Securing Predictable and Sustainable Financing for Peace in Africa

August 2016

The Context

1. Africa continues to show remarkable resilience in weathering both global and regional challenges. Consolidating peace remains the foundation for the Continent's continued progress and socio-economic transformation.

2. During the 50th Anniversary of the Organization of African Unity/African Union (OAU/AU) in May 2013, the AU Assembly of Heads of State and Government adopted a landmark declaration. They vowed that Africa would not bequeath the burden of conflicts to the next generation and made a commitment to end violent conflict on the continent by 2020. This was translated into the AU initiative: Silencing the Guns by 2020.

Growth and opportunity

3. The transition from the OAU to the AU came with high expectations. It offered a new vision for Africa at a time of renewed economic growth on the continent following years of economic decline, this was a period of rising real per capita incomes and improving human development indicators across the continent.

The exceptions: Conflict affected regions

4. While Africa's economic fortunes were beginning to improve there were important exceptions: Countries not at peace, or those emerging from decades of conflict and instability. The human and economic costs of these conflicts had adverse national and cross-border consequences: Increased numbers of refugees and internally displaced persons; the proliferation of small arms and light weapons, lost opportunities and wasted lives. In addition to these old conflicts new and more complex global security challenges emerged.

5. In response, and in line with the provisions of the *Constitutive Act of the African Union* and the *Protocol Relating to the Establishment of the Peace and Security Council* (PSC Protocol), the AU assumed political responsibility to address these challenges and developed its African Peace and Security Architecture (APSA). However, for a chronically underfunded organization, the financial and institutional requirements of assuming these new missions were perhaps underestimated.

6. Nonetheless the AU rose to the challenge progressively gaining experience, on what it can do alone and what is best done in partnership with others. It is important to underscore that, in responding to peace and security challenges, the AU demonstrated a significant comparative advantage not available to most other regions and organizations. This notwithstanding, it has become manifestly clear that, for Africa to maximize this advantage, adequate and sustainable resources and capacities must be in place.

7. In the peacekeeping arena, the AU has mandated and deployed seven (7) peace support operations (PSOs), most of them in contexts where the UN has been unable to deploy peacekeepers in a timely manner: the African Mission in Burundi (AMIB), the African Mission in Darfur (AMIS), the African Mission in Somalia (AMISOM), the AU Electoral and Security Assistance Mission to the Comoros (MAES), the African-led International Support Mission to Mali (AFISMA), and the African-led International Support Mission to Central African Republic (MISCA).

8. The AU Commission also provides strategic, political, technical, and planning support to operations authorized by the Peace and Security Council and carried out by regional coalitions of Member States, Regional Economic Communities (RECs), or Regional Mechanisms for Conflict Prevention, Management and Resolution (RMs).

9. Such support includes: The Regional Cooperation Initiative against the Lord's Resistance Army (RCI-LRA) and the operation against Boko Haram undertaken by the Lake Chad Basin Commission and Benin- the Multinational Joint Task Force (MNJTF). Since 2015, the AU has also mandated the deployment of a total of 100 human rights observers and 100 military experts to Burundi.

10. **The onerous nature of these missions is illustrated by the total cost of current operations which, for 2016, is estimated at $1.2 billion per year**. **AMISOM alone (with an approved strength of 22,126 uniformed personnel and 114 civilians) accounting for an estimated $900m per year.**

11. Without the necessary financial means, the AU has had to rely on contributions from Troop Contributing Countries (TCCs) and external partners to implement most PSO mandates, and with the exception of AMISOM, has often had to transfer responsibility for its missions to the UN, typically within 12 to 36 months.

12. It is important to highlight the critical nature of the partnerships the AU has developed within the framework of APSA. The European Union (EU), United Nations (UN) and bilateral partners have all played a key role. There has been significant innovation and creative problem solving, which has been pivotal in meeting the continent's peace and security challenges. Nonetheless all acknowledge that, with a few exceptions, overall support remains largely *ad hoc* and unpredictable.

Emerging comparative advantages

13. Various high level reports and recommendations have noted that, as the nature of international peace and security threats has evolved, no single organization has the legitimacy and capabilities required to act alone.

14. While the AU has the mandate, experience and political will to deploy rapidly in order to deliver stabilization and counter-terrorism operations, it is unable to sustain such missions over the medium to long term because it lacks sufficient means.

Peace Support Operations

15. Since the establishment of the Union in 2002, the AU and its RECs/RMs have demonstrated a clear comparative advantage in two particular types of situations: First, in Missions where offensive operations are needed and the UN is unable to deploy; and second, where the UN Security Council is unable to mobilize the requisite political consensus to initiate action.

