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African Politics, African Peace charts an agenda for peace in Africa, focusing on how the African Union can implement its norms and use its instruments to prevent and resolve armed conflicts. It is an independent report of the World Peace Foundation, supported by the African Union.

The Report is the most extensive review of the African Union's peace missions ever conducted. It is based on detailed case studies and cross-cutting research, and draws on consultations with leading experts, peacekeepers, and mediators.

This Paper is a summary of research undertaken in support of the Project.

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# Preventing and Responding to Mass Atrocities: Insights for the African Union

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## Key Messages:

1. Lethal violence against civilians unevenly, yet steadily declined in Africa 1997 – 2007, a positive outcome not limited to specific mechanisms designed to prevent and respond to atrocities;
2. The AU's development of norms and mechanisms for responding to a range of political crises has contributed to the decline;
3. Today's cases of greatest risk to civilians fall into three general categories, each of which requires a different strategy and tactics of protection;
4. The AU mechanisms that specifically focus on the prevention of and response to atrocities can be further enhanced to improve protection outcomes, but above all what is needed is a clearly articulated and empowered principle of civilian protection.

## Key Findings:

### Violence Against Civilians on the Decline

The shift of the African Union (AU) from a norm of non-interference to one of non-indifference has had significant consequences for how the continent's leading organization engages in the prevention of and response to systematic violence against civilians. Overall,

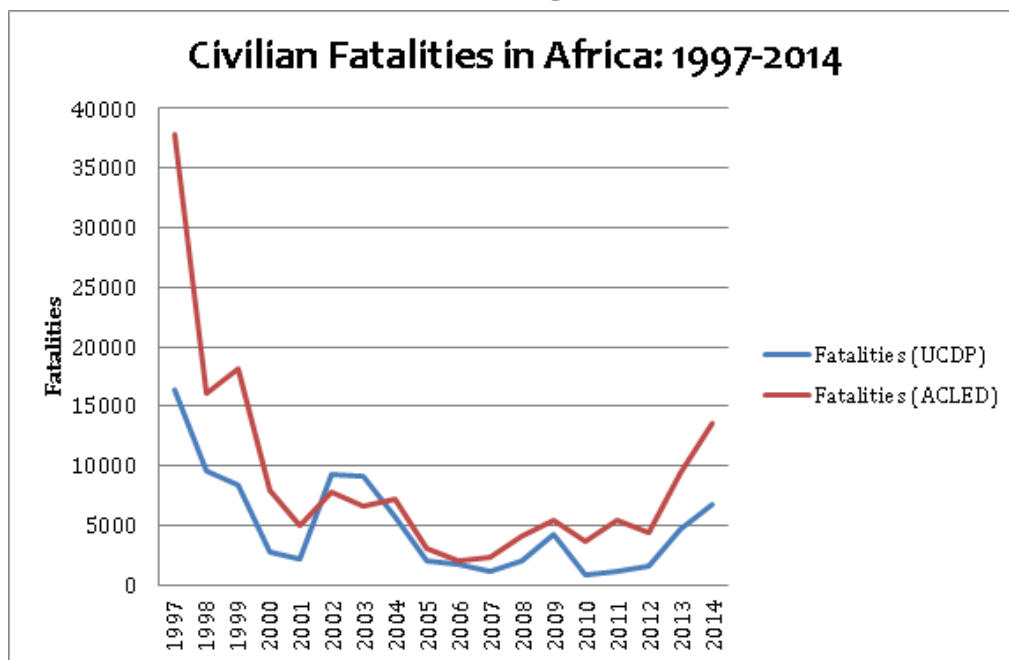
there have been reductions in the scale of lethal violence directed against civilians on the continent since 1997, although with troubling increases beginning in 2008 and sharply escalating after 2012 (see Table 1.1). The impact should not be measured solely or even largely in relation to the specific mechanisms designed to prevent and respond to atrocities, defined herein as widespread and systematic violence against civilians. Rather, to assess of the AU work's on situations that threaten civilians with violence, one must situate prevention and response within the larger context of the African Peace and Security Architecture (APSA).

When African leaders crafted the Constitutive Act (July 2000) for the OAU's successor organization, the African Union (AU), they committed to balancing sovereignty with collective responsibility to support human rights, democracy, rule of law, equitable

governance, peace and security. Further, anticipating the need to take action should future large-scale threats against civilians appear, the AU's constitutive act included: "the right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity" (Article 4(h)). While there is some debate whether this Article is intended to include a wider range of interventions beyond non-consensual military intervention, in practice, the AU has focused its engagement in places at risk of or experiencing violence against civilians through the broader framework and mechanisms of the APSA.

