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Os vinte anos da união africana: passado, presente e futuro

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EDITORIAL

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EDITORIAL

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O ponto de partida da reflexão

A integração regional no continente africano é amplamente complexa e está profundamente enraizada no ideal pan-africanista de uma África Unida. A organização regional que surgiu no rescaldo da libertação do colonialismo – a Organização da Unidade Africana – era limitada em termos de integração política. Com o alvorecer do novo milénio, a União Africana emergiu como uma organização política mais robusta que a sua antecessora. O Acto Constitutivo da União Africana, adoptado em 11 de Julho de 2000 e que entrou em vigor em 26 de Maio de 2001, marcou uma nova era para o processo de integração africana. A primeira Cimeira da UA teve lugar em Julho de 2002. A União Africana traz uma natureza institucional mais complexa e uma abordagem mais intervencionista nos assuntos africanos. A UA consagra os direitos humanos e a paz como princípios fundamentais da organização e visa promover a prosperidade para todo o continente. Nos seus primeiros anos, a UA foi muito activa em termos de conflitos e questões de segurança, trazendo uma nova arquitectura de paz e segurança para África e mecanismos regionais para lidar com conflitos regionais. A Agência da UA a este respeito é medida pela adopção de um Conselho de Paz e Segurança da UA, bem como pela consolidação de uma Arquitectura Africana de Paz e Segurança (APSA). A União também desenvolveu os seus quadros institucionais de direitos humanos e justiça, à medida que a UA desenvolveu uma abordagem baseada nos principais tratados de direitos humanos, reformas institucionais e na remodelação de uma Arquitectura de Justiça Africana. Mas a resistência política e a intolerância em todo o continente constituem ameaças reais ao respeito dos direitos humanos. A UA também adoptou políticas e instrumentos jurídicos que abordam questões em áreas-chave, como o desenvolvimento, a integração económica e jurídica, reforçando o seu papel como actor regional chave em África. O recente acordo sobre a Zona de Comércio Livre Continental Africana (ZCLCA) pode alavancar o desenvolvimento económico de África e expandir a sua influência em todo o mundo. Entretanto, África ainda luta para combater a pobreza, as violações dos direitos humanos, a prevalência da instabilidade política e as mudanças inconstitucionais de regime são algumas das questões que atrasam a promessa de um continente próspero e unido. Estas são algumas das questões às quais este número



especial procurou dar resposta, fazendo uma avaliação dos primeiros vinte anos da União Africana e os desafios para o processo de integração africana nas suas diferentes dinâmicas.

Olhares sobre os vinte anos da União Africana

Os artigos selecionados para compor este número especial procuram trazer respostas a essas e outras questões. Nos vinte anos de sua existência, as questões relacionadas à segurança continental continuam entre as prioridades políticas da entidade e dos analistas. Prova disso é o artigo apresentado por Diall e Nimaga, que se debruçam sobre os mecanismos coletivos de segurança, em particular a Arquitetura Africana de Paz e Segurança (APSA, na sigla em inglês), em paralelo à atuação da CEDEAO (ECOWAS, na sigla em inglês), analisando a sua efetividade na prevenção e na resolução de conflitos em nível continental e sub-regional e, identificando avanços e limitações dessa atuação.

Na mesma linha, o artigo de Afolabi e Kadoglu Chen, também analisa a Arquitetura Africana de Paz e Segurança (APSA, na sigla em inglês), sob a ótica da avaliação do Conselho de Paz e Segurança da União Africana (PSC, na sigla em inglês) e do Departamento de Assuntos Políticos, Paz e Segurança da União Africana (AU-PAPS). Os autores avaliam os diferentes mecanismos de ação e instrumentos normativos instituídos para o funcionamento da APSA e apontam para a necessidade de mudanças estruturais, não apenas dos mecanismos já existentes, mas também no aprofundamento da supranacionalidade da UA e no reforço das capacidades da organização para enfrentar as causas profundas dos conflitos entre os estados, que atualmente são bastante limitadas, a exemplo dos Acordos de Pretória de 2022.

Fechando o tópico das questões de segurança e conflituosidade, o artigo de Horn traz um estudo de caso sobre o conflito entre a Etiópia e os rebeldes da Frente de Libertação do Povo do Tigray, próximo à fronteira da Eritreia. A autora avalia a atuação da União Africana durante as negociações de paz, demonstrando que a atuação diplomática da UA foi eficiente para provocar a abertura do diálogo entre as partes e o sucesso das negociações representou um importante avanço da capacidade institucional de solucionar conflitos. Entretanto, o artigo também discute a incapacidade de implementar integralmente as ações pós-conflito, sobretudo o desarmamento e a desmobilização, criando condições para a emergência de um novo enfrentamento.

O trabalho de Laetitia Koechilin acrescenta uma contribuição importante para a reflexão mais ampla a respeito da atuação da União Africana nesses vinte anos de trajetória, ao abordar um tema central na própria origem da entidade: o acesso dos povos indígenas à justiça. A autora discute as muitas situações de discriminação e marginalização de populações que não são reconhecidas efetivamente como cidadãos pelos estados nacionais do continente e, conseqüentemente, ficam incapazes de proteger e acessar seus direitos. Por meio de dois estudos de caso, Koechlin analisa os avanços e limites da União Africana em sua função de promover justiça restaurativa para as populações indígenas e tradicionais do continente, apesar do arcabouço normativo no campo dos Direitos Humanos à disposição da entidade.



Fecha este dossiê, o trabalho de Garrido e Vargas, o qual aborda as políticas públicas instituídas pela União Africana no campo da Educação. Entendendo a educação como um tópico associado às necessidades de desenvolvimento económico e humano do continente africano, os autores recuperam o conjunto das normas e diretrizes instituídas pela UA para promover políticas educacionais em nível continental e sub-regional. Concluem que, apesar do amplo enquadramento normativo e respetiva tradução em políticas públicas abrangentes, o sub-financiamento da organização coloca desafios significativos à implementação dessas políticas.

Este dossiê trouxe à discussão pontos diversos da agência da União em matérias tão diversas da política africana. Estes trabalhos, ainda que circunscritos, são ilustrativos de uma África plural, que carece de um resgate epistemológico e de uma reflexão académica crítica sobre o continente.

REGARD RETROSPECTIF SUR L'ARCHITECTURE DE PAIX ET DE SECURITE EN AFRIQUE DE L'OUEST

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Résumé

La sécurité en Afrique de l'Ouest, ainsi que sur l'ensemble du continent africain, demeure un enjeu majeur pour la stabilité et le développement. Ce constat prévaut malgré la mise en place, depuis les années 1990, de divers mécanismes juridiques et institutionnels, tant au niveau continental avec l'Architecture africaine de paix et de sécurité (APSA) qu'au niveau sous-régional par la CEDEAO. Toutefois, un décalage persistant entre les objectifs affichés et l'efficacité concrète des dispositifs reste observable, notamment face à l'émergence de nouvelles formes de conflictualité telles que le terrorisme, les coups d'État ou les crises institutionnelles. Dès lors, deux problématiques principales se présentent : dans quelle mesure l'APSA, dont l'objectif est de promouvoir l'appropriation africaine des questions de paix et de sécurité, parvient-elle effectivement à répondre aux situations de crise ? Et comment les mécanismes ouest-africains, particulièrement ceux de la CEDEAO, peuvent-ils être articulés de façon optimale avec le cadre continental afin de garantir une sécurité durable et souveraine en Afrique de l'Ouest ?

Mots clés

Sécurité en Afrique de l'Ouest, Architecture africaine de paix et de sécurité (APSA), CEDEAO, UA, Gouvernance sécuritaire.

Abstract

Security in West Africa, as well as across the African continent, remains a major challenge for stability and development. This reality persists despite the establishment, since the 1990s of various legal and institutional mechanisms, both at the continental level with the African Peace and Security Architecture (APSA) and at the sub-regional level through ECOWAS. However, a persistent gap between stated objectives and the actual effectiveness of these mechanisms remains evident, particularly in the face of emerging forms of conflict such as terrorism, coups d'état, and institutional crises. Accordingly, two main questions arise: to what extent has APSA, whose objective is to promote African ownership of peace and security issues, effectively responded to crisis situations? And how can West African mechanisms, particularly those of ECOWAS, be optimally articulated with the continental framework to ensure durable and sovereign security in West Africa?



Keywords

Security in West Africa, African Peace and Security Architecture (APSA), ECOWAS, AU, Security Governance.

Comment citer cet article

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REGARD RÉTROSPECTIF SUR L'ARCHITECTURE DE PAIX ET DE SÉCURITÉ EN AFRIQUE DE L'OUEST¹

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Introduction

L'article 15 du traité de l'UEMOA dispose que: «Les États membres se consultent en vue de prendre en commun les dispositions nécessaires afin d'éviter que le fonctionnement de l'Union ne soit affecté par les mesures que l'un d'eux pourrait être amené à prendre en cas de troubles intérieurs graves affectant l'ordre public, de guerre ou de tension internationale grave constituant une menace de guerre»? Faut-il entendre par là que l'Union ambitionne de s'organiser en vue de maintenir un climat de paix et de sécurité en son sein?

En effet, c'est lors du Sommet de l'UEMOA de 2007, qu'il a été retenu que «le développement durable se construit dans la paix et la sécurité»². Cette phrase est riche d'enseignements et souligne toute la problématique de la sécurité dans une région qui se veut intégrée.

Le concept de sécurité est très large. Il est pluridimensionnel et traduit un état économique, alimentaire, social, politique, humain etc. La sécurité est l'état d'un sujet (individuel et collectif) qui s'estime non menacé ou dispose de capacités de réponses

¹ Sigles et abréviations: AES: Alliance des États du Sahel; ANAD: Accord de Non-Agression et d'Assistance en matière de Défense; APSA: Architecture de Paix et de Sécurité en Afrique; CADHP: Cour Africaine des Droits de l'Homme et des Peuples; CARIC: Capacité Africaine de Réponse Immédiate aux Crises; CEAO: Communauté Économique de l'Afrique de l'Ouest (prédécesseur de la CEDEAO); CEDEAO: Communauté Économique des États de l'Afrique de l'Ouest; CEEAC: Communauté Économique des États de l'Afrique Centrale; CIJ: Cour Internationale de Justice; CPS: Conseil de Paix et de Sécurité (Union africaine); ECOMOG: Force de Surveillance du Cessez-le-feu de la CEDEAO (Economic Community of West African States Monitoring Group); FAA: Forces Africaines en Attente; GIABA: Groupe Intergouvernemental d'Action contre le Blanchiment d'Argent en Afrique de l'Ouest; MICOPAX: Mission de Consolidation de la Paix en République Centrafricain; MINUSMA: Mission Multidimensionnelle Intégrée des Nations Unies pour la Stabilisation au Mali; MISMA: Mission Internationale de Soutien au Mali (sous conduite africaine, 2012-2013); ONU: Organisation des Nations Unies; OUA: Organisation de l'Unité Africaine (remplacée par l'UA en 2002); PNUD: Programme des Nations Unies pour le Développement; UA: Union Africaine; UEMOA: Union Économique et Monétaire Ouest Africaine; ZLECAf: Zone de Libre-Échange Continentale Africaine.

² Voir aussi la Déclaration de Lomé du 23 juin 1997, «... la Conférence des Chefs d'État et de Gouvernement rappelle le lien étroit entre la paix, la sécurité, la stabilité et le développement et réitère, dans cette optique, la nécessité urgente de créer une Force africaine de paix... Les États membres affirment leur disponibilité à y prendre part sous l'autorité de l'ONU et de l'OUA (UA)».



satisfaisantes en affrontant des dangers réels ou anticipés³. Bien que l'Espace UEMOA soit considéré comme la zone la plus intégrée de l'Afrique de l'Ouest,⁴ l'on constate toutefois, au sein des différents pays, des zones d'insécurité ou de fortes tensions. La situation économique, pour être vigoureuse, contraste avec le manque de sécurité.

Cet aspect participatif que la Déclaration de l'Union appelle de ses vœux doit être compris au sens large, c'est-à-dire, l'interdépendance dans le triptyque paix-sécurité-développement pour garantir une sécurité humaine aux ressortissants communautaires. Pour faire échos à l'Avis de la CIJ, elle doit s'entendre non seulement sur le plan financier, mais également militaire⁵. La budgétisation des opérations de maintien de la paix serait, en soi, un élément propre à faire englober celles-ci dans l'objet de l'Union⁶. Une autre des actions de l'Union réside dans l'établissement d'un mécanisme interne d'alerte et de suivi des conflits par une résolution du 20 juillet 2003 adoptée par le Comité Inter Parlementaire de l'Union qui considère que la recherche de la paix est un exercice collectif régi par les règles et principes universellement admis de bonne gouvernance.

En dehors de ces déclarations d'ordre général, l'Union n'a pas, en tout cas dans ses textes fondateurs, créé un système de défense collective propre à elle. Peut-être, les propos du professeur TALL⁷ peuvent-ils aider à la compréhension de cet état de fait ? Même s'il pense que, quels que soient les caractères spéciaux ou avérés des arguments donnant un poids à des mécanismes de l'UA ou de la CEDEAO, ils ne sauraient en tout état de cause constituer des obstacles dirimants à la mise en place d'un chantier propre à l'UEMOA. Il estime, en effet, que l'Union pourra s'inscrire, sans doute, dans les articles 52 et 53⁸ de la Charte des Nations Unies et rester fidèle aux objectifs de la CEDEAO⁹.

³ Voir Pascal BONIFACE, «L'environnement de sécurité et le processus de construction de la paix en Afrique de l'ouest». Étude réalisée en qualité de Consultant Indépendant, Octobre-Décembre 2006.

⁴ Propos tenus lors de la troisième réunion institutionnelle UEMOA-CEDEAO, les 7 et 8 février 2005 à Ouagadougou.

⁵ Voir Avis in Affaire des Dépenses des Nations Unies (Réc. 1962).

⁶ Voir Alioune SALL, Les mutations de l'intégration en Afrique de l'Ouest : une approche institutionnelle. Éditions L'Harmattan, 2006, p. 138.

⁷ Voir S. N. TALL, «Pour un cadre institutionnel, organique et juridique de la paix et de la sécurité dans l'espace francophone ouest-africain (UEMOA)» p. 194, in L'architecture de paix et de sécurité en Afrique, bilan et perspectives, Actes des colloques de Bordeaux et Ouagadougou des 30 novembre 2012 et 24-25 octobre 2013, organisés par l'Université de Bordeaux (CERCADI-GRECCAP) et l'Université de Ouaga 2 (CEEI), M. F. NAUGARET et L. M. IBRIGA (dir.), L'harmattan, 2014, p.312.

⁸ Cf. charte de l'ONU, articles 52 «(1) Aucune disposition de la présente Charte ne s'oppose à l'existence d'accords ou d'organismes régionaux destinés à régler les affaires qui, touchant au maintien de la paix et de la sécurité internationales, se prêtent à une action de caractère régional, pourvu que ces accords ou ces organismes et leur activité soient compatibles avec les buts et les principes des Nations Unies. (2) Les Membres des Nations Unies qui concluent ces accords ou constituent ces organismes doivent faire tous leurs efforts pour régler d'une manière pacifique, par le moyen desdits accords ou organismes, les différends d'ordre local, avant de les soumettre au Conseil de sécurité. (3) Le Conseil de sécurité encourage le développement du règlement pacifique des différends d'ordre local par le moyen de ces accords ou de ces organismes régionaux, soit sur l'initiative des États intéressés, soit sur renvoi du Conseil de sécurité...», et 53 «(1) Le Conseil de sécurité utilise, s'il y a lieu, les accords ou organismes régionaux pour l'application des mesures coercitives prises sous son autorité. Toutefois, aucune action coercitive ne sera entreprise en vertu d'accords régionaux ou par des organismes régionaux sans l'autorisation du Conseil de sécurité; sont exceptées les mesures contre tout État ennemi au sens de la définition donnée au paragraphe 2 du présent Article, prévues en application de l'Article 107 ou dans les accords régionaux dirigés contre la reprise, par un tel État, d'une politique d'agression, jusqu'au moment où l'Organisation pourra, à la demande des gouvernements intéressés, être chargée de la tâche de prévenir toute nouvelle agression de la part d'un tel État. (2) Le terme « État ennemi », employé au paragraphe 1 du présent Article, s'applique à tout État qui, au cours de la seconde guerre mondiale, a été l'ennemi de l'un quelconque des signataires de la présente Charte».

⁹ Voir préambule du traité de l'Union, paragraphe 1.



Faut-il rappeler que tous les États membres de l'UEMOA sont aussi membres de la CEDEAO, organisation plus vieille qu'elle.

En effet, la communauté internationale s'inscrit fortement aux côtés des organisations régionales et les utilise, d'ailleurs très souvent, pour résoudre des crises ou des conflits qui peuvent avoir des ramifications internationales. Pour bien comprendre ce phénomène des Nations Unies, il est judicieux de se souvenir de l'Agenda pour la paix de Boutros-Ghali. En fait, cet Agenda a été élaboré dans un contexte marquant des relations internationales. Il s'agit de la fin de la guerre froide, le monde, bipolaire jusqu'alors, entendait souffler dans la même trompette et profiter de cette deuxième chance de paix universelle¹⁰ que lui conférait la fin du risque d'un conflit mondial pouvant être déclenché par un affrontement entre les superpuissances. Pour ce faire, il y a eu une réunion des Chefs d'État et de Gouvernement de l'ONU au Conseil de Sécurité pour réfléchir à la responsabilité du Conseil quant au maintien de la paix et de la sécurité internationales. Faut-il le rappeler, cette instance suprême du système des Nations Unies, garante de la sécurité et de la paix universelle a été bloquée pendant plusieurs décennies du fait de la guerre froide¹¹. Cette réunion fut sanctionnée par une Déclaration solennelle (S/23500) qui a salué l'avènement d'une ère nouvelle porteuse de l'espoir de l'avènement d'un monde plus sûr, plus équitable et plus humain, ainsi que les progrès accomplis vers la démocratie et le respect des droits de l'Homme. Elle prend acte aussi des nouveaux risques pour la stratégie et la sécurité résultant des changements survenus et l'importance de renforcer et d'améliorer l'efficacité de l'ONU pour faire face aux nouveaux défis auxquels la communauté internationale est confrontée¹².

Ainsi, la Déclaration invita le Secrétaire général à élaborer une étude et des recommandations «sur le moyen de renforcer la capacité de l'Organisation dans les domaines de la diplomatie préventive¹³, du maintien et du rétablissement de la paix, et sur la façon d'accroître son efficacité, dans le cadre des dispositions de la Charte¹⁴». Elle

¹⁰ Voir Emmanuel KANT, *Projet de paix perpétuelle*, Broché, éd. Nathan, coll. Les Intégrales de Philo, juillet 2006 ; voir Montesquieu, *De l'esprit des lois* (1758), à propos du doux commerce, édition établie par Laurent Versini, professeur à la Sorbonne. Paris : Éd. Gallimard, 1995 (2 volumes : vol I : pp. 1 à 604 ; vol. II : pp. 605 à 1628.) Collection folio Essais, disponible sur <http://dx.doi.org/doi:10.1522/cla.moc.del8>.

¹¹ Voir Agenda pour la paix, Assemblée Générale, quarante-septième (47^{ème}) session, point 10 de la liste préliminaire (A/47/50), Rapport du Secrétaire Général sur l'activité de l'organisation A/47/277- S/24111 /Français du 17 juin 1992 : «Depuis la création de l'organisation des Nations Unies en 1945, plus d'une centaine de conflits majeurs ont éclaté dans le monde, qui ont provoqué la mort de 20 millions d'êtres humains environ. L'ONU est restée impuissante devant le nombre de ces crises en raison des vetos - au nombre de 279 - opposés à l'action du Conseil de sécurité, qui illustrent bien les divisions de l'époque».

¹² L'Agenda de la Paix du Secrétaire général B. Boutros-Ghali - Persée, https://www.persee.fr/doc/afdi_0066-3085_1992_num_38_1_3062.

¹³ Selon Christian SCHRICKE, la diplomatie préventive est une notion que Dag HAMMARSKJOLD avait déjà développée dans ses introductions au rapport annuel du Secrétaire général. Voir Christian SCHRICKE, p. 4, *L'Agenda de la Paix du Secrétaire général B. Boutros-Ghali - Analyses et premières réactions*. In: *Annuaire français de droit international*, volume 38, 1992, pp. 11-31.

¹⁴ Voir Agenda pour la paix, op. cit. p. 6 : «La diplomatie préventive a pour objet d'éviter que des différends ne surgissent entre les parties, d'empêcher qu'un différend existant ne se transforme en conflit ouvert et, si un conflit éclate, de faire en sorte qu'il s'étende le moins possible. Le rétablissement de la paix vise à rapprocher des parties hostiles, essentiellement par des moyens pacifiques tels que ceux prévus au Chapitre VI de la Charte des Nations Unies. Le maintien de la paix consiste à établir une présence des Nations Unies sur le terrain, ce qui n'a jusqu'à présent été fait qu'avec l'assentiment de toutes les parties concernées, et s'est normalement traduit par un déploiement d'effectifs militaires et/ou de police des Nations Unies ainsi, dans bien des cas, que de personnel civil. Cette technique élargit les possibilités de prévention des conflits aussi bien que de rétablissement de la paix». Un autre terme novateur dans le droit international a vu le jour dans cet Agenda, il s'agit de la consolidation de la paix, qui, après les conflits, est une action menée en vue de définir et d'étayer



suggérerait que l'étude porte notamment sur «l'identification des crises potentielles et zones d'instabilité», la contribution des organisations régionales, les besoins en ressources matérielles et financières, l'efficacité des plans et des opérations du Secrétariat, l'usage de bons offices et autres fonctions que la Charte confère au Secrétaire général. Après avoir souligné la résolution des membres du Conseil à prendre des «mesures concrètes» pour renforcer l'efficacité de l'ONU dans les domaines du désarmement, de la maîtrise des armements et de la non-prolifération, la déclaration est conclue par l'expression de leur plein appui au nouveau Secrétaire général dans ses efforts de renforcement de l'efficacité du système des Nations Unies, au moment où la conjoncture mondiale est la plus propice à la paix et à la sécurité internationales qui ait existé depuis la fondation de l'ONU. L'étude, du Secrétaire général, nommée a été présentée devant l'Assemblée générale de l'ONU le 30 juin 1992, réalisant ainsi le vœu du Conseil de sécurité pour que toutes les nations y participent¹⁵.

C'est ainsi qu'il fait appel au Conseil de sécurité pour réactiver le chapitre VIII de la Charte et les exhorte à prévoir l'utilisation des organismes régionaux pour l'application des mesures coercitives décidées, mais aussi une action coercitive propre à ces organismes sous réserve de l'autorisation du Conseil. Pour pallier le manque de définitions de ces organismes, Boutros-Ghali adopte une interprétation extensive de la Charte et y reconnaît les organisations créées par un traité, les organisations de sécurité et de défense mutuelles, ou les organisations destinées à assurer le développement régional, mais aussi les groupes d'États créés de façon ad hoc pour traiter d'une question particulière, politique, économique ou sociale¹⁶. C'est dans ce contexte que les organisations régionales africaines, en général, et ouest-africaines, en particulier, ont fait siennes les préoccupations d'ordre sécuritaires¹⁷.

Étant donné qu'elle fait partie des benjamines de ces organisations, l'on comprend alors, aisément, que l'UEMOA n'a fait que s'inscrire dans les objectifs sécuritaires de ses devancières, notamment la CEDEAO, qui est la seule organisation d'envergure de l'Ouest africain (seule reconnue par l'Union africaine comme Communauté Economique Régionale de l'Afrique de l'Ouest).

Les situations de conflit qui sont répertoriées dans l'Ouest africain résultent de l'enchevêtrement de facteurs ayant chacun leur propre logique. Réactualisation de tensions séculaires non résolues, atteintes aux principes constitutionnels, migrations non

les structures propres à raffermir la paix afin d'éviter une reprise des hostilités. La diplomatie préventive vise à régler les conflits avant que la violence n'éclate ; le rétablissement et le maintien de la paix ont pour objet de mettre fin aux conflits et de préserver la paix une fois qu'elle a été instaurée. En cas de succès, l'une et les autres -débouchent sur la consolidation de la paix après les conflits, contribuant ainsi à empêcher que les actes de violence ne reprennent entre les nations et les peuples». pp. 6-7. L'on peut par la même occasion parler d'une autre novation que constituent les unités d'imposition de la paix, «... je recommande que le Conseil envisage de faire appel, dans des circonstances clairement définies, à des unités d'imposition de la paix dont le mandat serait défini à l'avance. Ces unités, fournies par des États Membres, et composées de militaires qui se seraient portés volontaires, seraient tenues en réserve. Il faudrait qu'elles soient plus lourdement armées que les forces de maintien de la paix et qu'elles bénéficient d'un entraînement préparatoire approfondi dans les cadres des armées nationales...», pp. 14-15.

¹⁵ Voir Christian Schricke, *L'Agenda de la Paix du Secrétaire général B. Boutros-Ghali...*, op. cit. p. 12.

¹⁶ Voir pour cette question en général le commentaire de l'article 53 de la Charte in «*La Charte des Nations Unies*», éd. Economica/Bruyland, sous la direction de J.P. Cot et A. PELLET, cité par Schricke op. Cit. p. 10

¹⁷ En effet, le début des années de la dernière décennie du XX^{ème} siècle a vu un renouveau des organisations sous régionales africaines par des réformes structurelles et institutionnelles importantes.



contrôlées, conflits identitaires de minorités, banditisme, terrorisme etc, entre autres sont les facteurs de naissance de ces conflits. Ils sont intranationaux tout en ayant une dimension régionale par le biais des groupes armés terroristes se déversant dans des pays voisins¹⁸. L'élargissement des frontières nationales à celui des organisations sous-régionales d'intégration peut rendre encore plus difficile la lutte contre l'insécurité au sein de l'espace communautaire. Cet état de fait impose une étude d'ensemble du système de lutte contre l'insécurité en Afrique de façon générale, et de l'Afrique de l'Ouest en particulier notamment à l'heure de la recomposition géopolitique de la région via le partenariat et l'influence des nouvelles.

Ainsi, il ressort de cette analyse la problématique suivante : quel regard rétrospectif sur la paix et la sécurité en Afrique de l'Ouest ?

Elle se justifie aisément au regard des cadres d'intégration économique en Afrique, spécifiquement l'UEMOA et la CEDEAO. Les textes fondateurs du premier omettent délibérément toute prévision d'un système autonome de défense collective, reléguant la gestion des crises sécuritaires à la CEDEAO, elle-même intégrée à l'Architecture africaine de paix et de sécurité (APSA) de l'Union africaine en tant que seule Communauté Economique Régionale reconnue. Or cette délégation en cascade mérite d'être analysée, car malgré la multiplication des mécanismes juridiques et institutionnels depuis les années 1990, l'efficacité opérationnelle des organisations reste peu efficace. Ce qui invite à s'interroger sur la capacité réelle des dispositifs continentaux (UA) et sous-régionaux (CEDEAO/UEMOA) à répondre aux défis sécuritaires africains multiformes. Pour éclairer cette problématique, il convient d'examiner les mutations normatives ayant façonné l'APSA, d'analyser ses éventuelles lacunes capacitives compromettant ses ambitions, d'étudier comment la CEDEAO et l'UEMOA adaptent leurs outils de prévention et gestion des conflits aux nouvelles conflictualités (terrorisme, coups d'État), et de tirer des enseignements des interventions déjà faites sur le continent et dans la sous-région ouest africaine.

Ne prétendant pas l'exhaustivité, il sera juste question d'analyser les principaux mécanismes mis en place pour lutter contre l'insécurité au niveau continental (1) et voir comment le mécanisme régional de l'Afrique de l'Ouest s'articule avec les prescriptions continentales (2). En effet, depuis le renouveau du modèle d'intégration des grands ensembles régionaux africains, l'on assiste à une tentative d'appropriation du continent des voies et moyens pour parvenir à résoudre par lui-même les innombrables conflits qu'il voit inlassablement naître.

¹⁸ Lire OCDE/CSAO (2020), Géographie des conflits en Afrique du Nord et de l'Ouest, Cahiers de l'Afrique de l'Ouest, Éditions OCDE, Paris, <https://doi.org/10.1787/4b0abf5e-fr>. Lire aussi Christian Sambou, Les conflits armés ouest-africains: Sénégal, Mali et Côte-d'Ivoire. Lecture des guerres pour la reconnaissance. Science politique. Université Paris-Saclay, 2021, p.487.



I. L'Architecture de Paix et de Sécurité en Afrique, une œuvre de l'Union Africaine

La sécurité a longtemps hanté les pays africains depuis l'aube de leurs indépendances. À travers les grands ensembles régionaux qu'ils constituaient, ils ont tant bien que mal, avec l'appui de l'ex-colonisateur, essayé de résoudre toutes les formes de menace sécuritaire les touchant. Ces États nouvellement indépendants en quête de devenir des Nations, ont été créés dans des situations périlleuses, marquées par des rivalités idéologiques parfois contraires, essayeront d'organiser leur sécurité collective. C'est dans ce contexte que les premières organisations régionales postcoloniales se mettaient dans une posture de défense collective contre des troubles venus de l'étranger, posture qui s'inscrivait moins dans une optique d'intégration supranationale en matière de défense, mais plutôt dans des préoccupations défensives chargées de psychose¹⁹. Aujourd'hui, la sécurité continentale est appréhendée à travers l'Architecture de Paix et de sécurité en Afrique (APSA) dont les bases sont jetées par le Protocole relatif à la création du Conseil de paix et de sécurité (CPS), adopté à Durban (Afrique du Sud) en juillet 2002, et entré en vigueur en décembre 2003. Il est alors intéressant de comprendre les évolutions qui ont conduit à son institution (A) mais aussi les éventuelles limites (B) qui l'empêchent d'endiguer les problèmes sécuritaires du continent.