Mediation and Preventive Diplomacy

16. The AU and its sub-regional organizations have developed significant institutional capacity over the past decade to undertake early warning analysis and conflict prevention. In this regard, the AU has built up an impressive toolbox for prevention and peacemaking. These include the Continental Early Warning System, the Panel of the Wise, Special Envoys, and ad hoc mediation panels, often comprised

of sitting and former Heads of State. The AU also has experience in deploying liaison offices and "special political missions" in countries at risk of, or emerging from, conflict.

The Financing Context

17. The Peace Fund (PF) was established in June 1993 as the principal financing instrument for the peace and security activities of the Organization of African Unity. As one of the five pillars of APSA, the PF's legal basis is set out in Article 21 of the PSC Protocol.

18. The PF is to be replenished through financial appropriations from the regular AU budget (including voluntary contributions from Member States and arrears on assessed contributions). The Fund is also able to accept contributions from other sources within Africa, including the private sector, civil society, donations from individuals, and through appropriate fundraising activities.

19. During the Special Summit held in Tripoli in August 2009, AU Member States agreed to increase their contributions to the Peace Fund from 6% to 12% of the AU regular budget. During the 16th Ordinary Session of the Executive Council held in Addis Ababa, Ethiopia, in January 2010, it was agreed that this increase would be implemented over a period of three (3) years starting from 2011.

20. To date, the percentage contribution from the regular budget has only reached 7%. This is mainly because of high levels of arrears and late payments of Member States' assessed contributions. While some AU Member States have made additional voluntary contributions to the Peace Fund, these payments are irregular and unpredictable. As a result, the Fund is highly dependent on external partners.

21. This highly unsustainable and precarious situation affects the AU's ability to independently manage its peace and security priorities. The multiplicity of donor financing channels has, unsurprisingly, led to fragmentation and high transaction costs related to the numerous reporting requirements.

22. The urgent and strategic imperative of ensuring predictable and sustainable funding, not only in the area of peace and security but for the Union as a whole led the AU Assembly, in the 2013 and again in 2015, to prioritize the mobilization African resources to finance continental priorities.

Key Issues and Challenges

Weak financial foundations

- **Limited funding for mediation and preventive diplomacy**

23. Although It is well understood that preventive diplomacy is to be preferred to costly, complex peace keeping operations, to date the AU has not provided adequate financial support for this important undertaking. As a result, these critical activities are heavily dependent on the financial support of external partners, with more than 95 percent of the such activities funded by external partners, including conflict prevention, mediation, special envoys and special political missions.

- **Ad hoc and unpredictable financing of AU PSOs**

24. There is general agreement that the current financing arrangements for peace support operations are neither reliable nor predictable, especially in the context of high-tempo combat operations. While partners have demonstrated much flexibility and innovation, there is consensus that the current financing arrangements are unsustainable.

25. The EU has played a key role in supporting AMISOM. Other bilateral partners have provided (a) direct bilateral financial contributions, to the AUC and to Troop/ Police Contributing Countries/(TCC/PCCs) deployed in missions; and (b) in-kind contributions to specific missions through the provision of critical components such as communications systems, strategic airlift, etc.

26. The UN has been a key partner providing support in three principal ways: First, hybrid missions where the AU retains a political role in the strategic management of the mission, but where the day-to-day running and the financial costs are fully funded from the UN peacekeeping budget through the normal process of assessed contributions (UNAMID). Secondly, deploying a UN support mission to provide direct logistical support to key elements of an AU mission (UNSOS in support of AMISOM); and thirdly, through UNSC authorized, UN-managed Trust Funds, which are dependent on voluntary contributions.

27. It is important to highlight the significant contributions made to peace support operations by AU Member States/TCC/PCCs from their national budgets, e.g. the provision of uniformed personnel and equipment. Some of these costs are reimbursed, through payment of stipends to deployed uniformed personnel and reimbursement of contingent-owned equipment (CoE). However, AU Member States also carry the costs of preparing their forces, the capital cost of replacing equipment, responsibility for the lifelong care of wounded and disabled personnel, as well as the cost to societies and families of lives lost in the service of maintaining international peace and security.

28. The AU has consistently argued for predictable and sustainable financing through UN assessed contributions for AU-led peace operations that the UN cannot itself undertake, but which are regarded as critical for the maintenance of international peace and security. In this respect the recommendations of the High Level Independent Panel on Peace Operations (HIPPO), which are consistent with the AU's own Common African Position, are pertinent and ground breaking. It is to be recalled that the Report recommended that "UN assessed contributions should be provided on a case by case basis to fund AU PSOs authorized by the UN Security Council "

29. The decision by the AU Assembly of Heads of State and Government, in 2015, to **take financial responsibility for 25% of peace activities by 2020,** is a major milestone. Of equal significance is the

decision to reinvigorate the Peace Fund and appropriately endow it to finance preventive diplomacy, mediation activities, build readiness capabilities, maintain a Crisis Reserve Facility and contribute to peace support operations when that becomes necessary.