Article 4(h) has only been directly invoked in reference to violence in Burundi (2015 – 2016), in response to violence following a contested third term for the country's presidents, Pierre Nkurunziza. Beginning in

Table: 1.1 Violence Against Civilians



Source: Data from ACLED Violence Against Civilians Dataset and UCDP One-Sided Violence Dataset; World Peace Foundation 2016

May 2015, the country experienced protests, a coup attempt, government crackdowns and large-scale flight. Violence escalated sharply on December 11, 2015, when fighting broke out in the capitol, followed by a campaign of retaliation by forces aligned with the President. In total, a minimum of 87 people were killed. In response on December 17, 2015, the AU Peace and Security Council issued an ultimatum to Burundi: the government had 96 hours to accept a proposed peace mission or the force would deploy without their consent. The Burundian government refused, and further discussion was delayed until the AU Summit (January 2016), when the Assembly failed to support the deployment, largely based on arguments that the mediation effort had not been thoroughly exhausted. The AU subsequently began pushing for an international police force, and human rights and military observers.

This situation hardly stands as an exemplar of successful invocation of extraordinary measures to combat genocide, for several reasons. The violence in Burundi, while serious and deeply troubling particularly in relation to past periods of violence in the country, was neither widespread across the country nor of exceptional scale. While it did decline following the threat of intervention-- shifting into patterns of more targeted acts of violence and generalized oppression of the opposition—the debate about deployment exposed many questions about how the AU might operationalize this capacity in the future.

Of greater relevance to understanding how the AU has contributed to protecting civilians from violence is the much longer list of places where it has engaged without invoking Article 4(h). Its efforts to mediate crises, produce unified regional and continental positions against conflict and unconstitutional changes of government, support for democratization and human rights, and deployments of peace missions since 2000 covers a wide array of contexts and approaches to mediating political crises on the continent.

### Three contexts and frameworks for threats against civilians

The cases that have triggered concern due in some significant part to violence against civilians since 2000 include a diverse range of contexts and patterns of violence, with the priority of protecting civilians varying across them. Further, while the dominant anti-atrocity approach to early warning and engagement tends to approach contexts with the singular concern of how they might escalate to high-level targeting of civilians, the differences in political dynamics and issues below, as well as the differing frameworks for international response, suggest the need for context-specific principles and guidelines for action. The three main contexts are:

*Disputed transfers of power:* including Burundi (2015), Cote d'Ivoire (2010), Guinea (2009), Egypt (2011), Kenya (2007-2008). In general, response by the key international actors, including the AU, but also involving the UN, ECOWAS, and various nations, have in these instances prioritized halting violence against civilians while resolving the core leadership contention in line with established principles against unconstitutional changes of government and democratic constitutionalism. The mechanisms deployed to halt violence against civilians have included condemnation, sanctions, suspension from AU, military and/or policing deployments, high-level delegation and mediation efforts, and pressure on political leaders to use their good offices to control their supporters. This array of cases, however, also points to areas requiring further elaboration in relation to unconstitutional changes of government, like popular uprisings and manipulated constitutional processes.<sup>1</sup> Resolution of the political crisis was faster and more sustainable in cases where neighboring states, regional organizations, the AU and UN pursued compatible response strategies. An example of the inverse is Burundi, where differences among regional actors—leading mediation efforts in this case--over how to resolve the crisis have at times divided

neighboring states, AU, and international responses. These cases demonstrate the capacity for sudden sharp spikes in violence against civilians, but not at the same scale of overall violence as contexts of armed conflict. Disputed elections in Cote d'Ivoire followed a period of civil war, so it shares some characteristics with the below category, and has a high death toll, estimated at 3,000 people in the post-2010 election period.

*Armed insurgencies:* including CAR (2013 – present), South Sudan (2013 – present), Sudan (1985 – present), DRC (1996 – present). These are cases of deeply entrenched political dysfunction with violence against civilians regularly rising and falling in relation to a number of political or economic incentives. These cases have a tendency to produce higher death tolls than the other two contexts, with fatalities in the tens of thousands (if not higher), as they occur in the context of civil war, with at least two sides of somewhat evenly matched opponents some of whom intentionally target civilians, often along lines of group identification. Response mechanisms have prioritized humanitarian response, mediation, peacekeeping forces with civilian protection mandates, legal indictments, sanctions and embargoes. Peacekeeping forces deployed in all of these cases have had civilian protection mandates.