A. Historique et fondement juridico-institutionnel de l'APSA

Dans les années 1960, l'Union des États Africains (UEA), confrontée aux nombreux mouvements d'indépendance, a envisagé la mise en place d'un système de défense commun. Celui-ci devait permettre la mobilisation conjointe des ressources disponibles afin d'assurer la protection de tout membre de l'Union en cas d'agression²⁰. La Conférence d'Addis-Abeba de 1963, qui vit la naissance de l'OUA, donna l'occasion à Nkrumah (Premier Président du Ghana) de préconiser un système de défense commun avec un Haut commandement africain en vue d'assurer la stabilité et la sécurité de l'Afrique, ce qui fut sanctionné par l'établissement d'une Commission de défense par la Charte, Commission²¹ dont le rôle serait d'être un organe consultatif de préparation et de recommandation pour la défense collective ou l'autodéfense des États membres contre tout acte ou menace d'agression²².

L'inefficacité de la Commission de médiation, de conciliation et d'arbitrage conduisit très vite l'OUA à imaginer des moyens palliatifs, au nombre desquels, il existe des mécanismes ad hoc à travers des comités spéciaux et de petites structures portant le

¹⁹ Voir SALL, op. cit. p.133.

²⁰ Idem.

²¹ En réalité il existait aussi une Commission de médiation, de conciliation et d'arbitrage instituée par l'article 19 de la Charte de l'OUA, «Les États membres s'engagent à régler leurs différends par des voies pacifiques. A cette fin, ils créent une Commission de médiation, de conciliation et d'arbitrage, dont la composition et les conditions de fonctionnement sont définies par un protocole distinct, approuvé par la Conférence des Chefs d'État et de Gouvernement. Ce protocole est considéré comme faisant partie intégrante de la présente Charte».

²² Cette Commission recommanda en 1965 la création d'une Organisation africaine de défense indépendante sur la base du volontariat des États. Voir de façon générale sur ces questions V. H. SIKONDO, *La sécurité des États africains dans le système international contemporain : aspect politiques, diplomatiques et juridiques*, Thèse Reims 1986 ; M. A. BARRY, *La prévention des conflits en Afrique de l'Ouest : mythes ou réalités ?* Karthala, 1997. Cité par SALL, op. cit. p. 134.



nom de commissions de conciliation créées par le Conseil des ministres. Il arriva même que la Conférence des Chefs d'État ²³ soit mise à profit pour dénouer des situations tendues et conflictuelles²⁴.

Il a fallu attendre les années 1990 pour que les réalités politiques changent et offrent un vrai climat propice à l'organisation de réels mécanismes de défense africains. La Déclaration du Caire de 1993 qui crée un Mécanisme pour la prévention, la gestion et le règlement des conflits²⁵, en est une illustration parfaite.

C'est dans ce contexte que l'Organisation pour l'Unité Africaine (OUA) fut transformée en Union Africaine (UA), dont le processus a commencé lors du Sommet de Syrte de 1999 et s'acheva à Durban en mai 2002, pour reconstruire l'unité africaine avec pour ambition de renouveler et consolider le projet de l'intégration politique et socio-économique du continent, la défense de la souveraineté de ses États membres et la promotion de la paix et de la sécurité²⁶. Ce faisant, l'organe qui intéresse une étude de la sécurité en Afrique se porte sur le Conseil de Paix et de Sécurité (CPS), instituée, *ceteris paribus*, à l'image du Conseil de Sécurité de l'ONU. À titre de comparaison, à part l'existence de membres permanents et de membres non permanents, il comporte aussi quinze (15) membres. Mais il y a la possibilité d'une certaine permanence par la prolongation de la durée d'occupation du siège puisque les États sortants peuvent se présenter immédiatement pour être de nouveau membre²⁷. Pour rappel, lors des négociations pour définir le cadre conceptuel et institutionnel du CPS, les États ambitieux comme le Nigéria voulaient entièrement retenir la formule existante au Conseil de sécurité de l'ONU mais l'argumentation du président Konaré atténua ces positions²⁸. L'aide des pressions

²³ Selon, KPODAR «La politique de défense commune en Afrique » in *L'architecture de paix et de sécurité en Afrique* op. cit. p. 33, l'échec de ces commissions/comités ad hoc s'explique par le fait qu'il a toujours été difficile d'obtenir l'accord des États membres pour la tenue des rencontres régulières. C'est ce qui a justifié la diplomatie des pèlerins solitaires de la paix.»

²⁴ Voir Article 37 du Règlement intérieur de la Conférence des Chefs d'État et de Gouvernement, «La Conférence peut créer les comités ad hoc et autres groupes de travail temporaires qu'elle jugera nécessaires» et l'Article 36 du Règlement intérieur du Conseil des ministres, «le Conseil des ministres peut instituer tous comités ad hoc et groupes temporaires de travail qu'il juge nécessaire». Il faut noter qu'à titre d'exemples de réussite de ces Comités, l'on peut citer la Commission ad hoc sur le différend algéro-marocain qui a fonctionné de 1963 à 1967, le Comité ad hoc sur les différends interafricains créé en juillet 1977 qui a notamment réglé le conflit entre l'Ouganda et la Tanzanie, le Comité des bons offices des huit sur le différend Somalie-Éthiopie créé par la dixième session ordinaire de la Conférence en mai 1973, la Commission ad hoc présidée par le président Kenyatta envoyée en 1964 au Congo (Léopoldville), au Congo (Brazzaville) et au Burundi, ou encore le Comité permanent sur le Tchad dans les années 1980. Cité par Delphine LECOUTRE, p. 2 in *L'Afrique contemporaine - Été 2004*, pp. 131-162, *Le Conseil de paix et de sécurité de l'Union africaine, clef d'une nouvelle architecture de stabilité en Afrique?* Plus loin elle fait un répertoire complet des causes de l'incapacité criarde du Mécanisme (voir pp. 4-7). Ces remarques basées sur une étude réalisée en l'an 2000, pour l'*International Peace Academy*, par Margaret Vogt et Monde Muyangwa (p. 32) arrive à la conclusion que, d'une part, l'OUA était restée un acteur périphérique dans la plupart des conflits du fait de l'ampleur de la tâche, de son manque d'expérience dans le domaine de leur gestion, des contraintes organisationnelles et financières, ainsi que de l'absence de consensus international sur les rôles impartis respectivement à l'Organisation des Nations unies (ONU) et à l'OUA ; et que, d'autre part, les principes consacrés par la Charte de l'OUA limitaient son rôle dans la gestion des conflits dans la mesure où le respect de la souveraineté nationale entravait une intervention effective dans les conflits internes.

²⁵ Ce Mécanisme fut incorporé à l'OUA lors du Sommet de Lusaka en juillet 2001, cf. Rapport du Secrétaire Général (EAHG/Déc.1(V)) ; AHG/Déc.160 (XXXVII) ; CM/2210 (LXXIV). Voir aussi DJENA WEMBOU : «*A propos du Mécanisme de l'OUA sur les conflits*», RGDIP, 1994, pp. 377 et suivants.

²⁶ Voir utilement <https://www.peaceau.org/uploads/ua-en-bref-fr-.pdf>

²⁷ Voir <https://au.int/fr/cps>

²⁸ Allocution d'Alpha Oumar Konaré, président de la République du Mali, au XXXVIIe sommet de l'OUA, Lusaka, 9-11 juillet 2001, pp. 8-9., «... nous devons reconnaître que, dans toute entreprise commune, il y a une locomotive et des wagons ; il nous faut admettre qu'il y a des pays leaders dont la part dans la répartition des



internationales actuelles pour un renouveau du Conseil de Sécurité de l'ONU n'y est pas étranger aussi. L'opposition, farouche, des États plus faibles du continent, aussi, y a une marque. Le choix de l'absence de droit de veto s'inscrit dans la logique de ne laisser aucun État puissant l'instrumentaliser à d'autres fins. Ils peuvent aussi être tentés de l'utiliser contre des États voisins qui peuvent être en conflit avec eux.

Le CPS ne figurait pas dans les prévisions de création de l'Acte constitutif de l'UA²⁹. En fait, il est le résultat de l'incorporation du Mécanisme de gestion des conflits à l'organisation (fait lors du Sommet de Lusaka). Il a pris corps réellement en 2002, lors du lancement officiel de l'UA à Durban.

Dans un tel contexte, l'on est en droit de se demander, si elle est réellement en mesure d'exercer le pouvoir d'harmoniser et de coordonner les efforts visant à combattre le terrorisme international, et toutes les formes d'insécurité au niveau continental et régional³⁰.

B. Limites structurelles et efficacité relative : le fossé entre normes et pratiques

L'écart entre les avancées normatives et les réalités opérationnelles se manifeste avec acuité dans l'action de l'Union africaine (UA). Alors que son Conseil de paix et de sécurité (CPS), son Groupe de Sages³¹ et son Comité d'état-major³² incarnent des innovations majeures par rapport à l'OUA, offrant un cadre intégré d'alerte précoce, de médiation et de commandement unifié³³. Le cadre institutionnel est confronté à des limites structurelles entamant son efficacité. La dépendance aux interventions externes révèle une autonomie compromise. Deux cas peuvent illustrer ce fait. Lors de l'éclatement de la crise malienne en 2012, la MISMA s'est d'abord alignée sur l'opération française au Mali (Serval)³⁴ avant de se fondre complètement dans le dispositif onusien qu'est la MINUSMA. Le même scénario s'est produit avec le cas centrafricain. Plus criant encore

responsabilités devrait être plus grande que celle des autres. Ceci est une réalité. Nous devons envisager cette démarche dans une vision démocratique et non de gendarme, et la traduire en comportement pour avancer vers la réalisation de nos objectifs majeurs...».

²⁹ Les Chefs d'État se sont basés sur l'article 5 alinéa 2 de l'Acte, « (2) La Conférence peut décider de créer d'autres organes » pour créer le CPS, « Il est créé, au sein de l'Union, conformément à l'Article 5(2) de l'Acte constitutif, un Conseil de paix et de sécurité... », cf. article 2 du protocole sur la création du CPS.

³⁰ Cf. article 7, point « i » du Protocole relatif à la création du conseil de paix et de sécurité de l'union africaine (disponible sur <https://www.peaceau.org/uploads/psc-protocol-fr.pdf>).

³¹ Le Groupe des sages est composé de cinq personnalités africaines, hautement respectées, venant des diverses couches de la société et qui ont apporté une contribution exceptionnelle à la cause de la paix, de la sécurité et du développement sur le continent. Elles sont sélectionnées par le Président de la Commission, après consultation des États membres concernés, sur la base de la représentation régionale et nommées pour une période de trois ans par la Conférence (article 11 du Protocole instituant le CPS).

³² Il est créé un Comité d'état-major chargé de conseiller et d'assister le Conseil de paix et de sécurité pour tout ce qui concerne les questions d'ordre militaire et de sécurité en vue du maintien et de la promotion de la paix et de la sécurité en Afrique... Le Comité d'état-major est composé d'officiers supérieurs des États membres du Conseil de paix et de sécurité... (Article 13, points 8-9). Le Groupe des Sages et le Comité d'état-major ainsi que d'autres institutions ou organes (tel que les Forces Africaines Pré-positionnées créées par l'article 13) de l'UA ressemblent sur les points à d'autres organes et institutions du mécanisme de paix de la CEDEAO. D'ailleurs ils ont les mêmes appellations et les mêmes rôles à la différence que l'UA agit sur le plan continental et la CEDEAO sur le plan régional.

³³ Voir KPODAR, op. cit. p. 37.

³⁴ Voir KPODAR, op. cit. p. 39.



est l'absence persistante des Forces africaines en attente (FAA), pourtant actées dès 2003 et réaffirmées après le sommet d'Addis-Abeba de 2013. Ce décalage persistant entre les engagements solennels (comme la "Force de réaction rapide" promise en 2013 lors du Sommet d'Addis-Abeba, le 23 mai 2013, les Chefs d'État, disant vouloir tirer les leçons de leur incapacité à réagir lors de la crise malienne, ont pris l'engagement de réactiver la mise en place d'une force d'intervention rapide³⁵) et leur faible matérialisation inexistante encore en 2025 souligne l'incapacité à dépasser les logiques souverainistes et les lacunes financières. Ces éléments transforment l'Architecture africaine de paix et de sécurité (APSA) en édifice inopérant. Malgré quelques réussites³⁶, les situations sécuritaires dans les régions africaines pèsent sur l'opérationnalisation correcte de ces forces.

Il est important aussi de noter que le CPS n'est pas un organe à part de l'Architecture de Paix et de Sécurité en Afrique, en plus d'harmoniser et de coordonner les activités des Mécanismes régionaux dans le domaine de la paix, de la sécurité et de la stabilité, afin que ces activités soient conformes aux objectifs et aux principes de l'UA³⁷, il entretient des relations étroites de travail avec le parlement panafricain³⁸ et établit une coopération étroite avec la Commission africaine des droits de l'homme et des peuples³⁹ pour toutes questions touchant à son mandat.

Il est alors loisible de se demander si le manque de justiciabilité des États et des acteurs membres des résolutions des conflits n'est pas une énième cause de l'inefficacité du système ?

Pendant longtemps, du vivant de l'OUA, le règlement des conflits africains se préoccupait plus d'aplanir les positions des parties, pour sauvegarder les intérêts du moment, que d'y apporter une solution durable et définitive. En réalité, cet état fait, pousse certains auteurs à ne voir dans le règlement des conflits aucune logique⁴⁰, tous les cas sont traités différemment, aussi bien que chaque conflit voit naître un type de règlement qui lui est propre. L'on donne raison, alors, à celui qui a dit qu'en Afrique, on ne juge pas une affaire, on l'arrange⁴¹. Aucune mention de règlement juridictionnel des conflits n'est faite, ni par l'Acte constitutif⁴², ni par le Protocole créant le CPS.

La solution serait-elle de voir du côté de la juridiction obligatoire de la CIJ ? Ne faudrait-il pas, peut-être, étendre ses compétences et exiger des États, où naissent des conflits

³⁵ Cette mise en place fut renvoyée au sommet de janvier 2014 où elle a été encore renvoyée à celui de juin 2014.

³⁶ Tel fut le cas lorsqu'en 2003 une force interafricaine de plus de 2000 hommes a été déployée au Burundi pour s'interposer entre les belligérants et permettre au médiateur sud-africain de décrocher un accord de paix. Voir KPODAR, op. cit. p. 37.

³⁷ Cf. article 16, par. 1 point a du Protocole.

³⁸ Cf. Article 18, par. 1 du Protocole.

³⁹ Cf. Article 19 du Protocole.

⁴⁰ Cf. M. BEDJAOUI, «Le règlement pacifique des différends africains», AFDI 1972, pp. 85-89, cité par KPODAR, op. cit. p. 46.

⁴¹ Voir KPODAR, op. cit. p. 47. En effet, les traditions de médiation à l'ancienne pour décanter des situations conflictuelles sont restées dans la pratique des États africains. Au sein de l'OUA, il a toujours été fait recours à ce type de règlement, en utilisant un voisin, un notable, un sage à la forte personnalité... pour éteindre le feu des conflits. L'histoire a montré que comme des phénix, ces conflits renaissent toujours, avec plus d'acuité.

⁴² Cf. article 4 de l'Acte constitutif, «L'Union africaine fonctionne conformément aux principes suivants: ... (e) Règlement pacifique des conflits entre les États membres de l'Union par les moyens appropriés qui peuvent être décidés par la Conférence de l'Union...».



susceptibles de dégénérer, de porter leur conflit à l'appréciation de la Cour ? La récente posture de l'Israël et des Etats-Unis face à cette juridiction internationale face à la situation en Palestine, fait planer le doute sur celle-ci⁴³.

Cette solution serait souhaitable pour plus d'un, d'autant plus que, jusqu'à présent, peu d'États africains ont ratifié⁴⁴ le Protocole créant la Cour Africaine des Droits de l'Homme et des Peuples (CADHP) et ses activités n'ont que récemment commencé. Lors du sommet de la Conférence de 2004, il a été décidé de transformer cette cour en lui fusionnant la Cour de Justice de l'Union. Cette nouvelle entité aurait pour nom la Cour Africaine de Justice et des Droits de l'Homme. Certains universitaires et dirigeants d'ONG luttant pour la promotion des droits de l'homme voyaient une opportunité d'impliquer efficacement cette Cour dans la résolution des conflits africains par le biais du droit. En conséquence, une modification des statuts de la Cour s'imposerait⁴⁵. Mais contre toute attente, les Chefs d'État et de Gouvernement, par un communiqué à l'issue de leur Conférence en Guinée équatoriale, les 26 et 27 juin 2014, ont décidé d'insérer dans les nouveaux statuts la possibilité d'accorder une immunité, contre les poursuites devant cette juridiction, aux dirigeants et à d'autres hauts fonctionnaires durant leur mandat. Et cela en violation du droit international, du fait que, eux-mêmes, dans la Charte africaine des droits de l'Homme et des Peuples reconnaissent la nécessité de prendre des sanctions judiciaires contre toute atteinte aux droits de l'homme⁴⁶. Puis, la fusion décidée n'a jamais eu lieu.

Pour prévenir du caractère violateur du droit international d'une telle mesure, Salil SHETTY, Secrétaire général d'Amnesty International, avait adressé une lettre ouverte aux chefs d'État et de gouvernement de l'Union en leur demandant de rejeter cette proposition de modification⁴⁷.

⁴³ Lire utilement sur le doute au sujet de la justice internationale Alioune SALL, L'émotion et la raison, l'Afrique face à la justice internationale, L'Harmattan Sénégal, 2020, p.277.

⁴⁴ A ce jour, 34 sur 44 États signataires l'ont ratifié et il est entré en vigueur le 11 février 2009. Sur les 34 seuls 8 États (Burkina Faso, la Gambie, le Ghana, Guinée-Bissau, le Mali, le Malawi, le Niger et la Tunisie) ont déposé la déclaration reconnaissant la compétence de la Cour pour recevoir des requêtes introduites directement par des ONG et des individus. Voir <https://www.african-court.org/wpafc/bienvenue-a-la-cour-africaine/?lang=fr#>

⁴⁵ Lire utilement à ce sujet, S. H. Adjolohoun, Les grands silences jurisprudentiels de la Cour africaine des droits de l'homme et des peuples, Annuaire africain des droits de l'homme, 2018, pp. 24-46, <http://doi.org/10.29053/2523-1367/2018/v2n1a2>

⁴⁶ La réaction de Netsanet BELAY, Directeur de la recherche et du plaidoyer pour l'Afrique au sein d'Amnesty International, a été virulente : «Alors que le continent africain lutte pour faire en sorte que les auteurs de violations graves des droits humains soient tenus de rendre des comptes, il est impossible de justifier cette décision, qui sape l'intégrité de la Cour africaine de justice et des droits de l'homme avant même qu'elle soit opérationnelle». voir <https://www.amnesty.org/fr/latest/news/2014/07/au-summit-decision-backward-step-international-justice/>

⁴⁷ Cf. Lettre d'AMNESTY INTERNATIONAL, SECRETARIAT INTERNATIONAL, du 19 juin 2014 à Londres, Réf. : AFR 01/012/2014, «Je m'adresse à vous dans la perspective de la 23ème session de l'Assemblée des chefs d'État et de gouvernement de l'Union africaine (...) pour vous demander de ne pas adopter la proposition d'amender l'article 46A bis du Projet de protocole sur les amendements au Protocole portant statut de la Cour africaine de justice et des droits de l'homme (Projet de protocole). La réunion ministérielle du Comité technique spécialisé a décidé, à l'issue de ses délibérations des 15 et 16 mai, de modifier l'article 46A bis du Projet de protocole, qui se lirait alors comme suit : « Aucune accusation ne sera déposée devant la Cour contre un chef d'État ou de gouvernement de l'Union africaine en exercice, aucune personne exerçant ou autorisée à exercer ces fonctions, ou tout autre haut représentant de l'État sur la base de leurs fonctions, pendant la durée de leur mandat. » Amnesty International craint que cette proposition, de même que diverses démarches récentes de l'Union africaine, n'assurent l'immunité aux chefs d'État et de gouvernement. Au nombre de ces démarches, il y a la décision de l'Union africaine, a) en octobre 2013, d'exempter les hauts représentants de l'État de



Enfin, le CPS pourrait être un excellent outil au service du lien indissociable paix et développement s'il était judicieusement utilisé, il aurait agi en amont et en aval de tout type de conflits éclatant dans toute partie du continent, et ce avec le concours des CER. En effet, l'expérience accumulée par les CER, en matière de gestion de conflits, est considérable.

II. Le Mécanisme de prévention, de gestion et de règlement des conflits, un outil ouest-africain

La situation ouest-africaine avait commencé à se modéliser bien avant celle de l'OUA et de sa continuatrice. Son analyse se fera à travers l'évolution normative des mécanismes sous régionaux (A) et des expériences opérationnelles (B).

A. Évolution normative et institutionnelle du cadre sous régional de la CEDEAO

La CEAO, en 1977 avait conclu entre ses États membres plus le Togo un Accord de non-agression et de défense (ANAD)⁴⁸. La CEDEAO avait depuis le 29 mai 1981 signé un Protocole d'Assistance mutuelle en matière de défense, adopté au sommet de Freetown⁴⁹ et dont l'idée avait été lancée deux ans plus tôt au sommet de Dakar. Il englobait tous les États membres à l'exception du Cap vert, de la Guinée-Bissau et du Mali. Ledit Protocole prévoyait une assistance des autres parties en cas d'agression contre l'une d'elles⁵⁰ et entre les parties signataires, une obligation de non-recours à la force. Il prévoyait également la création d'une force d'interposition, mais seulement en cas de conflit entre États membres, leur intervention étant exclue si le conflit était purement interne⁵¹. Le conflit libérien a été la cause de la réactivation de la réflexion sur la prévention de la paix et de la sécurité internationale dans la sous-région. Il a fait l'objet de plus de 20 décisions prises par la CEDEAO dans la résolution de cette crise⁵², en plus de la création d'un comité permanent de médiation.

poursuites devant la Cour pénale internationale ; b) en janvier 2014, d'appeler les membres de l'Union africaine à se prononcer en faveur des amendements à l'article 27 du Statut de Rome, pour empêcher les poursuites contre les chefs d'État et de gouvernement. Je vous prie de bien vouloir examiner la proposition prévoyant l'amendement de l'article 46A bis pendant les délibérations à venir (...) L'article 46A bis du Projet de protocole porte gravement atteinte à l'intégrité de la Cour africaine et au but déclaré de l'Union africaine de permettre aux victimes de crimes graves de droit international d'obtenir justice (...) Si l'article 46A bis est adopté, les déclarations sur le fait que l'élargissement de la compétence de la Cour africaine faciliterait la lutte contre les fléaux que sont les génocides, les crimes de guerre et les crimes contre l'humanité et qui minent le continent africain seront vides de sens. (...) Amnesty International vous prie instamment d'examiner l'article 46A bis et de le remplacer par une disposition reprenant le principe fondamental inscrit à l'article 27 du Statut de Rome de la Cour pénale internationale...».

⁴⁸ Cet Accord est issu du Sommet franco-africain de 1977. Voir SALL op. Cit., p. 134. Mais le Protocole d'application de l'Accord en date du 14 décembre 1981 engage les parties à ne pas abriter d'opposant ou d'activités de subversion contre un autre État partie. Il faut ajouter un autre Protocole additionnel relatif à l'assistance en matière de défense militaire du 20 décembre 1982.

⁴⁹ Voir Protocole d'assistance mutuelle en matière de défense des pays de la CEDEAO (Nations-Unies, recueil des traités, 1992, Vol. 1690, 1-29137) disponible sur https://www.africansecuritynetwork.org/HSGO/assets/cedeo-1981-asistencia_mutua.pdf

⁵⁰ Cf. Article 16 du Protocole.

⁵¹ Cf. Article 17 du Protocole.

⁵² Voir J. O. CEDEAO, n° spécial sur la crise libérienne, novembre 1992, vol. 21.



Mais à l'analyse, il ressort très vite que dans un premier temps, c'est-à-dire, avant l'adoption du nouveau Mécanisme, la communauté envisageait la sécurité, seulement, sous l'angle de la défense, ou dans le cas d'un conflit interétatique, comme l'avait fait l'OUA. C'était manifestement faire fi des réalités du monde contemporain d'après-guerres. L'émergence et la multiplication de conflits d'un type nouveau avec des acteurs nationaux, transnationaux et internationaux appelaient forcément à une actualisation du système de défense. L'approche des premiers instruments de défense était obsolète. Cet état de fait pousse certains auteurs⁵³ à qualifier les premières interventions de la communauté, sous l'emprise des anciens textes⁵⁴, comme illégales, même au regard de l'ingérence humanitaire. La CIJ avait donné son appréhension de cette situation dans les affaires du Détroit de Corfou et les Activités militaires et paramilitaires au Nicaragua⁵⁵. L'ECOMOG qui est intervenu au Libéria en 1990 créa une situation de doute quant à son adéquation avec le traité de l'époque (l'on se souvient que le traité actuel de la CEDEAO date seulement de 1993). L'article 2 de celui-ci, en évoquant les buts de la Communauté, ne fait aucune référence aux questions de sécurité or il se trouve que la Communauté a pris plus d'une dizaine de décisions en y apposant le visa de l'article 5 du de l'ancien traité dont l'alinéa 2 se borne uniquement à évoquer les fonctions de la Conférence des Chefs d'État et de Gouvernement ; fonctions ne faisant aucune mention pouvant lui attribuer des prérogatives militaires.

En outre, le pacte de non-agression de 1978 qui a constitué la base juridique du comité permanent de médiation est en réalité juste un pacte de non-agression ne pouvant nullement justifier une opération de maintien de la paix. Cet état de fait est valable pour le protocole d'assistance mutuelle qui agit seulement en cas d'agression ou menace d'agression extérieure et exclut d'intervenir dans des conflits internes, cas du conflit libérien. Même si ce Protocole autorise les Chefs d'État et de Gouvernement à réfléchir sur les problèmes généraux de sécurité, cette argumentation tombe en désuétude du fait que l'intervention fut décidée par le Comité permanent de médiation dont le rôle se limitait à aider à la solution de litiges entre États membres⁵⁶.

Le traité de 1993 de la CEDEAO lève ses péripéties juridiques et en fait quasiment un des objectifs de la Communauté. En effet, il préconise le préalable de la sécurité à tout développement économique ou intégration entre ses États membres. C'est là que peut

⁵³ Voir SALL, « Les mutations... », Op. Cit. p 136 ; Abass BUNDU « Aucune Disposition n'avait été prise dans le cadre du traité de la CEDEAO concernant la coopération régionale dans les domaines de la politique et de la défense... » in LAVERGNE, op. Cit. p. 55 ; F. M. DJEDJERO « la guerre civile au Libéria et l'ingérence dans les affaires intérieures des États » in Revue Belge de droit international, 1993, p. 9/44 : « La condamnation de la subversion est très nette dans la doctrine et la jurisprudence. On constate en effet que si la doctrine est divisée sur la question de la licéité de l'aide apportée au gouvernement en place, elle considère globalement que le soutien aux insurgés est illégal... ».

Disponible sur <https://rbdi.bruylant.be/modele/rbdi/content/pdf/files/RBDI%201993/RBDI%201993-2/Etudes/RBDI%201993.2%20-%20pp.%20393%20%C3%A0%20436%20-%20F.%20Meledje%20Djediro.pdf> (consulté en septembre 2024).

⁵⁴ Il s'agit du traité de Lagos, le traité de non-agression du 22 avril 1978 et du Protocole d'assistance mutuelle du 28 mai 1981.

⁵⁵ «... l'appui fourni par les États-Unis ... aux activités militaires et paramilitaires des contras au Nicaragua, sous forme de soutien financier, d'entraînement, de fournitures d'armes, de renseignements et de soutien logistique constitue une violation indubitable du principe de non-intervention... » In Activités militaires et paramilitaires au Nicaragua et contre celui-ci (Nicaragua c. États-Unis d'Amérique), § 242, compétence et recevabilité, arrêt, CIJ. Recueil 1984, p. 392.

⁵⁶ J.O. CEDEAO, op. cit. pp. 6 et 7.



se rapprocher l'article 15 du traité de l'UEMOA tout comme l'article 58 du traité de la CEDEAO, traitant des questions relatives à la sécurité à l'échelle sous régionale. L'on peut dire, sans doute, qu'elle s'aligne sur les tendances et pratiques de l'ONU et de son organisation mère, l'UA en la matière. Aucune objection ne peut être faite, maintenant, à une base légale des interventions de la communauté en cette matière conformément à l'article 4 point « e » de son traité⁵⁷. Mais ce type d'intervention, même au sein de l'ONU, est régi par le principe de neutralité ce qui n'a pas toujours été le cas de la CEDEAO dans ses expériences passées.

B. Expériences opérationnelles à l'épreuve des ressources limitées et de la neutralité

Le bilan de la CEDEAO quant à son impartialité et le caractère dépourvu de sanctions de son intervention reste mitigé. Elle s'est vue impliquée de trop, altérant ainsi l'orthodoxie même du maintien de la paix⁵⁸. Il est souvent arrivé que les forces de la communauté soient prises pour cible. Elle a été amenée aussi à des situations extrêmes qui l'ont vu menacer le président Charles Taylor d'un blocus économique. Ce n'est qu'avec l'Accord de Cotonou de 1993⁵⁹, a posteriori, que ce pouvoir de sanction fut autorisé conformément à l'article 5 du traité de Cotonou. Il a donné à l'ECOMOG toute latitude pour sanctionner les violations d'un cessez-le-feu imposé. Et même là, l'ECOMOG a outre passé les autorisations du Comité chargé des violations. Cet état de fait créa un risque d'affrontement ouvert entre les forces de la communauté et les belligérants, toute chose qui créa un climat propice au retrait des troupes de certains pays membres⁶⁰. Les actions ainsi entreprises par la Communauté furent appuyées par l'ONU, a posteriori, à travers la résolution 1132 du 8 octobre 1997 imposant le cessez-le-feu, l'institution autorisa la CEDEAO, en coopération avec le Gouvernement démocratiquement élu de la Sierra Leone, à veiller strictement à l'application des dispositions de la résolution.

L'ampleur des opérations a conduit à l'envoi d'une force des Nations Unies (Mission des Nations Unies à la Sierra Leone).