- **Limited readiness to address rapid onset crises**

30. Article 21 (4) of the PSC Protocol foresaw the need for the creation of a replenishable Revolving Trust Fund as part of the Peace Fund (PF). This has never been established and, as a result, the AU does not have a reserve facility to finance responses to unforeseen crises. It is expected that once the Peace Fund is optimally operational this revolving facility will become fully functional.

Governance, accountability and financial management

31. The financing challenges outlined above have had important unintended consequences. High levels of donor dependency have weakened ownership in this critical area of the AU's mandate and led to strategic drift, as the AU Commission (AUC) increasingly focused on externally financed activities.

32. Both AU Member States and partners have expressed concerns with the lack of adequate accountability mechanisms, that reduce the scope for additional support and make multiple reporting requirements inevitable. Significant financial management and administrative reforms are now underway within the Commission but it may be some time before the efforts bear fruit.

33. Progress is being made in addressing the AUC's capacity to manage and provide oversight and accountability in the use of its funds irrespective of the source. However, there is still some distance to go in strengthening fiduciary management, accountability, results and effectiveness. In the interim, it is therefore necessary to put in place Peace Fund governance and management systems that combine AU political oversight with robust fiduciary systems including independent fund management.

The Way Forward

Priority 1: Predictable and Sustainable financing of the Africa Peace Fund

- **Financing Mediation and Preventive Diplomacy**

34. The high cost and complexity of AU PSOs places a premium on greater investment in Mediation, Preventive Diplomacy and Institutional Capacity. It is imperative that the AU Peace Fund take primary responsibility for financing this core operational priority. While partnerships will still be needed, AU Member States should primarily fund these relatively low cost but high impact activities. Table 1 indicates the costs of such activities in 2016.

- **Establishing and Maintaining a Crisis Reserve Facility**

35. It is vital that the AU has the minimum ability to respond to sudden unforeseen crises. It is therefore important that the Revolving Trust Fund envisaged in Article 24 (1) of the PSC Protocol is now formally established as a Crisis Reserve Facility within the Peace Fund. As in the area of preventive diplomacy and mediation, this Facility should be primarily financed by AU Member States.

Table 1: Financing Window 1 (Mediation, Preventive Diplomacy), Window 2 (Institutional Capacity), and Maintaining a Crisis Reserve Facility

Budget (mil USD)	2016	2017	2018	2019	2020
Mediation & Preventive Diplomacy	35	37	39	41	43
Institutional Capacity	3	15	15	15	15
Reserve (Art 21.4 of the Protocol)	10	15	20	25	30
TOTAL	48	67	63	65	67

- **Implementing the AU Assembly decision to finance 25% of the peace related activities**

36. Establishing the full cost of AU-led PSOs has been complicated by the multiple and *ad hoc* financing arrangements that are in place. **Contributions in kind and those provided from TCC national budgets are not routinely captured, yet they constitute a core element of the financing of AU-led PSOs**. The PSO budget costs provided in this section are estimates based on the available data.

37. A number of scenarios, were developed to analyze the financial implications of the 2015 Assembly decision to pay 25% of the PSO budget: Ultimately, it was agreed that the scenario described as "Middle Scenario" is the most realistic. This excludes AMISOM, but includes the RCI-LRA, MNJTF and Burundi observer missions. In addition, it assumes the potential deployment of two new missions, totaling 15000 uniformed personnel. The scenario also includes a 5% adjustment for inflation over the 5-year period.

Table 2: AU PSO (Window 3) Scenarios

	Total Cost (mil USD)	2016 5%	2017 10%	2018 15%	2019 20%	2020 25%
Baseline Scenario	1,200	49	103	163	228	299
Minimalist Scenario	236	12	25	39	55	72
Middle Scenario	772	38	81	128	179	235

38. Under this scenario, the estimated cost of all AU PSOs in 2016 would be US$772m. Although the baseline on which this is determined remains an estimate, it is the most realistic one in the current circumstances.

39. In its ground-breaking decision on the Financing of the Union, the July 2016 AU Assembly decided to institute a universal levy of 0.2% on eligible imports (Assembly/AU/Dec.605 (XXVII) whose technical details appear elsewhere.

