their performance after having been trained on the rights and protections of children.<sup>385</sup>

## 9.4 Senegal

### 9.4.1 Background

Senegal has a population of at least 15.5 million (2016), about a quarter of it concentrated around the capital of Dakar, and up to half in other urban areas.<sup>386</sup> After decades of very modest growth, the Government adopted the *Plan Senegal Emergent* (PSE) (Senegal Emergence Plan) in 2014 – a development plan designed to get Senegal out of a cycle of low-growth and weak poverty reduction. Senegal's economic performance remained strong in 2018, with

estimated real GDP growth of 7.0%, down slightly from 7.2% in 2017.<sup>387</sup> This growth momentum recorded since 2015 is expected to continue in 2019 and 2020 due to continued public investment under the Senegal Emergence Plan.<sup>388</sup> The country has, however, not succeeded in developing the human capital of its growing population. A 2011 survey (the most recent) calculated the poverty rate at 47%. Whilst poverty appears to have fallen by 4%-7% since then due to good economic growth, Senegal is still ranked 162 of 188 countries in the global 2017 Human Development Index (based on 2015 data).<sup>389</sup>

Senegal's high total fertility rate of almost 4.5 children per woman continues to bolster the country's large youth cohort – more than 60% of its 15.5 million population is under the age of 25 (40% is 14 years or younger).<sup>390</sup> Because of the country's high illiteracy rate (more than 40%), high unemployment (even among university graduates), and widespread poverty, Senegalese youth, particularly women, face dim prospects with thousands of them being forced to enter into marriages,<sup>391</sup> to beg in urban centres and are subjected to sexual abuse and physical violence. The recurrent exploitation, sexual abuse and inhumane subjection of children and young adults studying at a traditional Quranic school (known as talibés) to begging affects over 50 000 children, without a government solution in sight.<sup>392</sup>

Senegal has a tradition of stable governments and civilian rule and has managed to reduce violence through the maintenance of a ceasefire since 2014 in a local separatist conflict in the southern region of Casamance. The country has had just three major political transitions, each of them peaceful since its independence from France in 1960. Its serving president, Macky Sall, was elected in March 2012. In 2016, a constitutional referendum cut presidential

mandates from seven to five years. Senegal enabled the prosecution of Chadian dictator Hissene Habre by establishing a hybrid court, in collaboration with the African Union, within its legal system to try Habre as well as others responsible for international crimes committed in Chad during Habre's rule. In May 2016, he was sentenced to life imprisonment for war crimes, crimes against humanity, torture, and sexual slavery.<sup>393</sup>

#### 9.4.2 Ratification of International and Regional Instruments

As set out in Annex C to this report, Senegal has acceded to or ratified most of the key international and regional treaties and conventions with the exception of the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, which it has only signed. Unlike Côte d'Ivoire, Senegal has only signed the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention).

In addition, Senegal has ratified the Revised ECOWAS Treaty of 1993 and the Protocol relating to the Court of the Economic Community of West African States.

#### 9.4.3 Key child protection issues in Senegal

Child labour, female genital mutilation and child marriage are three of the main protection concerns affecting children in Senegal. Approximately 67% of Senegalese children aged 5 to 17 years are involved in child labour, affecting more girls than boys (78% versus 66% respectively).<sup>394</sup> The practice of female genital mutilation remains widespread. An estimated 25% of girls and women aged 15 to 49 have been cut, with strong disparities found across

the country's regions.<sup>395</sup> Similarly, child marriage remains common especially among girls. Data from 2015 shows that one third of women aged 20 to 24 were married before age 18 whereas 12% were married before age 15.<sup>396</sup> In addition to these violations, children continue to be subjected to various forms of violence, including psychological, verbal, sexual and physical violence (particularly within families and schools). In particular, 80% of parents reportedly use violence to 'educate children', whereas in schools, more than half of students from public schools and between 64% and 100% of children in Koranic schools (talibés) report experiences of physical violence.<sup>397</sup> Lastly, whilst approximately the births of 73% of children under 5 have been registered, serious challenges exist to ensure universal health coverage, particularly in rural areas.<sup>398</sup> Without birth registration, the age of children remains uncertain putting them at risk of detention by the justice system, conscription into the armed forces, marriage, sexual exploitation and child labour.

#### 9.4.4 System of Child Protection

##### 9.4.4.1 National instruments relevant to child protection

Senegal does not yet have a Children's Act or Children's Code. A draft Code, which encompasses all legislation related to children's rights was finalized and submitted for adoption in 2017. However, as of April 2019, the Code had not been adopted. Senegal has also embarked on a project for the creation of an Ombudsman for Children; however, it has yet to be implemented. Even though the Supreme Court has approved the bill for the creation of a Children's Ombudsman, it has yet to be considered by the Council of Ministers and submitted for legislative processing.

Despite these shortcomings, Senegal has enacted several laws that strengthen the

legal framework related to child protection such as the Family Code, the Criminal Code, the Criminal Procedure Code, the Law on Human Trafficking, the Labour Code, the Law Forbidding the Practice of Female Genital Mutilation and Excision and the Law Prohibiting Child Begging. It has also adopted a policy to end child marriage.

Government officials interviewed<sup>399</sup> emphasised that Senegal is committed to the protection of children. In this regard, emphasis was placed on the creation of a separate ministry, namely that of Good Governance and Child Protection, as an indication of the importance that the Senegalese government gives to the protection of children. The Ministry was made up of the Directorate for the Promotion of Children's Rights and the Protection Directorate. The Directorate for the Promotion of Children's Rights was aimed at ensuring that the country's legal frameworks are aligned to regional and international conventions on child protection and at playing a monitoring role while the Protection Directorate was meant to be focused on giving effect to the implementation of the National Child Protection Strategy. Unfortunately, following the national presidential elections in February 2019, this Ministry was disbanded. Instead, child protection (at the exclusion of child promotion) issues are now subsumed under the Ministry of Women, the Family, Youth and Child Protection.<sup>400</sup>

The National Child Protection Strategy (*Stratégie Nationale de Protection de l'Enfant - SNPE*) dates back to 2013 and it is aimed at creating a protective and secure environment in which children, including talibé children, benefit from appropriate services and are neither abused, exploited, nor needlessly separated from their families and are provided with appropriate services. The strategy provides for a mechanism to enable coordination across government departments that have a bearing on protection

and to enable children to be referred for specific services and follow-up in areas related to birth registration, health, justice, social assistance, law enforcement, amongst others. However, the strategy has been accompanied by a low level of implementation mainly due to the lack of sufficient resources, overlapping and duplicative interventions, and inadequate coordination.<sup>401</sup>

To address this shortcoming, the government has established a National Inter-Sectoral Committee for Child Protection (*Comité intersectoriel national de protection de l'enfant - CINPE*) and aims to establish departmental committees on child protection (CDPEs) in each of the 45 departments in Senegal to coordinate the implementation of the National Strategy on Child Protection. A national executive committee implements all CINPE strategic and political decisions. Under the Executive Committee, four thematic commissions (policy and promotion, prevention, alternative care, monitoring and evaluation and information management) were created to manage priority actions requiring the interventions of several ministries. The role of these commissions is to advise and guide the work undertaken on specific themes in view of the development of programmes and specialized tools within the framework of the National Child Protection Strategy. It is expected that the thematic commissions and the Executive Secretariat of the CINPE will work on integrating the thematic action plans into the National Plan of Action for Child Protection.<sup>402</sup>

The departmental committees on child protection (CDPEs) are the expression of child protection at the local level. They are constituted by representatives from all major ministries having a bearing on child protection (such as health, education, social services, security (police, Gendarmerie, military) and have the power and capacity to convene various

entities to enable access to services for children in need of protection.<sup>403</sup> The committees are also made up of a number of NGOs and community structures. The aim is that, by working together with a multiplicity of actors, the state will be able to document cases of protection as well as provide the necessary services or referrals to services in a coordinated way.

There are, however, a number of challenges in ensuring that the departmental committees are fully operational. For one, the committees do not allow for child participation or direct representation of children. This is an aspect that has attracted the attention of a number of civil society organisations, as noted by the *Coalition Nationale des Associations et ONG en Faveur de l'Enfance (CONAFE)*<sup>404</sup> and *Plateforme pour la Promotion et la Protection des Droits Humains (PPDH)*,<sup>405</sup> and forms part of their advocacy activities. Moreover, mandates across institutions responsible for implementation remain unclear and overlapping. There is also a lack of coordination between such institutions, especially between national and decentralized entities. In discussions with government representatives,<sup>406</sup> concerns were raised that a number of NGOs, which provide valuable services to children, do not work through the established structures. Another concern raised was the lack of alignment between the priorities set by various child protection NGOs and their perceived unwillingness to align their activities to those of the government in relation to child protection. In this regard, government representatives reiterated the importance of NGOs respecting the national strategy and government priorities as well as actively lending their support to the government in the implementation of local coordination mechanisms.