Heureusement, peut-on dire, le Protocole de Lomé mettant en place le Mécanisme de prévention, de gestion et de règlement des conflits de la CEDEAO de 1999⁶¹, tente de corriger les erreurs du passé en s'inscrivant dans le sillage des pratiques de la Communauté internationale. Ce Protocole qui est désormais la base légale de l'organisation en matière de sécurité abroge les deux autres qui le précèdent (le Protocole de 1978 et l'Accord de 1981) et elle intègre en son sein l'ANAD de l'ancienne CEA. Nulle part sur le continent, au moment de son adoption, on ne trouvait d'équivalent dans toutes

⁵⁷ «LES HAUTES PARTIES CONTRACTANTES, dans la poursuite des objectifs énoncés à l'Article 3 du présent Traité affirment et déclarent solennellement leur adhésion aux principes fondamentaux suivants : (...) e) Maintien de la paix, de la sécurité et de la stabilité régionales par la promotion et le renforcement des relations de bon voisinage».

⁵⁸ Cf. SALL, op. cit. p. 139.

⁵⁹ L'Accord de Cotonou fait référence à l'Accord trouvé par les parties prenantes pour la résolution du conflit libérien. Son article 5 énonce tous les cas de figure pouvant être considérés comme violation de l'Accord et l'inobservation est sanctionné. Voir un exemplaire de l'Accord sur https://www.ceja.ch/images/CEJA/DOCS/Bib/Pays/Liberia_S2/I8_FR.pdf

⁶⁰ L'exemple du Sénégal est donné par le Professeur SALL, in *Les mutation...*, op.cit. p. 142.

⁶¹ Voir <https://www.africansecuritynetwork.org/HSGO/assets/cedeo-1999-protocole.pdf>



les organisations sous-régionales. L'UEMOA, à travers son Mécanisme d'alerte et de suivi des conflits, et tout récemment l'intervention de la CEDEAO en Côte d'Ivoire et au Mali, a été minée par son retard et son manque de moyen cruel à un moment où la vie de ces pays était tout simplement menacée.

À tous les égards, la plus grande innovation de la communauté en matière de sécurité, à travers son nouveau traité et le Protocole, reste qu'elle conçoit, désormais, le maintien de la paix sur une durée permanente. C'est en ce sens que l'UEMOA s'inscrit avec elle dans le sillage des pratiques onusiennes. La CEDEAO a, pour cela, créé un système d'observation de la paix et de la sécurité régionales, tout comme le Mécanisme interne d'alerte et de suivi des conflits de l'UEMOA qui s'est traduit par l'adoption de l'Acte additionnel N° 04/2013/CCEG/UEMOA instituant la politique commune de l'UEMOA dans le domaine de la paix et de la sécurité.

Ce système de pré-alerte résulte de l'article 58 du traité de la CEDEAO et contient deux composantes : (1) un centre d'observation et de suivi chargé de la collecte et de la redistribution de l'information à l'attention du Secrétaire exécutif, et (2) des zones d'observations et de suivi, ayant chacune une capitale⁶². Dans chaque capitale il existe un Bureau placé sous l'autorité du Secrétaire exécutif. En outre la conception de la communauté du maintien de la paix répond à celle de l'ONU, dont il était question dans l'Agenda pour la paix⁶³. En témoigne, d'ailleurs, la création d'une Cellule des armes légères⁶⁴, d'un Fonds de la paix, d'un mécanisme de gestion des catastrophes et d'un Groupe inter gouvernemental d'Action contre le blanchissement d'Argent (GIABA⁶⁵).

Malgré cette consécration, les différents rapports de la Commission de la CEDEAO sont édifiants sur l'état de la sécurité dans les pays membres de la CEDEAO. Il y a toujours un tableau noir peignant les difficultés sécuritaires de la région. Le rapport annuel de la CEDEAO de décembre 2012, est le suivant : «le Burkina Faso, où des mutineries

⁶² Zone 1 : Cap vert, Gambie, Guinée-Bissau, Mauritanie, Sénégal avec pour capitale Banjul ; zone 2 : Burkina Faso, Côte d'Ivoire, Mali, Niger avec Ouagadougou comme capitale ; Zone 3 : Ghana, Guinée Conakry, Libéria, Sierra Leone ayant pour capitale Monrovia ; Zone 4 : Bénin, Nigéria, Togo dont la capitale est Cotonou.

⁶³ «... La paix et la sécurité internationales ne découlent pas seulement de l'absence de guerre et de conflits armés. D'autres menaces de nature non militaire trouvent leur source dans l'instabilité qui existe dans les domaines économiques, sociaux, humanitaires et écologiques...». In *Revue générale de droit international public (RGDIP)*, 1992, p. 258

⁶⁴ Rapport final de la 51^{ème} session du Conseil des ministres, doc.ECW/CMLI/XXIV/Rev.1, Accra, décembre 2003, pp. 15 et 25. Voir aussi le Moratoire sur les armes légères entré en vigueur en novembre 1998 dont la gestion incombe au Programme de Coordination et d'Assistance pour la Sécurité et le Développement (PCASED) financé par le PNUD. Ce programme finissant en 2004 au terme de son mandat fut remplacé par ECOSAP le 6 juin 2006 à Bamako, dont le mandat s'écoulait le 8 juin 2008. La CEDEAO a relancé le projet et lui a donné un autre mandat qui doit finir en 2015 lors de la Conférence d'Abuja de 2010 (voir le règlement C/REG.17/06/10 portant prorogation du projet ECOSAP et adoption de son programme d'activités).

⁶⁵ Voir Décision A/DEC.6/12/00 portant adoption des statuts du groupe inter-gouvernemental d'action contre le blanchiment de l'argent (GIABA). En fait la création de ce groupement est consécutive à la Déclaration Politique et le Plan d'Action contre le Blanchiment de l'Argent, adoptés lors de la vingtième session extraordinaire de l'Assemblée générale des Nations Unies consacrée à la lutte contre le problème mondial de la drogue, qui s'est tenue à New York, le 10 juin 1998, et des quarante (40) recommandations adoptées par le Groupe d'Action financière contre le Blanchiment des capitaux établi par les Chefs d'État des sept (7) pays les plus industrialisés, et le Président de la Commission Européenne (GAFI) ; et surtout les Recommandations de la quarante-septième session du Conseil des ministres tenue à Bamako, du 9 au 12 décembre 2000. Les évolutions du concept de maintien de la paix sont spectaculairement visibles dans le Protocole de 1999 (voir article 45 relatif à la restauration de l'État de droit, chapitre VIII relatif à l'assistance humanitaire, article 40 relatif à la sauvegarde de l'environnement, article 46 relatif à la criminalité transfrontalière, article 48 relatif à la lutte contre la corruption, article 49 relatif au blanchiment d'argent et l'article 51 relatif à la circulation illégale des armes légères).



militaires ont été notées en 2011 s'est traduit par des violences et des pillages. La Côte d'Ivoire a connu une situation d'instabilité en 2002, qui s'est aggravée en 2011, à la suite de la crise postélectorale née de la volonté de l'ancien Président de se maintenir au pouvoir en dépit du verdict des urnes ; la Guinée-Bissau continue d'enregistrer une situation d'instabilité, avec les coups d'État intervenus en 2009, et plus récemment en avril 2012 ainsi que la tentative de coup d'État d'octobre 2012 et d'août 2020. Le Mali, après plusieurs décennies de stabilité politique, a enregistré trois coups d'État, dans un contexte d'attaques armées au nord de son territoire. Le Niger a connu une période d'instabilité en 2009 à la suite de la volonté du Président de prolonger son mandat arrivé à échéance. Cette situation d'instabilité a abouti à un coup d'État intervenu en février 2010. Le Sénégal pour sa part a enregistré des troubles sociopolitiques en 2011 et au début de l'année 2012, à la suite de la tentative de modification de la Constitution de juin 2011⁶⁶.

Le plus grand problème dont souffrent les outils de Maintien de la paix au sein de la communauté reste le manque de moyens⁶⁷. En effet, toutes les actions qu'elle a eu à mener étaient tributaires de l'aide extérieure, soit des Nations unies, soit de partenaires bilatéraux et multilatéraux et quelques rares fois les États membres eux-mêmes. Cet état de fait réduit quelque peu la marge de manœuvre des États africains en général quant à la prise en main de leur destinée sécuritaire. Une telle situation est à la base de la proposition de créer la Capacité Africaine de Réponse Immédiate aux Crises Force en Attente⁶⁸, pour pallier le retard des Forces Africaines en Attente (FAA) dans les crises maliennes et bissau-guinéenne.

Néanmoins, AMBROSETTI et ESMENJAUD, identifient certains des conflits dans lesquels des États africains ont eux-mêmes assuré le maintien de la paix et tous les coûts y relatifs. En intervenant au Libéria et en Sierra Leone, le Nigéria, avant la montée en puissance de la MINUSIL, a assumé pendant huit ans la majeure partie des coûts financiers. Il en a été ainsi, aussi lors de la récente crise malienne de 2012, où pour pallier l'inertie de la CEDEAO, le Nigéria, le Sénégal et le Burkina ont envoyé des troupes dont le financement restait autonome avant la reprise par la MINUSMA. Dans le cas bissau-guinéen, ces pays, avec en tête, le Nigéria, remplacèrent des militaires angolais qui assuraient le maintien de la paix pour le compte de la Communauté des pays de langue portugaise. Toutefois, le soutien aérien d'États extérieurs à la CEDEAO était

⁶⁶ Voir Rapport annuel de la Commission, Abuja décembre 2012, p. 99, disponible sur <https://www.ecowas.int/wp-content/uploads/2024/08/ANNUAL-REPORT-2012.pdf>

⁶⁷ Voir article Axel AUGÉ, « Le 'maillon faible' de l'architecture de paix et de sécurité africaine : la condition de l'homme de troupe ». Contribution issue du colloque de Ouagadougou les 25 et 26 octobre 2013, in NAUGARET et IBRIGA (dir.), *L'architecture de paix et de sécurité en Afrique*, op. Cit. pp. 155-164.

⁶⁸ Sa création fut annoncée par la présidente de la Commission de l'Union africaine, Nkosazama Dlamini-ZUMA, le 27 mai 2013 à l'occasion du cinquantième anniversaire de l'Union africaine (UA), la Capacité africaine de réponse immédiate aux crises (CARIC) tarde à voir le jour, les forces la constituant sont constituées des pays volontaires. Lancée en réaction à la crise malienne, l'idée de la présidente de la Commission de l'UA était de faire de la CARIC une mesure transitoire dans l'attente de la pleine opérationnalisation de la FAA, sans doute pas avant 2015. Les pays volontaires à l'issue du Sommet de l'Union Africaine des 26 et 27 juin 2014 sont le Mali, le Burkina, l'Égypte, le Niger, le Sénégal, l'Ouganda, l'Algérie, la Guinée, la Mauritanie, le Tchad, l'Éthiopie, le Soudan, la Tanzanie, l'Angola et l'Afrique du Sud. Ces États membres de la CARIC sont prêts à mettre leurs troupes à disposition et financer eux-mêmes les coûts que cela créera sous l'autorité du Conseil de paix et de sécurité de l'Union Africaine. Dès son lancement en Éthiopie, début 2014, le soutien ferme de la plupart des partenaires multilatéraux de l'Afrique, dont l'ONU. Voir *La CARIC*, au cœur des préoccupations de la PAX AFRICANA, disponible sur <https://afriquinfos.com/caric-coeur-preoccupations-africana-258118/>



nécessaire⁶⁹. L'UA, pour sa part, a fourni un gros effort lors de la crise malienne en déboursant 50 millions de dollars sur le milliard que requérait la Mission internationale de soutien au Mali. Dans d'autres parties du continent, la CEEAC a eu à financer 30%⁷⁰ de la mission de consolidation de la paix déployée en République Centre Africaine qui est devenue par la suite la Mission internationale de soutien à la Centrafrique en décembre 2013⁷¹.

L'article de AMBROSETTI et ESMENJAUD, va plus loin, et analyse les causes des faiblesses des forces de l'UA. L'audit externe rendu par le panel de Haut niveau au Président de l'UA le 27 décembre 2007 identifie la difficulté de ces opérations *africaines* à absorber l'aide financière et à la transformer en efficacité opérationnelle. Au demeurant, l'appropriation de ces opérations par l'ONU est un signe évident de la légitimation internationale des actions de ces organisations africaines, tant sur le plan continental que régional. Toute chose dont la mesure doit être prise, et dont le profit doit être tiré pour, pour qu'enfin, se réalise le vieux rêve d'une défense africaine.

Conclusion

L'Architecture Africaine de Paix et de Sécurité (APSA) représente une avancée significative par rapport au modèle de coopération de l'OUA, grâce à la mise en place de mécanismes nouveaux tels que le Conseil de paix et de sécurité (CPS), les systèmes d'alerte précoce et les cadres de médiation comme le Groupe des Sages. La collaboration de la CEDEAO, par le biais de l'ECOMOG et du Protocole de Lomé, a démontré la capacité régionale à répondre aux enjeux sécuritaires et à favoriser plusieurs transitions politiques pacifiques.

Cependant, l'APSA demeure vulnérable face à des faiblesses structurelles persistantes : la non-opérationnalité pérenne des Forces africaines en attente, prévues depuis 2003, la forte dépendance financière vis-à-vis des partenaires extérieurs, ainsi que les divisions politiques illustrées par les tensions entre la CEDEAO et les pays de la confédération des États du Sahel, ainsi que la nébuleuse terroriste. Ces limites ont entravé l'efficacité des dispositifs de prévention lors de crises majeures sur le continent.

⁶⁹ Cette aide de certains partenaires de l'Afrique a souvent fait l'objet de malversations financières au point que, lors des crises récentes maliennes et centrafricaines, des cellules financières *ad hoc* furent créées en vue de canaliser les aides extérieures et d'afficher une certaine transparence éliminant tout risque de mauvaise gestion ou de corruption. Voir à ce titre le journal *Libération* du 16 juillet 2007, « Des euros évaporés par millions au Darfour. Disponible sur <https://www.liberation.fr/planete/2007/07/16/des-euros-evapores-par-millions-au-darfour> 98329/. Il est intéressant de savoir qu'en réalité, malgré les efforts particuliers et autonomes de certains pays africains, l'OTAN et surtout l'UE restent les principaux bailleurs de fonds aux opérations de maintien de la paix en Afrique. L'UE à travers son programme Facilité de Paix en Afrique (APF), dont la première action fut utilisée au Burundi via la Mission africaine (MIAB) a pris, par exemple, la majeure partie des opérations en Somalie et au Mali, et jusqu'à 70% de la MICOPAX. Voir, p. 142, David AMBROSETTI et Romain ESMENJAUD, « Le financement des opérations de paix africaines: quatre types d'arrangements et leurs enjeux politiques », contribution au colloque de Bordeaux, le 30 novembre 2012, in NAUGARET et IBRIGA (dir.), *L'architecture de paix et de sécurité en Afrique*, op. Cit. pp. 135-153.

⁷⁰ Ces données sont issues d'un entretien que les auteurs ont eu avec un officiel de l'UE à Paris en janvier 2013. Cf. David AMBROSETTI et Romain ESMENJAUD, « Le financement des opérations de paix africaines ... », op. Cit. p. 140.

⁷¹ Évidemment, l'aide de la CEEAC fut stoppée par les États membres à partir du moment où la MISCA reprit le dossier à son compte.



Dans un contexte de changements géopolitiques marqué par la ZLECAF, l'émergence de l'AES et les réformes institutionnelles encouragées par la Commission Kagamé – des mesures prioritaires s'imposent pour renforcer l'APSA:

Opérationnalisation des Forces africaines en attente, via une contribution obligatoire des États membres, dont la taxe de 0,2 % sur les importations;

Harmonisation des initiatives sous-régionales (CEDEAO, AES, CEEAC), sous la coordination effective de l'Union africaine;

Développement de brigades régionales d'intervention rapide, à l'image de la Force conjointe du G5 Sahel;

Institutionnalisation de la justice transitionnelle afin de mettre fin durablement aux cycles de violence, en mobilisant la Cour africaine des droits de l'homme et des peuples.

Pour assurer la consolidation durable de la paix sur le continent, il est indispensable de promouvoir l'appropriation souveraine des outils sécuritaires par les États africains. À condition d'intégrer les enseignements des expériences passées, l'APSA est en mesure de devenir le fondement d'une véritable paix en Afrique afin que le développement économique soit une réalité dans une perspective pérenne.

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AN AFRICAN GORDIAN KNOT? INSTITUTIONAL AND OPERATIONAL LIMITATIONS IN AU CONFLICT PREVENTION AND PEACE INTERVENTION INITIATIVES

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Abstract

This article provides an insight into the progress on the operationalization of African Peace and Security Architecture (APSA) since its establishment over two decades ago with the ambitious task of offering 'African solutions to African problems'. It explores the extent to which APSA's critical components have been effective in promoting peace and security across the continent with a specific focus on the African Union (AU) conflict prevention and conflict response scheme. In doing so, followed by a historical survey highlighting the political developments leading to the establishment of the APSA, it offers a critical interrogation on the relevance and effectiveness of the AU Peace and Security Council (PSC), and the AU Department of Political Affairs, Peace and Security (AU-PAPS). These have been undertaken within a broader context of substantive political, operational and contextual challenges extant in the domain of conflict management. In conclusion, the article argues for the future operational opportunities to arise from structural change that involves the adoption of AU principles and instruments relevant to the current security challenges, the demonstration of political will, the conferment of greater supra-nationality to the African Union by African leaders, as well as the intensification of cooperation among the continental and international APSA stakeholders.

Keywords

African Union, APSA, AU-PAPS, AU PSC, Conflict Prevention, Conflict Response, African Politics.

Resumo

Este artigo fornece uma visão sobre o progresso na operacionalização da Arquitetura Africana de Paz e Segurança (APSA) desde a sua criação há mais de duas décadas, com a ambiciosa



tarefa de oferecer "soluções africanas para os problemas africanos". Explora em que medida as componentes críticas da APSA têm sido eficazes na promoção da paz e da segurança em todo o continente, com um foco específico no esquema de prevenção de conflitos e resposta a conflitos da União Africana (UA). Ao fazê-lo, seguido de um levantamento histórico destacando os desenvolvimentos políticos que levaram à criação da APSA, oferece uma interrogação crítica sobre a relevância e eficácia do Conselho de Paz e Segurança (CPS) da UA e do Departamento de Assuntos Políticos, Paz e Segurança da UA (AU-PAPS). Estes foram realizados num contexto mais amplo de desafios políticos, operacionais e contextuais substantivos existentes no domínio da gestão de conflitos. Em conclusão, o artigo defende as futuras oportunidades operacionais decorrentes de mudanças estruturais que envolvam a adoção de princípios e instrumentos da UA relevantes para os atuais desafios de segurança, a demonstração de vontade política, a atribuição de uma maior supranacionalidade à União Africana pelos líderes africanos, bem como a intensificação da cooperação entre os intervenientes continentais e internacionais da APSA.

Palavras-chave

União Africana, APSA, AU-PAPS, AU PSC, Prevenção de Conflitos, Resposta a Conflitos, Política Africana.

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Introduction

The current sociopolitical and security landscape across the African continent is arguably the gloomiest since post-independence. Despite the limitations of the OAU in addressing emerging threats to peace and stability during its nascent years, it was at least able to respond adequately to the mandate thrust into its laps as contained in its 1965 Treaty of Addis Ababa. The tasks of the day back then- to work towards a coordinated continental response to colonialism and apartheid were undertaken with much success. Today, with a new mandate enshrined in the AU Constitutive Act and related normative frameworks, one can safely conclude that the AU has for the past two decades of its renewed mandate been unable to adequately address many of the challenges that informed its existence, for various reasons, and some of which this article seeks to examine in detail.

This article examines the conceptualization and operationalization of the African Peace and Security Architecture (APSA), which has been in place for a little over two decades since the AU evolved from the OAU, following the signing of the African Union (AU) Constitutive Act in Lomé in 2000. It undertakes an assessment of APSA's key conflict management and response mechanisms with a view to determining whether the challenge of adequately responding to the threats to peace and stability lies in the quality and content of the normative instruments themselves, or in the much-required political will and action, which reinforces every good policy. Put in simple terms, has the problem been with the inadequacy of the normative instruments and the structures developed to operationalize key instruments? Alternatively, on the other hand, does the problem lie with the much-required political will and action determined by political leaders? While the initial decade after the AU adopted its Constitutive Act was characterized by action and a concerted action to develop APSA, a gradual lull in the operationalization of the framework was observed subsequently. The AU's peace and security architecture and intervention must also be assessed through the lens of its ability to facilitate the principles of complementarity and subsidiarity. Given that the Regional Economic Communities (RECs), as building blocks and partners of the AU in its peace and security mandate, have



a critical role to play in delivering on the overarching mandate of ensuring peace and stability in Africa, an appraisal of their linkages and synergy with the AU must also be examined. Going into the future and in view of emerging threats to peace and stability on the continent, an assessment of this nature becomes important for contributing towards a realignment of the AU for the future.

1. The African Peace and Security Landscape: Historically Entrenched Patterns of Instability & The Genesis of Contemporary Continental Cooperation

The contemporary African peace and security landscape is marked by a substantial humanitarian crisis in effect with the rising armed conflicts in Northern, Eastern and Central Africa, as well as intensified terrorist activities in Sahel region and unconstitutional changes of government with conflict potential.¹ The locus of these regional and continental elements of instability is rooted in the mutually reinforcing structures of economic, social and political inequalities, most of which transcend concurrent subjectivities. The pre-colonial, colonial and early post-colonial legacies in extant political culture and inter-group animosities take a toll on the effective operationalization of the extant African peace and security framework. Thence, necessitates a nuanced and multifaceted understanding on historical patterns in African peace and security landscape brimmed with great human suffering in effect with episodes of collective violence ranging from inter-state and intra-state wars, inter-ethnic clashes, violent extremism, terrorism to genocides.

Although it is not possible to argue for *a priori* state of absolute peace, the inordinate scale and magnitude of collective violence and insecurity across the continent can be traced back to the rise of transatlantic slave trade and the natural resource extraction which was intensified in 17th century in effect with the high European demand for slave labour, reaching its devastating peak in 19th century.² This interaction with the outsiders gradually transmuted into forceful social, economic and political control over African people, eventually leading to the colonization of the whole continent by European Powers between 1833 and 1914.

Throughout the colonial era, along with the economic exploitation, Africa's experience was of racial humiliation and cultural dominance. African people were forced to live under the colonial rule as subjects, and under such conditions, aside from being subjected to arbitrary violence and political suppression, they were stripped from most basic cultural rights such as right to speak their own languages and exercise traditional religions. Borne out of the forced dispersal of millions through the transatlantic slave trade, the African diaspora, on the other hand, was also exposed to the equally dreadful structures of socio-economic and political inequality in elsewhere across the globe. All in all, this

¹ United Nations, *Report of the Secretary General on Promotion of Durable Peace through Sustainable Development in Africa*, A/79/226-S/2024/550, 23 July 2024.

² Frankema, E., De Haas, M. & Van Waijenburg, M. (2023) Inequality Regimes in Africa from Pre-Colonial Times to the Present. *African Affairs*, 122(486), pp. 57-94; Lovejoy, Paul E. (2000). *Transformations in Slavery: A History of Slavery in Africa*. Cambridge University Press



troublesome existence led to the emergence of Pan-Africanism in mid-19th century as a political and cultural movement calling for the liberation and unification of African people and the celebration of African identity.

The early Pan-African ideas were articulated by the formerly enslaved Africans living in Northern America and the Caribbeans on their quest against racial injustice, inequality and colonialism both in continental Africa and all places where people of African descent lived. At the turn of the century, the creation of a formal organization to institutionalize Pan-African ideals became a matter of vigorous endeavour. Between 1900 and 1927, a total of four conferences took place in United Kingdom (UK), Belgium, France, Portugal and United States of America (US) within which the advocates of Pan-Africanism voiced their demands for the abolishment of systemic and structural racial discrimination, injustices and inequities faced by Africans and people of African descent across the world. In 1944, several political organizations from the continental Africa and UK opened up talks for the establishment of the Pan-African Federation, which was actualized a year later during the fifth Pan-African Congress in Manchester with the calls for decolonisation and elimination of all forms of racism in Africa. Standing at a critical juncture in the history of the Pan-African movement, with this event the Pan-African leadership shifted to the African leaders, and the Pan-Africanist political cause to the continent itself.³

Throughout the 1950s, Pan-Africanism flourished as a driving force behind the decolonization wave in Africa. At the time, the African leaders of independence sought unity and solidarity among African peoples as a necessity "[...] for the rapid eradication of colonialism and for the continent's economic and political development."⁴ The first remnant, in this regard, was the independence of Gold Coast (later Ghana) from the British rule in 1957 under the leadership of Kwame Nkrumah, who was to state that "our independence is meaningless unless it is linked up with the total liberation of the African continent"⁵ at the historic celebration of Ghana's independence.

Despite the consensus on the unity ideal, however, the questions of 'what entails African unity and how to achieve it?' surfaced as a matter of contest between the ideological camps to which the nascent immediate post-independence African leaders belonged. On the one hand was the more conservative, gradualist Monrovia Group, which favoured an inter-African economic, cultural, scientific and technical cooperation. The idea of political integration was seen as a premature venture which could compromise the newly attained sovereign rights of the African states. For Monrovia, whatever the unity would entail, it was crucial for it to be built on the principle of non-intervention. On the other hand, was the federalist Casablanca group that *ab initio*, favoured a 'United States of Africa' model, which would foster integration and de-emphasize national identities and other forms of delineations. Extremely wary of the prospect of external political and economic interventions, this group strongly advocated for the socio-political and economic

³ DuBois, W. E. B. (1921). To the World: Manifesto of the Second Pan-African Congress. *The Crisis*, 23 (1), pp. 5-11; Esedebe, P. O. (1994). *Pan-Africanism: the Idea and Movement, 1776-1991*. Howard University Press; Sherwood, M. (2011). *Origins of Pan-Africanism: Henry Sylvester Williams, Africa and the African Diaspora*. Routledge.

⁴ Muyangwa, M., & Vogt, M. A. (2000). *An Assessment of the OAU Mechanism for Conflict Prevention, Management and Resolution, 1993-2000*. International Peace Academy, p. 4.

⁵ Kwameh, N. (1957). *Independence Speech*, 5 March 1957.



integration across the continent to prevent external intrusion in the future. At the onset in 1963, due to the reluctance of the Monrovia group to aspire to supranational ideal prescribed by the Casablanca group, the Organization of African Unity (OAU) was birthed as an offspring of compromise.

1.1. The Organization of African Unity (OAU)

The OAU, whose treaty was signed in Addis Ababa in 1963 by 32 African states, was founded as an inter-governmental organization. The primary goal of the Organization was prescribed as the promotion of unity and solidarity of the African States through which member states would work together towards the eradication of all forms of colonialism from Africa, and to provide better life for people of Africa via harmonisation of economic, diplomatic, socio-cultural and security policies.⁶ Through concerted diplomatic and non-diplomatic means, the OAU achieved its key political goals, having championed the independence of African states that were still under the clutches of colonialism, and carrying out a successful fight against the apartheid rule in South Africa. Yet, overtime, it became clear that the Organization lacked the required institutional capacity to promote better living conditions for African people.

The peace and security issues in post-independence Africa were primarily by-products of ill-governance. The Pan-African dreams of socio-political equality and economic development were effectively crashed within a decade by the African leaders of independence, who were captivated by the pre-colonial/patrimonial traditions of political leadership and dictatorial aspirations. Consequently, millions were exposed to violent campaigns of political oppression, acute poverty and underdevelopment under the authoritarian kleptocratic systems of governance extant in various newly independent African states. In 1970s and 1980s, African continent witnessed high-intensity conflicts in the form of super power proxy wars and coup d'etats, along with the spark of secessionist insurgency directed against the suppressive regimes. The colonial inheritance of international borders in post-independence Africa, which separated the closely related ethno-linguistic groups into different regions, also surfaced as a driver in the regionalization of on-going conflicts in the form of border disputes.

In the absence of articulation on peace and security matters beyond elimination of foreign invasion, the OAU's approach to conflict was underpinned by the principles of non-interference, territorial integrity and inviolability of the colonial boundaries. The OAU Charter neither had a clause on exceptions to the sovereign equality of its member states, nor had any significant elements on peace and security matters. All governments, regardless of their method of acquiring political power, were recognized as legitimate members to partake in decision-making processes, while the domain of peace and security was exclusively left to domestic jurisdiction. The culture of impunity generated under the prevailing structure, thus, provided convenient conditions for much of OAU member states to perpetuate political tyranny. The OAU's strong focus on inviolability of

⁶ Organization of African Unity, *Charter of the Organization for African Unity*, 479 UNTS 39, 13 September 1963.



the colonial boundaries, which together with non-interference policy, also incapacitated the Organization to address issues arising from the secessionist/border disputes.

From the 1960s to the 1980s, in effect with liberation movements and post-independence conflicts, millions of Africans were forced to leave their homes to escape persecution, armed conflict and human rights violations. The OAU, in effect with its 1969 regional refugee convention which encompassed a capacious and inclusive interpretation with respect to refugee protection arising out of armed aggression and other kinds of violence,⁷ and its member states' generosity in accepting refugees served as a positive example for the rest of the world.⁸ The admirable success of the OAU in dealing with Africa's refugee problems, however, was not mirrored on its ability to address rest of the peace and security matters of the era. Thus, it could not prevent the Organization from attaining an unsavoury reputation for being notoriously ignorant towards the unfolding human tragedies of the era as the guardian of autocratic regimes.

The OAU Charter had no provision on conflict management but a claim on the commitment of its member states to peaceful settlement of disputes by negotiation, mediation, conciliation or arbitration. Consequently, the Organization's scope for peace interventions was limited. In comparison to the UN Secretary-General, for instance, the Executive Secretary of the OAU had no mandate to initiate peace interventions while the continental body was also limited in terms of its capacity to enforce its own resolutions.