40. The 0.2% levy will endow the Peace Fund with $325m in 2017 rising to a total of $400m by 2020 against an estimated overall Peace Fund budget of $302m in 2020. Any unutilized balances will be held in the Crisis Reserve Facility to enable rapid response to unforeseen crises.

41. Recognizing that the AU regions and RECs/RMs have exercised much leadership and have often constituted the first line of response, the Peace Fund will support regional responses, in accordance with PSC and other AU Policy Organs' decision making processes.

Priority 2: Operationalizing the Peace Fund

- **Structure and Governance**

42. The July 2016 AU Assembly (Assembly/AU/Dec.605 (XXVII) para 5b) adopted the proposal that the PF be structured around three Windows:

Window 1 - Mediation and Preventive Diplomacy
Window 2 – Institutional Capacity
Window 3 - Peace Support Operation

43. Alongside the above the Crisis Reserve Facility (Revolving Trust Fund) provided for by Article 21 (4) of the PSC Protocol on Peace and Security) will be established within the Peace Fund to enable rapid responses to unforeseen crises, from any unutilized balances.

44. The AU Policy Organs, particularly the PSC, have the political authority to guide the activities of the Peace Fund. The AUC Chairperson supported by an **Executive Management Committee** will oversee the Fund's Operations.

45. A **Board of Trustees** will be put in place to ensure strategic coherence, enhanced governance, financial and administrative oversight of the PF. External partners to the Fund will be invited to nominate one or two representatives to the Board. **An Independent Evaluation Group** will provide periodic

evaluation on the use and impact of the Fund. A dedicated **Peace Fund Secretariat** will be established within the Commission to manage day to day operations and will report to the Executive Management Committee. An independent **Fund Manager** will be recruited to ensure the highest standards of accountability and compliance with fiduciary rules and procedures in the management of the Fund. The detailed proposals are contained in Annex 1.

- **Supporting Regional Responses**

46. Strengthening collaboration between the AU and RECs/RMs is a key operational and strategic priority for the Peace Fund. To this end, the RECs/RMs will be invited to participate in the fund design, operational procedures and eligibility to ensure appropriate modalities for financing effective responses to their needs and priorities.

Priority 3: Consolidating Partnerships

47. While AU Member States are primarily responsible for financing the Peace Fund, partnerships will continue to play a vital role in supporting peace and security activities of the African Union. Deepening co-operation with partners, both traditional and emerging ones is therefore imperative. The Peace Fund proposals in Annex 1, which emphasize improved prioritization and governance, will provide a vehicle as well as an opportunity, to improve the co-ordination and overall effectiveness of existing and future partnerships.

48. Engagement with emerging partners will be central to the operationalization of the Peace Fund. It will be important to understand their systems and procedures, typically emphasizing bilateral and direct forms of support, in order to develop a strong basis for collaboration through the Fund.

- **The United Nations: Enhancing Mutual Accountability and Leveraging Comparative Advantage**

49. The AU's proven ability to act as 'first responder' is a critical element of the evolving international peace and security architecture. Based on this shared understanding, both the April 2015 Common African Position and the HIPPO report stressed the need for a strategic-level AU-UN partnership.

50. This enhanced form of partnership must necessarily be based on the two organizations' respective authorities, competencies and capacities. It must also observe principles of burden-sharing, consultative decision-making processes, comparative advantage and a mutually-acceptable division of labor. The AU-UN Joint Review of mechanisms that is underway should provide an opportunity to enhance the partnership building on the lessons identified.

51. In this regard, it is important to highlight the July 2016 AU Assembly decision (Assembly/AU/Dec.605 (XXVII) para 5 (b) (iv)) which called for a way forward on how AU led missions can access UN assessed contributions, following the HIPPO Report recommendation. Annex 2 proposes a possible consultative decision making process to that effect.

52. **There should be no illusion as to the political complexity of this matter. However, to the extent that there is agreement on the urgency of improving the international peace and security architecture to address today's security challenges, arriving at a shared solution is a strategic imperative for both the AU and the UN**.

53. Ensuring that all AU missions, including both those missions supported by UN assessed contributions as well as those financed through other means, are compliant with international human rights and

humanitarian law as well as accepted international norms of conduct and discipline, is an obligation applicable to the AU and all its Member States.

54. In this regard, both the UN and AU missions have faced challenges in recent years and must remain vigilant and strive for improvement. Progress has already been made within the AU to ensure that its missions are in compliance with international legal obligations. However, much of this work has been *ad hoc* and must be institutionalized. Annex 3 addresses this in detail.