### 9.4.5 Access to justice mechanisms

The key pieces of legislation that govern access to justice for children in Senegal are the Code of Criminal Procedure, the Penal Code and the Family Code. There is a lack of coherence in the definition of a child's age of majority across various pieces of legislation. Thus, Senegalese law assigns several statuses to the child and defines his or her minority (or majority) according to age thresholds that may vary depending on the context. Therefore, the child, beyond being a victim or a witness of a criminal act, may be a minor in conflict with the law (i.e. the child as perpetrator of a crime) or a child in danger or at risk of falling into delinquency as a result of his or her behaviour or living conditions. Children require the assistance of their parents, guardians or other specialised bodies to access justice, especially in Children's Tribunals.<sup>408</sup>

Under the Family Code (Article 276), a minor is "a person of either sex who has not yet attained 18 years of age." Importantly, there seems to be no defined age for criminal responsibility for children in Senegalese law. In many countries, it is stipulated that below a certain age, a child cannot be held to be criminally responsible because he or she lacks the capacity to differentiate between right and wrong. The Penal Code of Senegal does not seem to define criminal capacity. It simply says that a child under the age of 13 years cannot be detained. However, this does not mean that a child below 13 years of age cannot be prosecuted. Since the maturity of the child is not taken into consideration, it was noted that the role of the judge becomes critical in such instances.<sup>409</sup>

Whereas the Family Code defines a minor as someone who is younger than 18 years of age, a child in danger is defined as someone 21 years

or younger whose health, safety, morals or education is compromised. The Code of Criminal Procedure governs the provisions applicable to this group of children.<sup>410</sup> Besides exhibiting contradictions at family level, a number of child protection laws such as the age of marriage for girls are in conflict with international laws.<sup>411</sup>

Under the Senegalese juvenile justice system, judicial protection can be divided into two main categories, namely: that which is accorded to children in conflict with the law (defined as children who are below 18 years of age) and that accorded to children in danger/at risk (defined as children who are below 21 years of age). The latter category includes: victims of crime or abuse, as well as children who are vulnerable (i.e. handicapped, *talibés* whose parents are unable to protect them), who lack access to education or health, whose parents are unable to provide for their education or well-being, or children whose morality is compromised (i.e. being asked to work as prostitutes by family members who are themselves involved in prostitution, etc.).

Children who are victims or witnesses of a crime are considered under the rubric of 'children in danger' and do not enjoy a specialised form of protection.

#### 9.4.5.1 Children's Tribunals

Children between the ages of 13 and 18, who are criminally liable under the Code of Criminal Procedure, and children who are in danger, are brought before Children's Tribunals that have special jurisdiction over such matters. These courts have been established in Senegal's 14 regions. High Courts generally house the Children's Tribunals. The President of a High Court designates a judge as a Children's Judge to take charge of cases concerning minors. A Deputy Prosecutor in charge of children's matters supports the Children's Judge in the process of investigation. The latter provides

instructions on investigations to be carried out in such cases and, usually, the judicial police carry out such investigations. The prosecutor is in charge of the judicial police and gives them instructions on investigations.

The powers of a Children's Tribunal are quite broad: it can determine measures of protection, assistance, monitoring and education, if deemed appropriate. Children's tribunals can, and if circumstances require, set penalties as provided for in the Penal Code, but which are often adapted (i.e. reduced sentences). Where protection, assistance, and supervision measures ordered by the Children's Tribunal do not apply because of the behaviour of the minor child, the court can then hand down a criminal sentence. When it is necessary to safeguard a child, the court can determine his or her placement from a range of possible options depending on what is more suitable for the child.<sup>412</sup>

In Children's Tribunal proceedings, the judge makes a ruling after hearing the minor, the witnesses, the parents (or guardians), the public prosecutor, representatives from entities working with children and the defendant. If the child's best interests so require, the child may be exempted from appearing at the hearing. When necessary, a judge will ask to hear the child alone, away from the presence of his or her parents (in cases where judge suspects that child does not feel free to provide his/her view or where the parents are the problem).<sup>413</sup> In cases where children are implicated in a crime, they are heard separately from others who are implicated.<sup>414</sup> Any case that involves a minor child is subject to strict confidentiality and the number of persons admitted to the proceedings is limited.

In criminal cases where children are implicated in the commission of crime, it is mandatory for the Judge to ensure that the child is provided

with a lawyer if the child or his/her family cannot afford one. Such lawyers are paid by the state. Unfortunately, however, there is no requirement for lawyers in Senegal to carry out a certain number of pro-bono hours as part of their professional requirements.<sup>415</sup> In civil cases, lawyers or counsellors are not automatically provided to children who cannot afford them.<sup>416</sup> Depending on the case, it is expected that the judge will act in the best interest of the child to actively protect the child.

When handing down judgment or an order, the judge generally takes the time to explain the measures that he or she intends to adopt in respect of the child. The child is given an opportunity to be heard and to propose measures. It was noted that there is generally better adherence to the measures imposed if the child commits to them rather than when a judge simply imposes them.<sup>417</sup> The judgment is rendered *in camera*, in the presence of the minor and no details about these hearings, the judgment or the identity and personality of the child can be published.<sup>418</sup> However, it was noted that there are currently no child-friendly hearing rooms – a room is simply designated for children's hearings.<sup>419</sup> Children's Tribunals are also not in a position to cater for children's basic needs such as food or water in cases where hearings might be prolonged.<sup>420</sup>

In criminal cases where minors are involved, the judge tries to dispose of (finalise) the case at the first hearing, as long as the parents/guardians are present (even if the civil party is not present). There might be a postponement if it is necessary to have the other party present (i.e. to establish the truth); otherwise, cases are finalised as soon as possible.<sup>421</sup> Importantly for purposes of this project, it was indicated that in criminal cases, it is not necessary for the victim to be present; the presence of the victim (i.e. a foreign child who is the victim of a violation by a peacekeeper)



would only be necessary in cases of civil claims (damages).<sup>422</sup> In other words, in cases where the victim of a violation is not Senegalese, it might not be necessary for the victim to be present for the perpetrator to be convicted. However, it will be necessary for the complainant to be present in a civil claim against the perpetrator (i.e. damages or maintenance in the case of a child born out of a rape). AJS indicated that this process would need to be coordinated through the Embassy of Senegal in the mission country and the Ministry of Foreign Affairs in Senegal, and informed by any agreements that might exist to enable this process.<sup>423</sup> However, it was noted that the state would be unlikely to cover the travel costs of the victim.<sup>424</sup>

Importantly, whether in cases of children in conflict with the law or children in danger, the Children's Tribunal may review its own decisions.<sup>425</sup> For instance, initially, in a criminal case, a Tribunal might order that a child be placed in prison. However, based on improvements in conduct/behaviour, the Children's Tribunal has the power to review the sentence thus leading to the child being placed elsewhere (or vice-versa).

#### **The Directorate of Supervised Education and Social Protection – Ministry of Justice**

Within the Ministry of Justice, the Directorate of Supervised Education and Social Protection (DESPS) is the entity in charge of providing for children who are in danger or in conflict with the law. This Directorate is responsible for services such as prevention, assistance, child protection, family mediation, vocational training and socio-professional reintegration of children in conflict with the law. The DESPS has built four types of centres that have targeted purposes in the education and protection of children: first reception or 'rescue' centres, centres for child safeguarding, multipurpose centres and social adaptation centres.<sup>426</sup> The problem, however, is that the staffing of these institutions is not able

to accommodate all the children who need to be there. To illustrate, there are only 3 'rescue' centres in the 14 regions of Senegal.<sup>427</sup>

Children can also be designated to undergo rehabilitation in an open environment. A key structure that provides external education and support services is known as AEMO (*L'Action Éducative en Milieu Ouvert*), which is set up in each of Senegal's administrative regions, at each High Court and other local courts. AEMO provides services for children in conflict with the law and children in danger/at risk including reception, observation, open re-education, mediation, and prevention. AEMO's regional offices are also responsible for the coordination of hearings, the provision of social assessments, family mediation, as well as the development, implementation and monitoring of specific educational projects for each child throughout the judicial process as well as legal assistance. Whilst the work of AEMO is commendable, it was noted that it lacks the necessary capacity to deal with demand.