Tasked with the coordination of peaceful settlement of the disputes between the member states, the Commission on Mediation, Arbitration and Reconciliation was commanding the OAU peace and security agenda. Although, the very existence of this organ signaled commitment and value to institutional mediation, the operationalization of this framework was jeopardized by the OAU's strict non-interference policy, leaving the Commission impotent to prevent and respond effectively to intra-state conflicts. Furthermore, the Commission had no compulsory jurisdiction over the settlement of disputes, which eventually led to the collapse of the framework as the member states were wary of transferring their sovereign rights. The deadlock on the matter was attempted to be resolved gradually through the establishment of ad hoc committees, and later a Mechanism for Conflict Prevention, Management and Resolution which lacked enforcement authority in furtherance of the futility of the Organization's peace and security framework.

2. The African Union & The Quest for Continental Peace and Security

In the early half of the 1990s, the inability of the United Nations to prevent and stop the Rwandan genocide, *inter alia*, state collapse in Somalia, the eruption of civil wars across several parts of Africa, as well as human rights violations orchestrated by states, created an impulse for the revival of Pan-African consciousness. Deriving from these ideals

⁷ Organization of African Unity, *Convention Governing the Specific Aspects of Refugee Problems in Africa*, 1001 UNTS 45, 10 September 1969.

⁸ Crisp, J. (2006). Forced Displacement in Africa: Dimensions, Difficulties and Policy Directions. *New Issues in Refugee Research*, RP No 126, UNHCR.



emerged the desire for the promotion of better living conditions for African people, hitherto lost with the rise of dictatorial and corrupt regimes in the immediate aftermath of the decolonization. The zeitgeist of the era was equally potent in shaping the African leaders' perceptions on the necessity for African governments to play a proactive role in combatting emergent threats to peace and security across the continent. Kofi Annan, Secretary-General of the United Nations had called for the adoption of relevant principles to the UN Charter to enable humanitarian interventions for the protection of civilians in armed conflicts⁹. Annan also made a call for the UN Security Council's reinforcement for involvement of the African regional and sub-regional agencies in conflict prevention and management initiatives in cooperation with the UN.¹⁰

Drawing on revived Pan-African ideals and the vivid pre-Responsibility to Protect (R2P) debates in global level, the African Union (AU) assumed a pioneering role by embracing human security understanding and affirming regional and international collaboration as a requisite for the promotion of peace, security and stability in the continent. This epochal moment was defined by the adoption of the AU Peace and Security Council (PSC) Protocol in 2002¹¹ which established the first continent-wide peace and security system in Africa with the objective of offering 'African solutions to African problems', the African Peace and Security Architecture (APSA).

The transformation of the OAU into the AU portrayed the continental body's readiness to tackle some of the weaknesses inherent in the old order. The OAU's scorecard was replete with its inability to play a significant role in such major situations as the border dispute between Algeria and Morocco in 1963, the Biafra war in Nigeria from 1967-1970, the Chadian Civil War in the early 1980s, the collapse of Somalia in the early 1990s and consequent state decay. Other occurrences that brought the OAU's limitations into the fore included the civil wars experienced in West Africa in countries such as Liberia, Sierra Leone, Guinea Bissau, and Cote d'Ivoire in the 1990s, as well as the devastating genocide in Rwanda in 1994.

Departing from the old ways, the AU Constitutive Act, specifically Articles 2 and 3, emphasizes the need to promote continental peace and stability, democratic principles and institutions, popular participation and good governance, sovereign equality and interdependence.¹² Quite importantly, to banish the ill-effects of the 'non-interference' principle, the Constitutive Act was explicit in its principles which spell out important elements such as the sovereign equality and interdependence of African states, the right of the Union to intervene in a Member State under grave circumstances, namely war crimes, genocide and war against humanity, and the right of a Member State to request intervention from the union in order to restore peace and security. Of particular significance was the creation of the organs and instruments of the Peace and Security

⁹ United Nations, *Report of the Secretary-General on the Work of the Organization*, UN Doc. A/54/1, 1 October 1999.

¹⁰ United Nations Security Council, *Resolution 1197 (1998) [Africa]*, S/RES/1197, 18 September 1998.

¹¹ African Union, *Protocol Relating to the Establishment of the Peace and Security Council of the African Union*, AU Doc. 9/7/2002.

¹² African Union, *Constitutive Act of the African Union*, OAU Doc. CAB/LEG/23.



Council, the Continental Early Warning System (CEWS), the Panel of the Wise, as well as the Economic and Social Council (ECOSOCC).¹³

These systems and structures were mandated by the Constitutive Act to adequately operationalize the new continental peace and security architecture which embraces a comprehensive peace and security agenda that includes conflict prevention, early warning and preventive diplomacy, peace-making, peace support operations, peacebuilding, post-conflict reconstruction, humanitarian response and disaster management, as well as the promotion of democracy, good governance and respect for human rights. The operationalization of this continental framework is supported by the assignment of stakeholders such as United Nations (UN), the Regional Economic Communities (RECs) and Regional Mechanisms (RMs) and civil society organizations.¹⁴ The coordination of the APSA in collaboration with the stakeholders, on the other hand, is centralized around the PSC, the apex body of decision-making responsible for the prevention, management and resolution of conflicts, supported by four institutional instruments, namely, the Panel of the Wise, Conflict Early Warning System (CEWS), the African Standby Force (ASF) and the Peace Fund.

2.1. AU Conflict Prevention Scheme

Devoted to establishing the capabilities that would enable the AU's ability to anticipate and predict potential crises, ensure the timely intervention of conflict, as well as the ability to resolve prevailing tensions or to avert conflict relapse, the AU conflict prevention framework derives from its overarching APSA. It primarily functions through the Continental Early Warning System (CEWS) and the activities carried out by the Panel of the Wise (PoW). This framework comprises five highly respected African personalities from various segments of society who have made outstanding contribution to the cause of peace, security and development on the continent,¹⁵ and it serves as an advisory body to the PSC and the Chairperson of the AU Commission. The five Panel members, who represent the East, Southern, West, North and Central parts of Africa, are appointed as peace mediators even as the AU can also rely upon special envoys and committees for the matter. The PoW, thus, carries out its primary function through the preparation of special reports on issues such as election-related violence and vulnerabilities of women and children in armed conflicts.¹⁶

Prior to its recent internal reforms as part of the merging of the AU Political Affairs and Peace & Security Departments into one, a critical component of the APSA framework was the Continental Early Warning System (CEWS). CEWS, a proactive component in APSA's

¹³ African Union, *Constitutive Act of the African Union*, OAU Doc. CAB/LEG/23.

¹⁴ African Union, *Memorandum of Understanding on Cooperation in the Area of Peace and Security Between the African Union, The Regional Economic Communities and the Coordinating Mechanisms of the Regional Standby Brigades of Eastern and Northern Africa*, 26 September 2008, Article IV (iii).

¹⁵ African Union, *Protocol Relating to the Establishment of the Peace and Security Council of the African Union*, AU Doc. 9/7/2002, Article 12.

¹⁶ African Union, *Report of the AU Panel of the Wise: Election- Related Disputes and Political Violence*, 2010; African Union, *AU PSC & Panel of the Wise Expert Report on Eliminating Vulnerabilities of Women and Children in Armed Conflicts*, 2014.



conflict prevention scheme, had the mandate of data collection and analysis to detect situations that are likely to escalate into armed conflicts at an early stage, with the mandate to prepare reports to the Chairperson of the AU Commission and the PSC. Part of CEWS' functions was also to undertake its missions out in the observation and monitoring centre in Addis Ababa, also known as *the Situation Room*, which directly operates on the data collected from AU liaison offices, AU field missions, AU early-warning officers and monitoring-observation units in RECs and RMs. The CEWS no longer exists as we know it and it is the firm belief of the authors of this Paper that a critical element of the AU's peace and security architecture has been sacrificed to institutional reforms. Yet, prior to this recent development on the CEWS, the entity had suffered from the active coordination with RECs early warning structures, which limited its ability to obtain information that would have reinforced the AU's ability to carry out its early warning and early response functions. The limited political will by AU member states and reluctance to act on 'internal matters' form part of the problems in the effective functioning of the APSA. This disconnect between early warning and early response comes alive with the PSC's decision on not taking preventive action in 2012 despite being informed about a possible outbreak of conflict in Mali and Guinea-Bissau by the CEWS staff.¹⁷

The AU Conflict Prevention Scheme also encompass two voluntary processes: the Country Structural Vulnerability and Resilience Assessment (CSVRA) and the Country Structural Vulnerability Mitigation Strategy (CSVMS) within the CEWs. Since its adoption in April 2013, the PSC has been repeatedly encouraging the utilization of these mechanisms by AU member states for the structural prevention of conflict in Africa.¹⁸ Yet, as important as they are in helping member states to evaluate their structural vulnerabilities, identify resilience factors and develop risk mitigation strategies, and doing so, strengthening the AU capacity in addressing the challenges in early warning and early response nexus, the continental uptake on CSVRA and CSVMS have been extremely slow, limited to the participation of Ghana (2017), Côte d'Ivoire (2019) and Zambia (2020) out of the extant 55 AU member states.¹⁹

2.2. AU Conflict Response and Intervention Mechanism

AU Conflict Response and Intervention mechanism under APSA primarily functions through the African Capacity for Immediate Response to Crises (ACIRC), and the African Standby Force (ASF) which is a peacekeeping force with international and continental components inclusive of military, police and civilian contingents. Envisaged as a multipurpose instrument, the PSC holds the mandate to authorize ASF observation and monitoring missions, peace support missions and humanitarian interventions in AU member states. Despite the ambitious scope of this framework, however, the ASF lacks the rapid deployment capacity, which is central to its operational capability. Equally, if

¹⁷ Noyes, A. & Yarwood, J. (2013). The AU Continental Early Warning System: From Conceptual to Operational? *International Peacekeeping*, 20(3), p. 256.

¹⁸ PSC/PR/COMM.2 (DII) ; Assembly/AU/ Decl.1-2(XXXV) ; Assembly/AU/4(XXXVII).

¹⁹ African Union Peace and Security Council, *Press Release: National and Regional Consultations on Country Structural Vulnerability and Resilience Assessment (CSVRA) of Ghana*. 3 November 2017; African Union, *Key Decisions of the 32nd Ordinary Session of the Assembly of the African Union (January 2019)*, 12 February 2019.



not more critical, is the importance of Member States conferring more supra-nationality to the AU, by providing the required political backing needed to put the ASF into readiness and action.

The PSC's role in operationalizing APSA requires an African Union Commission whose mandate is to ensure that the structures and processes align. Prior to 2018, the AU Commission had two separate departments with mandates on political affairs and peace and security respectively. However, by November 2018, the 11th Extraordinary Session of the AU Assembly, had ratified the merger of two separate departments, namely Political Affairs and Peace & Security into the Department of Political Affairs, Peace and Security (PAPS). PAPS' mandate covers four AU Commission priorities- political affairs, peace and security, economic integration, and Africa's global representation and voice, and in line with the AU Agenda 2063,²⁰ which aspires to a "An Africa of Good Governance, Democracy, Respect for Human Rights, Justice and the Rule of Law"²¹. Effectively, this merger of the old departments into a single new department commenced in 2020 and has remained work in progress since then. The core functions of the department include the monitoring of peace and security trends, support to conflict prevention, capacity building and training of Member States and RECs on relevant political, peace and security issues, and the coordination of the development of Common African Positions on relevant political, peace and security issues. Also included in the new Department's mandate is the responsibility to ensure complementarity and synergy in the implementation of African Governance Architecture (AGA) and the African Peace and Security Architecture (APSA), as well as supporting post-conflict reconstruction and development policy and strategy development.²²

Ideally, the merger of the two departments into one present numerous challenges which will require time and resources to tackle. These will include a reorientation of relevant personnel to ensure a shared sense of purpose and vision, a realignment of human resource needs and the stock-taking of existing capacity, as well as the luxury of time to allow the new department to evolve. Merging the two departments has, according to AU sources, been chaotic and problematic because of the lack of clarity of mandates, competition between the personnel of the old departments, some of whom keep their loyalties to the old set up.²³ According to a senior AU staff who chose to remain anonymous:

"The old set up of having separate departments for peace and security and political affairs was better. The biggest mistake was merging peace and security with political affairs as things are being done in a chaotic manner. Peace and security were dedicated to peace interventions while political affairs did political stuff such as elections, democratic governance issues and human rights issues. The thinking behind the merger was that since most of the

²⁰ African Union (n.d.). *PAPS Mandate*.

²¹ African Union Development Agency (n.d.), *Aspiration 3: An Africa of Good Governance, Democracy, Respect for Human Rights, Justice and the Rule of Law*.

²² African Union (n.d.). *PAPS Mandate*.

²³ Personal interview with a senior staff of the AU PAPS Department.



*threats to peace and stability were political in nature, a unified set up would boost the AU's work"*²⁴.

3. Responding to the Most Pressing Threats to Peace and Stability across Africa

The continental landscape is dotted with several conflict, humanitarian disasters and political instability. Some of the threats to peace and stability include interstate conflicts, ethnoreligious conflicts- identity based conflicts, climate change-derived conflicts, and political contestations/coup d'états. Given its mandate to deal with peace and security matters, the AU is expected to respond to the current threats and manifestation of instability and conflict across the continent. Over the past two decades, the AU has played an active role in dealing with such challenges as the political crisis in the Comoros, the Darfur war, post-election crises and upheavals in places such as Cote d'Ivoire in 2010-2011, and arguably more recently, the Tigray conflict through the signing of the Pretoria Cessation of Hostilities Agreement (COHA).²⁵

The limitations by multilateral organizations to successfully initiate dialogue processes and arrive at a peace agreement has been severely limited in recent times for a number of reasons. While the geopolitical battles between the US and China and the US and Russia account for the stalemate at the Security Council, for the AU, it is a bit different. The inability to galvanize 'frontline states' who are usually seized with peace and stability concerns for the entire continent has created a leadership vacuum. The era of committed regional hegemons- Algeria for North Africa, Ethiopia for East Africa and the Horn, Nigeria for West Africa, South Africa for Southern Africa, who were at the forefront of initiating peace interventions and developmental policies, is now in the past. The most protracted conflicts no longer feature on the agenda of the bi-annual Summits of AU Heads of State. Part of an era gone by was the ability to foster a consensual approach to the peace and security challenges that beset the continent. This leads to an examination of the AU's response to the prevailing threats to peace and security, manifesting in the devastating conflict in Sudan, the perennial conflicts in the Oromia and Amhara regions of Ethiopia, the AU's host state, the dangerous developments in the Horn between Ethiopia and Somalia, leading to an alliance between Eritrea, Egypt (Ethiopia's adversary over the Grand Ethiopian Renaissance Dam (GERD)), violent clashes in the Sahel by extremists, especially in Burkina Faso, as well the manifestation of the same in Nigeria and Mozambique.

As mentioned briefly in the introductory section, the hallmark of effective collaboration between the UN, AU and RECs was the respect for the two principles of subsidiarity and complementarity. Adherence to these principles helped in the sharing of responsibilities and in ensuring a collective approach to peace and security matters. On key issues pertaining to West Africa for example, ECOWAS would normally act and obtain the ratification of the AU and the UN, with the sub-regional entity acting in a timely manner

²⁴ Personal interview with a senior staff of the AU PAPS Department.

²⁵ The Tigray conflict ended with a Cessation of Hostilities Agreement (COHA) signed in Pretoria in 2022.



and without waiting for interventions from Addis Ababa or New York. This did not mean the non-involvement of the AU. Rather, the AU would be content with backstopping the sub-regional effort and offer advanced legitimacy. In reality, this manifested in the AU often co-chairing an International Contact Group (ICG) or 'Friends' arrangement, as was done during the political dialogue and democratic transition process in Guinea from 2008-2011. On rare occasions, when the impartiality or capability of a REC to respond to threats and manifestations of conflict was in question, the AU would step in to coordinate a joint AU-REC effort, as was done following the decision to constitute an AU High-level Panel on the post-election crisis in Cote d'Ivoire between 2010-2011.

In terms of the capacity to respond to violent extremism, whether it be in Nigeria, the Sahel, and in places such as Mozambique, the AU has been active through the application of subsidiarity principles and, in the case of Somalia, the deployment of a peacekeeping force with an expanded mandate to use force to repel non-state armed groups (NSAGs). In response to the threat of violent extremism, the AU has worked with the Multinational Joint Task Force (MNJTF) Against Boko Haram in the Lake Chad Basin area of the continent. In Somalia however, the AU's deployment of a continental force, the AU Mission in Somalia, initially to stabilize the Transitional Federal Government (TFG), implement a national security plan, and to train the TFG forces, and the subsequent expansion of its mandate to support the Somali government efforts, has been the practice since 2006. While the flexibility is commendable, it remains to be seen whether there is any meaningful effort by the AU, RECs and the various ad-hoc arrangements such as the MNJTF, to adopt an intervention that seeks to understand and tackle violent extremism from its root cause. Gaps also exist in terms of the AU's capacity to respond to conflicts occurring or manifesting at the sub-state level but with repercussions for regional peace and stability. Climate change-derived conflicts are often mixed with identity-based issues and occurring through disputes over shared natural resources such as water sources, land and farmer-herder disputes, and are limited to interventions by sub-state level actors and NGOs. With the havoc that these conflicts may constitute for regional stability, given the propensity for widespread violence across borders and various regions in Africa, this constitutes another obvious gap that sub-regional and regional arrangements are unable to deal with.

3.1. Progress & Setbacks in Peace Intervention Efforts

Beyond the aforementioned limitations of the AU to effectively prevent and respond to conflict issues, additional obstacles to effective conflict management and resolution efforts include the following:

3.1.1. Limited Supranationality of the AU

Expectations were that the principle of 'non-indifference', enshrined in the AU Constitutive Act, would replace one of the cardinal principles of the defunct OAU's principle of non-interference. While 'non-indifference' exists in the normative instrument, the reality is the frequent retention of the right to withdraw the AU's right to intervene



where necessary. An AU senior official²⁶ refers to this as 'the constant invocation of sovereignty by Member States in crisis'. The popular refrain is for member states to reiterate their independence and sovereignty, and to label conflicts of concern in their member states as internal matters. This act limits the capacity of the relevant departments within the organization to make bold pronouncements on conflict issues in member states. It also reveals the limitations of the Commission to identify and engage in conflicts early before they escalate, especially in member states that wield power and influence within the Commission. For example, a largely unspoken reality is the AU's reluctance to tackle conflict issues in Ethiopia, a powerful member state, and the host to the AU, due to the host member state's enormous influence within the organization and beyond.

3.1.2. Inability to Tackle Conflict Root Causes

he AU's limited staying power and ability to address the root causes of conflict and to deploy long-term measures required in tackling them. There is the penchant for facilitating inconclusive peace processes or peace agreement implementation, or peace processes with limited participation of conflict actors. An example is the Pretoria Agreement of 2022, which effectively ended the devastating Tigray conflict, but which did not address the root causes of the conflict in itself, nor involve the participation of Eritrea, an active conflict party, in the peace talks. The recent threats to peace and stability in Ethiopia and the consequent concerns over the unravelling of the Pretoria Agreement have come about because of the *ad hoc* nature of the Agreement.

3.1.3. Identifying and Pursuing Peace and Security Priorities

For various reasons, attaining a unity of purpose and a shared vision and direction for the AU has been a struggle. This phenomenon is not exclusive to the AU, a fifty-five member state organization with a broad mandate. Even the EU, with half the membership of the AU, and with many years of advancement, has this challenge. However, the AU has in recent years, struggled to attain harmonized position and a set of key priorities.

3.1.4. Short Intervention Lifespan and Placing Conflict Management Over Transformation

Linked to the above, is a limited attention span on key conflict issues, and the frequent 'flipping of channels' from one conflict to another. Due to the myriad challenges that the AU has to grapple with, there has been the tendency to move too quickly from one conflict issue to another. The tendency to 'fire-fight' overwhelmingly supersedes the tendency to prevent conflicts from occurring or escalating. There is a sense that some of the current conflicts and political crises that have escalated in recent times- whether it be in the DRC, the Sahel region, Mozambique, South Sudan, Ethiopia and Sudan- could have been

²⁶ Interview with a serving AU official who wishes to remain anonymous, 10th September 2025, Nairobi, Kenya.



prevented from degenerating into full-scale conflict, or crisis. When the default approach to conflict issues is a conflict management approach, rather than transformation, any temporary reprieve or Band-Aid that stops the haemorrhaging will do.

3.1.5. Division of Labour with the Regional Economic Communities

We had earlier alluded to the blurring of lines in terms of the sharing of responsibilities between the AU and the RECs. While there remain good working relations between the multilateral organizations that are the building blocks of the AU (the RECs) and the AU, there is perception in some quarters that with the AU's backing, some of the conflicts and crises could be better managed by the RECs where the countries in conflict are domiciled²⁷. On the other hand, some AU personnel believe that RECs already have too much power and have arrogated some of the AU's responsibilities to themselves. This difficult topic is rarely discussed in the open but is a palpable reality that informs action or inaction on the part of the AU²⁸.

Conclusion & Recommendations

The adoption of the continental APSA, widely acknowledged as a comprehensive regional plan, and which captures the realities and ambitions of attaining sustainable peace and stability in Africa, represents a good starting point for attaining regional peace and stability. However, what makes for a normative instrument, or a viable peace and security architecture is the political will granted by decision makers to operationalize such frameworks. Closely linked to this is the important role that RECs have to play in furthering the peace and security agenda in their sub-regions and in collaboration with the AU and other partners. This aspect of the collaboration between the AU and its building blocks warrants a distinct study of its own. RECs not only have parts of their mandates deriving from the AU, but they also seek an endorsement of their action from the AU and from the UN. Over time, there has been a blurring of lines in and clarity on what guides action, and who should lead dialogue processes across board. Going forward, with the emergence of new actors, such as the Gulf countries and the likes of Turkey, who have joined the established global powers in seeking to influence domestic politics in parts of the continent such as the Horn and the Sahel among others.

In a recently-published report reviewing the progress made by the African Union on its 'Silencing the Guns' Initiative, Dersso & Hailu (2025) shared a gloomy if not damning scorecard of the AU's efforts at conflict management. They noted thus:

The AU is in crisis. Nothing more highlights this crisis than its increasing loss of leadership in peace and security. There is nothing more central to the mandate of the Peace and Security Council (PSC) and the AU than Silencing the Guns. It constitutes the raison d'être for the very existence of this Council and indeed for the AU itself...from Sudan to

²⁷ Interview with anonymous personnel of the ECOWAS Commission, 15th July 2025, Abuja, Nigeria.

²⁸ One of the Authors has experienced these tensions while serving as a Political Affairs Officer with ECOWAS and in the course of his frequent exchanges with AU personnel.



DRC, from Mozambique to the Sahel, Ethiopia and South Sudan, the peace and security situation of the continent has deteriorated exponentially.

a. The Conferment of Meaningful Supranationalism on the AU

Having described some of the challenges hindering the AU from fulfilling its mandate, it is important to stress that the AU Commission can only be as effective as the Member States want it to be. Indeed, the AU Chairperson and the AU Commissioner for Political Affairs, Peace & Security both elected officials of the Commission, are mandated to lead the AU's peace efforts, but require the backing of the AU's higher organs, the Assembly and the Peace & Security Council. The conferment of supranational powers on the AU will ensure its independence of action and reduce the political interference by Member States.

b. Revisiting Subsidiarity and Complementarity Principles between the AU, RECs and the UN

Given that the attainment of continental peace and stability is a shared responsibility between the UN, the AU and the RECs, a review of shared functions and the adherence to the principles of subsidiarity and complementarity will be a positive step forward. It will help in attaining two main objectives- a clear division of roles and responsibilities, and increased coordination between the AU, RECs, and Member States. Of particular importance is the operational synergy between the AU and its building blocks- the RECs, given the sheer impossibility of the AU to tackle every threat to peace and stability on the continent.

c. Revisiting the AU Reforms with Particular Emphasis on Peace & Security

The AU's internal reforms, especially the merging of the two Departments responsible for Political Affairs, and Peace and Security, into one, which has effectively led to lesser functions for such important organs as the Continental Early Warning System (CEWS), especially on its operationalization. While this piece does not afford the opportunity to undertake an appraisal of its functions, future research on the ability of the AU Peace Fund, mandated in the 1993 PSC Protocol to cater to operational peace interventions, will be beneficial to scholars and practitioners alike.

d. Increased Capacity to Understand Evolving Geopolitics and New Threats to Peace and Stability

Some of the most devastating threats to peace and stability on the continent today include large-scale intercommunal conflicts, violence emanating from hate speech and social media misuse, as well as the impact of geopolitical tussling between powerful states and emergent powers. The ability to identify the root causes of the conflicts is critical to devising solutions to them and this requires new engagements and analyses



that are more sophisticated than what currently obtains. It may therefore require a revisiting of existing early warning indicators and mechanisms for tackling conflict.

e. Towards a Longer-term Political Dialogue Processes, More Comprehensive Peace Processes, and Gender Inclusion

The shift from a 'fire-fighting' and reactive approach to undertaking structural conflict prevention initiatives can only be attained if the AU is provided with the required tools - a supranational status with less interference in its operations by member states, as well as the financing required to undertake longer-term political dialogue processes. Inclusion of critical actors such as women, youth and marginalized groups are also critical for the maximum delivery of its mandate to the people of Africa.

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THE CIVIL WAR IN ETHIOPIA (2020-2022) AND THE AFRICAN UNION'S ROLE IN THE PEACE PROCESS

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Abstract

The war that erupted between the government of the Federal Democratic Republic of Ethiopia and the Tigray People's Liberation Front (TPLF) in November 2020 left the country embedded in an unprecedented humanitarian crisis, combining internal displacement, famine, and widespread human rights violations by external forces still present in the region. This research examines the conflict using the Contentious Politics Approach to Civil War (Florea, 2017) and discusses the role of the African Union in the peace negotiations in Pretoria, South Africa. After understanding the structural conditions that led to the authority and legitimacy crisis, and consequently, civil conflict, we identified in the war cycle in Ethiopia several mechanisms of radicalization and militarization. The interference of AU's shuttle diplomacy resulted in the beginning of the peace negotiations and represented a remarkable achievement in independent African conflict resolution. Nonetheless, AU failed to oversee the full implementation of the agreement. The disarmament and demobilization phases were never completed, for instance, and Tigrayans currently find themselves on the edge of another conflict.

Keywords

Civil War, Ethiopia, African Union, Peace Negotiations.

Resumo

A guerra que eclodiu entre o governo da República Federal Democrática da Etiópia e a Frente de Libertação do Povo Tigré (FLPT) em novembro de 2020 deixou o país mergulhado em uma crise humanitária sem precedentes, combinando deslocamento interno, fome e violações generalizadas dos direitos humanos por forças externas ainda presentes na região. Esta pesquisa examina o conflito usando a Abordagem Política Contenciosa da Guerra Civil (Florea, 2017) e discute o papel da União Africana nas negociações de paz em Pretória, África do Sul. Após compreender as condições estruturais que levaram à crise de autoridade e legitimidade e, consequentemente, ao conflito civil, identificamos no ciclo de guerra na Etiópia diversos mecanismos de radicalização e militarização. A interferência da diplomacia de vaivém da UA resultou no início das negociações de paz e representou uma conquista notável na resolução independente de conflitos africanos. No entanto, a UA não conseguiu supervisionar a



implementação integral do acordo. As fases de desarmamento e desmobilização nunca foram concluídas, por exemplo, e os tigrés se encontram atualmente à beira de outro conflito.

Palavras-chave

Guerra Civil, Etiópia, União Africana, Negociações de Paz.

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THE CIVIL WAR IN ETHIOPIA (2020-2022) AND THE AFRICAN UNION'S ROLE IN THE PEACE PROCESS

THAIS HORN

Introduction

On the 15th of February 2025, the African Union elected a new leader. Held in Addis Ababa, home of the AU's headquarters, delegates from the member countries elected Mahamoud Ali Youssouf for the new mandate. Not far from there, Tigrayans of Mekelle were (and still are) facing the increasing fear of their region relapsing into another civil war. The same AU that elected its new leader last weekend mediated the negotiations and the signature of the peace agreement in November 2022. On the edge of a new conflict, Ethiopia is back in the international eye. The criticism of the Cessation of Hostilities Agreement reemerged, and the role of the AU in the negotiation process is being discussed again. In this direction, the present article aims at understanding the role of AU in the peace negotiations in 2020. In order to have this discussion, the conflict itself and its causes must be put under investigation.

During the night of November 3rd, 2020, the Ethiopian National Defense Forces (ENDF) base in Mekelle, capital of the Tigray Regional State, known also as the Northern Command, was attacked. The federal government, represented by Prime Minister Abiy Ahmed, blamed the Tigrayan People's Liberation Front (TPLF) for the attack and announced military activities against the group.

The Prime Minister's announcement was followed by two years of intense military and violent conflict between the federal government forces and the Tigray People's Liberation Front. The federal government quickly gained control of Mekelle, forcing the TPLF fighters to disperse and retreat. Nonetheless, regrouping and adopting guerrilla tactics, the TPLF made advances, inflicting heavy losses on the government forces, including plundering military equipment and kidnapping personnel. Amongst change of tactics, human rights violations, and ceasefire announcements, the federal government and the TPLF fought "the most preannounced war in recent African history" (Tronvoll, 2022, p. 163).

Being a multiethnic society, Ethiopia's cultural diversity is usually the primary aspect considered to be the cause of the conflict. However, as advocated in this research, ethnicity alone cannot be the sole explanation for Ethiopia's civil war between 2020 and 2022. To assume this argument is valid would represent enduring Westernised interpretations of African politics, focused on the idea of "tribalism" as the primary driver of conflicts on the continent. We advocate for a comprehensive and multifaceted interpretation of the context in which the conflict occurred, taking into account the



country's multiethnicity, and include topics such as ethnic fragmentation and polarization in our research.