- **Engagement with the African Private Sector**

55. AU Member States have the primary responsibility for funding the Union. That said, the private sector has an interest in, and stands to benefit from, improved peace and security on the continent. It is also worth recalling here the critical role of the private sector during the recent Ebola crisis. They led from the front and were critical partners to the AU. Leveraging financing from this sector to support well delineated activities of the AU Peace Fund such as preventive diplomacy remains a top priority. A well designed and adequately resourced Peace Fund will lay a solid foundation for a longer-term engagement with the business community.

Conclusion

56. Financing peace and security in Africa on a sustainable basis is not only an African priority but a global strategic imperative, given the complex and interconnected nature of threats to international peace and security today. The July 2016 AU Assembly Decisions on the Peace Fund are a powerful demonstration of the determination and commitment of the AU and its members to assume primary responsibility to fund the Organization's peace activities. This provides the opportunity to build new partnerships with traditional and emerging partners, International Organizations, the private sector and civil society, and to pool our strengths in order to meet the emerging global threats.

57. The African Union and its Member States are already taking the lead in confronting challenges which other institutions are not able to address. With an AU Peace Fund fit for purpose, the Continent, together with its partners, will establish a foundation for creating a more responsive international peace and security architecture. The complexity of the issues, ranging from funding, to crafting new partnerships with the UN, cannot be underestimated and will demand political will and a paradigm shift. A journey of a thousand miles begins with one step. It is now time to take that step.

Annex 1

The African Union Peace Fund

July 2016

Background

Original Concept and Rationale

1. Legality: The Peace Fund (PF) was established in June 1993 as the principal financing instrument for the peace and security activities of the Organization of African Unity. As one of the five pillars of the African Union's Peace and Security Architecture (APSA), the Fund's legal basis is set out in Article 21 of the *Protocol Relating to the Establishment of the Peace and Security Council* (PSC Protocol).

2. Scope: The Fund's mandate was to finance peace support missions and other operational preventive diplomacy activities. Operational activities currently financed through the PF include mediation—particularly where the AU is identified as a guarantor to the peace agreement—liaison offices, and Special Political Missions. Also included are peace support operations (PSOs) and institutional support aimed at enhancing the AU's capacity to plan, deploy, and manage its core peace and security activities.

3. Financing: The PF is replenished through financial appropriations from the regular AU budget (including voluntary contributions from Member States, arrears on assessed contributions); other sources within Africa, including the private sector, civil society and donations from individuals; as well as through appropriate fundraising activities. During the Special Summit held in Tripoli in August 2009, AU Member States agreed to increase their contributions to the Peace Fund from 6% to 12% of the AU regular budget. During the 16th Ordinary Session of the Executive Council held in Addis Ababa, Ethiopia in January 2010, it was agreed that this increase would be implemented over a period of three (3) years starting from 2011. However, to date (2016), the percentage contribution from the regular budget has only reached 7%.

Reform Priorities

Financing and Operationalizing the Fund

4. The Peace Fund has been in existence for over twenty years and, while it is mentioned in the PSC Protocol as one of the key pillars of the APSA, a significant amount of work is required to fully operationalize the Fund. Key challenges also remain with regard to ensuring predictable and sustainable financing, putting in place credible and transparent governance systems and structures, and consolidating work on fiduciary rules and management that comply with internationally accepted standards.

5. There are three particular challenges regarding financing of the PF: (a) how to increase overall levels of financing, (b) how to ensure that AU member states themselves are providing these increased resources, and (c) how to ensure that they do so in a sustainable and predictable manner. At present (2016), African states provide only 2% of the cost of AU peace and security initiatives, while international partners provide the remaining 98% of the funding. This financing trend raises significant concerns with respect to the overall effectiveness, predictability, and sustainability of the African Union's peace and security operations. Moreover, as the AU's peace and security activities have increased, the percentage of financing provided from AU member states has in fact decreased.

Governance and Accountability:

6. Coverage and Scope of the Fund: The PF is envisaged as a vehicle to finance the African Union's operational peace and security activities, in particular the peace support operations deployed on the continent, as well as related activities, including, for example, the deployment of human rights observers and military experts in crisis and conflict situations as in Burundi at present, as well as the political missions deployed in Mali, Central African Republic and South Sudan, to accompany the Parties in the implementation of the peace agreements which ended the fighting. A core element of improving overall governance and accountability will be sharpening the Peace Fund's strategic focus and articulating its core priorities, which over the years have moved away from the operational focus envisaged in the Peace & Security Protocol. Establishing clear rules and criteria on what activities can be financed and which entities can access the Peace Fund will be essential to maintaining the Fund's overall effectiveness and impact.

How will the fund be managed?

Governance Arrangements

7. The Peace Fund will be formally established as a Fund with enhanced governance, oversight, accountability, fiduciary rules and procedures based on core African ownership with enhanced advisory support and oversight from contributing partners.