#### **9.4.5.2 Recent developments in relation to the juvenile justice system**

In 2016, the Committee on the Rights of the Child welcomed efforts by the government of Senegal to revise the Penal Code and the Criminal Procedure Code, which will provide the opportunity for children aged 13-18 who are in conflict with the law to receive assistance and protection and to benefit from defined alternative measures to detention. However, the Committee nonetheless highlighted that the current Penal Code lacks specificity on the social and protection measures for children in conflict with the law, as well as on clear mechanisms to support children and the family so that they can benefit from such measures.<sup>428</sup> Moreover, the Committee noted with concern that Children's Tribunals lack specialized juvenile judges, whilst

children have not only been deprived of their liberty (not as a last resort) but have also been detained in adult prisons.<sup>429</sup>

To remedy the shortcoming of training amongst persons involved in juvenile justice, since 2016 the Judicial Training Centre in Dakar has, with the support of the Swiss Government, launched a Juvenile Justice Training Programme. Trainers composed of magistrates, specialized educators, lawyers, prison officers, social workers, police officers, and gendarmes are expected to undergo specialised education courses that will enable them to train others.<sup>430</sup>

The Juvenile Justice Bill, which is meant to be incorporated into the new Code of Criminal Procedure, includes the following key provisions, incorporating some protections for child victims and witnesses:<sup>431</sup>

- Juvenile courts will in future form part of courts of first instance;
- Specialized units responsible for the protection of minors will be created within the local and national police services;
- The duration of police custody will be limited to 24 hours, renewable once;
- The right to legal counsel will be guaranteed from the first hour of custody;
- An alternative to police custody will be provided by making it possible for a minor to be entrusted to a reception centre pending a request for custody valid for a period of 72 hours;
- The pre-trial detention of a minor will be subject to a limit of three months for minor offences and six months for serious offences;
- A new procedure involving a suspended sentence linked to a probationary period of three to six months will be established in addition to other penalties that mostly involve alternatives to detention, although detention will not be ruled out; and
- Juvenile victims will be comprehensively

defined in law and will benefit from an extension to the statutory limitation under ordinary law.

#### 9.4.5.3 Challenges in relation to access to the juvenile justice system

Whilst there are some steps that have been taken to improve the juvenile justice system in Senegal, a number of actors interviewed raised concerns about the absence of the necessary political will to prosecute perpetrators, particularly if they involve members of the security forces. It would seem that such political will is often absent thus acting as a dissuasive factor for children, whether victims or witnesses of abuses or violence, to report such cases. To illustrate, some NGO representatives indicated that the courts often do not apply maximum sentences for perpetrators of rape. It was noted that perpetrators are given two years as opposed to the allowed 10 years; there are often no additional penalties (i.e. increased sentences) imposed where the victim is a child.<sup>432</sup> Representatives from the justice system interviewed did not endorse such views but instead highlighted that sentences depend on the age of the victim, the type of rape (whether a gang rape or not), as well as mitigating circumstances, amongst other factors.<sup>433</sup>

In relation to social and legal assistance, whilst the state relies on AEMO to render such assistance, there is only one representative per each of the 14 regions in Senegal. Even though the state has a duty to provide such assistance, in many instances attorneys are not paid for their services and refuse to assist; children are often denied legal assistance at the time of detention. This duty then falls on civil society organisations which aim to assist children.<sup>434</sup>

From the interviews conducted, one significant drawback of the existing juvenile justice system is

that there is currently no protection for children who are victims or witnesses of crimes<sup>435</sup> - a factor that can act as a deterrent to children from coming forward. There is currently nothing contained in the Code of Criminal Procedure or the Penal Code to protect child victims or witnesses.<sup>436</sup> The fact that the victim is a child does not confer specific rights on that child; instead, a child who is a victim is treated as an adult, subject to the common law and does not have special protection derived from his or her status as a child.<sup>437</sup> In court, a child who is a witness or victim is assisted both by the parents (where available) and by the judge (who acts on the basis of the best interest of the child). However, beyond the court setting, there are no protections for children against possible reprisals. In this regard, Senegalese law falls short of the standards set out in the UNCRC. Moreover, even though child victims and witnesses might be in great need of psychosocial support and legal assistance, there are no express provisions that entitle them to access these services. For instance, there is no legal mandate for AEMO to intervene to support these children and their families, thus leading to situations where children and their families are unaware of procedural issues and lack knowledge about existing assistance mechanisms.<sup>438</sup> The only way for children to access such services is by order from a judge.

Another important shortcoming of the existing juvenile justice system is linked to the duties and training of judicial actors who work on children's matters. In many regions, there is only one judge that presides over the court and therefore such a judge deals with matters affecting children as well as all other matters.<sup>439</sup> This is similarly the case for prosecutors. As a result of the shortage of staff, judges and prosecutors are unable to specialise on juvenile justice matters. Similarly, there is currently no specialised Children's Unit within the Gendarmerie - there is no *Brigade de Mineurs* (Children's Section).<sup>440</sup> The judicial

police, who carry out investigations, do not receive special training on how to interview and interact with children. Like judges and prosecutors, they are tasked with investigating all cases (whether they involve children or not) and do not specialise in dealing with children. With regard to training, the Judicial Training Centre provides an initial module that is six months long, which includes aspects of juvenile justice. However, beyond this initial training, more specialised training is only acquired through special projects (such as training initiatives with the Swiss government discussed earlier), through seminars, or by pursuing additional training overseas. In this regard, a number of interviewees highlighted the need to enhance the training on children's rights that is received by the various actors in the juvenile justice system.<sup>441</sup>

#### 9.4.6 Security forces and law enforcement

Police and gendarmes are responsible for maintaining law and order within Senegal. The army shares the responsibility in exceptional cases, such as during a state of emergency. The National Police fall under the Interior Ministry and operate in major cities. The Gendarmerie is part of the Ministry of Defence and primarily operates outside of major cities. The armed forces consist of approximately 20,000 troops; as of 31 January 2018, Senegal contributed a total of 3,219 personnel to UN Peacekeeping missions (3103 male and 116 female).<sup>442</sup>

#### 9.4.7 Engagement with the Police and Existing Accountability Mechanisms

Whereas Save the Children has not focused many of its training interventions on the Senegalese police force, an interview was conducted with a representative from the

police<sup>443</sup> to understand existing accountability mechanisms considering that Senegal deploys both Formed Police Units (FPUs) and Individual Police Officers (IPOs) for peace support operations in the Continent as well as Haiti and there is evidence of sexual violations by deployed Senegalese police officers.

To illustrate, as of September 2018, the UN tracking database for SEA allegations showed that there were allegations against 23 Senegalese peacekeepers (21 police officers and 2 military personnel).<sup>444</sup> An allegation of transactional sex was made against 14 members of the Senegalese FPU serving with the UN Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) between 2016 and 2017. UN payments of the accused were suspended as an interim measure whilst the cases were under investigation. As of September 2018, nine (9) of these cases were concluded and dismissed on the grounds of insufficient evidence, whilst five (5) cases were found to be substantiated.<sup>445</sup> According to the UN database, these five officers were repatriated and jailed.<sup>446</sup> The fact that police are a key component of national contingents and are entrusted with coming into contact with children through their patrolling duties, the training of police peace-keepers might present a future area of intervention for Save the Children.

It was noted, however, that FPUs are predominantly made up of Gendarmes and not police officers. Currently, six out of the eight Senegalese FPUs deployed are made up of Gendarmes.<sup>447</sup>

#### **9.4.7.1 Vetting and selection of FPU members**

It was indicated that the Senegalese police relies on the United States' IPPOS (International Police Peacekeeping Operations Support)

program to assist Senegalese police with the vetting process. IPPOS is a United States' government programme that aims to train, equip, and support more than 4,500 police from nine partner countries, one of which is Senegal.<sup>448</sup> Two months prior to the start of pre-deployment training, a list is sent to IPPOS for vetting purposes.

For selection, potential troops to be deployed must undergo a series of practical tests to qualify. Police from across the country are able to apply for deployment. One of the requirements is that a police officer must have no conviction in the four years prior to selection; otherwise, he or she is excluded.<sup>449</sup> In cases of deployment as part of UN missions, it is the practice that a team from the UN comes prior to deployment and documents that no member has a criminal record.

The issue of the age of police officers to be deployed was raised since more mature and experienced police officers might be better suited for deployment and are able to deal with the psychological and physiological challenges experienced during missions. However, it was noted that while it is true that more mature police officers might be less likely to be involved in incidents of sexual abuse/rape, they might be unable to perform the physically taxing tasks allocated to police contingents during missions (i.e. crowd control, protection to Special Units and protection of UN personnel and UN premises).