*Offensive actions by coalitions of the willing to defeat a named enemy group:* including Libya (2011), Multinational Joint Task Force (MNJTF) [to counter Boko Haram] (2015 – present), the LRA-Task Force (2011- present), and Somalia (AMISOM). The place of civilian protection within these missions' priorities is secondary to defeating an opponent,<sup>2</sup> and the impact of the missions has arguably at times worsened conditions for civilians. This is particularly true in cases where missions have not even upheld their obligations to adhere to International Humanitarian Law and minimize harm to civilians.<sup>3</sup> Ironically, even the NATO intervention in Libya, triggered as a “responsibility to protect” mission, interpreted its mandate to protect civilians through the strategic goal of defeating the

Gadaffi regime. Patterns of violence in these cases tend to shift, as offensive action by more powerful regular armed forces has been capable of pushing enemy groups back and even defeating them, but found it difficult to 1) consolidate state authority, and 2) ward off the more randomized threat such groups pose as they weaken and resort to terrorist tactics.

This paper argues that trends in violence against civilians across these cases demonstrate that a higher degree of protection is possible when issues related to violence against civilians are prioritized within a political strategy that holds leaders responsible for decreasing violence and is aimed at resolving the core points of contestation. In short, protection cannot be disarticulated into discrete response policies. Even the most robust policy of offensive force must be deployed within the context of a political strategy that overtly prioritizes civilian protection.

### **Enhancing existing atrocities-specific response mechanisms**

While political leadership and management is the starting point for any strategy to protect civilians and ward off atrocities, there are unquestionably areas where the African Union could increase the efficacy of its various response mechanisms. These areas include:

**Strengthen existing civilian protection and human rights organs, with the goal of mainstreaming protection issues throughout AU activities:** Today, it is common that the distinct professional expertise and practices associated with anti-atrocities agenda, human rights, and civilian protection issues divide protection endeavors rather than unite them. This is true at the AU as well. The AU possesses standards and principles in its core documents, as well as a quasi-judicial system in the African Commission on Human and Peoples' Rights, and African Court on Human and People's Rights<sup>4</sup>, and specific guidance on

particular rights-based approaches to protection in relation to women, children, and various other groups, as well as the context of peace support operations. These systems, principles and instruments could be better integrated into the operationalization of conflict prevention and peace-making efforts, and better supported to form a comprehensive network for protection that is more powerful than its sum parts. To achieve this, however, would require an overt commitment to protection and would likely demand the creation of a position charged to advance this goal. Such a position should not be organized around a mandate exclusively focused on genocide, crimes against humanity or mass atrocities, but rather through a broader human rights framework and in service of a principle of protection.

**Implementing recommendations found in the *Guidelines for the Protection of Civilians in African Union Peace Support Operations*.** The guidelines were developed in 2010. Some training has already been undertaken and the guidelines continue to be analyzed in relation to experiences of AU peace support operations, but the AU should dedicate itself to fully integrating PoC guidelines into all peace missions, including coalitions of the willing, as a priority. Among the laudable recommendations from the *Guidelines* report are: integration of PoC into early warning mechanisms, development of strategic documents to support PoC; increased capacity for mission specific information-gathering, assessment, planning and training; clarity about hierarchy of mandate goals in PSOs; realistic assessment of threats and capacities; flexible mandate review and adjustment policies; Head of Mission responsibility; and coordination with political actors. These guidelines should be integrated into the development and training of the African Standby Force. To these recommendations, this report adds two notes of caution:

1. The core principles and practices advanced in the *Guidelines* should be re-affirmed in light of

challenges posed by extremist groups and other nonstate actors. These contexts should not be treated as exceptions;

2. Military force regardless of how well-mandated, trained and resourced cannot effectively provide protection to the size and range of civilian populations at risk across the continent.
  - a. Effective use of military force to improve civilian protection and prevent atrocities will always require subordination to political strategy focused on addressing core political disputes.
  - b. Understanding the means by which civilians protect themselves, and fashioning support for the most effective of these measures can increase the protective impact of peace mission efforts. This requires dedicated efforts to formalize regular engagement with civilian communities, paying particular attention to diversity within communities.