8. The AU Peace and Security Council (PSC) decisions on peace support operations, mediation and preventive diplomacy will guide the Peace Fund's financing priorities.

Board

9. A Board of Trustees will provide oversight. The Chairperson of the Commission, Deputy Chairperson and Commissioner for Peace and Security will be members of the Board. The Board shall also include non-Executive members comprised of Eminent Persons with significant peace and security, and up to two non-African partners who contribute to the PF.

10. The core functions of the Board are:
    - Strategy Development
    - Governance and Oversight
    - Commitment of Financial Resources
    - Assessment of Organizational Performance
    - Risk Management
    - Assess Fund levels and recommend Fund replenishment

11. The Board will meet twice a year with provision for emergency sessions to take financial decisions in relation to emerging crises. The Board may establish sub-committees to cover specific issues, for instance: (a) Audit and Ethics (b) Financial and Operational Performance, Strategy (c) Investment and Impact Committee.

Independent Evaluation Group

12. The IEG will provide periodic reviews and evaluations on the use, impact, speed and appropriateness of the Fund activities and examines performance and financial reports on its use in order to ensure accountability. The IEG's core functions are to:
    - Assess the overall impact of the Fund against stated objectives.
    - Review performance and management of the Fund, including reporting and evaluation of results achieved.

13. The IEG is appointed by the Chairperson of the Commission and reports directly to the Board.

14. *A Peace Fund Secretariat (PFS)* responsible for the overall management of the Peace Fund shall be established. The core functions of the PFS are:
    - Approving projects and programs eligible for financing from the Peace Fund, as defined within the Rules and Regulations governing the PF
    - Monitoring and Evaluation of implementation
    - Fund Administration, Accounting and reporting: this function will be delivered through an Independent Fund Manager (IFM) that meets the highest professional standards for a minimum period of five years.
    - Leading partnerships, resource mobilization and advocacy

15. The PFS will report to the Chairperson of the African Union Commission who is the Chief Accounting Officer of the African Union Commission. The Chairperson will provide semi-annual reporting on the activities of the Peace Fund to the AU PSC.

16. The Chairperson of the Commission will provide executive oversight of the Fund through an Executive Management Committee (EMC) made up of the Deputy Chairperson, Commissioner for Peace & Security and Commissioner for Political Affairs. The Chairperson will chair the EMC.

Strategic Focus

Structure and Scope of the Fund

17. The Peace Fund will finance the African Union's core peace and security priorities with an explicitly operational rather than programmatic focus. In the initial stages we propose the following three Windows with a clear thematic focus and eligibility criteria, plus an additional Reserve (Revolving) Facility Window:

Window 1: Mediation and Preventive Diplomacy (MDP)

- **RATIONALE AND SCOPE**

18. Experience has shown that mediation support requirements are unique and necessitate a high degree of flexibility, speed and ability to adapt both during the start-up phase and throughout the mediation process. Moreover, most successful mediation processes, including both African and non-African processes, can last for years. Despite this, there has been a tendency for the international community to engage in "deadline diplomacy", in which parties to a conflict are given a fixed deadline by which to reach a political agreement to end a conflict. This has seldom worked in practice. Most mediation initiatives are financed through voluntary contributions from external partners. The transaction costs are typically high (given the different financial management and reporting procedures associated with each voluntary contribution), which significantly limits the timeliness and responsiveness of interventions.

19. This window will establish a project-based financing facility to provide rapid funding for preventive diplomacy and mediation interventions. To be effective the facility will need to demonstrate speed, flexibility and an ability to facilitate the rapid establishment of mediation initiatives, peace processes or deployment of envoys and their staff, and the provision of operational support once established. "The bottom line for effective mediation is logistics. Credibility and momentum are key: If you act tomorrow, it's too late."

- **ELIGIBILITY**

20. This Window will finance activities that fall within the scope of the:
    - Principles outlined in Article 4 (a) and (b) of the AU Protocol on the Establishment of the Peace and Security Council: The *peaceful settlement of disputes and conflicts*; and *early responses to contain crisis situations* so as to prevent them from developing into full-blown conflicts, and
    - Functions of the PSC outlined in Article 6 (b) and (c) of the AU Protocol on the Establishment of the Peace and Security Council: preventive diplomacy and peace-making, including the use of good offices, mediation, conciliation and enquiry.

21. Detailed eligibility criteria, operational guidance rules and procedures will be developed based on lessons learned from support to mediation initiatives, peace processes and preventive diplomacy interventions. This will include, a review of lessons learned in providing support to mediation interventions and a workshop bringing together Senior Mediators and Envoys to develop thinking on to the overall design this window.