#### **9.4.7.2 Training on child protection**

The police representative interviewed indicated that awareness training on children's rights and child protection currently takes place during the pre-deployment phase; it is not currently integrated into the basic training curriculum for the police.<sup>450</sup> Civil society organisations indicated that even though there are capacity-

building initiatives with members of the police and gendarmerie, these initiatives are insufficient and require reinforcement considering that laws change and there is turnover within the police services.<sup>451</sup>

It was noted that very theoretical child protection training is provided in relation to the six grave violations against children, protection of civilians and the protection of vulnerable groups (women, children, disabled persons). This training usually takes approximately 2-3 hours and it is quite general. During missions, training is undertaken to lay down the expected conduct/behaviour among deployed personnel; there are on-going talks about mission principles, how to behave and how to report incidents. It was noted that police officers also receive training by the UN in relation to SEA and stress management.<sup>452</sup>

Upon return from mission, Police Commanders undergo a process of debriefing in which they share their experiences with the next contingent that will be deployed, as a means of enabling the next contingent to understand the mission context and what to expect once deployed.<sup>453</sup>

#### 9.4.7.3 Child protection during missions

According to the Commander interviewed, there are no child protection focal points within the police contingent (FPUs). There is an investigator that forms part of the contingent, particularly in relation to SEA violations.

When asked about existing mechanisms for community members during missions to report possible violations, it was noted that local police stations in the mission country have Women's Desks and the UN also has a Child Protection Unit. A report can be made at the UN base or at a police station. The matter is usually referred to OIOS for investigation. It was also

reiterated that every police officer who receives a complaint/report of abuse/misconduct is duty bound to report it to OIOS.

Community engagement by police contingents usually takes the form of community policing. By means of the latter, the police aim to make the community aware of their own security; they assist communities and support cooperation between the police and the community. Like CIMIC, they also engage in Quick Impact Projects (QIPs) to assist and thus gain the trust of the host community.

Female IPOs, who are often placed at the Women's Desks at police stations, also approach local women through visits to villages and are available to discuss issues of abuse/maltreatment and blackmail (especially in societies where the justice system does not work in favour of women).

#### 9.4.7.4 Dealing with misconduct during missions

If there is an allegation of misconduct by a police officer, OIOS and the Senegalese investigator cooperate to investigate the matter. It was noted that Senegalese investigators receive limited training on how to talk to/ elicit information from children. If there is an allegation of SEA, it was noted that such police officers would never be deployed on a mission again. It was indicated that such person's name is entered into what was described as the UN's 'black list'.<sup>454</sup>

If a police officer is accused of a SEA violation, he or she might have his or her immunity waived and thereafter tried in the country of deployment. Thereafter, he or she would be repatriated and serve the sentence in his or her home country.

The Commander made mention of relatively recent UN rules regarding misconduct which

state that if there is a member of a contingent who is found to be responsible for a violation (in relation to SEA), then the whole contingent could be repatriated.<sup>455</sup> In other words, national contingent commanders become responsible for the misconduct of their contingent members. According to the Commander, this has resulted in contingent commanders being more vigilant in monitoring the conduct of their subordinates.

#### **9.4.8 Engagement with the military and accountability mechanisms**

For a number of years, Save the Children has been working with the office of the Chief of Staff of the Armed Forces in order to give effect to the Accra Declaration and build the capacity of the Senegalese armed forces in child protection prior to mission deployment.

##### **9.4.8.1 Training of Armed Forces**

Save the Children has been successful in working with the armed forces to establish a Child Rights and Protection Unit (SDPE) within the office of the Chief of Staff of the Armed Forces and in developing training modules to be incorporated at all levels of training. Moreover, it has entered into an agreement with the Armed Forces to carry out the training, on the basis of the developed modules, by way of training trainers within the Armed Forces and providing support in the delivery of such training.<sup>456</sup>

At present, each of the six training schools of the armed forces has developed its own bespoke training manual based on existing ECOWAS Training Toolkit. Save the Children has printed the manuals and it is expected that the schools will begin to use them for training towards the end of the year.<sup>457</sup>

In addition to the training, Save the Children has worked with the Armed Forces to develop a code of conduct that contains basic principles to be respected when dealing with children and has also developed a pocket guide given to all members of the Armed Forces to act as a quick reference guide whilst deployed.

Pocket guides are also an example of the various types of training materials used to ensure that the armed forces are able to convey information across various literacy levels. Rank and file soldiers often have limited literacy and therefore accessible materials that are able to convey messages through images/graphics are quite important. Recently, approximately 800 pocket guides were distributed to the military contingent that was deployed to Mali.<sup>458</sup>

As much as child protection training continues to be carried out with troops, there are limited ways to measure the impact of the training received. During the interviews, it was noted that upon return from mission, contingent members undergo a period of debriefing. Moreover, heads of the various sections (i.e. contingent commander, company commanders, etc.), together with the Prevention and Security Directorate of the Armed Forces, also hold debriefing sessions with the Army Chief of Staff.<sup>459</sup> However, it was noted that the Child Protection Focal Point and the Head of Training for the Army do not participate in such debriefings.<sup>460</sup>

Over and above the initiatives undertaken by Save the Children to sensitise potential Senegalese peace-keepers in the area of children's rights, standards of conduct, and violations of children's rights, interviews with military officers<sup>461</sup> highlighted that measures such as vetting and mechanisms during missions also help to ensure accountability of deployed members. These are discussed below.

#### 9.4.8.2 Requirements for peacekeepers to be deployed

Generally, it was noted that members to be selected for a mission need to be in good health (undergo a medical examination), and must be of good character. Unfortunately, it was not possible to obtain information regarding additional requirements such as minimum age of members, years of service in the armed forces, level of education/training, and prior experience on a mission as possible pre-requisites for deployment.

#### 9.4.8.3 Vetting process

In line with requirements by the UN, the Senegalese armed forces undertake a process of verification and due diligence of personnel to be deployed. The army has a database with information regarding a member's conduct, reports on performance in previous missions (if applicable), as well as information concerning legal cases pending against such persons (military tribunals, civil or criminal courts).

One of the challenges regarding the process of verification, however, is that the list of potential personnel to be deployed is not made public. In view of this, it is not possible for entities within civil society to provide information about the conduct of such personnel that might not amount to formal legal charges but which nonetheless could point to the potential of a particular person to do harm to children.

#### 9.4.8.4 Child protection during missions

According to the information gathered,<sup>462</sup> upon arrival at the mission, the military contingent receives induction training which includes training on the duty to protect and to report any violations or wrong-doing by any member of the contingent. As part of the training, members are reminded of the grave

consequences that a failure to report violations could carry. However, there does not seem to be any additional training specifically on child protection, which is carried out during missions.

When deployed, a national military contingent works closely with the Civil-Military Coordination (CIMIC) Cell in the field. The CIMIC Cell acts as the link between the contingent and the community and provides information about the terrain of operations (i.e. population, context, social and political factors to consider, who needs to be protected). CIMIC members undergo pre-deployment training with focus on sensitisation about communities, women, children; relations with community members – what is allowed and not allowed; and cultural understanding of the operational context.<sup>463</sup> During missions CIMIC staff participate in daily mandatory meetings to plan the contingent's activities (i.e. patrols), which includes a briefing on rules of conduct and context sensitisation (including cultural customs).<sup>464</sup> Upon return from the operations, members of the contingent participate in a debriefing session to share experiences/developments.<sup>465</sup>

When asked about existing mechanisms for children and communities to raise concerns about possible violations, it was noted that Child Protection Advisors (CPAs), who are civilians, form part of the CIMIC Cell. The military contingent supports the activities of CIMIC. CIMIC engages in a number of activities to build rapport with communities during missions, including Quick Impact Projects (QIPs). CIMIC also has a desk, usually next to the contingent's hospital during missions, where women/children come for information.<sup>466</sup> In addition to reporting matters to CIMIC officers, it was noted that community members can report matters to the CPAs, the Chief of Mission and other civilian officers who engage with the community including civilian police (CIVPOL), military

observers (MILOBS), and IPOs who participate in patrols.<sup>467</sup>

CIMIC representatives indicated that currently there are no CIMIC female officers. However, the army is starting to incorporate female social assistants as part of the CIMIC contingent. Without female CIMIC officers, in places like Darfur, Senegal has relied on local women to work with the CIMIC component to communicate with women. CIMIC officers indicated that there is a need to enhance the child protection training of CIMIC staff and of social assistants (particularly women) who are starting to be deployed to missions.<sup>468</sup>

Whereas there are CPAs who form part of the CIMIC teams, there are currently no dedicated Child Protection Officers or Child Protection Focal Points that form part of the national contingent. According to the UN's 2017 Child Policy in PSO guidelines, battalion commanders are expected to appoint full-time child protection officers whereas each company commander is expected to designate a child protection focal point.