The research relies on the critical historical analysis method. Through the heuristic phase, we collect data and information from primary and secondary sources. After critically evaluating our sources, we commit to synthesizing information and constructing a narrative that explains the political causes of the conflict between 2020 and 2022. Regarding its structure, this article is divided into four sections, besides the introduction and the conclusion. The theoretical framework will be introduced first; the conflict between ENDF and TPLF is discussed and, after, analyzed using the Contentious Politics Approach to Civil War onset (Florea, 2017). Finally, we discuss the role of the AU in the peace negotiations.

The Contentious Politics Approach to Civil War Onset

Using the Contentious Politics Approach to analyze civil war onset implies considering the flexible and uncertain nature of the cycles of contention as essential shapers of the conflict dynamics, from the escalation to its resolution. The framework provides an understanding that a combination of structural conditions and specific contextualized factors generates conflict in a country. Firmly rooted in a mechanism-based approach, the Contentious Politics Approach explains civil conflict as a result of a crisis of authority and legitimacy and two distinct but interdependent mechanisms: radicalization and militarization (Florea, 2017).

The combination of structural conditions and specific mechanisms is central to the argument, considering that many contentious politics have happened across history, and not all of them necessarily turned into civil war. A crisis of authority or legitimacy is required but not sufficient. Radicalization and militarization must shape the conflict's outburst (Florea, 2017). Nonetheless, it is essential to consider that this does not mean other mechanisms have not influenced the contention cycle and its outcomes.

When a country faces a crisis of authority or legitimacy, several indicators emerge, including multiple power contenders challenging the central government's sovereignty, a fragmented political body with undermined functions, and declining capacities. These types of crises are common in weak states, authoritarian regimes, and newly established governments, especially in contexts after an imperial or federal collapse and in ethnically and culturally diverse and fragmented societies (Florea, 2017).

Low-capacity, undemocratic countries are the most common hosts of civil wars worldwide. In contrast, low-capacity democratic countries are known for experiencing military coups and other contentious struggles (Tilly & Tarrow, 2015). Furthermore, in undemocratic regimes, social movements often have to opt for more extreme and violent performances and repertoires to have their claim heard, considering that peaceful and institutional options have been removed from community reach. Contentious politics can be even more hampered in high-capacity undemocratic regimes due to the most considerable resource availability for repressive actions.



Countries with successful democratic governments and transitions over the decades have been the least common scenarios for civil conflict or other forms of violent contentious politics (Tilly & Tarrow, 2015). Elections, term limits, and other forms of democracy institutionalization are essential to build a political context that welcomes political participation from ordinary citizens or opposition parties, deepening and entrenching democracy. There is no such thing as a fully consolidated democracy. However, authors have shown that extending the life expectancy of democracy beyond the short term is necessary and assists in preventing authoritarian regression (Schedler, 1998). In other words, long-lasting and stable democracies host political contexts where claim-making is not only accepted but facilitated, and contentious and violent political claim-making tactics are not chosen by civil society and opposition. Hence, where societies have seen multiple and frequent democratic backslides, including regime collapses, democratic values are improbable to take root in a society.

Contention and violence can be ethnically shaped, and hence, so can civil wars. In this direction, some authors have argued that ethnic distribution (polarization and fractionalization) is linked with the intensity of conflicts. Through empirical analysis, studies have shown that polarization influences conflict over public goods, and fractionalization increases conflict when private components are involved (Esteban et al., 2012).

However, there is a distinction between ethnic fractionalization and polarization - the latter having a more considerable influence on civil conflicts. Fractionalization is the probability of two random individuals not belonging to the same group. At the same time, polarization refers to the population distribution among groups, with high polarization indicating a bipolar system. Ethnic conflicts are less likely in highly homogeneous or heterogeneous societies but more likely in countries with a significant minority facing a dominant majority (polarization) (Esteban et al., 2012).

Ethnic-shaped contention can generate structural conditions necessary for civil war to emerge. Nonetheless, in the same direction as Florea (2017), Fearon and Laitin (2003) argued that neither ethnic polarization nor ethnic fractionalization generated civil conflict. Instead, internal wars were mainly the result of conflict accumulation across decades. Also, civil war can be seen in terms of insurgency. Local grievances based on ethnicity can be essential for the local population to support the insurgents (Fearon & Laitin, 2003). Hence, ethnicity influences civil conflict, but there is no causal relationship between ethnic diversity and the conflict.

The Ethiopian Civil War (2020 – 2022): the path from hope to war

On November 4th, 2020, Abiy Ahmed, the Ethiopian Prime Minister, issued a statement informing the Ethiopian population that the last red line had been crossed. The TPLF attacked the Ethiopian National Defense Forces Base, also known as the Northern Command, located in Mekele, the capital of the Tigray region, after "months of continued provocation and incitement for violence." The ENDF was, hence, authorized to carry out military activity to "save the country and the region from spiraling into instability" (Office of the Prime Minister – Ethiopia, 2020a).



Ethiopian Airlines planes, intended for civil use only, were reportedly arriving at Mekelle with special forces troops and equipment. Shots were exchanged at the airport and surrounding areas as Tigrayan political leaders received information about the federal government's activities. The fighting moved to the Northern Command's main base, from where the Tigrayans captured heavy weaponry (Plaut, 2021; Plaut & Vaughan, 2023; Tronvoll, 2022). The Parliament unanimously approved a State of Emergency and, on November 6th, the Prime Minister's Office report informed that the Federal Defense Forces were determined to finish the "criminal enterprise with the least possible cost to the civilian population" (Office of the Prime Minister - Ethiopia, 2020b).

Two weeks after the beginning of the attacks, Mekele was surrounded by federal troops, and as the 72-hour deadline for Tigrayan surrender expired, the civilian population of Tigray's capital was subjected to military attacks. With Mekele under federal control, Tigrayan forces were forced to flee the capital and relocate to rural areas (Ethiopia, 2020; Plaut & Vaughan, 2023).

The central government interpreted taking control over Mekele as a sign of the war's end (Ethiopia, 2020). However, TPLF, momentarily defeated and separated, still had resources and interpreted the takeover of their capital as only the beginning of the conflict. From this moment onwards, Tigrayan troops reorganized, adopted guerrilla strategies, and increased their military arsenal with every attack on federal troops. The first phase of the conflict was marked by TPLF tactical successes (Ethiopia's Tigray Conflict, 2021). Tigrayans recovered many territories previously taken by the federal government, caused heavy losses on enemy troops. Unable to respond to the attacks, the government and allied troops "took out their frustration on the civilian population" (Plaut & Vaughan, 2023, p. 229). During the invasion of cities and houses, women and girls were systematically raped and sexually assaulted. Expectedly, Tigray forces also were accused of committing mass killings, sexual assaults, and systematic rapes after taking over several cities in Afar and Amhara regions (The Acute Risk of Further Atrocity Crimes in Ethiopia, 2023).

As June 2021 ended, Ethiopian forces were forced out of Mekelle after a significant battle that allegedly captured over 9,000 ENDF men. TPLF was in control of Mekelle, and the Central Government declared an instant and unilateral ceasefire (Ethiopia Peace Observatory, 2021; Plaut & Vaughan, 2023; The Acute Risk of Further Atrocity Crimes in Ethiopia, 2023). The announcement was received with hope. However, what happened was "an extension of the genocidal war campaign on Tigray, perhaps the worst stage" (The Acute Risk of Further Atrocity Crimes in Ethiopia, 2023). Using the ceasefire as an instrument for violence, the central government cut the internet signals, discontinued banking activities, and restricted electricity availability, severely constraining the provision of aid (Ethiopia - Tigray Region Humanitarian Update Situation Report, July 9th, 2021 - Ethiopia | ReliefWeb, 2021).

Federal government responses indicated that some damage was done: Abiy revoked the unilateral ceasefire and, with the assistance of different media vehicles, convinced the population that war was necessary, a patriotic endeavor, even asking citizens to march against the 'terrorist' TPLF "with every weapon and power" (Plaut & Vaughan, 2023; Standard4, 2021). Categorizing TPLF as a terrorist group was strategic, considering that



it opened possibilities of counterterrorism attacks that would not be available otherwise, restricted by international humanitarian law and human rights regulations.

TPLF forces attempted to capture the city of Mille but were targeted with intensive aerial bombing. Drones sent by Turkey and China, for instance, led Ethiopia to a significant victory in the Afar region and rapid advances toward the north (Plaut & Vaughan, 2023; The Acute Risk of Further Atrocity Crimes in Ethiopia, 2023).

As a strategy to hold the enemy, Tigrayans started to call on the international community to initiate peace talks and intervene. Christmas Eve saw, after more than one year, both sides announcing ceasefires. Nonetheless, by January 2022, drone attacks resumed, especially in civilian areas. Both sides of the conflict exchanged accusations of perpetrating military attacks, while requesting the international community to act and lead the peace negotiations (Plaut & Vaughan, 2023).

Ethnic Polarization and Fragmentation in Ethiopia

Ethiopia is both ethnically fragmented and polarized. The second largest population of the African continent (more than 126 million) is composed of approximately 90 ethnic groups, divided into nine regional states and two administrative councils. The most significant part of the population belongs to four ethnic groups (Oromo, Amhara, Somali, and Tigray), and more than half of the ethnic groups (at least 56 Indigenous groups) of Ethiopia are concentrated in the Southern Nations, Nationalities, and Peoples Region. ("Country Summary," n.d.).

Numerically, there is some level of polarization in the country, as the biggest ethnic group comprises more than one-third of the population (Oromo, 35,8%). Nevertheless, when considering the political aspect of the concept of "majority," other groups stand out as the most prominent ethnicities: Amhara and Tigray have been representing political majorities by controlling state resources alternatively since the establishment of modern Ethiopia, without being the numerical majority (24,1% and 5,7%, respectively) ("Country Summary," n.d.).

Party formation and proliferation in Ethiopia are processes intensely influenced by ethnicity. As we consider the constant overlapping of ethnicity and aspects of public life in Ethiopia (agriculture, land demarcation, economics, administrative routines, education, etc.), the expected consequence is a high number of political parties to reflect an ethnically diverse society with ethnic-based political agendas.

NEBE published a list of the accredited political parties in the country in 2022, which contained 67 parties. Of the total, more than 40 have ethnic groups mentioned in their names, being the Ethiopian party system a concrete example of the ethnically fragmented society it represents (Political Parties | National Election Board of Ethiopia, n.d.).

Ethnicity plays a vital role in Ethiopian politics and the 2020 conflict. Ethnic divisions shaped contention and contentious performances, as well as the mechanisms of radicalization taken by both actors during the conflict. As discussed previously, the role of ethnicity in the conflict is important. However, there is no direct causality relation between ethnic diversity and conflict, neither in theory nor in the case of Ethiopia.



Contentious Politics Approach to the Ethiopian Civil Wars Onset (2020 - 2022)

Exactly three weeks after the World Health Organization declared the COVID-19 outbreak a global pandemic, the National Election Board of Ethiopia (NEBE) announced the indefinite postponement of regional and national elections, to take place initially in May and, later, at the end of August of 2020 ("Ethiopia Postpones June 5 Parliamentary Elections," 2021).

In June 2020, the Tigray Regional State Council announced its decision to hold elections despite the federal decision. The Council claimed that neither NEBE nor any other federal government institution had the authority and legal grounds to announce the postponement of the regional elections: the holding of polls was predicted in the regional Constitution ("Ethiopia Postpones June 5 Parliamentary Elections," 2021).

The Ethiopian population had to choose members for the House of People's Representatives (HPR) and the Regional Legislative Councils. The 2020 elections were expected to be the freest, fairest, and most competitive since 2005. The timing was also an issue: the mandate of the Parliament was supposed to end in September 2020. Hence, elections needed to be held by August at the latest (Steering Ethiopia's Tigray Crisis Away from Conflict | Crisis Group, 2020). NEBE and TPLF exchanged accusations for months, with NEBE claiming that TPLF had no legal grounds to organize an election logistically and deploy a workforce, for instance. NEBE was the only institute with the mandate to execute an election impartially. However, the TPLF claimed that the institute was only a tool to facilitate elections when they happen, not an organ that holds any decision-making power (Tsehay & Chekol, 2021).

The Board was created in 1992, after the end of the Derg regime, as an independent electoral institution under the 1995 constitution, with responsibilities to conduct elections, announce results, register voters and political parties, for instance (*Constitution of the Federal Democratic Republic of Ethiopia*, n.d.). In this direction, NEBE was the institution overseeing all Ethiopian elections, many of which were criticized for impartiality and for favouring the leading party of the ruling coalition, the TPLF.

Reformed after Abiy's ascension to PM, Birtukan Mideksa, a former TPLF opposition leader, was appointed as chairperson (*Birtukan's Appointment as NEBE's Chief Crucial to Realize Genuine Election System*, n.d.). None of those reforms explicitly equipped NEBE with the power to postpone elections. Articles of a proclamation from 2019 include mentions to the responsibility of deciding on "matters necessary for the proper execution of free, fair and peaceful elections" and taking measures "to resolve issues that may arise in the electoral process" (*Election Laws | National Election Board of Ethiopia*, n.d.).

Further analysis of the issue of the postponement of the elections is made on Tronvoll (2024) and Mengie (2022), for instance. The main goal here is to locate NEBE's announcement in a broader context of the authority and legitimacy crisis in Ethiopia: the federal government instrumentalized NEBE's decision to extend its mandate and weaken opposition, and the TPLF leadership criticized NEBE and defied its instructions, questioning the legality and authority of the whole government.



After a closed-door meeting, the House of Federation (HoF) decided that the elections in Tigray were illegal. Hence, whatever the results were, they would be considered non-applicable, non-effective, and non-binding. Abiy Ahmed, in the same direction, mentioned taking "the necessary actions against those who are engaged in illegal political acts that threaten the constitution and constitutional order." (Abbay Media apud Tsehay & Chekol). Despite these two precise positions from the central government, TPLF opened polls in September (Tsehay & Chekol, 2021).

The party violated the decision of the federal government, questioning not only its authority but also its legitimacy. The 5-year term for federal political positions has ended, and elections need to be held to fill public offices in Addis - the same elections that were not conducted. Hence, TPLF argued that neither the HoF nor the HPR officeholders represented Tigray and its people. The very existence of the federal government was being denied by Tigrayan leaders (Tsehay & Chekol, 2021).

As discussed previously, there is a bigger probability of finding problems with authority and/or legitimacy in four contexts: weak states, authoritarian regimes, newly established governments, and ethnically plural societies. Despite the difficulty of inferring the level of democracy of any country, it is essential to highlight here that Ethiopia, immediately before the conflict onset, presented itself with three out of the four contexts mentioned. Ethiopia can be labeled as an undemocratic and low-capacity regime, given its low level of democracy institutionalization, the limited power transitions over decades, and the persistent and numerous electoral issues, among other factors. In addition, considering the cycle of the war, Abiy's government was extremely recent and was showing clear signs of authoritarianism, as the PM was growing to be the next African Big Man.

Radicalization and Militarization: Actions taken by the Central government

It is essential to understand that the federal government has invested in an anti-TPLF campaign composed of several fronts since Abiy's ascension to power. In this piece, we consider them as radicalizing actions, as the central government increased the resources mobilized to achieve a specific goal: to undermine the TPLF influence in Ethiopian politics.

TPLF interpreted the creation of the Prosperity Party as an active movement to remove power from the hands of TPLF. In a meeting with only three out of the four founder parties of the Ethiopian People's Revolutionary Democratic Front (EPRDF) coalition, the creation of a new unitary party system was voted on. Although almost anything was done to institutionalize the new ruling system, the TPLF interpreted Abiy's action as unconstitutional. In an attempt at a conciliatory movement, the PM tried to convince TPLF to join the new party under particular and already defined circumstances. In its turn, TPLF refused to integrate the Prosperity Party. In addition, a large number of Tigrayans were removed from public office, especially from security and military institutions, prosecuted, and imprisoned. Former members occupied high positions in the chain of command (Colonels, Majors) and were responsible for defence logistics, intelligence, and tactical operations coordination - having strategic access to information and resources ("Ethiopia Parliament Dissolves Tigray Leadership"). The primary justification for the



arrests was accusations of corruption and human rights violations. Most accusations were made in sentences without proper evidence to back up the process (Tessemi, 2018).

Removed from the government, the new party, and even from public positions across different government institutions, the Tigrayan leadership left (or was forced to leave) to return to Mekelle. The pro-government media vehicles reported that returning was an embittered announcement of defeat, while TPLF and its supporters were interpreting it as a necessary homecoming embedded in a bigger narrative of a sacrifice done for the greater good (Plaut & Vaughan, 2023).

In addition, following the general discourse of the public manifestations between 2015 and 2018, TPLF was the chosen culprit for all and every negative aspect of the country. Abiy's various proposed reforms were presented to the population against the backdrop of previous government errors. From the initial speech of "You are the motor that runs Ethiopia" (PM Abiy to Tigray, 2018), the Prime Minister has come a long way to characterize the TPLF-led government as "the dark years" and to describe the opponents of his reforms as saboteurs and "daytime hyenas" (Gardner, 2024).

Leaders of opposition groups and political enemies of TPLF, previously exiled or in the diaspora, returned to the country after Abiy issued their forgiveness or dropped any charges. Many of them were even named to occupy public offices. After the 2005 elections, many people were prosecuted for crimes against the Constitution by the TPLF-led government (Plaut & Vaughan, 2023).

Regarding militarization, the federal government invested heavily in reforming and modernizing the military, especially training and reorienting the regional special forces allied to the central authorities. Reports indicate an 88% increase in military spending directed towards expanding surveillance and enhancing drone capabilities, among other initiatives. Also, agreements with Western partners (United Kingdom) to train pilots, and special forces were reached (Tian et al., "Trends in World Military Expenditure, 2022.", "Shifts in Ethiopia's Military Strategy - World - Al-Ahram Weekly.")

The federal government invested in a campaign of securitization and authoritarian control, including mass arrests, human rights violations, and blockages, increasing repression and violence towards ethnonationalist groups not only in Tigray but also in the Oromia and the Benishangul-Gumuz regions (Kelecha, 2021; Plaut & Vaughan, 2023). Also, Tigray government insiders reported using Ethiopian Airlines to move military personnel and equipment across the country. Forty heavily armed men were detained at Mekele airport without any explanation or justification for their presence in the region.

Radicalization and Militarization: Actions taken by the TPLF

Most TPLF acts of radicalization came as responses to federal government positions and in the form of public speeches and answers in interviews. After the publication of a report implying that TPLF was involved in the assassination of the Oromo singer Hachalu Hundessa, Getachew Reda, the party spokesman at the time, said that scapegoating TPLF was a trend and accused the Prime Minister and his government of being in chaos



(AfricaNews, 2020). Accusations of lies, controlling the media, selective justice, and attempts to corner the people of Tigray were common, amongst many others. After the decision of the finance ministry to send resources directly to Tigray local administrations as a sort of punishment for the holding of elections, the party leadership accused the decision of being unconstitutional and 'tantamount to a declaration of war' (Steering Ethiopia's Tigray Crisis Away from Conflict | Crisis Group, 2020).

By holding regional elections, despite the federal decision to postpone and the numerous threats and speeches made by the PM regarding the consequences of such an act of defiance, the TPLF was responsible for a significant escalation in the already tense relationship between the regional and federal governments. No federal government would remain indifferent to an extensive and public demonstration of disrespect to its authority and legitimacy. The TPLF leadership, as once the ruling party of Ethiopia, was not naive to believe their acts would not have consequences.

Considering TPLF militarization actions, an investigation by the Attorney General's office generated a report pointing to the crimes committed by TPLF against the ENDF. Besides pointing to the fact that the TPLF as a whole was making sure that enough food and fuel were available before initiating war, the report indicated that after Abiy's ascension to power, Tigray Regional State started training an extra 5,000 special forces per year (Abrehet, 2021).

It is relevant to highlight that acquiring military resources during the fighting was extremely important for TPLF forces to defend, advance, and conquer many territories across Tigray and Amhara, for instance. In fact, on the very first day of the conflict, during the attack on the Northern Command base, TPLF fighters seized a large number of weapons and killed and captured a high number of high-ranking officers and resistant soldiers. TPLF guerrilla tactics were also crucial for several victories during the conflict and, consequently, for taking hold of military equipment. These strategies were deployed in the attack on the Northern Command buildings, initiating the conflict, and in the attack on Kombolcha, a strategic location between Addis and the northern region. TPLF forces were accused of killing 100 ethnic Amharics and looting military equipment ("Tigray Rebels Accused of 'Summarily Executing' 100 in Kombolcha"). Also, after the beginning of the conflict, TPLF implemented force enlistment strategies, augmenting their military personnel (Paravicini & Houreld, 2022).

Strategies, expectations, and peace negotiations

The initial phases of the peace negotiation process, led by the African Union, was marked by what the AU itself calls shuttle diplomacy between Addis Ababa and Mekele. The High Representative for the Horn of Africa had begun discreet and direct engagements with parties involved and key political actors in the country, where he advocated for unconditional ceasefire and cessation of hostilities, unhindered humanitarian access and political dialogue without any preconditions. When both parties showed disposition for negotiating, the AU began the bureaucratic process to bring everyone to the table (Kodjo, n.d.).



According to Zekarias Abebe (2022), there were some sticking points about the AU leadership of the peace negotiation process. The TPLF leadership expressed reservations about the neutrality of the institution's representatives, citing the proximity of former Nigerian President Obasanjo to Abiy Ahmed. In addition, the TPLF also demanded the lifting of the blockade and restoration of basic services in the region before the beginning of the talks. The federal government wanted to see more indications of an agreement before resuming basic services (Abebe, 2022). This proves that human rights were being violated as electricity and banking services remained cut and aid was impeded in the region in order to have negotiation leverage.

Despite apparent impediments, negotiations started in Pretoria, South Africa, on October 25th, 2022. The AU organized a High-Level Panel where representatives had direct and confidential negotiation and plenary sessions were held to monitor progress and confirm areas of agreement. Representing AU were the African Union High Representative for the Horn of Africa and former Nigerian President, Olusegun Obasanjo, by the former Kenyan President, Uhuru Kenyatta, and by the former Deputy President of South Africa, Dr. Phumzile Mlambo-Ngucka. The Intergovernmental Authority on Development (IGAD), the United Nations, and the Government of the United States also participated as observers. The AU report on the negotiation process highlights the three mediation principles followed by the organization during the talks: consent, relevance and ownership, with the Panel adopting a mere facilitative approach. On November 2nd, the Cessation of Hostilities Agreement (CoHA) was signed – also referred to as the Pretoria Agreement (Opata, 2022).

The role of the African Union in the peace negotiations was unprecedented and became a concrete representation of the motto "African Solution to African Problems". The document published by the AU about the process includes the lessons learned during the process and mentions AU's leadership and ownership promoting, as well as management of the media vehicles and engagement with observers (Abraham, 2025). Considering the high complexity of the conflict and topics discussed, mediating the signature of the CoHA is an excellent achievement for the African Union.

Nonetheless, when discussing the implementation of the Agreement, the AU was not as successful. A direct channel of communication was established between the senior military commanders to implement the measures agreed in Pretoria and a Joint Planning Committee was formed to develop a disarmament, demobilisation and reintegration (DDR) strategy. However, there were few advances, especially when it came to dialogue, accountability, reconstruction, the DDR process and the presence of non-ENDF forces in Tigray (The Acute Risk of Further Atrocity Crimes in Ethiopia, 2023).

The power struggle is currently migrating inwards the TPLF, and the region is on the edge of another conflict (Cascais, 2025). The head of the interim administration and the party leader, Debretsion Gebremichael, were replaced by Getachew Reda. The TPLF is divided regarding this replacement and its implications for the relationship with the central government. Getachew was part of the peace negotiations in Pretoria and is criticized for being more aligned with Abiy, as the PM nominated Getachew as his ministerial advisor on East African Affairs.



Eritrean interference in the region also exacerbates the tense relationship between the central government and Tigray. While Getachew supporters seek alignment with the central government, Debretsion supporters are aligning with Eritrea to explore the current rivalry between Ethiopia and Eritrea over sea access. Abiy formally denied any intention to militarily invade Eritrea to grant access to the Red Sea, but mentioned several times its preparedness to military action, if that is needed. The conclusion of the construction work on the Grand Ethiopia Renaissance Dam (GERD) also affects stability in the region, considering Egypt and Sudan, for instance, are long opposing Ethiopia on the topic - as the GERD will affect the water levels of the Nile, resources which Egyptian and Sudanese government are highly dependant on.

Lasting peace is far from being a reality in Tigray - but it could have been closer if the AU had maintained its efforts during the agreement implementation phase. It seemed more concerned with receiving praise for an unprecedented win than with actually working towards stability and peace in the region. It is clear that the complexity of the issue and the involved parties' predisposition to peace are important factors to be considered, and there is only so much AU can do if the parties involved are not willing to compromise. In this direction, the same structural conditions that facilitated the onset of the civil war may also be acting as impediments to the full implementation of the agreement. Weak and undemocratic regimes, as well as ethnic fragmentation, are possible factors, amongst many others, influencing the lack of sustainable peace - just as they influenced the presence of violent contention. This is an open path for research.

Conclusion

When analyzing the period immediately before the conflict that erupted on November 3rd, 2020, we can conclude that the authority and legitimacy crisis occurred when some mobilization performances related to the mechanisms of radicalization and militarization were already underway. The government had already begun its media campaign against Tigray. It intensified the ethnic discussion inside the political realm when TPLF refused to comply with the decision to postpone regional elections. The crisis of legitimacy and authority is a consequence of the central government's and TPLF's increased use of radicalization mechanisms.

Also, we argue that Abiy Ahmed, representing the central government, focused more on radicalization mechanisms, considering that he, as the country leader, controlled an already satisfactory array of material resources, such as military equipment and trained personnel. These military resources were already deployed to control and suppress opposition in other regions, such as Oromia. The balance of power, initially, was explicitly pending towards the central government.

However, at the official beginning of the conflict, TPLF drastically intensified its militarization mechanisms, acquiring considerable amounts of weapons and other equipment and organizing and training units to use guerrilla tactics. This strategy brought some military victories for TPLF forces and, even if momentarily, altered the balance of power in their favor.



As the humanitarian crisis worsened, international eyes focused more frequently on Ethiopia. The beginning of peace negotiations between ENDF and TPLF resulted from international pressure and intervention, as well as from resource draining and claims that both parties were ready to negotiate. When conversations in Pretoria, South Africa, resulted in the Cessation of Hostilities Agreement, the balance of power tilted back to the central government.

As per the negotiation process, it is possible to conclude that the African Union leadership was essential for the signature of the CoHA and without the shuttle diplomacy missions and the High-Level Panel and talks facilitated by the AU representatives, the conflict would not have ended within two years. What the international media and international community saw happening in Pretoria in 2022 was an incredible demonstration of power, diplomacy and African agency in regards to African conflicts. No external participant played a pivotal role in the preparation, negotiation or implementation phases.

What remains to be seen is a more active role from the AU in guaranteeing the affected region can see stable peace and human rights being restored unhindered, mitigating further radicalization and militarization actions from the parties involved - TPLF, the federal government and Eritrea, as well.

Press releases strongly encouraging the parties to uphold the obligations agreed during the signature of the CoHA may not be enough. A closer look to the post-war context in Tigray is needed, as the population is still suffering from the consequences of the conflict, such as lack of infrastructure and job opportunities, for instance. The AU's position of promoting ownership and allowing the own parties to establish the agenda, as it assumed a facilitator role, was appropriate for the peace negotiations only. At this moment, AU needs to provide more assertive guidance and actions towards conflict prevention and peacebuilding and investing resources into projects in key areas in the region: governance, free and fair elections, human rights, justice and disarmament.

Activating networks with local NGOs and cooperatives can be the solution for increasing formal employment and improving the post-war economy; reinstating the Joint Monitoring Committee with the participation of local leaders and activists can provide inside insights about what are the actual needs of the Tigrayans and provide more accurate humanitarian assistance; implementing international elections observers and providing technical assistance for an electoral reform can represent a significant step towards fair elections, and officially discussing accountability and transparency in regards to the issue of war crimes can be an important milestone for the victims and their families. In addition, mediating the tense relationship between Ethiopia and its neighbours is crucial to prevent further conflicts, as the relationship with Eritrea is a key point of contention within the TPLF, and any Ethiopian military incursion into the neighboring country may reignite the conflict in Tigray.

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ACCESS TO JUSTICE FOR INDIGENOUS PEOPLES IN AFRICA

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Abstract

This paper explores the issue of access to justice for indigenous peoples in Africa, a topic that has received insufficient attention within the broader discourse on human rights and legal inclusion. The concept of indigenous peoples in Africa is examined, with a focus on the unique cultural, social and historical contexts that shape their relationship with the States and its legal systems. The African legal framework is analyzed in relation to its provisions for protecting indigenous rights, alongside an exploration of the mechanisms available for accessing justice within the continent. Key challenges to accessing justice, such as discrimination, the marginalization of indigenous knowledge, and the lack of recognition of customary law, are discussed. Landmark cases highlighting both the successes and failures of the legal system in addressing indigenous grievances are presented to underscore the gaps in the protection of their rights. The paper also addresses the concept of restorative justice as an alternative legal approach that aligns more closely with indigenous peoples' traditions of conflict resolution and healing. Finally, recommendations for improving access to justice for indigenous communities are offered, including legal reforms, better integration of indigenous legal systems, and the promotion of inclusive, culturally sensitive judicial processes. By examining these themes, the paper advocates for a justice system that respects the rights, cultures, and traditions of indigenous peoples, ensuring their full participation in the legal processes that affect their lives.

Keywords

Indigenous peoples, Africa, Fundamental Rights, Humanitarian aid, Justice, CSOs, NGOs.