22. The AU's Special Political Missions and Liaison Offices will be financed through this window.

- **FINANCING SOURCE**
  - AU member state contribution made up of voluntary contributions and alternative financing sources
  - Multilateral and Bilateral contributions
  - Private sector contributions

Window 2: Institutional Capacity

- **RATIONALE AND SCOPE**

23. There are a number of critical institutional capacities required to support the effective delivery of activities financed under Windows 1 and 2. These include: (a) the costs associated to the institutionalization of the human rights compliance framework for AU PSOs; training and capacity building activities related to the Africa Stand-by Force and peace support operations, (b) additional institutional capacity required to support the AU-UN partnership, and (d) the costs associated with the establishment of the Peace Fund and its administrative structures.

- **FINANCING SOURCE**
  - AU member state contributions made up of voluntary contributions and alternative financing sources
  - Multilateral and Bilateral contributions
  - Private sector contributions

Window 3: AU Peace Support Operations (PSOs)

- **RATIONALE AND SCOPE**

24. For various reasons, the AU and the Regional Mechanisms for Peace and Security (RMs) are increasingly called on to deploy peace support operations, either because the UN is unable to deploy, or because the UN cannot deploy a mission quickly enough. The PSC Protocol envisages that the cost of these mission will be covered from the Peace Fund (article 21.1). However, the costs of these missions have exceeded the resources available from AU member state contributions, and the AU has had to rely heavily on support from partners to deploy and sustain peace support operations (PSOs). This has had negative consequences for the AU's role as a peace and security actor on the African continent, since the decisions of the PSC to deploy

PSOs has been contingent on support from partners to finance the missions. It has also impacted on the sustainability of AU PSOs, leading in some cases to premature transitions to a UN mission, before the conditions for such transitions are ripe, and the immediate goal of stabilization of the conflict has been attained. This in turn has had negative consequences for the follow-on UN peacekeeping mission.

25. In structuring this window, the cost of PSOs need to be factored in: The least costly mission the AU has deployed to date, AMIB, the AU Mission in Burundi, cost an estimated $134 million per annum. AMISOM, the AU Mission in Somalia, which has approximately 22,000 troops deployed in addition to a civilian component, costs an estimated $1.2 billion per annum. The findings of the Joint AU-UN Review will inform the structuring of this Window based on an identification of key mission costs that meet the PF's eligibility criteria.

- **ELIGIBILITY**

26. This Window will finance the following:
    - AU-led PSOs undertaken in the context of Chapter 8, Articles 53 and 54 of the UN Charter:

      The Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority. But no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council (Article 53, 5). And the UN Security Council shall at all times be kept fully informed of activities undertaken or in contemplation under regional arrangements or by regional agencies for the maintenance of international peace and security (Article 54).

      PSOs eligible for support under this Window are guided by Chapter 7 of the UN Charter, and involve the application of a range of coercive measures, including the use of military force to restore peace even where parties to the conflict may not consent to the intervention.

      Financing Source
      - AU member state contributions
      - 75% UN assessed contributions (on a case by case basis)
      - Non-AU bilateral contributions

    - AU-led PSO missions authorized under Article 7 (c) of the AU Peace and Security Council Protocol.

      Financing Source
      - AU member state contributions, and
      - Non-AU bilateral contributions.

- **RATIONALE AND SCOPE**

27. Article 21 (4) of the PSC Protocol, envisages the establishment of a Revolving Trust Fund as part of the Peace Fund but this has never been operationalized. The APSA has been designed as a flexible architecture that can adjust quickly to the immediate and evolving peace and security needs of the African continent. Thus the PSC is able to take the necessary decisions for appropriate intervention in the case of crises and conflicts on the continent pursuant to Article 4(h) of the Constitutive Act.

28. However, the deployment of PSO and preventive diplomacy capacities has been hampered by the absence of a reserve facility that can finance missions at short notice. It is further hampered by the fact that the budgeting cycle of the AU is based on a calendar year (January-December), with the annual budgeting requirements decided up to 6 months in advance. The Revolving Trust Fund identified in the PSC protocol is intended to address these challenges, and will be established as *a Crisis Reserve Facility*, to support the start-up costs of PSOs, emergency mediation and preventive diplomacy initiatives and other unplanned and unbudgeted activities, until they can be incorporated into the AU's regular Peace Fund budgeting cycle. It would provide the flexibility to be able to address rapid onset crises that erupt without sufficient warning.

29. Article 21 (4) of the PSC Protocol, states that the appropriate amount of the Reserve Revolving Trust Fund shall be determined by the relevant Policy Organs of the Union upon recommendation by the Peace and Security Council. **We recommend that the the level of the Crisis Reserve Facility not fall below $50 million**.