#### 9.4.8.5 Dealing with misconduct during missions

During our interviews,<sup>469</sup> it was noted that if there is an allegation of misconduct by a member of a national contingent, the military police and national investigators carry out the investigation during missions. In particular, it is the *Brigade Prévôtale* or Provost Unit, a division of the Gendarmerie, that investigates the conduct of the armed forces, including accidents, infractions, as well as proper use of military equipment.

Members of the Provost Unit form part of deployed military contingents. During missions, their camp is separate from that of the military contingent. Members of the

Provost Unit accompany the military when they undertake operations during missions. If there is an allegation of misconduct by a member of the military contingent, the Provost Unit undertakes an investigation. It cooperates with the Prevention and Security Directorate of the Armed Forces, with OIOS and with the local police.<sup>470</sup> The investigation can include DNA and other tests, depending on the nature of the complaint. In cases where Senegal chooses not to carry its own investigation and relies on the UN to do so, it respects the findings by the UN. Once the evidence is gathered, the Provost Unit communicates the findings to the Chief of Staff of the Armed Forces where a military prosecutor, namely a civilian prosecutor who deals with military justice cases, determines the course of action to take against the member based on the Military Code, the Code of Military Discipline and existing guidelines. It is the military prosecutor who gives an order to prosecute the case where the evidence warrants it.<sup>471</sup> Whilst the investigation is underway, a number of interim measures might be undertaken by the UN (suspension of salary) or by the country (repatriation of contingent member). Once the evidence is handed over to the military prosecutor, the work of the Provost Unit ends, save to take custody of the alleged perpetrator in cases where he or she is repatriated. It was noted that cases of sexual abuse and rape tend to be amongst the most commonly investigated matters that result in the repatriation of military personnel.<sup>472</sup>

Interviews with members of the Provost Unit indicated that, as part of their regular training, they undergo modules on conducting hearings with children, witnesses and victims. However, these modules are general in nature. It was noted that national investigators do not receive detailed training on how to conduct investigations with children (interviewing children, talking to children)<sup>473</sup> – this could



become an area of intervention for Save the Children. A concern was however raised about the role of the military carrying out investigations on its own members as a possible contributory factor to possible complicity in covering up violations. However, Provost Unit members indicated that there is no conflict of interest and that the Provost Unit does not shy away from carrying out its investigations.

It was noted that the UN is kept informed of developments and progress with a particular case of misconduct. However, reports are usually not sent to the African Union.

#### **9.4.8.6 The role of the military and military justice mechanisms**

Military justice is governed by the Military Justice Code. The Regional Court of Dakar includes a military tribunal which has jurisdiction over crimes committed by military personnel. The tribunal is composed of a civilian judge, a civilian prosecutor, and two military assistants to advise the judge, one of whom must be of equal rank to the defendant. The tribunal may try civilians only if they were involved with military personnel who violated military law. The military tribunal provides the same rights as a civilian criminal court.

In 2016, the armed forces and the gendarmerie adopted a Code of Military Discipline. The code introduces much stiffer penalties for offences such as ‘desertion’, which is now punishable by a term of imprisonment varying from 6 months to 3 years in peacetime and up to 10 years in wartime. If the offender is an officer, the court may also sentence him or her to dismissal.<sup>474</sup>

Over and above police allegations, the UN database also showed that there was one military member who faced an allegation of rape of a child and another member who faced an allegation of having an exploitative

relationship whilst forming part of UNOCI. According to the UN database, the rape case was substantiated; the military member was given a written reprimand and imprisoned for a period of 45 days. In the other case, the allegation was also substantiated but no action was taken since the member involved, retired.<sup>475</sup> During interviews with the Provost Unit, these cases were discussed to establish whether the member who served time in prison was subsequently dismissed or remains in the armed forces and whether the member who retired did so with a full pension. However, the Provost Unit did not have information about outcomes, since they do not follow through on cases once they are handed over to the prosecutor; they also were unaware of the existing UN database of SEA allegations for TCCs.<sup>476</sup> It is envisioned that an interview will be conducted in coming weeks with a prosecutor in charge of military matters to understand these sentences.

### **9.4.9 Oversight mechanisms for child protection**

#### **9.4.9.1 The Ombudsman (Médiateur)**

The Ombudsman is competent to hear a complaint from any individual who believes that a public body has not acted in accordance with their public duties. The individual can refer the matter to the attention of the Ombudsman by way of a written complaint. Whilst the Ombudsman is competent to hear complaints of children’s rights violations, it has yet to do so.<sup>477</sup>

#### **9.4.9.2 High Commissioner for Human Rights and Peace in the Office of the President**

The Office of the High Commissioner for Human Rights and Peace Promotion is an administrative structure attached to the Presidency of the Republic. The Office includes a *Guichet des droits de l’homme* (Human Rights Board) in charge of

receiving complaints and making suggestions to the President of the Republic on subsequent responses. The Commissioner does not have powers to provide remedies to individuals. Despite receiving all complaints of human rights violations, the Commissioner is neither allowed to participate in the judicial process nor challenge court decisions.<sup>478</sup>

#### 9.4.9.3 The Senegalese Human Rights Committee (CSDH)

The Senegalese Human Rights Committee is the national human rights institution. The mandate of the CSDH includes promotion and protection of human rights, as well as reporting on the situation of human rights in the country. The Committee must take action when it becomes aware of human rights violations, either in the course of its duties or when informed by authorities. The Committee may issue opinions or recommendations on matters relevant to human rights, including laws, regulations or administrative practices; however, it lacks a formal role in reviewing laws, has no investigative powers in individual cases or express powers to pursue individual violations.<sup>479</sup>

#### 9.4.10 Role of the media

It was noted that the public media does not generally report on cases of abuse by the security forces. This responsibility often falls on private media. However, interviewees noted that they could not recall reported cases regarding the role of the armed forces overseas.<sup>480</sup> It was noted that community radio stations are one viable way of communicating with the population. Community radio stations often address a number of local issues of interest to communities and therefore could represent an avenue for further awareness-raising on the role of the armed forces and issues surrounding access to justice for children. Some organisations such as PPDH have undertaken some capacity-building activities with journalists on the rights of children, which could present an opportunity for further engagement.<sup>481</sup>

In interviews with representatives from the armed forces, the possibility of sharing information with civil society and the media was discussed. However, it was noted that it was highly unlikely that the military would be willing to share this information due to the sensitivity of the issues involved. However, given that military justice cases are open to the public, there would be a possibility for media and civil society organisations to monitor the cases that come before the tribunal in Dakar.

# Annex A: Draft interview guidelines for key informants

## Questions for representatives of the AU and APSA architecture

### Influencing mandates

- Who designs the mandate of AU/REC-led peacekeeping missions? Does the AU/REC have a multi-disciplinary and integrated planning team? Does it have policies and operational guidelines and directives to assist it in the planning phase? What is the current mission planning process and who are the key actors?
- Is the AU/REC able to influence the Strategic Assessment phase of a UN mission and the development of a Draft Mission Plan? (NB: this is the stage that is critical in influencing the mandate that a mission will adopt).
- How does the AU/REC Early Warning System work? What kind of information on possible child protection issues does it include?
- How does the AU/REC influence the strategic planning stages of a peacekeeping mission (i.e. mission mandate, type of forces required, etc.)? Is someone sent from the AU/REC to conduct pre-mission visits? If so, from what division is that person/team, what kind of knowledge/training does that person/team have? How does that person/team take into consideration child protection and PoC needs to feed into the mandate of an operation?
- If a call for troops is put to the AU/REC, what is the role of the AU/REC in deciding which countries will contribute troops? What is the decision based on?

- During the process of planning the mission, do such plans incorporate the establishment of complaints mechanisms accessible to members of the public in the host country of a mission?
- What is the process of data collection about the changing nature of the conflict, once a mission is deployed (i.e. mission is in field)? Does it include child protection concerns?

### Introducing a child protection focus

- In your opinion, do you see PoC as encompassing child protection or should child protection be a stand-alone mandate?
- Does the AU/REC have a child protection strategy on the mainstreaming of child protection in the mandate of peacekeeping operations across components (military, civilian, police)? If this is so, what are some of the operational functions and actions that are expected of civilian, police and military components of a mission to take in support of child protection?
- What do you foresee as the key political challenges in the prioritisation of child protection in peace support operations in view of resource constraints and expanding mandates for deployed forces?
- Whilst there is often variation at country level in the way and types of training conducted, does the AU/REC set out minimum standards of training for national contingents to receive? What are the minimum standards on child protection that TCCs must comply with? (especially for APSTA)

- What type of child protection-centred training is offered to troops as part of their on-going training (i.e. not pre-deployment)? Is it incorporated as part of their cadet training? (both theoretical and in terms of simulation exercises)
- What type of child protection-centred training is offered to troops as part of their pre-deployment training? What does the training entail? (both theoretical and in terms of simulation exercises)
- What types of mission-based training on child protection do members of military contingents receive? Who carries out this training and what does it entail?
- How does the AU/REC check whether such training has been conducted, met the standards and more importantly, whether personnel are able to apply substantively the concepts imparted?
- What is the AU process going forward to finalise the various peace support operation guidelines, standards and procedures?
- What is the roadmap to operationalize and consolidate the AU Child Protection Architecture?