Resumo

Este artigo explora a questão do acesso à justiça para os povos indígenas na África, um tema que tem recebido atenção insuficiente dentro do discurso mais amplo sobre direitos humanos e inclusão legal. Examina-se o conceito de povos indígenas em África, com enfoque nos contextos culturais, sociais e históricos únicos que moldam a sua relação com os Estados e os seus sistemas jurídicos. O quadro jurídico africano é analisado em relação às suas disposições de proteção dos direitos indígenas, juntamente com uma exploração dos mecanismos disponíveis para o acesso à justiça no continente. São discutidos os principais desafios para o acesso à justiça, como a discriminação, a marginalização do conhecimento indígena e a falta de reconhecimento do direito consuetudinário. Casos marcantes que destacam os sucessos e fracassos do sistema jurídico no tratamento das queixas indígenas são apresentados para sublinhar as lacunas na proteção de seus direitos. O artigo também aborda o conceito de justiça restaurativa como uma abordagem jurídica alternativa que se alinha mais estreitamente com as tradições dos povos indígenas de resolução e cura de conflitos. Por último, são apresentadas recomendações para melhorar o acesso das comunidades indígenas



à justiça, incluindo reformas jurídicas, uma melhor integração dos sistemas jurídicos indígenas e a promoção de processos judiciais inclusivos e culturalmente sensíveis. Ao examinar esses temas, o artigo defende um sistema de justiça que respeite os direitos, culturas e tradições dos povos indígenas, garantindo sua plena participação nos processos legais que afetam suas vidas.

Palavras-chave

Povos indígenas, África, Direitos Fundamentais, Ajuda humanitária, Justiça, OSC, ONGs.

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ACCESS TO JUSTICE FOR INDIGENOUS PEOPLES IN AFRICA

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"For to be free is not merely to cast off one's chains, but to live in a way that respects and enhances the freedom of others."

Nelson Mandela

Introduction

Access to justice is a fundamental human right that should be available to all individuals, regardless of sex, religion, ethnicity, race, or language. It ensures that everyone has the opportunity to seek and obtain a fair resolution to disputes, protect their rights, and receive equal treatment under the law. However, for indigenous peoples in Africa, access to justice remains a deeply challenging and often inaccessible reality. These communities, with their distinct cultures, languages, and ways of life, face numerous barriers in navigating mainstream legal systems, which are frequently ill-equipped to address their unique needs and realities. The issues surrounding access to justice for indigenous peoples in Africa are compounded by systemic marginalization, historical inequalities, and the lack of recognition of indigenous customary law within national legal frameworks. Traditional justice systems, which have served indigenous communities for centuries, often come into conflict with modern state-run judicial systems that fail to acknowledge or respect the legitimacy of Indigenous legal practices. These tensions raise important questions about the role of traditional justice mechanisms and the need for legal reforms that respect both the universality of human rights and the cultural autonomy of Indigenous peoples. While some indigenous juridical systems continue to function effectively within their communities, they are often excluded or undermined by state laws, exacerbating the struggles for justice faced by these populations. Understanding these dynamics is essential in advocating for a justice system that is truly inclusive and reflective of Africa's rich diversity.

The concept of indigenous peoples

Sometimes referred to as "autochthonous", "aboriginal", or "native" people, there is yet no universally accepted definition of the concept of "indigenous people".¹ However, the

¹ United Nations, 2021. *Guidelines in Indigenous Peoples Issues*.



United Nations has described indigenous peoples as any group or community of people who have retained social, cultural, economic and political characteristics that are distinct from those of the dominant societies in which they live. It lists the factors that are relevant to understand the concept to include any ethnic community having priority in time, with respect to the occupation and use of a specific territory; "the voluntary perpetuation of cultural distinctiveness, which may include language, social organization, religion and spiritual values; self-identification as well as recognition by other groups or by state authorities as a distinct collectivity; and experiences of subjugation, marginalization, dispossession, exclusion or discrimination ». In the African context, the Commission, the Working Group on Indigenous Populations (WGIP) in Africa lists similar factors to include any people having a distinct culture from the dominant society, and whose cultures are under threat, in some cases, of extinction; whose survival of their particular way of life depends on their access to their ancestral lands and the resources thereon; who suffer discrimination as they are regarded as less developed than other parts of the society; who suffer various forms of marginalization; who are subjected to "domination and exploitation through political and economic structures that reflect the interest of the national majority; and who identify themselves as indigenous".² Many African countries do not formally recognize indigenous peoples in their constitutions or legal frameworks. As a result, indigenous groups often do not have legal standing or the right to claim specific protections under national laws. This lack of recognition can result in the denial of their rights to land³, culture, and self-determination. While the African Charter on Human and Peoples' Rights (the Charter) provides some protections, it does not explicitly define or recognize "Indigenous peoples." The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) has been endorsed by many African nations, but its implementation is inconsistent. In many parts of Africa, indigenous communities are being driven off their ancestral lands to make way for wildlife reserves, tourist resorts or the extraction of natural resources.⁴ The Commission through its WGIP set out four criteria defining indigenous peoples; occupation and use of a specific territory, the voluntary perpetuation of cultural distinctiveness, self-identification as a distinct collectivity, as well as recognition by other groups and an experience of subjugation, marginalization, dispossession, exclusion or discrimination.⁵ During the colonial period, the word indigenous was used for the people inhabiting or existing in land from the earliest times or from before the arrival of colonialists. The first organization to expand this concept was the Pan-American Union in 1938, which declared that indigenous people were descendants of the first inhabitants of the land. It was further examined by the General Assembly in 1949 whom recommended a study of the 'Social Problems of the Aboriginal Populations and Other Under-Developed Social Groups of the American Continent'. In 1960, the United Nations adopted Resolution 1514 which granted the

² Odum and Hari (2022).

³ The International Labor Organisation in its Convention n°169 from 1957 underlines the importance of the indigenous peoples' land rights and highlights the free, prior and informed consent principle (known as the FPIC principle), which the companies or any institution should respect before trying to do something on the land of ethnic communities

⁴ Gilbert (2017). LITIGATING INDIGENOUS PEOPLES' RIGHTS IN AFRICA: POTENTIALS, CHALLENGES AND LIMITATIONS. See the 2003's report by the WGIP/ Communities of the Commission on Human and Peoples' Rights which provides a profound analysis of the situation of indigenous peoples in Africa

⁵ See Chapter 4 (Report of the African Commission's Working Group of Experts on Indigenous Populations / Communities, 2005)



independence to colonial countries and peoples and characterized the foreign rule as a violation of the Human Rights, affirmed the right to self-determination and called for an end of the colonial rule. Between the 1960s and 1970s, an international level indigenous activism arose. In 1971, the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities commissioned a study on the discrimination against indigenous peoples. The report, written by Cobo, published in 1983, was indicative of the difficulty in defining indigenous people. Despite the lack of an authoritative definition, there are criteria that help to define indigenous peoples.⁶ On an individual basis, an indigenous person is one who belongs to these indigenous populations through self-identification as indigenous and is recognized and accepted by these populations as one of its members – acceptance by the group.⁷ This preserves for these communities the sovereign right and power to decide who belongs to them, without external interference. Indigenous peoples are distinct social and cultural groups that share collective ancestral ties to the lands and natural resources where they live, occupy or from which they have been displaced.⁸ In addition of the criteria stressed above, the United Nations Permanent Forum on Indigenous Peoples defined some more criteria such as a strong link to territories and surrounding natural resources ; distinct social, economic and political systems ; and distinct language, culture and beliefs.⁹ During the process of the UNDRIP's adoption, a formal definition of indigenous peoples needed to be set ; as there was no such definition under international law. Over the course of international discussion and debate, four themes emerged as being important criteria in conceptualizing indigeneity : priority in time, perpetuation of cultural distinctiveness, self-identification and recognition by other actors, experience of subjugation, marginalization or discrimination.¹⁰ Unfortunately, the predominant approach by African governments is the suppression of diversity through assimilation, with a focus on developing and integrating peoples who are seen as primitive. These pre-colonial development strategies mimic those of imperial states as well as various postcolonial development initiatives funded and led by the international organizations. The continent's complicated history makes identifying as indigenous in Africa a complex exercise. There are tensions fueled by issues of power, representation, and difference. In addition, the concept of indigeneity, originally championed by indigenous peoples from the Americas and Australasia, had to be molded and reframed to fit the African context as indigenous peoples (re)asserted their agency previously been erased by the State. It is therefore not that surprising that its applicability is questioned, despite the increasingly vocal engagement of the indigenous community. This molding of indigeneity to fit the African environment has led to skepticism among scholars who have pointed out that self-identification as indigenous can – and possibly has been – used by groups who might not identify as indigenous as a way to access the benefits of collective rights as a way to

⁶ Cobo (1987, pp. §379-380)

⁷ Cher (2023, p. 4).

⁸ The land and natural resources on which they depend are linked to their identities, cultures, livelihoods, as well as their physical and spiritual well-being. Indigenous peoples often lack formal recognition over their lands, territories and natural resources, are often last to receive public investments in basic services and infrastructure and face multiple barriers to participate fully in the economy, to have access to justice, and to participate in political processes and decision making.

⁹ Indigenous Peoples and the United Nations Human Rights System (2013, pp. 2,3).

¹⁰ See also Article 33(1) of the UNDRIP as it states the indigenous peoples' right to determine their own identity.



better access their natural resources and land rights. Important rights for indigenous peoples have been guaranteed by international and regional legal instruments¹¹, nevertheless the question has remained regarding if these protections are enough to protect indigenous peoples or whether a separately formulated response to their situation is necessary and appropriate.¹² Scholars have a divergent opinion on this matter, some would argue that indigenous voices will get lost under a generalist Human Rights system, whereas others believe it is sufficient to meet the needs of indigenous peoples.¹³ Collective rights versus individual rights is another contentious issue. Collective rights have historically been incompatible with international law that is traditionally centered on individuals and States, and so, indigenous rights – which include a set of collective rights – have been an uneasy fit for international law. Nonetheless, with the emergence of third generation rights¹⁴, the international legal forum has grown to accept indigenous group claims.¹⁵ Individual rights are those which belong to each person and which he or she can assert vis-à-vis the State, the community or other human being. Each individual can exercise these rights alone, according to his or her own will. But certain individual rights can only be exercised collectively – freedom of assembly, association or trade union freedom. Collective rights are those that belong to a group or collectivity and are intended to protect the integrity of that group or collectivity (right to development and right to self-determination)¹⁶, they can only be exercised if several people agree to use collectively – together and for the same purpose – the right that belongs to each of them.

The African legal framework

The African [Banjul]¹⁷ Charter on Human and Peoples' Rights adopted on June 27, 1981, in Nairobi, Kenya at the Organization of the African Union's eighteen summit, was the first declaration to be adopted regarding the indigenous African peoples' Human Rights. Within the framework of the African regional system, the African Charter on the Rights and Welfare of the Child was adopted on July 11, 1990 and is the first regional instrument exclusively dedicated to the regulation of the rights of the minors ; and the Protocol to the Charter on the Rights of Women in Africa [Maputo Protocol] adopted on July 1, 2003.¹⁸ The last treaty adopted within the Organization of the African Union is the Protocol to the Charter on the Establishment of an Court ,¹⁹ adopted on June 10, 1998.²⁰ Other treaties of the system can be mentioned, such as the Organization of the African Union's Convention Governing the Specific Aspects of Refugee Problems in Africa adopted on September 10, 1969 or the African Union Convention for the Protection and

¹¹ See the legal framework chapter of this paper.

¹² The question here is regarding the necessary separate set of rights specifically for indigenous peoples.

¹³ Cher (2023, p. 6).

¹⁴ Also known as solidarity Human Rights, they are rights that try to go beyond the framework of individual rights to focus on collective concepts, such as community or people.

¹⁵ Cher (2023, pp. 11,12), in practice, collective rights have emerged and become increasingly acceptable under IL (Mazel, 2009). See Conventions No. 107 and 169, and the UNDRIP (Articles 3, 6, 26) – all affirms the collective indigenous rights to land, territories and resources.

¹⁶ The recognition of group rights for indigenous peoples is essential to establish an effective instrument for the protection of indigenous ways of life and to secure their cultural survival.

¹⁷ Ngom (1984, p. 68)

¹⁸ Rodríguez (2021, pp. 236-239)

¹⁹ Mubiala (2005, pp. 95,96)

²⁰ Droits de l'Homme en droit international - Recueil de textes (2007)



Assistance of Internally Displaced Persons in Africa adopted on October 23, 2009. There are significant signs of the emergence of new legal frameworks to recognize and protect indigenous peoples' rights across the continent. For instance, the new Constitution of Kenya, from 2010, recognizes historically "marginalized group",²¹ including indigenous communities. The Constitution of Cameroon also mentions in its Article 2 the protection of the rights of indigenous peoples. In 2011, the Republic of Congo became the first country to adopt a specific law on indigenous peoples : Law on the Promotion and Protection of the Rights of Indigenous Populations in the Republic of Congo.²² In 2022, the Democratic Republic of Congo took a big leap forward in recognizing the customary rights of its indigenous population by adopting a new law on the Promotion and Protection of the Rights of the Indigenous Pygmy Peoples. This historic law is the country's first ever legislation to formally recognize and safeguard the rights of indigenous peoples, in particular their land rights. The Constitution of the Republic of Benin makes the provisions of the Charter an integral part of the national constitution ; by clarifying how international should be treated in and by its domestic courts.²³ The Constitution of the Central African Republic states in its Article 6 the equality before the law of all human beings without distinction of race, ethnic origin, region, sex, religion, political affiliation or social position and the protection of the rights of indigenous peoples and the guarantee of equality for all rights in all the domains for men and women. Lastly, the Malawi's Constitution adopted in 1998, shows the protection granted to everyone, none withstanding their origin, race, customs, ethnicity in its Chapter IV – Section 26 of the Constitution²⁴ and Section 28.²⁵ It is up to Non-Governmental Organizations (NGOs) and Human Rights activists to advocate the advancement and implementation of these rights to the relevant state bodies, particularly the courts, who must in turn ensure that these rights have meaning and are better recognized for the population.

The mechanisms to access justice in Africa

Justice Charles Kajimanga²⁶ defines the access to justice as "The right of individuals and groups to obtain a quick, effective and fair response to protect their rights, prevent or solve disputes and control the abuse of power, through a transparent and efficient process, in which mechanisms are available, affordable and accountable." In the absence of access to justice, people are unable to have their voice heard, exercise their rights, challenge discrimination or hold decision-makers accountable. Access to justice helps to preserve human dignity, it is helpful in efforts to grow civil society and to reduce and end poverty. Delivery of justice should be impartial and non-discriminatory. To strengthen access to justice, the United Nations system works with national partners to develop national strategic plans and programs for justice reform and service delivery.

²¹ See Kenya's Constitution's Chapter seventeen – general provisions ; Article 260 – interpretation

²² N'ZOBO (2012)

²³ It can be seen through the Preamble of Benin's Constitution specifically references to the United Nations Charter, the Universal Declaration of Human Rights, and the UNDRIP ; and also in Benin's Constitution's Article 7, adopted on December 2, 1990.

²⁴ See Malawi's Constitution's Section 26 – culture and language

²⁵ See Malawi's Constitution's Section 28 – right to property

²⁶ Kajimanga (2013)



One of the major obstacles in accessing justice is the cost of legal advice and representation. The United Nations system supports the provision of legal aid by building the capacity of rights-holders, improving legal aid programs that empower rights-holders, particularly the poor and marginalized groups, and supporting legal awareness, legal aid clinics and public information campaigns. Access to justice is a requirement that is increasingly at the heart of the major debates of our time, whether in the fields of economic, political and social development, peace, Human Rights or culture. This issue forms a bridge between the past, the present and the future, as it refers to the marginalization and systemic discrimination suffered by members or groups of society. The solid international Human Rights framework developed over the last 70 years, and the way in which it is further developed through the interpretation of international Human Rights bodies, gives access to justice the normative contours and specificity necessary for its practical implementation. Major elements such as the rule of law, the right to the truth and other fundamental normative frameworks have given new weight to access to justice. Based on the legal framework defined in chapter 3, several cultural biases and discrimination within legal systems issue have been identified. As a matter of fact, indigenous women, children, youth, and persons with disabilities face discrimination on multiple grounds, which often puts them in a particularly disadvantaged situation. So, there is a huge need to pay attention to the situation of these specific groups, who face cumulative discrimination. Winning a court case, whether at the level of the Commission or nationally, has proven to be only one small step in the struggle against marginalization, discrimination, and dispossession.²⁷ The Commission's report argues that indigeneity "is today a term and a global movement fighting for rights and justice of those particular groups who have been left at the margins of development paradigms, whose cultures and way of life are subject to discrimination and contempt and whose very existence is under threat of extinction".²⁸

Formal justice systems

The Commission

Since its inception in 1987, the Commission has sought to execute its mandate as stipulated in Article 45 of the Charter, which includes promoting and protecting human and peoples' rights and interpreting the Charter.²⁹ The Commission meets twice a year in ordinary sessions, where its members, states, organizations having observer status and other stakeholders engage in dialogue on pertinent human rights issues on the continent. The International Work Group for Indigenous Affairs has been at the forefront and indeed elicited interest through raising awareness and supporting the participation of indigenous peoples at the Commission's sessions³⁰ and has also facilitated and funded the Commission's Working Group and its activities.³¹ The Commission is officially charged with three major functions : the protection and the promotion of human and peoples'

²⁷ Werner (2023, p. 392), while technically the decisions of the Court are legally binding, there is no follow-up instrument or mechanisms to make sure that the States comply.

²⁸ See the Report of the Commission's WGIP from 2005, page 87

²⁹ Bojosi and Wachira (2006)

³⁰ See IWGIA's official website – <https://iwgia.org/en/>

³¹ Bojosi and Wachira (2006)



rights ; and the interpretation of the Charter. The WGIP in Africa was established by the Commission at the 28th Ordinary Session in Benin in 2000 and it consists of commissioners as well as external expert members. The WGIP carries out promotional activities for the rights of indigenous peoples, including country visits, research and sensitization seminars. Since 2015 the WGIP has carried out 13 country visits and research and information visits, as well as a number of seminars and research activities. The WGIP is an active participant in international gatherings on indigenous peoples' rights, and published in 2010 an Advisory Opinion on the UNDRIP. In 2003 the Commission adopted a groundbreaking report on the rights of indigenous peoples in Africa taking point of departure in the Charter.³² The adoption of an Advisory Opinion by the Commission to support the adoption of UNDRIP marked another step toward the affirmation of indigenous peoples' rights in Africa.³³ The Advisory Opinion not only participated in unlocking the reluctance of the group of African States to adopt the UNDRIP, but also reflected developments taking place at the international level on the rights of indigenous peoples as well as their connection to the continent. Remarkably, in recent years, the Commission has started to refer to indigenous peoples' rights in its examination of States' periodic reports.³⁴ All these factors and the recent decision of the Commission in the Endorois case indicate the emergence of a consistent jurisprudence on indigenous peoples' rights in Africa.³⁵

The Court

The Court was established by African countries to ensure the protection of human and peoples' rights in Africa. It complements and reinforces the functions of the Commission. The Court was established under Article 1 of the Protocol to the Charter, which was adopted by member states of the Organization of African Unity³⁶ in Burkina Faso, in June 1998. The Protocol entered into force on January 25, 2004. To date, thirty-four member states have ratified the protocol establishing the Court. To date, only eight of the thirty-four States parties to the Protocol have deposited the declaration recognizing the Court's jurisdiction to receive applications lodged directly by NGOs and individuals (Burkina Faso, Gambia, Ghana, Guinea-Bissau, Mali, Malawi, Niger, Tunisia).³⁷ The Court's contentious jurisdiction applies to all cases and disputes submitted to it concerning the interpretation and application of the Charter, the Protocol and any other relevant human rights instrument ratified by the States concerned. As part of its advisory jurisdiction, the Court may, at the request of a Member State of the African Union, one of its organs or any African organization recognized by the African Union, give an opinion on any other legal question relating to the Charter or any other relevant human rights instrument, provided that the subject of the opinion is not related to a question being examined by the Commission. The Court is made up of eleven judges who are nationals of African Union

³² See the Resolution on the Adoption of the Report of the African Commission's WGIP, November 2003, ACHPR/Res.51 (XXVII) 34th Ordinary Session

³³ African Commission on Human and Peoples' Rights (May 2007)

³⁴ Bojosi and Wachira (2006)

³⁵ Gilbert (2011). INDIGENOUS PEOPLES' HUMAN RIGHTS IN AFRICA: THE PRAGMATIC REVOLUTION OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

³⁶ Legally replaced by the African Union (AU) in 2001

³⁷ Rwanda withdrew its declaration in 2017 ; Tanzania in 2019 ; Ivory Coast and Benin in 2020.



member states. On the proposal of their respective States, the judges of the Court are elected, in their individual capacity, from among African jurists of proven integrity and recognized practical, judicial or academic competence and experience in the field of human rights. Judges are elected for a six-year term, renewable once. The judges of the Court elect from among their number a President and a Vice-President of the Court for a two-year term. They may be re-elected only once. The President of the Court resides and works full-time at the seat of the Court, while the other ten judges work part-time. In the performance of his duties, the President is assisted by a Registrar who performs the clerical, management and administrative functions of the Court. The Court may receive cases filed by the Commission on Human and Peoples' Rights, States Parties to the Protocol or African intergovernmental organizations. NGOs with observer status with the Commission and individuals may file cases directly with the Court, provided that the State they are suing has filed the declaration under Article 34(6) recognizing the Court's competence to accept cases from individuals and NGOs.

Informal justice systems

African traditional justice systems can be referred as all the mechanisms African communities have applied in managing conflicts and disputes since ages, and which have been passed on from one generation to the other. These systems are often called traditional, informal, customary or non-state justice systems.³⁸ These systems have strengths, such as the high level of public participation, the fact that it helps discovering the truth and as a consequence it helps the survivors and the relatives of the deceased victims to handle their emotions of anger and loss and to understand what happened, and in the end, it contributes to reconciliation. Also, indigenous justice systems may benefit a higher degree of legitimacy as they reflect the norms, values and customs recognized for aged by their communities ; and these systems are usually geographically closer than the formal systems, there is usually no language issue as they speak all the same dialect, and it is way more affordable. In addition, in case of serious crimes or human rights violations, customary justice systems may contribute to reconciliation and communal stability as the perpetrators may return to the community and their own families. As a contrary, these traditional justice systems have weaknesses.³⁹ These weaknesses could be the abuse of the informal system's position, corporal punishment or violence based on sexual orientation, or violations of human rights and individual rights such as fair trial guarantees.⁴⁰ Other critics are regarding the violation of women's rights in particular and the non-protection of fundamental rights and freedoms of suspects in criminal cases.⁴¹ Although these informal justice systems have huge potential for enhancing access to justice for indigenous communities in Africa – as they have been sometimes excluded from the formal justice systems –, strengthen the rule of law and bring development among communities ; various challenges arise in operationalizing them. Indeed, some of these traditional practices have been declared illegal and in some

³⁸ Kariuki (2018). African Traditional Justice Systems.

³⁹ It should be noted that these cons are usually formulated from the Western point of view.

⁴⁰ Szpak (2019)

⁴¹ Kariuki (2018). African Traditional Justice Systems.



African countries such as Kenya or South Africa, there are laws proscribing the traditional practices despite their complementary role in dispute resolution with the formal systems.⁴² Some other challenges are due to the fact that African justice systems are regarded as inferior in comparison to formal justice systems, and these systems are threatened by modernization and by the socio-economic, political and cultural changes.

The challenges to access justice

Material issues

Indigenous peoples, particularly in rural areas, face economic and social disadvantages that limit their ability to access legal resources, including legal representation and to engage in lengthy legal battles. Many are illiterate or lack knowledge about the legal system, making it harder for them to assert their rights. Furthermore, widespread discrimination and stereotypes about indigenous peoples in many African countries and societies contribute to their marginalization in the legal system. This cultural bias can hinder their access to fair trials, legal processes and remedies. Also, in some African countries, corruption and a lack of effective governance system undermine the functioning of the judiciary, making it difficult for indigenous peoples to secure justice and especially when their cases involve powerful corporate or state interests.

Individual issues

Indigenous women

Numerous barriers exist for indigenous women in accessing justice on an equal basis to others. Indigenous women are disproportionately at risk of experiencing all forms of violence, compounded by multiple forms of discrimination based on race, gender and other forms of identity, including disability and sexual orientation. Remote or rural is another barrier for indigenous women to have access to justice. Indigenous women are overrepresented in national criminal justice systems. Reporting of violence against indigenous women is lacking, as sometimes they do not feel comfortable to fill complaints or as they may be unaware of the protections available. Lastly, justice systems are mostly male dominated and discriminating against women. International Human Rights law requires that States take all measures to ensure equality before the law.⁴³ The Committee on the Elimination of Discrimination against Women has noted with concern – in its study by the Expert Mechanism on the Rights of Indigenous Peoples from April 29, 2013 – the lack of women, including indigenous women, appointed to the judiciary and has called for gender-sensitization training of justice officers. The Committee has noted further that laws or customs that limit a women's access to legal advice or ability to seek remedy before courts, or accord lesser value to a female testimony, violate the right to equality before the law.⁴⁴

⁴² Kariuki (2015). Conflict Resolution by Elders in Africa: Successes, Challenges and Opportunities, p. 50)

⁴³ See the Convention on the Elimination of All Forms of Discrimination Against Women, 1979, Article 15

⁴⁴ Expert Mechanism on the Rights of Indigenous Peoples (2013)



Indigenous children and youth

The rights of indigenous children and young people are recognized, implicitly and explicitly, by the Universal Declaration of Human Rights ; the ICESCR ; the Convention on the Rights of the Child ; the World Declaration and Plan of Action on the Survival, Protection and Development of Children ; the Declaration of the World Summit for Children ; the UNDRIP and of course the African Charter on the Rights and Welfare of the Child.⁴⁵ There is some discrimination towards indigenous youth ; despite the fact that the available data is limited, several studies show that indigenous children and youth are disproportionately represented in criminal justice systems. The Committee on the Rights of the Child pointed out that disproportionate high rates of incarceration of indigenous children may be attributed to systematic discrimination within the justice system and / or society. Other areas in which persistent barriers remain are access to justice for indigenous children who have been victims of domestic violence or sexual abuse ; and once in custody, indigenous youth may be less likely to benefit from non-custodial sentencing options or restorative justice measures, more likely to receive the most punitive measures and to be subjected to the harshest treatments, such as being placed in secure confinement. The Committee has called upon the States to take measures to address juvenile crimes without resorting to judicial proceedings wherever possible and also to support traditional restorative justice systems to promote the best interests of the child. The governments must make certain that their national constitutions as well as their statutory and customary laws, reflect the provisions of international Human Rights instruments. Nevertheless, it is argued that custom tradition, culture, and religion are major constraints to the recognition and protection of the rights of children in Africa. In several countries, traditional values are often deployed as an excuse to undermine Human Rights, including those of children.⁴⁶ For children's rights to be recognized and protected in an African country, it must be the case that the country has first internationalized its constitutional law ; then the country must establish a governing process that adequately constrains the state and prevents civil servants and political elites from acting with impunity and violating the rights of children. The issue is regarding the fact that such a governing process must have the judicial system that is independent enough to bring to justice those who violate children's rights. Unfortunately, in many African countries, even including those that have domesticated the various international Human Rights instruments, there is still a widespread abuse of the rights of the children.⁴⁷ Indigenous children and youth are exposed to economic and social factors that impact their fundamental rights. They are often forced to leave their traditional communities in search of work or education and move to the city where they are frequently discriminated against and do not have the same opportunities as others to find work and access education.⁴⁸ Their new condition

⁴⁵ Also known as the African Children's Rights Charter, adopted in 1990 and entered into force in 1999. The African Committee of Experts on the Rights and Welfare of the Child was formed in July 2001.

⁴⁶ Reid (2013)

⁴⁷ Mbaku (2022, p. 231), this is due to the fact that these countries do not yet have a governing process that can adequately prevent those whose role it is to enforce the laws and protect children from prohibiting adoption behaviors that contribute to non-enforcement of the law.

⁴⁸ Fonds des Nations Unies pour l'enfance Convention relative aux droits de l'enfant Groupe de la jeunesse (ONU, 2000), indigenous children and young people are one of the groups most at risk of fundamental rights



can have devastating consequences on their self-esteem and cultural identity, and thus be at the root of many serious medical and social disorders, such as depression and drug addiction. Indigenous youth inherit the responsibility of protecting and preserving the traditional lands, resources and sacred sites that represent their cultural heritage and determine their identity. Various Human Rights bodies, including treaty and Charter bodies, can address concerns about the rights of indigenous children, such as UNICEF, the United Nations Youth Advisory Group.

Indigenous disabled persons

A key framework Convention is the one on the Rights of Persons with Disabilities, which guide the interpretation of other relevant international Human Rights and the development of instruments in this regard. Non-discrimination is a general principle of this Convention – Article (3)b). Indigenous persons with disabilities face considerable obstacles in terms of access to justice ; such as living in rural areas, limited access to information provided in accessible formats and appropriate languages, inaccessibility of legal counsel. There are also concerns regarding the treatment of indigenous persons with disabilities in detention. Indeed, the United Nations Office on Drugs and Crimes has found that indigenous persons with disabilities face magnified difficulties in prisons and that women prisoners with disabilities are at particularly high risk of manipulation, violence, sexual abuse and rape.^{49,50} Although legal protections and the social status of indigenous persons with disabilities have both improved, there still are many areas where services and accessibility fall short,⁵¹ some areas need to be addressed : services, legal capacity, imprisonment. Nevertheless, some factors could contribute to overcome these issues. For instance, at the international level, the Committee on the Rights of Persons with Disabilities instituted by the United Nations has taken the opportunity to comment on the situation of indigenous persons with disabilities' access to justice. Its observations have focused on the equality and non-discrimination issue, the liberty and the security of the person, the importance of data and statistics and the situation of indigenous children with disabilities.

Landmark cases

The Endorois case n°276/2003

The 2010 decision by the African Commission marked a significant milestone in the recognition of indigenous peoples' rights in Africa, especially concerning land and natural resource claims. The case arose from the forced eviction of the Endorois community – approximately 60,000 people – from their ancestral lands around Lake Bogoria, Kenya, to make way for a game reserve. The Endorois alleged that the Kenyan government

violations, as their language, customs and values often set them apart from the society to which their community belongs.