**Integrating atrocity early warning into the existing Continental Early Warning Systems (CEWS).** This recommendation was put forward in the draft *Guidelines for Protection* (2010) and should be implemented. Augmenting existing early warning capacities with a civilian protection lens would improve CEWS' ability to anticipate conflicts, atrocities and other forms of political violence that threaten national and regional security.

**Further developing guidelines on Article 4(h).** As noted above, the AU response to Burundi revealed gaps in the norms and practices associated with Article 4(h).<sup>5</sup> This raises three areas for further elaboration.

First, is whether the AU should articulate criteria or guidelines for when and how Article 4(h) is invoked. The failure to approve the Burundi force, while decried by some as a symptom of the AU's weakness and

divisions within the PSC and Assembly, might be viewed as well-founded wariness regarding hostile intervention especially if mediation efforts are not fully exhausted. This argument mirrors African concerns regarding the NATO intervention in Libya, where African leaders mounted a late mediation effort that was sidelined by other international actors.

The second critical area is whether Article 4(h) should be understood as limited to the specific response mechanism of military intervention, or whether it describes a category of acts or crimes that deserves special attention. If the latter were the case, it might be understood as a vehicle through which the AU could assert its authority over regional or other actors as the appropriate organization to lead response to cases that appear to demonstrate high risk of evolving into mass atrocities.

While there are some strong reasons for taking this latter approach—significantly, that when situations are escalating and appear to result in mounting risks for entire civilian populations, the AU, rather than a regional organization or other such actor, may be better equipped to lead response, through its capacity to mediate between neighboring actors and forge a coherent international response. However, there is also a major risk in so doing: namely, it is very difficult to effectively distinguish a broader alert and response framework for such crimes from the powerful response tool of military intervention that initially defined the category. A broader human rights and protection framework that could inform early engagement and contribute to an approach to political mediation is a more appropriate strategy.

### Recommendations:

- Create an office dedicated to helping the various instruments and organs of the AU create, synthesize and integrate new learning and guidelines for improving the protection of civilians across all of its

modes of engagement, not just PSOs;

- Even on missions that view defeat of an enemy force as a strategic goal, centralize protecting civilians;
- Specifically, integrate a civilian-centric lens into early warning analysis at the AU and coordinate with RECs' early warning mechanisms.
- Establish criteria to guide how the AU will operationalize Article 4(h).

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<sup>1</sup> See Solomon Dersso. 2016. "Study on Unconstitutional Changes of Government and Unconstitutional Practices in Africa," World Peace Foundation, Available at: URL

<sup>2</sup> Included in the MNJTF mandate of 29 January 2015 (PSC/AHG/2.(CDLXXXIV) is "ensuring, within its capabilities, the protection of civilians under immediate threat, IDP and refugee camps, humanitarian workers and other civilian personnel;" AMISOM was given a PoC mandate in May 2013; and UNSC Res 1973 authorizing the NATO intervention in Libya emphasized the need to protect civilians, and while NATO insisted it did all in its power to minimize harm, more civilians were killed during the war than had during the period of government crackdowns that prompted the intervention.

<sup>3</sup> See, for instance, on increasing insecurity for civilians in Somalia, see Lotze, Walter and Paul D. Williams. May 2016. "The Surge to Stabilize: Lessons for the UN from the AU's Experience in Somalia," International Peace institute. Available at <file:///Volumes/bconle02/African%20Peace%20Missions%20Atrocities/IPI-Rpt-Surge-to-Stabilize.pdf> (pp.12 – 13); on the MNJTF, see Center for Civilians in Conflict, 2015. " 'When we can't see the enemy, civilians become the enemy': Living Through Nigeria's Six-Year Insurgency, Available at: <http://civiliansinconflict.org/resources/pub/living-through-nigerias-six-year-insurgency>.

<sup>4</sup> The African Union Assembly decided in February 2009 to explore the creation of a special criminal chamber within the African Court of Justice and Human Rights (ACJHR), setting in motion the process to realize this goal. At present, the Court requires additional state ratifications before it will come into effect, with jurisdiction over criminal cases in instances of genocide, war crimes and crimes against humanity (extended jurisdiction February 2009), in addition to cases submitted to it concerning interpretation and application of the African Charter of Human and Peoples' Rights, the Protocol establishing the Court and relevant Human Rights instruments ratified by the States (Article 3, 1).

<sup>5</sup> See Dersso, Solomon. 2016. "To intervene or not to intervene: An inside view of the AU's decision-making on Article 4(h) and Burundi," World Peace Foundation: February 2016. Available at:

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