### Due Diligence and Vetting

- Does the AU/REC have its own due diligence and vetting policies? If not, does it rely on the UN DD HR policy?
- Are there standardised policies/directives for TCCs to follow in vetting members of the national contingents in each contributing country?
- Does the requirement of approval of a deployment by the UNSC mean that the AU/REC needs to abide by the UN HR DD mechanism and therefore, by default, there is no separate need for the AU/REC to develop its own policy on vetting?
- What role does the AU/REC play in ensuring that the national due diligence and vetting

processes are conducted and how does it verify whether they have been undertaken?

### Accountability and responsibility of deployed forces

- What factors does the AU/REC take into consideration in the development of the content of status of forces and status of mission agreements?
- What type of agreement/documentation exists to bind the TCCs to the AU/REC? Does the AU/REC have model MoUs that it uses to enter into with the TCCs? What are the discipline and conduct provisions, if any, in the MoUs? What do they cover and what do they exclude?
- What mechanisms exist at the AU/REC to pro-actively monitor discipline and conduct of deployed forces both in the field and in the TCC? Does the AU/REC envisage the establishment of a dedicated investigative unit (like OIOS at the UN)?
- Is there an AU/REC mechanism at to monitor reports by the SG (based on the MRM findings) and SRSG-CAAC and act on the findings?
- In a situation where members of a national contingent are repatriated due to misconduct, what role does the AU/REC play in ensuring that such person(s) are held to account for their conduct? Is there an AU/REC mechanism to follow up on these cases until finalisation?
- Are there policies that ban TCCs from contributing troops if such countries are unwilling to prosecute troop members implicated in abuses while on mission? If yes, what are they?
- Does the AU/REC keep a database of ASF/regional SF deployed personnel (whether military, police or civilian) who have been implicated in human rights abuses whilst on duty to ensure that they do not serve again?

- How does the AU/REC interact with the AMISOM Civilian Casualty Tracking, Analysis, and Response Cell (CCTARC)?

## Government Departments

### ***Ministry of Justice (for crimes falling under Criminal Code); Ministry of Defence (for crimes falling under Military Code)***

- What is your Ministry's policy on assisting children who are victims of armed conflict?
- What are the policies and procedures to be followed if the violation occurred in the country of origin?
- What are the mechanisms in place to assist complainants? Are complainants able to make such complaints anonymously for fear of reprisals? Are there special publicly-provided mechanisms to assist children who might be complainants (legal assistance, witness protection, access to psycho-social support, etc.)? If yes, can you please describe them?
- What are the policies and procedures to be followed if the violation occurred in another country but the country has jurisdiction over the perpetrator?
- For crimes that do not fall under the Military Code that are committed by members of a national contingent deployed on mission, how are these cases dealt with nationally? Which of the Ministries or Departments are involved in this process?
- Have personnel from the Ministry of Justice ever formed part of national investigation teams sent to a mission to investigate allegations against practices/conduct of members of its deployed national contingent? If so, please describe who was deployed and the activities undertaken.
- What are the mechanisms in place to assist foreign children who are complainants against a member of a national contingent deployed in a mission?

- Have the above mechanisms ever been used to prosecute a member of a TCC (civilian, police officer) for a violation against a child (or even a SEA violation)?
- Is there a system of publicly-provided legal assistance for foreign children who are unable to afford or access such legal assistance?
- Do national laws allow for the exercise of extra-territorial jurisdiction of crimes committed by its nationals in a foreign country? (in case that prosecutions would be undertaken in missions)
- Does the Department of Justice keep a register of members of the armed forces, police and civilians who have been convicted of child-related crimes or who have the potential to inflict harm on children as a means to vet future personnel to be deployed?

### ***Department of Defence (Military)***

- Please take me through the process that is followed to select commanders and troops as part of a deployed group?
- What kinds of mechanisms are in place to vet members before they join the armed forces and prior to being deployed on a peace support operation?
- Does the military have a code of conduct that explicitly deal with child protection issues?
- Are Force Commanders or Heads of Military contingents empowered in terms of national legislation, policies or directives to act on violations against children perpetrated by members of their units in missions?
- If such duty exists, do you think that this is carried out diligently by Forced Commanders or Heads of national military contingents deployed? What factors might interfere with this duty?
- How often do heads of military contingents need to report to national authorities about

developments in a particular mission? What do these reports contain?

- What are the violations commonly reported that have been perpetrated against children (both male and female) by members of the national military both in the country of origin and in peace support operations?
- In the event that there are allegations of violations against children by troops in peace support operations, what is the process that is followed by the Ministry to deal with this matter?
- How is the reporting and investigation process geared towards respecting the needs of children as complainants and victims? This approach ensures that the child's needs and the rules of evidence and fair process required in any investigation and prosecution are satisfied.
- How do preventive and disciplinary processes protect the identity of the person (victims and other witnesses) reporting allegations or concerns against a member?
- Where does the decision to prosecute a member of the military who is accused of having perpetrated a violation of a child in a situation of armed conflict lie? What is the nature of the evidence that is required to ensure a successful prosecution in this regard?
- Do any violations of children in situations of armed conflict by troops fall under the Military Code? If not, what are the violations that members could be prosecuted for, under the Military Code in respect of children? (i.e. abandoning the post)
- In your opinion, is there political willingness on the part of the military to fulfil its roles and responsibilities when it comes to holding perpetrators of violations against children to account? Please provide concrete examples where troops have been held to account for violations against children in armed conflict (whether in country or as members of a deployed force).

- Does the military keep a register of members who have been convicted of child-related crimes or who have the potential to inflict harm on children as a means to vet future personnel to be deployed?
- Significant emphasis is placed by the UN on the responsibility of TCC governments to ensure in-depth pre-deployment training for forces on issues such as child protection/SEA.
- What type of child protection-centred training is offered to troops as part of their on-going training (i.e. not pre-deployment)? Is it incorporated as part of their cadet training? (both theoretical and in terms of simulation exercises)
- What type of child protection-centred training is offered to troops as part of their pre-deployment training? What does the training entail? (both theoretical and in terms of simulation exercises)
- What types of mission-based training on child protection do members of military contingents receive? Who carries out this training and what does it entail?

#### **Ministry of Interior (Police)**

- Please take me through the process that is followed to select heads of police and police officers as part of a deployed group?
- What kinds of mechanisms are in place to vet members before they join the police and prior to being deployed on a peace support operation?
- Does the police have a code of conduct that explicitly deal with child protection issues?
- Are heads of national police contingents deployed in missions empowered in terms of national legislation, policies or directives to act on violations against children perpetrated by members of their units in missions?
- If such duty exists, do you think that this is carried out diligently by heads of national police contingents deployed? What factors might interfere with this duty?

- How often do heads of national police contingents need to report to national authorities about developments in a particular mission? What do these reports contain?
- What are the violations commonly reported that have been perpetrated against children (both male and female) by members of the national police both in the country of origin and in peace support operations?
- In the event that there are allegations of violations against children by members of the police in peace support operations, what is the process that is followed by the Ministry to deal with this matter?
- How is the reporting and investigation process geared towards respecting the needs of children as complainants and victims? This approach ensures that the child's needs and the rules of evidence and fair process required in any investigation and prosecution are satisfied.
- How do preventive and disciplinary processes protect the identity of the person (victims and other witnesses) reporting allegations or concerns against a member?
- Where does the decision to prosecute a member of the police who is accused of having perpetrated a violation of a child in a situation of armed conflict lie? What is the nature of the evidence that is required to ensure a successful prosecution in this regard?
- Do any violations of children in situations of armed conflict by members of the police fall under the Police Act or Criminal Code? If not, what are the violations that members could be prosecuted for, under these codes in respect of children? (i.e. dereliction of duty)
- In your opinion, is there political willingness on the part of the police to fulfil its roles and responsibilities when it comes to holding perpetrators of violations against children to account? Please provide concrete examples where members of the police have been held to account for violations against children in armed conflict (whether in country or as members of a deployed force).
- Does the police keep a register of members who have been convicted of child-related crimes or who have the potential to inflict harm on children as a means to vet future personnel to be deployed?
- Significant emphasis is placed by the UN on the responsibility of TCC governments to ensure in-depth pre-deployment training for forces on issues such as child protection/SEA.
- What type of child protection-centred training is offered to members of the police as part of their on-going training (i.e. not pre-deployment)? Is it incorporated as part of their academy training? (both theoretical and in terms of simulation exercises)
- What type of child protection-centred training is offered to members of the police as part of their pre-deployment training? What does the training entail? (both theoretical and in terms of simulation exercises)
- What types of mission-based training on child protection do members of police contingents receive? Who carries out this training and what does it entail?
- What kinds of mechanisms are in place to vet members before they join the police service and prior to being deployed on a peace support operation?
- Does the police have a child-friendly mechanism to enable children who are victims of violations in the country of origin to report them?