⁴⁹ Pollack (2014, pp. 310, 311)

⁵⁰ See United Nations Office on Drugs and Crime, Criminal Justice's Handbook on Prisoners with special needs, 2009, p. 45

⁵¹ Larson (2014, p. 225), the persons with disabilities still face wide gaps in achievement, access and services



violated their rights to property, culture, religion, and development by evicting them without adequate prior consultation or compensation for the loss of their land. In its ruling, the Commission found several violations of the Charter, particularly concerning the Endorois' right to property, access to natural resources, and the freedom to practice their religion and culture. The Commission recommended that the Kenyan government formally recognize the Endorois' ownership of their ancestral land, grant them unrestricted access to Lake Bogoria for religious and cultural purposes, and provide compensation for the community's losses. This ruling was pivotal for several reasons. It was the first time the Commission addressed the rights of Indigenous peoples in Africa and the first international decision to acknowledge a violation of the right to development. Furthermore, the Commission recognized the Endorois as an indigenous community, completing an ongoing process of ethnic identification that had begun in the 1990s. The decision also has far-reaching implications for the rights of Indigenous peoples across Africa, especially given the increasing pressures on land from environmental conservation and economic development projects. Although the Kenyan government has not fully implemented the Commission's recommendations, the case has significantly raised awareness about the plight of Indigenous peoples in Kenya and across the continent. It contributed to the creation of a new community-based land tenure system in Kenya's 2010 Constitution, but further legal and policy reforms are necessary. Additionally, the case has attracted attention from international human rights bodies and civil society organizations, emphasizing the growing global recognition of indigenous rights in Africa.

The Ogiek Case nº006/2012

The Ogiek people, an Indigenous community of about 20,000 members, have historically inhabited the Mau Forest in Kenya, relying on it for residence and sustenance as a hunter-gatherer society. Despite their long-standing presence, in October 2009, the Kenya Forestry Service ordered their eviction from the Mau Forest. The government refused to recognize the Ogiek as an Indigenous group deserving of protection. In response, the Centre for Minority Rights Developments and Minority Rights Group International submitted a complaint to the African Commission, which was referred to the African Court in 2012. The Court ruled in May 2017 that Kenya had violated the Ogiek's rights by forcibly evicting them from their ancestral land and denying them access to its resources, which disrupted their traditional practices and religious ceremonies linked to the forest. The Court ordered Kenya to reinstate restrictions on land transactions in the Mau Forest and to respect the Ogiek's right to land and natural resources. Additionally, Kenya was instructed to pay compensation to the Ogiek and take steps to legally recognize and protect their ancestral land, including granting them collective land title and ensuring their consultation on any development or conservation projects. The Court's 2022 ruling further mandated Kenya to engage in consultations regarding land concessions and to fully recognize the Ogiek as an Indigenous people. This decision marked a historic step in securing the rights of Indigenous communities in Kenya and has been seen as a hopeful precedent for other marginalized groups. However, despite these rulings, the Kenyan government continued to violate the Ogiek's rights, including a 2020 eviction. As of now,



the task force report on the matter has not been released, and the Ogiek's struggle for justice remains ongoing.

The Ogoni and Shell case

The case of the Ogoni people in Nigeria against Shell is primarily associated with the long-standing environmental and human rights issues resulting from Shell's oil operations in the Niger Delta, particularly in Ogoniland. The Ogoni people, who live in the Niger Delta region, have long protested the environmental degradation caused by oil exploration and extraction, as well as the human rights abuses they believe are associated with Shell's activities. The case highlights the complexities of multinational corporate responsibility, the intersection of human rights and environmental justice, and the challenges faced by communities in conflict zones in seeking accountability from powerful corporations. The struggle of the Ogoni people has also inspired similar activism and legal actions around the world, as communities fight for environmental justice and the protection of their rights. The outcome of the Ogoni people's case against Shell has been mixed. While there have been financial settlements, particularly the 2008 U.S. settlement, and legal victories concerning some of the environmental damage (e.g., in the Netherlands), the widespread environmental devastation and human rights abuses in the Niger Delta persist. The consequences include limited justice for the victims, with many still waiting for compensation or accountability for the full scale of human rights abuses, slow environmental restoration, with Ogoniland remaining one of the most polluted regions on earth, global awareness of the need for greater corporate responsibility, particularly for oil companies operating in fragile states and continued activism from Nigerian communities, demanding reparations and systemic change in how oil resources are managed and how companies like Shell operate in the Niger Delta. Ultimately, the Ogoni case remains a symbol of the ongoing struggle for environmental justice, human rights, and corporate accountability, and its consequences continue to shape discourse around corporate responsibility and sustainable development globally.

Restorative justice

Restorative justice is an approach that emphasizes repairing the harm caused by criminal behaviour through cooperative processes that involve victims, offenders, and the community. In the context of Africa, indigenous peoples often face challenges in accessing justice, as their customary practices and legal systems may not always align with national legal frameworks. However, there are examples where restorative justice mechanisms have been integrated into the legal systems, or where indigenous justice practices have been recognized to ensure access to justice for indigenous communities. For instance, South Africa has made significant strides in incorporating restorative justice principles, particularly in the post-apartheid era. The country's Truth and Reconciliation Commission is an example where restorative justice was used to address the atrocities of apartheid and give victims, including indigenous and marginalized groups, a platform to tell their stories and seek reparations. South Africa recognizes the traditional justice systems of indigenous communities, especially in rural areas. Traditional Courts were



historically used by indigenous communities to address disputes. These systems prioritize reconciliation, restitution, and community restoration, with a focus on repairing harm rather than punishing offenders. Through the Traditional Courts Bill from 2017, the country seeks to balance the legal rights of indigenous people with its national laws. However, there has been significant criticism of the Bill's approach to gender equality, as traditional courts sometimes uphold patriarchal customs. In Kenya, the Maasai and Nandi communities, among others, traditionally use restorative justice methods to address grievances. They use elders as mediators in conflict resolution, with the aim of restoring balance and ensuring that all parties are reintegrated into society. Kenya has promoted Alternative Dispute Resolution mechanisms, which include restorative justice practices, through the Judicial Service Commission and local community initiatives. The government has worked to integrate these methods into formal justice systems to provide indigenous peoples with a platform for accessing justice. The National Policy on Peacebuilding and Conflict Management from 2011 encourages the use of indigenous conflict resolution methods, especially among pastoralist communities like the Maasai and Turkana, recognizing their role in peacebuilding and restorative justice. Rwanda is known for its Gacaca Courts, which were used to address crimes committed during the 1994 Genocide against the Tutsi. These Courts were community-based and utilized restorative justice principles to promote healing and reconciliation. The Gacaca system, though not exclusively indigenous, shares key elements with traditional African restorative justice practices. These Courts encouraged offenders to confess, ask for forgiveness, and make restitution, while also allowing victims to participate in the process of reconciliation. It provided marginalized communities, particularly those in rural areas, with a means to access justice outside the formal court system, helping to bridge the gap between traditional practices and national legal frameworks. The integration of restorative justice principles into the legal systems, especially in relation to indigenous peoples, varies widely across the African continent. Many countries, such as South Africa and Rwanda, have made significant strides in recognizing the importance of indigenous justice systems, blending them with formal judicial processes. However, challenges remain, particularly in ensuring that indigenous justice practices respect human rights and that indigenous peoples have equal access to both traditional and formal justice systems. Another avenue to explore are the truth commissions⁵² which have on many occasions been established in nations where there are indigenous peoples in order to redress Human Rights violations, in accordance to the right of victims to an effective remedy and the right to know the truth to the fullest extent possible.⁵³ Truth commissions investigate violent historical periods⁵⁴ and are going further than the traditional focus on individual Human Rights violations to tackle collective Human Rights violations to economic, social, cultural and environmental rights. The involvement of indigenous peoples in these processes has varied, ranging from not being included at all, to more recent instances of truth commissions established specifically to address rights violations

⁵² Lavin (2014), a key factor contributing to the development of the right to the truth is the establishment of truth commissions.

⁵³ The right to truth has been increasingly recognized by various United Nations Resolutions, expert reports, and national courts, regional and international decisions. See United Nations Human Rights Council's Resolution A/HRC/EMRIP/2013/2 and Resolution A/HRC/27/65.

⁵⁴ Librizzi (2014), The recommendations of truth commissions generally seek to identify the causes of the violations, determining patterns of abuse and preventing recurrence.



experienced by indigenous peoples, where indigenous peoples have led the processes from their initiation. In many cases, however, truth commissions have failed to address the needs of indigenous peoples in any significant ways. Challenges faced by truth commissions include ensuring the independence and credibility of the commission ; political interference ; inadequate funding; and ensuring continued participation of marginalized groups, civil society and victims' organizations. Truth commissions have also been criticized for weak outcomes, lack of implementation of their recommendations or adequate follow-up. Implementation of these recommendations has generally been weak even where recommendations are strong. There are a number of advantages of truth commissions, including that they might be more consistent with indigenous peoples' conceptions of justice and cultures; they can inspire political commitment to the resolution of grievances. A positive example of indigenous engagement comes from the Truth, Justice and Reconciliation Commission of Kenya.⁵⁵ Truth commissions have varying purposes and modes of operation, yet many display features that align with or support restorative justice principles. Truth commissions have significant potential to help remedy abuses suffered by indigenous peoples and strengthen their rights. Implemented properly, with strong guarantees of independence, integrity and adequate leadership, as well as considering the rights, perspectives and needs of indigenous peoples, truth commissions can help strengthen the identity of indigenous peoples, and respect for their civil, political, economic, social and cultural rights, as well as their rights to ancestral lands and natural resources the rights of indigenous peoples and proposing policies to prevent further violations. National NGOs have a key place in the work of truth commissions.⁵⁶ Indeed, they usually monitor the commission's activities, provide honest feedback and push the commission to respond appropriately to the needs of victims and communities. CSOs may offer support services that the commission may wish to refer the victims and survivors to – such as individual or group counselling, community support mechanisms, or basic medical services to those injured or still suffering from past violence.

Improvements for accessing justice as indigenous peoples in Africa

Scholars generally agree that one of the most important goals of the international indigenous movement is to advance indigenous rights under international law.⁵⁷ Several key actors have played significant roles in this movement. Three United Nations bodies, namely, the WGIP, the Permanent Forum on Indigenous Rights, and the Special Rapporteur on the Rights of Indigenous Peoples, have been instrumental in setting norms on indigenous rights. International and African NGOs played an important advocacy role for setting up an African regional protection of Human Rights mechanism. NGOs have played an advocacy role with the Commission, helping it to improve its

⁵⁵ Although not specifically focused on indigenous peoples, the Commission provided an explicit forum for the expression of indigenous issues regarding historical injustices, marginalization and ethnic tension. The Commission hired indigenous people as part of its staff ; conducted public hearings allowing testimony in different languages, including Maasai ; and conducted outreach to indigenous communities and organizations that addressed their rights.

⁵⁶ Rule-of-law tools for post-conflict states : truth commissions, 2006.

⁵⁷ Morgan (2007)



working methods. By May 30, 2003, the Commission had granted consultative status to 13 National Human Rights Institutions and by January 1, 2004, the Commission had already granted consultative status to more than 300 NGOs.⁵⁸ The Commission has gradually defined the framework for its relations with NGOs and national rights institutions, to which it grants consultative and affiliate status respectively. Human Rights NGOs with observer status are required to present their activity reports to the Commission. National Human Rights Institutions granted affiliate status with the Commission are obligated to submit reports on activities undertaken in promoting and protecting Human Rights under the Charter and at the national level. As analyzed before in the paper, the African Constitutions have a high level of Human Rights norm recognition, but the enforcement through the Commission is relatively weak and remains problematic. Nevertheless, this situation has improved since the development of subregional institutions and an indigenous African fundamental rights jurisprudence. Indeed, the domestic level is the most important in the protection of Human Rights – followed by the regional and global systems – as the domestic level has the benefit of direct enforcement, and the regional scale has the advantage of peer pressure that the global level often lacks. Nonetheless, the effectiveness of the mechanisms and their capacity to facilitate the coordination of Human Rights norms recognition and enforcement have yet to be proven. International indigenous rights coalitions involve indigenous and non-indigenous CSOs. Similarly as self-identification points out on different aspects of indigeneity across regions or continents, there is a variance between indigenous and non-indigenous CSOs. This can be explained through the fact that they might have different understandings of indigenous values, symbolism and customs. The four main issues these CSOs are advocating are regarding the unequal treatment African indigenous peoples can face, the self-determination concern, the violence and threats to indigenous culture and the question of the environment. Even though indigenous and non-indigenous CSOs may have not the same approach in their messaging and interpretation of indigenous rights issues in the international scene, their voices are heard – and even more since the adoption of the UNDRIP as the CSOs in indigenous rights coalitions are more homogenized. The State has a responsibility to ensure the promotion and protection of Human Rights principles, norms and instruments ; CSOs and NGOs have a role to play through its struggles and participation in Human Rights culture.⁵⁹

Conclusion

The struggle for access to justice among indigenous peoples in Africa is multifaceted, involving both legal and cultural dimensions. While the African legal framework, including institutions such as the African Court and the African Commission, offers avenues for addressing grievances, the gap between legal recognition and practical implementation remains a significant challenge. Indigenous peoples continue to face barriers in accessing

⁵⁸ Mubiala (2005, pp. 92,93)

⁵⁹ Zeleza (2007, p. 491), CSOs have expanded, and in the last two decades, Human Rights NGOs have emerged as powerful instruments in Africa's drive for the promotion of Human Rights and development.



both formal and informal justice systems, often due to socio-political marginalization, historical injustices, and limited awareness of their rights. Informal justice mechanisms, such as community-based dispute resolution, provide a more culturally relevant avenue for seeking justice, yet they are often under-recognized or inadequately supported by the States. Restorative justice, with its emphasis on healing and community reconciliation, presents an alternative approach that is more aligned with the values of many Indigenous communities in Africa. However, its broader application faces challenges in terms of state support and integration within formal legal frameworks. To improve access to justice for indigenous peoples, both African and international legal systems must work collaboratively to ensure that indigenous rights are not only recognized in theory but also implemented in practice. This involves legal reforms, strengthening indigenous representation within formal legal bodies, and fostering greater awareness and respect for indigenous customary law and cultural practices. In doing so, Africa can move closer to a more inclusive and just legal system that honors the rights and dignity of its indigenous peoples.

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AS POLÍTICAS PÚBLICAS PARA A EDUCAÇÃO NO DIREITO DA UNIÃO AFRICANA

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Resumo

O presente trabalho tem como objetivo analisar o quadro legislativo que dá substrato ao conjunto das políticas públicas para a educação da União Africana e que vertem sobre a política para a educação em África. Adotando uma abordagem multinível, toma-se como ponto de partida o arcabouço normativo instituído a partir da União Africana para seguir a adaptação, a efetivação e a operacionalização de políticas públicas educacionais emanadas do plano internacional para o plano sub-regional, em especial as Comunidades Económicas Regionais das quais fazem parte os países em estudo. A análise documental versa, em específico, sobre os documentos políticos adotados pela União Africana, sobretudo a partir de 2006 até 2025. Conclui-se que, apesar de uma codificação, em instrumentos jurídico-políticas, relativamente ampla e abrangente para a promoção dos direitos humanos na área da educação dos cidadãos africanos, a sua efetividade permanece reduzida atendendo à baixa capacidade da União Africana atrair financiamento para sua implementação.

Palavras-chave

Políticas educativas, Agendas políticas, Direito da Educação, União Africana, efetivação e financiamento.

Abstract

This paper presents an analysis of the legislative framework that underpins the set of public policies for education developed by the African Union and which inform educational policy across Africa. Adopting a multilevel approach, the study begins with the normative framework established by the African Union and traces the adaptation, implementation, and operationalisation of educational public policies as they move from the international level to the sub-regional level—particularly within the Regional Economic Communities to which the



selected countries belong. The documentary analysis concentrates specifically on the political instruments adopted by the African Union, especially from 2006 to 2025. The study concludes that, despite a relatively broad and comprehensive codification of legal-political instruments aimed at promoting human rights in the field of education for African citizens, their effectiveness remains limited due to the African Union's low capacity to attract funding for their implementation.

Keywords

Educational policies, Policy agendas, Right to Education, African Union, Effectivity and funding.

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AS POLÍTICAS PÚBLICAS PARA A EDUCAÇÃO NO DIREITO DA UNIÃO AFRICANA

RUI GARRIDO

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1. Introdução

A educação é fundamental para o desenvolvimento de uma sociedade plural. A garantia da educação está vertida em vários instrumentos de direitos humanos, quer também ao nível do ordenamento jurídico de diversos Estados. Tendo como ponto de partida a noção conceptual de “direito da educação”, entendida como um conceito dinâmico que compreende a articulação entre o aparato jurídico e a sua implementação através de políticas públicas (GARRIDO & BALDÉ, 2021), importa perceber em que medida esta segunda dimensão – as políticas públicas – se torna efetiva e operacional. A definição conceptual de política pública não é consensual, havendo distintas noções, mas todas convergem na ideia de que se trata das políticas governamentais que versam sobre problemas concretos da governação (Souza, 2006). Ainda que este artigo não verse sobre o nível doméstico dos Estados, entendemos que podemos servir-nos desta noção conceptual e definir que as organizações internacionais também podem produzir políticas específicas que procurem dar resposta a problemas à escala continental. Neste sentido, no panorama das políticas públicas para a educação, temos três níveis de relevância no contexto regional africano, nacional, sub-regional e continental. No entanto, esta investigação analisa as políticas públicas produzidas ao nível, sobretudo, da União Africana, dada a crescente atenção e consistência destas políticas. Isto porque o direito da União Africana – entendido como todos os tratados, resoluções e decisões adotados pela União Africana e que têm aplicação direta ou indireta nos Estados membros da União (AMAO, 2019) – tem-se consolidado no que tange à educação, como poderemos verificar. No continente africano encontramos a particularidade de haver mais de uma fonte de direito comunitário (a União Africana), uma vez que entre os Estados e a União existe um nível intermédio sub-regional – as Comunidades Económicas Regionais – também elas fontes de direito comunitário de âmbito regional mais restrito. Esta particularidade traduz-se numa aplicação diferenciada do direito comunitário africano em distintas regiões, o que evidencia uma receção distinta por cada uma das Comunidades Económicas Regionais.



Ao nível da União Africana, as políticas públicas em matéria educativa datam do final da década de 1990, ainda sob os auspícios da Organização da Unidade Africana. Esta experiência precursora foi fulcral para o desenvolvimento das políticas seguintes, bastante alinhadas com as agendas internacionais para o desenvolvimento. Neste caso, como sugere Leon Tikly (2019), as políticas regionais africanas tinham como finalidade a interpretação, à luz das necessidades continentais, mas também de mediação daquelas políticas de matriz universal – por exemplo, os Objetivos de Desenvolvimento do Milénio (ODM) ou os Objetivos para o Desenvolvimento Sustentável (ODS) –, que posteriormente seriam reinterpretadas e implementadas a nível nacional (TIKLY, 2019).

A este respeito, a agenda da ONU para o desenvolvimento sustentável determina, no seu objetivo 4 (ODS4), as metas a atingir para uma educação de qualidade. Estas metas compreendem desde logo o acesso universal e equitativo a uma educação básica e secundária de qualidade (UN, n/d). O acesso ao ensino superior é igualmente contemplado, determinando o ODS4 que, até 2030, deve ser assegurado o acesso equitativo a mulheres e homens a um ensino tecnológico, vocacional ou terciário, onde também se inclui a universidade (UN, n/d). Na concepção de Tikly (2019), as várias agendas regionais devem assim atender a este objetivo mais amplo – o acesso equitativo ao ensino superior – tendo em consideração que, à medida que as políticas são desenhadas em fóruns de âmbito regional mais próximos do local, tenham em consideração as especificidades e necessidades desse mesmo contexto. Neste sentido, tem contribuído significativamente a Associação para o Desenvolvimento da Educação em África (ADEA), uma instituição Pan-Africana criada em 1988 por iniciativa do Banco Mundial, que compõe uma rede de decisores políticos, investigadores e professores com o objetivo de acelerar reformas no setor da educação no continente Africano (ADEA, n/da). No caso do ensino superior, a ADEA dispõe de um grupo de trabalho específico, em atividade desde 1989, com a finalidade de “reforçar a colaboração entre governos africanos, parceiros de desenvolvimento e instituições de ensino superior para melhorar a eficácia da assistência ao desenvolvimento” (ADEA, n/db). Este grupo de trabalho tem encetado estudos sobre reformas estruturais no ensino superior e desenhado políticas públicas que atendem a problemas específicos no acesso à universidade, nas desigualdades de género e na harmonização dos currículos universitários.

Posto isto, este artigo tem como objetivo identificar e problematizar as políticas públicas na área da educação adotadas no quadro do União Africana. Adota uma metodologia qualitativa, analisando fontes primárias, desde logo a legislação, diretivas e outras fontes oficiais que emanam das organizações internacionais africanas. O presente artigo encontra-se dividido em 2 partes, na qual a primeira identifica e analisa as políticas públicas ao nível das organizações regionais africanas e a segunda, debruça-se sobre as políticas públicas da União Africana, mapeado desde as primeiras iniciativas no final da década de 90, até à estratégia atualmente em vigor. Uma terceira parte tece algumas considerações sobre a implementação destas agendas, identificando alguns constrangimentos e dificuldades.



2. As políticas públicas da educação ao nível sub-regional: as Comunidades Económicas Regionais Africanas

O Tratado de Abuja, de 3 de junho de 1991, estabelece as metas para a criação e funcionamento de uma Comunidade Económica Africana. Este processo de integração económica assenta, sobretudo, nas várias comunidades económicas regionais que caracterizam o processo de integração regional africano. Neste sentido são reconhecidas pelos Tratado de Abuja as seguintes comunidades:

- União do Magrebe Árabe (UMA);
- Mercado Comum para a África Oriental e Austral (COMESA);
- Comunidade dos Estados do Sahel e do Sahara (CEN-SAD);
- Comunidade dos Estados da África Oriental (ECA);
- Autoridade Intergovernamental para o Desenvolvimento (IGAD);
- Comunidade Económica dos Estados da África Central (CEEAC);
- Comunidade Económica dos Estados da África Ocidental (CEDEAO);
- Comunidade para o Desenvolvimento da África Austral (SADC).

2.1 Comunidade dos Estados do Sahel e do Sahara

A CEN-SAD é uma comunidade económica regional relativamente recente, criada em 1998, no seguimento da estratégia de Abuja para a Comunidade Económica Africana. É a maior comunidade regional e a sua operacionalização tem sido bastante difícil. Houve um pequeno avanço no objetivo de harmonização dos sistemas educacionais e pedagógicos, por meio da criação de uma divisão ligada ao secretariado executivo da Comunidade (AU, 2014). A revisão de seu Tratado fundador¹ criou uma organização interna, indicando a disposição de dar um tratamento mais adequado aos temas ligados à educação, saúde e assuntos sociais no secretariado executivo da Comunidade. Nesse mesmo ano, na Conferência regional para a educação em ambiente nómada da região do Sahara e do Sahel, ocorrida em dezembro de 2013, a CEN-SAD requereu apoio à Associação para o Desenvolvimento da Educação em África para desenvolver uma política específica para os povos nómadas na região (ADEA, 2014). Não foi possível apurar se houve algum desenvolvimento significativo nesta matéria específica, ou em outras políticas públicas na área da educação na região.

2.2 Comunidade Económica dos Estados da África Ocidental

No caso da CEDEAO, uma fonte importante de direito da educação é o seu tratado fundador, em particular, a sua revisão de julho de 1993. O Tratado Revisto da CEDEAO (doravante, Tratado Revisto) estipula os objetivos para o desenvolvimento da comunidade baseados na promoção da cooperação e da integração com a finalidade de

¹ Artigo 33 do Tratado Revisto da Comunidade dos Estados do Sahel e do Sahara (2013).



melhorar o padrão de vida dos cidadãos comunitários. Para tal, os Estados-membros devem harmonizar e coordenar políticas públicas nacionais que promovam, entre outros, a educação, a ciência e a tecnologia (CEDEAO, 1993). O artigo 27.º (Ciência e Tecnologia) do Tratado Revisto postula que os Estados devem cooperar na formação e na transferência de conhecimento tecnológico e para tal devem “harmonizar os sistemas educativos com a finalidade de adaptar uma melhor formação educativa, científica e técnica às necessidades específicas de desenvolvimento do ambiente da África Ocidental (CEDEAO, 1993b)”.

Atendendo ao que tinha sido estipulado pelo Tratado Revisto de 1993, os Chefes de Estados e de Governo da CEDEAO adotaram, em 2006, o Protocolo A/P3/1/03 sobre Educação e Formação (CEDEAO, 2006), que não sendo uma política pública em si, define um conjunto de diretrizes que fortalecem a cooperação na área do ensino formal e da formação tecnológica. É um tratado abrangente, englobando todas as áreas da educação, incluindo o ensino superior. Neste grau de ensino, destaca-se a cooperação no ensino superior como vetor estrutural para o desenvolvimento da África Ocidental. Assim, e tendo por base outros desenvolvimentos legislativos e políticos no seio desta comunidade – desde logo o estatuto de Cidadão Comunitário e a liberdade de circulação dentro do espaço comunitário² – no que concerne ao acesso às universidades, este protocolo estabelece que os Estados-membros devem consignar 5% das vagas para os cidadãos de outros Estados da CEDEAO (CEDEAO, 2006). Define ainda que deve haver uma harmonização dos critérios de admissão, do ano escolar, dos currículos como forma de evitar duplicação e facilitar o sistema de transferência de créditos e conhecimento (CEDEAO, 2006, ART. 1-4). Um exemplo da aplicação desta política para o ensino superior é a proposta, de 2015, de harmonização do currículo para a formação de farmacêuticos (WAHOAS, 2015), oferecido em toda área da CEDEAO. Também é importante referir que, em 2014, foi adotado o *Supplementary Act A/SA.1/12/14*, que define metas para a melhora do Ensino superior no espaço da CEDEAO (2014), quer ao nível do financiamento, da harmonização e do reconhecimento mútuo dos currículos.

Em matéria específica de políticas públicas, a CEDEAO tem tido um desenvolvimento relevante na criação de políticas integradas de desenvolvimento, nas quais a educação surge como fator potencializador. Em 2012, foi adotada a Diretiva A/DIR.1/1/06/12 sobre Ciência, Tecnologia e Inovação, que determinou como objetivo o “melhorar o acesso à educação e à aprendizagem de ciências básicas e matemática em todos os níveis do sistema educativo” (CEDEAO, 2012, art. 3). Esta diretiva postula ainda a cooperação na promoção da equidade de género e acesso universal à educação na área da ciência, da tecnologia e da inovação (CEDEAO, 2012, art. 4).

Por fim, a agenda *ECOWAS VISION 2020* (CEDEAO, 2010), destaca-se pela sua visão de criar uma região integrada, na qual a população usufrui de liberdade de circulação e tem acesso a uma educação e saúde eficientes. Esta eficiência, podemos pressupor, traduz não apenas um acesso universal – tal como se afirma mais adiante quando se refere como meta o acesso a uma educação acessível a todos –, como também uma educação

² Desde logo o Protocolo A/P.3/5/52 relativo à definição do Cidadão Comunitário (1990). É importante notar, neste campo, que a liberdade de circulação dentro da comunidade e o estatuto de cidadão comunitário, equiparado em termos de direitos aos cidadãos nacionais, tem sido um fator importante de desenvolvimento e transferência de conhecimento dentro da CEDEAO. Neste sentido, ver YUSUF, M. (2019).



de qualidade capaz de estimular o desenvolvimento do potencial humano. Identifica como desafios socioeconómicos a insegurança, as desigualdades de género, a fraca qualidade dos serviços sociais e o fraco processo de integração. Por isto mesmo, uma das prioridades da política da CEDEAO é o investimento nas áreas da educação, da formação e da juventude (CEDEAO, 2010, p.7).

2.3 Comunidade Económica dos Estados da África Central

A CEEAC é uma comunidade económica estabelecida em 1983, mas que sofreu um período de inatividade prolongado até ao final do século XX, por dificuldades financeiras, mas também pela conflitualidade armada que marcou a região dos Grandes Lagos. Em 1999, os líderes políticos procuraram dar nova força a esta comunidade – coincidindo com a primeira etapa definida pelo Tratado de Abuja, no sentido do reforço das comunidades económicas regionais e que derivaria, em 1998, na adoção do Protocolo sobre as relações entre a Comunidade Económica Africana e das Comunidades Económicas Regionais.

A educação surge como um pilar estrutural no Tratado que estabelece a Comunidade Económica dos Estados da África Central (1983), no Capítulo XIII – Cooperação na Educação, Formação e Cultura. Neste sentido, o artigo 61 do tratado (Educação e Formação) determina que os Estados membros da comunidade devem encetar esforços numa política educativa comum, que atenda às especificidades económicas e socioculturais da região, para a promoção do desenvolvimento e do progresso sociais. Neste sentido, determina a melhoria da eficiência dos sistemas educativos nacionais, a criação e/ou o fortalecimento de instituições de formação, e a promoção do intercâmbio de experiências e informação no domínio das políticas educativas (ECCAS, art. 61, nº2). A comunidade tem produzido um importante acervo jurídico em várias matérias, tendo adotado o Protocolo para a Cooperação no Desenvolvimento de Recursos Humanos, Educação, Formação e Cultura entre os Estados membros da Comunidade Económica dos Estados da África Central. Ao nível das políticas públicas para a educação – e sobretudo, para o ensino superior – não tem havido nenhum desenvolvimento significativo nesta matéria.

2.4 Comunidade de Desenvolvimento da África Austral

No caso da África Austral, a SADC tem tido um papel decisivo no incremento de um processo de integração regional, que tem tido na educação uma das suas forças maiores. A SADC reconhece o papel fundamental da educação no potenciamento do crescimento económico e no desenvolvimento sustentável. Para a SADC, a educação é uma ferramenta com o potencial de aliviar a pobreza e garantir uma maior qualidade de vida dos cidadãos. A educação é fulcral na concretização da visão da SADC de um futuro comum, na garantia de um bem-estar social e económico, melhoria dos padrões de vida, de promoção dos valores da liberdade, da justiça, da paz e da segurança comuns.