## CSOs, National Human Rights Institutions and International Child Rights bodies

- Do you conduct work in the area of Children and Adolescents in Armed Conflict (CAAC)?
- Can you please describe the work that you do in this area?
- Which are your key partners?
- What are the human rights violations that children (both male and female) are subjected to in your country? (this should go beyond the 6 grave violations)
- What are the positive developments and challenges faced in relation to child protection in your country? What national mechanisms exist to coordinate the work of the child rights sector?
- How would you describe the culture of accountability of the armed and security forces in the country? (i.e. corruption, impunity)
- In your experience, do national armed and security forces comply with relevant laws and norms (including international humanitarian law, human rights law, child protection standards, and relevant provisions in national law)?
- Can you identify instances where armed and security forces have been held to account for violations against children?
- Do you come across incidents where members of the national armed or security forces deployed to a mission are accused of perpetrating violations against children? Is there any coverage of such instances in the media?

### **Children's access to complaints mechanisms/ reporting of violations**

- What mechanisms exist for children who are victims of violations by the armed forces and security sector to report these? Are there variations by region in the country?

- Is there a culture of reporting violations against children perpetrated by members of the armed and security forces?
- Do children feel safe in coming forward to report violations against them by the military and security forces?
- Does your organisation provide any support to assist children who might have been victims or witnesses to violations in the reporting of such violations?
- Does the police have a child-friendly mechanism to enable children who are victims of violations to report them?
- In your opinion, do people have a high regard and trust in the justice processes in the country?
- Did you participate in the MRM process when the UN forces were deployed (Côte d'Ivoire, Kenyan/Ugandan NGOs for AMISOM)? How was data collected to determine violations against children? How participatory was the process? Was there a defined complaints mechanism for victims of violations to come forward?

### **Access to justice**

- Does the country have an accessible juvenile justice system? What does it constitute of? Who are the key actors?
- Are there specific children's courts/juvenile courts to deal with violations against children?
- Are key actors (police, prosecutors, judges) trained in dealing with children? (i.e. interviewing techniques, providing support for children, etc.)
- Are there measures in place to protect the identity of children (victims and other witnesses)?
- Are investigation and court proceedings conducted in a manner that is child-centred? This approach ensures that the child's needs and the rules of evidence and fair process required in any investigation and prosecution are satisfied.



- What kind of legal assistance is rendered to children who are complainants and who cannot afford it? Does the state provide legal assistance and legal representation?
- Are other actors (e.g. national armed forces, human rights organisations including national human rights institutions, international bodies, local communities) fulfilling their respective roles and

responsibilities when it comes to holding perpetrators of violations against children to account?

As part of the interview process, informants will be asked to name the key national laws, policies and strategies that have a bearing in the area of child protection and the role of armed and security forces.

## Annex B: List of interviews conducted

	Entity	Date
<b>South Africa</b>		
<b>Civil Society</b>		
Yasmin Sooka	Chairperson, Commission on Human Rights in South Sudan	16 July 2018
Cheryl Hendricks	SADC Peacekeeping Training	24 July 2018
Richard Smith	SADC Peacekeeping Training	27 July 2018
Jens Pedersen	Senior Humanitarian Policy Advisor and Representative to the AU, Doctors Without Borders, South Africa	31 July 2018
<b>Senegal</b>		
<b>Government</b>		
Directorate: Child Protection	Ministry of Good Governance and Child Protection	5 September 2018
Prevention and Security Directorate	Ministry of Armed Forces	5 September 2018; 3 December 2018
Child Protection Focal Point	Ministry of Armed Forces	26 April 2019
Department of Social Welfare	Ministry of Armed Forces	26 April 2019
Provost Unit, Gendarmerie	Ministry of Armed Forces	25 April 2019
Police Commander	Ministry of the Interior	24 April 2019
Prosecutor, Children's Tribunal	Ministry of Justice	24 April 2019
President, Children's Tribunal	Ministry of Justice	25 April 2019
<b>Civil Society</b>		
Representative	AJS (Association of Senegalese Jurists)	6 September 2018; 23 April 2019
Representative	CONAFE (National Coalition of Child Rights Associations and NGOs)	5 September 2018; 23 April 2019
Representative	Plan International - Senegal	4 September 2018
Representative	PPDH (Platform for the Promotion of Human Rights)	7 September 2018; 23 April 2019
Representative	Tostan – Dignity for All	Written input

	Entity	Date
<b>Cote d'Ivoire</b>		
<b>Government</b>		
Sub-Directorate for Combatting Child Trafficking and Juvenile Delinquency	Ministry of the Interior and Security	10 September 2018
Directorate: Judiciary Protection for Children and Youth	Ministry of Justice and Human Rights	14 September 2018
Child Protection Directorate	Ministry of Women, Family and Children	12 September 2018
Legal Section and Army Commanders	Ministry of Defence	13 September 2018
<b>Civil Society</b>		
Representative	AJS (Association of Women Jurists - Cote d'Ivoire)	14 September 2018
Representative	APDH (Action for the Protection of Human Rights)	10 September 2018
Representative	Amnesty International	11 September 2018
Representative	DDE-CI (Dignity and Rights for Children – Cote d'Ivoire)	12 September 2018
Representative	LIDHO (Ivorian League for Human Rights)	11 September 2018
Representative	MIDH (Ivorian Movement for Human Rights)	11 September 2018
Representative	SOS Children's Villages	12 September 2018
<b>Other</b>		
Child Protection Division	UNICEF	11 September 2018
	CNDH – CI (National Human Rights Commission – Cote d'Ivoire)	10 September 2018
<b>Uganda</b>		
	Uganda Human Rights Commission	21 September 2018
	Human Rights Directorate: UPDF	14 December 2018; 3 April 2019
	Female Engagement Team (FET), UPDF	14 December 2018; 3 April 2019
	UPDF Trainers	19 September 2018; 3 April 2019
	UPDF Political Commissar	18 September 2018; 3 April 2019
	Women's Affairs Directorate: UPDF	18 September 2018; 3 April 2019

Entity	Date
UPDF Legal Staff (prosecutor)	19 September 2018; 3 April 2019
Federation of Women Lawyers (FIDA Uganda)	2 April 2019
Atrocities Watch	2 April 2019
Human Rights Network-Uganda (HURINET-U)	2 April 2019
Uganda National Police Force	4 April 2019

### Kenya

Representative	Ministry of Labour and Social Protection	
Department of Children's Services	10 September 2018	
Representative	Kenya Alliance for the advancement of Children Rights	10 September 2018
Representative	The Cradle	11 September 2018
Representative	Terres des Hommes	11 September 2018
Representative	World Vision	12 September 2018
Representative	Kenya Human Rights Commission	12 September 2018
Representative	Kenya Alliance for the advancement of Children's Rights	13 September 2018
Representative	Plan International	14 September 2018
	Police Commissioner	14 September 2018

### Addis Ababa

Child Protection Advisor	African Union	11 December 2018
Representative	UN Economic Commission for Africa	11 December 2018
Advocacy Director	Save the Children – AU Office	12 December 2018
Representative	Early Warning Division, African Union	12 December 2018
Representative	United Nations Office for the Coordination of Humanitarian Affairs	12 December 2018

## Annex C: Status of Ratification of Key International and Regional Instruments

Instrument	Cote d'Ivoire	Kenya	Senegal	Uganda
The Universal Declaration of Human Rights	•	•	•	•
International Covenant on Economic, Social and Cultural Rights	•	•	•	•
International Convention on the Elimination of all forms of Racial Discrimination	•	•	•	•
UNESCO Convention against Discrimination in Education	•	•	•	•
UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	•	•	•	•
UN Convention on the Elimination of All Forms of Discrimination against Women	•	•	•	•
UN Convention on the Rights of Persons with Disabilities	•	•	•	•
UN Convention on the Prevention and Punishment of the Crime of Genocide	•	•	•	•
Optional Protocol to the Convention on the Rights of the Child, on the Sale of Children, Child Prostitution and Child Pornography	•		•	
UN Convention on the Rights of the Child	•	•	•	•
Optional Protocol to the Convention on the Rights of the Child, on the Sale of Children, Child Prostitution and Child Pornography	•	Signed	•	•
Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict	•	•	•	•
Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure	Signed		Signed	
Convention on the Consent for Marriage, Minimum Age for Marriage and Registration of Marriages	•			
UN Convention relating to the Status of Refugees of 1951 and its 1967 Protocol	•	•	•	•