Ao nível de políticas regionais, os Chefes de Estado e de Governo da SADC adotaram, em 1997, o *Protocol on Education and Training* (SADC, 1997), um documento que



estabelece a cooperação entre Estados em vários domínios, inclusive na coordenação e implementação de políticas, estratégias e sistemas de ensino nos Estados-membros (SADC, 1997, Artigo 3, alínea c). Prevê ainda a coordenação de políticas públicas noutros setores, como a formação e a investigação. São também objetivos deste protocolo a redução e eliminação das limitações no acesso a uma educação de qualidade e a programas de formação (SADC, 1997, Artigo 3, alínea f). Destacamos ainda o estímulo ao ensino e aprendizagem da língua inglesa e da língua portuguesa como línguas de trabalho na África Austral (idem). As áreas de cooperação entre os Estados são: políticas para a educação e formação, educação básica, ensino secundário, ensino superior, investigação e desenvolvimento (I&D), educação ao longo da vida e publicação e recursos bibliotecários (SADC, 1997, Artigos 4-10).

Ao nível do ensino superior (SADC, 1997, art. 7), o protocolo determina que, no que tange ao acesso, os Estados membros devem reservar 5% das vagas de ingresso nas universidades para estudantes de outros Estados da SADC, à semelhança do que já havia sido previsto na CEDEAO. A mobilidade e a harmonização de currículos são dois aspetos sublinhados como essenciais para permitir uma prossecução dos objetivos de uma educação superior de qualidade e capaz de produzir e transferir conhecimento (HAHN & TEFERRA; 2013, p.132). Os Estados devem assim cooperar no sentido de uma integração do ensino superior como forma a suprir a procura por este grau de ensino, sobretudo em sociedades muito jovens e com uma pressão muito grande para a especialização e a formação avançada. A cooperação torna-se, desta forma, uma ferramenta para suprir as carências de alguns Estados (HAHN, 2004. p.200). Ele tem ainda uma preocupação, no que tange ao acesso ao ensino superior, na redução das barreiras à mobilidade, mas também no incremento do acesso equitativo e respeitando a equidade entre géneros (HAHN, 2005. p.14).

O Protocolo determina, nos pontos seguintes, aspetos específicos da cooperação interuniversitária, programas de mobilidade e reconhecimento mútuo de currículos no espaço da SADC para as licenciaturas e pós-graduações. É ainda estimulada a criação de centros de especialização em áreas do conhecimento a determinar em concertação entre as universidades e os governos dos Estados membros. O protocolo determina a necessidade de criar fóruns ou associações entre as universidades, e tal viria a acontecer, em 2007, ano em que foi criada a SARUA – *Southern African Regional Universities Association* – associação que tem, entre outros, a missão de “construir e sustentar uma comunidade de ensino superior vibrante que dá um contributo distintivo para o desenvolvimento e integração socioeconómica regional através de redes e parcerias colaborativas” (SARUA, 2007). Esta associação tem, portanto, desenvolvido iniciativas em prol de um espaço comunitário de Ensino universitário que, como referiu o seu presidente em 2017, ainda se encontra fragmentado em toda a região (DELL, 2017). Neste sentido, a SARUA está “motivado para que um alinhamento estratégico, organizacional e programa mais próximo entre a SARUA e a SADC comece a enfrentar os desafios partilhados que as instituições de ensino superior enfrentam” (DELL, 2017). O Protocolo em Educação e Formação foi posteriormente complementado com uma política pública relativa ao ensino à distância, o *Regional Open and Distance Learning Policy Framework*, que só viria a ser aprovado em 2012 (SADC, 2012). Esta política resulta do projeto iniciado em 2008, que teve como principal objetivo contribuir para o



desenvolvimento e mobilização de uma política de ensino à distância que fosse efetiva, para potenciar uma educação e formação de qualidade na SADC.

Em 2020, a SADC adotou aquela que é a sua política de desenvolvimento para a região para as próximas três décadas. A *SADC Vision 2050* aspira “um futuro comum que assegurará o bem-estar socioeconómico, a melhoria dos padrões e qualidade de vida, a liberdade e a justiça social, e a paz e segurança para o povo da África Austral” (SADC, 2020, p.2). Esta visão comum de desenvolvimento assenta em três pilares que são: Desenvolvimento Industrial e Integração de Mercado (Pilar 1), Desenvolvimento de Infraestruturas em apoio à Integração Regional (Pilar 2), e Desenvolvimento de Capital Humano e Social (Pilar 3). A educação tem lugar no terceiro pilar, que se debruça sobre as pessoas e o seu desenvolvimento, o que determina que, até 2050, na região da SADC deve ser alcançado um patamar elevado de qualidade de vida, o que se traduzirá em cidadãos bem instruídos, com níveis de produtividade elevados e que atendam ao desenvolvimento sustentável económico, mas também humano (SADC, 2020, p.7). Para tal, prevê esta política que os Estados devem garantir “maior acesso à educação de qualidade e relevância, bem como ao desenvolvimento de competências, incluindo na ciência e tecnologia, para os cidadãos da SADC” (SADC, 2020, p.7).

É ainda de referir que outras políticas públicas da SADC, que têm outras áreas de foco, têm abordado o ensino e a sua importância para alcançar os objetivos destas políticas públicas. Exemplo disso é a *Política de Género da SADC* (2009) que tem na educação uma ferramenta de eliminação de barreiras entre género e a violência baseada no género.

3. As Políticas Públicas da Educação ao Nível Continental: União Africana

A União Africana tem várias estratégias implementadas no que concerne à Educação. Esta centralidade da educação já advém do tempo da Organização da Unidade Africana, como iremos ver de seguida. Ao nível do enquadramento normativo há algumas particularidades locais que se articulam ou colidem com as políticas que derivam da União. Duas tendências sobressaem no continente: a governação e a diversificação. Neste sentido, ao nível da governação, identificou um estudo do Banco Mundial, em 2009, que os governos detinham um grande controlo sobre as instituições de ensino superior, o que influenciava na experiência de autonomia destas instituições (SAINT, LAO & MATERU; 2009, p.13), contudo, também se observou um nível elevado de diversificação dos sistemas de ensino (ASSIÉ-LUMUMBA, 2006; p.18). Estas características locais têm de estar articuladas com as políticas adotadas ao nível das Comunidades regionais, mas sobretudo com as políticas da UA. E neste caso, para além dos programas implementados sob iniciativa da União, também as parcerias a nível internacional têm sido fundamentais na persecução de uma educação de qualidade em África. Neste campo, sobressai o Programa de cooperação União Africana – União Europeia para o Ensino Superior, fruto da cooperação estratégica União Africana – União Europeia, da cimeira do Cairo, em 2000. Esta cimeira foi fundamental para o reforço do quadro de cooperação entre os dois continentes (CARAPETO, 2020). A estratégia conjunta foi apresentada e adotada em 2007, na 2.^a cimeira União Europeia – África, em Lisboa, na qual se reafirmou a aceleração da implementação dos Objetivos de Desenvolvimento do Milénio, em específico a educação básica universal (UA, 2007, p.12). Para além da educação básica,



a parceria EU-África sublinhou a necessidade de reforço de todos os níveis de ensino, implementando as agendas *Education for All Fast Track Initiative*³ e o plano de ação da *Segunda Década da Educação para África* (UA, 2007, p.13), a política da União Africana em vigor à época. O desenvolvimento da cooperação no ensino superior Europa – África tem sido possível através de vários programas, tais como o Erasmus+, o *Intra-Africa academic mobility scheme*, o *Marie Skłodowska-Curie actions/Horizon 2020*, e ainda as iniciativas conjuntas de harmonização do ensino superior – o programa *Tuning Africa* e o *Harmonisation of African higher education quality assurance and accreditation* (ZYGIEREWICZ, 2019). Estes mecanismos associam-se a outros no controlo de qualidade do ensino superior – desde logo o *African Quality Rating Mechanism* e o *African Quality Assurance Network* – os quais têm sido fundamentais para a estruturação de um ensino superior de qualidade no continente africano, com real potencial de formação de quadros locais altamente especializados produtores de conhecimento e de inovação (ADEA, n/sc). Outras parcerias têm sido postas em prática com a ONU, em particular a Universidade das Nações Unidas, que em 2009 elaborou um estudo sobre a necessidade de revitalização do ensino superior na região da África subsaariana e das necessidades em termos de políticas públicas a adotar para tal fim (UN, 2009).

No âmbito concreto das iniciativas africanas, importa referir que tanto ao nível da Organização da Unidade Africana, como ao nível da União Africana, a educação tem sido transversal como ferramenta de desenvolvimento social e económico. O vasto corpo normativo produzido pela União Africana em matéria de educação, previsto em vários tratados de direitos humanos de âmbito geral ou específico, têm-se traduzido numa abordagem mais ampla em instrumentos de *soft law* – como protocolos, resoluções ou diretivas – mas também em políticas públicas de âmbito continental. Num âmbito mais geral, importa destacar o papel da Comissão Africana dos Direitos Humanos e dos Povos, que tem tido um profícuo trabalho de interpretação e densificação dos direitos económicos, sociais e culturais, onde se inclui o direito à educação, da Carta Africana dos Direitos Humanos e dos Povos. Como apontado por Garrido e Baldé (2021), destacam-se as Diretrizes relativas aos Direitos Económicos, Sociais e Culturais para a elaboração dos Relatórios dos Estados Parte da Carta Africana dos Direitos Humanos e dos Povos (1989), a Declaração de Pretória sobre Direitos Económicos, Sociais e Culturais em África (2004) e os Princípios e Diretrizes na Implementação dos Direitos Económicos, Sociais e Culturais da Carta Africana dos Direitos Humanos e dos Povos (2011).

Como pudemos verificar anteriormente, a harmonização de currículos tem sido uma aposta forte na área do ensino superior no continente. Quer ao nível das comunidades económicas regionais, mas também da União Africana e das parcerias estratégicas, esta harmonização tem sido entendida como fator potenciador da mobilidade e da transferência de conhecimento. Em 1981, ainda no tempo de atividade da Organização da Unidade Africana, foi adotada a Convenção de Arusha para o reconhecimento de estudos, certificados, diplomas, graus e outras qualificações académicas no ensino superior nos Estados Africanos (UNESCO, 1981). A Convenção de Arusha propunha que os Estados adotassem políticas no sentido de garantir a acessibilidade das universidades a todos, de reconhecer os estudos e diplomas de outras universidades, assim como

³ Parceria global que procurou acelerar a implementação do ODM 2 – Educação Básica Universal – até 2015.



potenciar a mobilidade de professores, estudantes e investigadores (UNESCO, 1981, art.2). Estavam ainda previstos como objetivos a flexibilidade no retorno de estudantes, professores e investigadores, critérios objetivos de avaliação de competências, abordagem dinâmica na admissão à universidade, entre outros. Para além da Convenção de Arusha, a Organização da Unidade Africana/União Africana adotou um conjunto significativo de tratados internacionais de direitos humanos que, não sendo específicos da questão da educação – menos ainda do ensino superior – reconhecem, contudo, a importância do direito à educação e do seu potencial de desenvolvimento humanos. São disso exemplo, como pudemos analisar na primeira parte, a carta Africana dos Direitos Humanos e dos Povos (1981), a Carta Africana dos Direitos e Bem-Estar da criança (1990), a Carta Africana para a Juventude (2006), o Protocolo à Carta Africana dos Direitos Humanos e dos Povos relativo aos direitos das Mulheres em África (2003), o Protocolo à Carta Africana dos Direitos Humanos e dos Povos relativo aos direitos das pessoas idosas em África (2016) e ainda o Protocolo à Carta Africana dos Direitos Humanos e dos Povos relativo aos direitos das pessoas com deficiência em África (2018). Este enquadramento normativo robusto permite que o direito à educação seja amplamente reconhecido como um direito fundamental na realização pessoal e profissional dos cidadãos.

Este complexo enquadramento normativo deriva num conjunto significativo de políticas públicas, que se articulam entre si, fomentando a consolidação de um direito bastante dinâmico da educação em África. Neste sentido, podemos identificar três políticas públicas de âmbito específico da educação em África, que cobrem um espaço temporal de cerca de 30 anos:

3.1 A Primeira Década da Educação para África (1997 – 2006)

A Primeira Década da Educação para África (Primeira Década) foi uma política pública adotada pela Organização de Unidade Africana, tendo como referencial a agenda da ONU para o Milénio, mas também os objetivos de integração propostos pelo Tratado de Abuja (1991).⁴ Foi adotada em 1997 e o seu plano de ação demorou dois anos a ser desenhado e adotado. Este plano foi estruturado em torno dos seguintes eixos: 1) equidade e acesso ao ensino básico; 2) a qualidade, relevância e eficácia da educação; 3) modalidades complementares de aprendizagem; 4) capacitação (PITYANA, 2008, p.5). O ensino superior não se destacou nestes eixos e a própria política teve uma fraquíssima implementação (GARRIDO & BALDÉ, 2021).

⁴ O Tratado de Abuja estabeleceu as metas para a criação de uma comunidade económica africana, assente em várias etapas. No que tange à educação, previu a criação de um Comité Técnico Especializado, o Comité para a Educação, a Cultura e os Recursos Humanos (artigo 25.º, n.º 1, alínea g). Na área da tecnologia e da inovação, determinou que os Estados membros deveriam assegurar o ensino e a harmonização de políticas públicas nesta área do conhecimento e a adequação dos currículos escolares, na área da inovação tecnológica, para atender às necessidades de desenvolvimento Africanas (artigo 51.º). Em seu capítulo XII – Educação, Formação e Cultura – determina-se que os Estados devem cooperar na educação e na formação através de políticas que permitam: o aproveitamento da capacidade instalada e a sua ampliação; a melhoria da qualidade dos sistemas de ensino; a criação de programas conjuntos de formação; o incentivo e incremento da troca de informação e partilha de conhecimentos; e, todos os esforços necessários que retenham os quadros altamente especializados, procurando evitar a sua saída para fora do continente africano (artigo 68.º).



A *Primeira Década* foi essencial para a área da educação, pois pela primeira vez uma política pública de escala continental norteou os Estados Africanos para a cooperação a nível sub-regional, regional e pan-Africano, para a integração, harmonização e melhoria dos sistemas educativos em África (KANSAKAI, 2010, p.32). Apesar disto, esta política teve vários problemas na sua implementação e ficou bastante aquém dos objetivos delineados (TOURAY, 2016).

3.2 A Segunda Década da Educação para África (2006 – 2015)

Finalizado o tempo para a implementação da *Primeira Década*, mas também com finalização do processo de transição da Organização de Unidade Africana para a União Africana, tiveram lugar algumas alterações significativas no campo das políticas africanas. Tendo em atenção o enquadramento normativo, mas também fazendo uma reflexão sobre a implementação de políticas anteriores, em particular a *Primeira Década*, foi desenhada uma nova política no campo da educação: a Segunda Década da Educação para África, a implementar entre os anos de 2006 e 2015.

A decisão sobre a *Segunda Década* foi adotada na 6.^a sessão ordinária da Conferência da União, que teve lugar em 23 e 24 de janeiro de 2006, em Cartum, Sudão (UA, 2006). Nesta decisão, a Conferência da União saudou os Estados e das Comunidades Económicas Regionais pelo esforço na implementação da *Primeira Década*, reconhecendo, contudo, os obstáculos e as limitações que impediram a concretização dos objetivos desta política (UA, 2006). Tendo em consideração a experiência já acumulada, a *Segunda Década* difere bastante da sua antecessora, procurando evitar e corrigir as dificuldades e ineficiências da sua aplicação. Por isto mesmo, foi desenhado um plano de ação prevendo uma estratégia de gestão e comunicação assente numa multiplicidade de atores envolvidos nos vários níveis de organização política do continente (GARRIDO & BALDÉ, 2021). Em concreto, do nível mais local para o continental, os atores envolvidos foram as autoridades nacionais com responsabilidade na área da educação, as Comunidades Económicas Regionais, e ao nível da União Africana, a Comissão da União (Idem). O envolvimento da Comissão da União Africana é indicativo de que houve um esforço de garantir a efetividade deste plano de ação da *Segunda Década*, uma vez que a Comissão é um órgão com funções administrativas e que tem, na prática, a tarefa de gestão dos assuntos da União (MAKINDA, OKUMU & MICKLER, 2016, p. 57). Na decisão que aprova a *Segunda Década*, a Conferência reconhece ainda:

[A] existência de outras iniciativas envolvidas na educação em África, tais como a Educação Para Todos, os Objetivos do Desenvolvimento para o Milénio, a Nova Parceira para o Desenvolvimento de África (NEPAD) e lança um apelo no sentido de haver uma melhor coordenação entre estas iniciativas e o quadro de ação para a Segunda Década (UA, 2006).

Por isto mesmo, a *Segunda Década* surge como uma política integrada nas iniciativas no campo da educação e do desenvolvimento em vigência à época. Também reflete uma mudança de paradigma que foi operada com a transição OUA – UA e que foi a centralidade dos direitos humanos para a nova organização. Como aponta Emenet



Woldegiorgis (2017), a *Segunda Década* estava orientada para os direitos humanos como matriz fundamental para o crescimento económico e o desenvolvimento de capital humano em África (p.44). Esta abordagem nos direitos humanos traduziu-se em objetivos que pretendiam, entre outros, a equidade de género. Na área de atuação “Género e Cultura”, definiu o plano de ação como objetivo:

Eliminar as disparidades de género e garantir a igualdade de género, a capacitação das raparigas e das mulheres em todo o sistema educativo, enriquecendo ao mesmo tempo o sistema com os aspetos positivos dos valores culturais africanos (UNIÃO AFRICANA, 2006).

As meninas e mulheres são incluídas, no quadro da política, na categoria de grupos vulneráveis ou marginalizados, entendidos, de forma não exaustiva, como “meninas, pessoas portadoras de deficiência, e crianças infetadas com o vírus do VIH/SIDA” (UNIÃO AFRICANA, 2006, p.5). Desta forma, a *Segunda Década* procurou eliminar as desigualdades não apenas entre género no acesso à educação e a empregos qualificados, como também de crianças em situação de particular vulnerabilidade económica e social e em situação de exclusão (GARRIDO & BALDÉ, 2021). Para estes casos, o ensino técnico e vocacional assumiu particular relevância. A *Segunda Década* definiu que estes grupos devem ter acesso a este tipo de formação especializada, inclusive através de programas de educação não-formal, mas também para reconstrução nacional em situações de pós-conflito (UNIÃO AFRICANA, 2006, p.11). Ainda no que concerne à questão da equidade entre géneros, é necessário ter em consideração que a *Segunda Década* articulou-se com outras políticas da União Africana, em particular a Política da União Africana para o Género (2008), que tinha, entre outros, o objetivo de promover o acesso e controlo igualitário entre homens e mulheres sobre recursos, conhecimento, informação, propriedade de terras e empresas, e serviços como educação e formação, cuidados de saúde, crédito e direitos” (UNIÃO AFRICANA, 2008).

No campo do ensino superior, o plano de ação da *Segunda Década* delineou, como meta, a:

Revitalização completa do ensino superior em África, com o surgimento de instituições fortes e vibrantes profundamente envolvidas em serviços de investigação, ensino, divulgação comunitária e enriquecimento para os níveis mais baixos de educação; e funcionamento num ambiente de liberdade académica e autonomia institucional, num quadro global de responsabilidade pública (UNIÃO AFRICANA, 2006, p.8).

Norteadas por esta meta, a política educativa propunha uma aposta no reforço do ensino superior em África, em contraciclo com o que se tinha verificado na implementação da *Primeira Década*, que tinha um foco orientado para atingir a meta da educação básica universal. Esta reorientação para o ensino superior incorporou o espírito da agenda da ONU para o Milénio, sobretudo pelo potencial do ensino superior no desenvolvimento económico e do capital humano, da ciência e da tecnologia.



3.3 A Estratégia Continental para a Educação em África (2016 – 2025)

A Estratégia Continental para a Educação em África (União Africana, 2016a) é a terceira política no campo da educação da União Africana, que se encontra atualmente em vigor. A designação da política reflete, desde logo, uma transformação institucional para a área da educação, demonstrando uma maior ambição na implementação do que as suas antecessoras. Esta estratégia é demonstrativa de uma maior ambição da União Africana, para uma transformação da educação em África, em todos os domínios e que permitam que esta seja uma ferramenta transformadora no continente (GARRIDO & BALDÉ, 2021).

A *Estratégia Continental* enquadra-se numa abordagem mais ampla, que é a agenda para o desenvolvimento da União Africana (AWAAH, 2019). A *Agenda 2063 – A África Que Queremos* determina as aspirações do continente em matéria de desenvolvimento para um espaço temporal de 50 anos.⁵ Ela é uma agenda transversal, na qual a educação é central para as suas metas. Os direitos humanos norteiam a agenda de desenvolvimento delineada pela *Agenda 2063*, que determina na sua Aspiração 1 - uma África próspera baseada no desenvolvimento inclusivo e sustentável – a luta contra a pobreza, as desigualdades e a falta de serviços básicos de saúde e sanitários como prioridades de desenvolvimento, a par do desenvolvimento das competências e da transformação do capital humano através da educação (GARRIDO & BALDÉ, op.cit). A *Estratégia Continental* deriva das aspirações da *Agenda 2063*, facto que a torna tão distinta das políticas anteriores adotadas no quadro a OUA e da UA. Ela estabelece as metas a educação na transformação para o desenvolvimento sustentável, focando uma visão pan-africana de unidade e prosperidade (TIKLY, 2019, p.223). Imbuída desta visão pan-africana, a *Estratégia Continental* verte ainda em si a agenda de desenvolvimento sustentável da ONU, sendo inclusive o guião para a implementação do ODS 4 para a garantia de uma educação inclusiva e de qualidade para todos (EMMANUEL, 2019, p.33). Resulta de um esforço de consulta de stakeholders, entre os quais o AUDA-NEPAD, as Comunidades Económicas Regionais, outros atores regionais e os Estados (GARRIDO & BALDÉ, 2021.).

No âmbito do ensino superior, a *Estratégia Continental* não prevê nenhuma medida independente, sendo este grau de ensino articulado com outras políticas, em particular a Estratégia para África na Ciência, Tecnologia e Inovação (2024) – uma política de educação específica para o ensino técnico e vocacional. Neste sentido a *Estratégia Continental* reconhece que:

O ensino superior proporciona um ambiente propício ao desenvolvimento e exploração adequada de todo o potencial da ciência, tecnologia e inovação para apoiar o crescimento sustentável e o desenvolvimento socioeconómico. Melhora também a competitividade no que diz respeito ao processo global de investigação, inovação e empreendedorismo que exige uma produção de conhecimento de qualidade das universidades dos países africanos (UNIÃO AFRICANA, 2016, p.18).

⁵ A Agenda 2063 foi adotada em 2013.



Em junho de 2017, teve lugar a 14.^a Conferência da Associação de Universidades Africanas, em Acra (Gana) que lançou oficialmente o *CESA Higher Education Cluster* (União Africana, 2017). Esta iniciativa integra-se na lógica integrada de criação de vários *clusters* nas várias áreas de foco da *Estratégia Continental* (UNIÃO AFRICANA, 2017). No caso do *cluster* para o ensino superior, este tem como propósito: a expansão de uma sociedade Africana do conhecimento, através de um forte investimento nas universidades, na ciência, na tecnologia, na investigação e na inovação; a harmonização do ensino superior e o reconhecimento de competências; estabelecer uma Agência Africana de Acreditação, para atestar níveis de qualidade do ensino, e; fortalecer a Universidade Pan-Africana e estabelecer uma Universidade Virtual Pan-Africana com o objetivo de aumentar o alcance do ensino no continente e fortalecer as áreas prioritárias da ciência, da tecnologia e da inovação (UNIÃO AFRICANA, s/da).

O projeto de uma universidade virtual no continente africano foi incluído no plano de ação para a primeira década de implementação da *Agenda 2063* (UNIÃO AFRICANA, s/db). Neste sentido, e já com a *Estratégia Continental* em vigor, o Comité Técnico Especializado em Educação, Ciência e Tecnologia, em articulação com o *cluster* para o ensino superior (2017) e dos objetivos a que se propunha alcançar, propôs a criação da universidade virtual. Tal proposta seria acolhida pelo Conselho Executivo da União Africana, em janeiro de 2018 e marcando o arranque oficial do projeto (UNIÃO AFRICANA, 2018). A *Pan African Virtual and E-University* foi oficialmente inaugurada em 2019. Esta iniciativa tem como propósito acelerar o desenvolvimento do capital humano, da ciência, tecnologia e da inovação através de um projeto de ensino superior de acesso universal (UNIÃO AFRICANA, 2019). A *Pan African Virtual E-University* cimenta-se na revolução tecnológica e digital do século XXI para permitir que os cidadãos africanos tenham acesso a uma formação superior especializada em qualquer lugar em que estejam. Desta forma, a *Pan-African Virtual and E-University* complementa e consolida todas as iniciativas e estratégias africanas que visam o desenvolvimento e a inovação.

4. Impedimentos à implementação das Política Públicas Educativas da União Africana

O mapeamento realizado neste artigo demonstra a construção de um amplo leque de políticas públicas para o avanço da educação no continente. A criação de normativas nos planos continental, regional e nacional reforça a formação de uma rede de diretrizes e projetos abrangentes dados os enormes desafios para se oferecer educação de qualidade para as populações africanas. A abordagem de construção de níveis de ação cria uma estrutura que busca envolver todos os níveis que constituiriam o que se pode chamar de um sistema educacional africano. Articuladas aos Objetivos do Desenvolvimento Sustentável e à Agenda 2063, as diretrizes educacionais da *Estratégia Continental* rompem com a falsa contradição que comumente é apontada nos projetos educacionais para os países em desenvolvimento entre a educação básica e a educação superior (CORBUCCI, 2004; SGUISSARDI, 2014), ao tratar o nível superior (incluindo-se o ensino tecnológico) e o nível básico (inclusive o ensino técnico-profissional), como partes integrantes de um mesmo complexo cuja estruturação é indispensável para a promoção do desenvolvimento económico.



Também é relevante o destaque atribuído à promoção da igualdade de gênero no sistema educacional, uma vez que, como ficou demonstrado nos esforços da Primeira Década da Educação para a África, o objetivo de ampliar o percentual de pessoas escolarizadas em todo o continente por si só não bastava para garantir o acesso igualitário de mulheres e meninas à escolarização em todos os níveis e a sua consequente inserção profissional. Entretanto, se a construção das políticas públicas para a educação avançou no plano sub-regional com a inclusão de diversas comunidades económicas regionais e no plano continental com a ampliação das ações da União Africana no âmbito educacional, um obstáculo dos mais importantes ainda permanece: o financiamento necessário para a efetivação das diretrizes instituídas.

A falta de autonomia financeira da União Africana é um tópico presente nas discussões do organismo desde a sua fundação (MOLLA & SHUNDE, 2023; MOYO, 2021). Tal condição foi herdada de sua predecessora – a OUA – fundada em meio ao processo de descolonização africana, e, desde a origem, a capacidade dos estados-membros para sustentar economicamente a atuação da entidade foi restrita. A partir de 2016, a entidade começou a discutir um conjunto de reformas com o objetivo de reduzir a dependência de doações dos países desenvolvidos por meio da busca por novas fontes de financiamento e da reforma de diversos mecanismos de gestão dos recursos (KAGAME, 2017; UNIÃO AFRICANA, 2016c).

Em suas recomendações, Kagame aponta uma série de reformas que considera essenciais para ampliar a eficiência na implementação das políticas definidas pela UA, dentre as quais destacamos a indicação de que a entidade adote um número mais reduzido de prioridades, privilegiando áreas em que possa atuar com alcance continental (Kagame, 2017, p.27), em colaboração com as comunidades económicas regionais. Mesmo após com a aprovação da Decisão de Kigali sobre o Financiamento da União (UNIÃO AFRICANA, 2016c), Kagame constata que mais de 40% dos estados-membros deixaram de pagar suas contribuições anuais para a organização.

Por sua vez, Moyo (2021), argumenta que a condição de dependência económico-financeira da UA deita suas raízes na subalternidade dos próprios países africanos. O autor aponta que 80% dos recursos da UA são originados de ex-colonizadores, dos EUA e de atores que buscam aprofundar sua influência no continente, como China e Rússia. Essa relação é utilizada, na visão do autor, para perpetuar a condição dependente dos países africanos e impossibilita a efetiva implementação de qualquer política para autonomizar o continente e, para superar esse quadro é preciso reforçar o autofinanciamento da organização, algo problemático em meio aos orçamentos nacionais bastante restritos dos estados-membros, sobretudo por conta do endividamento externo.

O quadro apresentado demonstra que há grandes desafios políticos e económicos para a implementação efetiva das políticas educacionais definidas no âmbito da União Africana. Em que pese a vontade política que mobilizou os estados-membros da UA para sua criação, a baixa capacidade de investimento de muitos países ainda se coloca como o principal obstáculo a ser superado para avançar como políticas que impulsionem o desenvolvimento continental e construam sua efetiva autonomia.



Conclusão

A educação tem ocupado um lugar importante na agenda política da União Africana. A consagração do direito à educação em vários instrumentos jurídicos adotados no quadro da União Africana é demonstrativa da relevância deste direito na vida jurídica da União. Por outro lado, a concepção e desenho de políticas públicas específicas nesta área vêm reforçar a relevância desta agenda no quadro das prioridades políticas da União. A *Primeira Década da Educação* foi importante para catapultar o tema na cena política regional, posteriormente consolidada na década seguinte. É com a *Estratégia Continental* que a União concretiza uma agência robusta em matéria de políticas na área da educação, concretizando medidas a implementar nos diferentes níveis de educação. Esta Estratégia articula-se com outras agendas adotadas no quadro da organização, concertando uma resposta jurídica e política forte no quadro da educação em África. Contudo, foi possível identificar algumas dificuldades nesta implementação, desde logo, a dificuldade da União Africana em alocar um orçamento razoável para esta área, fruto de alguma debilidade estrutural em matéria do financiamento da organização pelos estados-membros. A União Africana tem assim uma crónica falta de autonomia financeira que compromete a concretização das agendas e políticas por si definidas.

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