Instrument	Cote d'Ivoire	Kenya	Senegal	Uganda
Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime	•	•	•	Signed
Convention on Cluster Munitions	•		•	
United Nations Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition	•	•	•	•
Convention on Certain Conventional Weapons (CCW)	•	•	•	•
Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction ("Ottawa Treaty")	•	•	•	•
Protocol relating to the Prohibition of the Use of Asphyxiating, Toxic Gases and Bacteriological Substances in War	•	•	•	•
Arms Trade Treaty	•	•	•	
ILO Convention No.105 concerning the Abolition of Forced Labour of 25 June, 1957	•	•	•	•
ILO Convention No.138 concerning the Minimum Age of Admission into Employment of 26 June, 1973	•	Min Age: 15 yrs.	•	Min Age: 14 yrs.
ILO Convention No. 29 concerning Forced Labour of 28 June, 1930	•	•	•	•
ILO Convention No. 182 concerning the Prohibition of the Worst Forms of Child Labour and the Immediate Action Towards their Elimination	•	•	•	•
Geneva Convention for the Relief of the Wounded and the Sick in the Armed Forces during Warfare (I)	•	•	•	•
Geneva Convention for the Relief of the Wounded, the Sick and Shipwrecked Members of Armed Forces at Sea (II)	•	•	•	•
Geneva Convention on the Treatment of Prisoners of War (III)	•	•	•	•
Geneva Convention on the Protection of Civilians during Warfare (IV)	•	•	•	•

Instrument	Cote d'Ivoire	Kenya	Senegal	Uganda
Supplementary Protocol to the Geneva Conventions of 12 August, 1949 relating to the Protection of Victims of International Armed Conflicts (Protocol I)	•	•	•	•
Supplementary Protocol to the Geneva Conventions of 12 August, 1949 relating to the Protection of Victims of Unarmed International Conflicts (Protocol II)	•	•	•	•
Convention for the Protection of Cultural Property in the Event of Armed Conflict	•		•	
The Rome Statute of the International Criminal Court	•	•	•	•
UN Convention Relating to the Status of Stateless Persons	•		•	•
UN Convention on the Reduction of Statelessness	•		•	
<b>Accession to Regional Instruments</b>				
Constitutive Act of the African Union	•	•	•	•
African Charter on Human and Peoples' Rights	•	•	•	•
African Charter on the Rights and Welfare of the Child	•	•	•	•
African Youth Charter	•	•	•	•
Protocol Relating to the Establishment of the Peace and Security Council of the African Union	•	•	•	•
Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa	•	•	•	•
ACHPR Protocol on the Establishment of an African Court of Human and Peoples' Rights	•	•	•	•
African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)	•		Signed	•
OAU Convention on Specific Aspects of Refugee Problems in Africa	•	•	•	•



Save the Children Somalia



# NOTES

- 1 Uganda successfully launched MRM, which led UPDF to establish standard operating procedures in May 2011 for the reception and handover of children and women separated from LRA in the Democratic Republic of the Congo, South Sudan and the Central African Republic.
- 2 For CIV, it is related to the Monitoring and Reporting Mechanism, holding perpetrators to account and their involvement in the verification process. The Human Rights Commission and ONUC (while it was present) were involved.
- 3 Save the Children has Memoranda of Understanding with ECOWAS, and the Eastern Africa Standby Force.
- 4 Includes but not limited to African Committee of Experts on Rights and Welfare of the Child (ACERWC), African Peace and Security Architecture (APSA)
- 5 Conflict Dynamics International (2011), Bridging the Accountability Gap: New approaches to addressing violations against children in armed conflict.
- 6 UNICEF (2009), Machel Study 10-year Strategic Review: Children and Conflict in a Changing World, (UNICEF: New York), pp.63-64.
- 7 Statement by Ms. Virginia Gamba, Special Representative of the Secretary-General for Children and Armed Conflict: Open Debate on Children and Armed Conflict “Protecting Children Today Prevents Conflict Tomorrow”, UN General Assembly, 9 July 2018, p.1
- 8 Ibid, p.2.
- 9 Ibid.
- 10 Save the Children (2018), The War on Children Report: Time to end grave violations against children in conflict, (Save the Children International: London), p.7.
- 11 Ibid.
- 12 Ibid.
- 13 United Nations (2013), Report of the Secretary-General, Children and Armed Conflict, A/67/845–S/2013/245, May 2013.
- 14 United Nations (2015), Uniting Our Strengths for Peace – Politics, Partnership and People: Report of the High-Level Independent Panel on United Nations Operations, 16 June 2015, p.62.
- 15 One of the first documents developed was the United Nations Secretary-General's Bulletin on Special Measures for Protection from Sexual Exploitation and Abuse (ST/SGB/2003/13).
- 16 United Nations General Assembly (2018), Annual Report of the Special Representative of the Secretary-General for Children and Armed Conflict to the Human Rights Council (A/HRC/37/47), 8 January 2018, p16.
- 17 Ibid, p.4.
- 18 Erin A. Weir (2013), “Policies that Protect: The African Union and the Protection of Civilians”, Policy Brief 7, (Oslo: Norwegian Institute of International Affairs), <https://www.files.ethz.ch/isn/168422/NUPI%20Policy%20Brief-7-13-Weir.pdf>, (accessed 15 March 2019), p.2.
- 19 The Malabo Protocol extends the jurisdiction of the yet-to-be established African Court of Justice and Human Rights (ACJHR) to crimes under international law and transnational crimes. In essence, the international criminal law section of the ACJHR will serve as an African regional criminal court, operating in a manner similar to the International Criminal Court (ICC) but within a narrowly defined geographical scope, and over a massively expanded list of crimes. For more information see, for instance, Amnesty International (2016), The Malabo Protocol: Legal and Institutional Implications of the merged and expanded African Court, (London: Amnesty International), <https://www.amnesty.org/download/Documents/AFR0130632016ENGLISH.PDF> (accessed 15 March 2019).
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- 21 Bernadette Knauder, ‘The ‘List of Shame’ – a Sham? Accountability of conflict parties for child rights violations, 13 June 2017, <https://policyblog.uni-graz.at/2017/06/the-list-of-shame-a-sham-child-rights-violations/> (accessed 29 July 2018); Security Council Report (October 2017), Children and Armed Conflict: Sustaining the Agenda, (Security Council Report: New York), p.2.

- 22 Security Council Report (October 2017), *Children and Armed Conflict: Sustaining the Agenda*, (Security Council Report: New York), p.3.
- 23 United Nations Office of the Special Representative of the Secretary-General for Children and Armed Conflict, United Nations Department of Peacekeeping Operations and United Nations Children's Fund (2014), *Guidelines – Monitoring and Reporting Mechanism on Grave Violations against Children in situations of armed conflict*, June 2014, p.1-24.
- 24 Ibid, pp.12-15.
- 25 Ibid, pp.12-13.
- 26 Watchlist on Children in Armed Conflict (2009), UN *Security Council Resolution 1612 and Beyond*, p.3.
- 27 United Nations Security Council, Working Group on Children and Armed Conflict, <https://www.un.org/securitycouncil/subsidiary/wgcaac>, (accessed 24 November 2018).
- 28 UNICEF (2009), *Machel Study 10-Year Strategic Review: Children and Conflict in a Changing World*, p. 55.
- 29 Watchlist on Children in Armed Conflict (2009), UN *Security Council Resolution 1612 and Beyond*, p.3.
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- 33 Ibid, p.104.
- 34 Ibid, p.107.
- 35 Ibid, p.108.
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- 45 Ibid, p.141.
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- 57 Annex H of the revised MOU contains a code of conduct, which includes the following documents: Ten Rules — Code of Personal Conduct for Blue Helmets; We Are United Nations Peacekeepers; and Prohibitions on sexual exploitation and abuse. The Annex sets forth the behaviour that is expected from peacekeeping personnel and is mainly directed at all members of a national contingent.
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# MAPPING OF CHILD PROTECTION ACCOUNTABILITY MECHANISMS IN ARMED CONFLICT IN AFRICA

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