Key Targets and Milestones

Objective: *Reformed Peace Fund with improved governance and accountability framework in place and delivering effective PSOs and mediation interventions.*		
Targets	**Milestones**	**Timeline**
Recruitment and Inception	• Recruitment of Fund Design Experts • Expert Seminar	August – September 2016
Fund Design	▪ Drafting of Legal Instruments and Governance processes. ▪ Terms of Reference for the Board ▪ Nomination of Board Members ▪ Terms of Reference for the Independent Advisory Panel ▪ Nomination of Independent Evaluation Group ▪ Terms of Reference for the Peace Fund Secretariat ▪ Recruitment of Peace Fund Secretariat ▪ Technical Design Workshop PSO Window ▪ Technical Design Workshop Mediation Window ▪ Scope and Eligibility criteria for Windows agreed ▪ Revolving Fund proposal adopted by the PSC ▪ Peace Fund Manual setting out legal, financial rules and procedures	September - December 2016
Legal Establishment of the Fund	• Review and adoption by appropriate structures and processes.	November - December 2016
Launch	• Official Launch of the Peace Fund - AU Summit January 2017	January 2017
Operational Implementation	• Resource mobilization • Recruitment and mobilization of Peace Fund Secretariat Staff • Procurement of Independent Fund Management team.	January – July 2017

Annex 2

Decision-making process for Seeking UN Assessed Contributions for AU Peace Support Operations

July 2016

Background

1. The African Union has the mandate, political will and an established track record for the rapid deployment of peace support operations (PSOs) in some of the most challenging political and security contexts, often where the United Nations is unable to deploy. This proven ability to act as 'first responder' is a critical element of the evolving international peace and security architecture. Based on this common understanding, both the April 2015 Common African Position on the UN Review of Peace Operations and the June 2015 Report of the High-level Independent Panel on Peace Operations (HIPPO) stressed the need for a strategic-level AU-UN partnership based on their respective authorities, competencies and capacities, as well as principles of burden-sharing, consultative decision-making processes, comparative advantage and a mutually-acceptable division of labour.

2. There is now a need to clarify the decision-making arrangements and reporting requirements for AU PSO's authorised by the UN Security Council and supported through UN assessed contributions, in particular those involving peace enforcement and/or counter-terrorism mandates as set out in the decision adopted at the 547th Meeting of the AU Peace and Security Council on 26 September 2015.

3. This annexure presents a framework for the predictable mandating and reporting of those AU PSOs, authorised under the provisions of Chapter VIII of the UN Charter and seeking support through UN assessed contributions. The key phases and steps related to the planning, decision-making and accountability of such Missions are presented below.

Initial Assessment

Initial Appraisal

4. When a crisis emerges or an existing crisis worsens to the extent that the PSC or the AUC Chairperson considers it necessary to start assessing the conditions on the ground and intervention options including the possible deployment of a PSO, the AUC Chairperson will task the AU Commission to prepare an Initial Crisis Brief on the situation in consultation with various stakeholders. This initial Brief will be submitted to the PSC.

A Letter of Intent from the AUC Chairperson to the UN Secretary-General (UNSG)

5. Following the Initial Crisis Brief, the PSC shall request the AUC Chairperson to transmit a letter of intent to the UNSG, informing him/her of AU's intention to start considering options to address the situation at hand, including the possible deployment of an AU PSO, and inviting the UN to participate in a joint assessment of the situation and requesting the UNSG to transmit the letter of intent to the UN Security Council.

Joint Assessment

6. If the UN commits to a joint assessment, a joint AU-UN team will be constituted to evaluate the overall political, security, humanitarian and human rights situation on the ground. The assessment team can include other stakeholders, e.g. RECs/RMs, as appropriate. The joint assessment team will develop recommendations for a Strategic Mission Concept, including cost estimates, as well as recommendations for the support and financing of the Mission.

AUC Chairperson's Report

7. Based on the findings and recommendations of the joint assessment mission, the AU Chairperson will submit a detailed report to the PSC for consideration. This report will include the draft Strategic Concept for the envisaged Mission, highlighting modalities for the establishment of an AU-led PSO including its political objectives, deployment phases, scope, size, end state, command and control arrangements, and the exit strategy. The draft Strategic Concept will also address the financial implications, including a preliminary budget and propose options for the financing of the Mission.

Mission Mandating

PSC-UNSC Consultations

8. Based on the report of AUC Chairperson and the draft Strategic Concept, the PSC shall initiate consultations with the UNSC to ensure timely decision-making and effective mandating by the respective Councils.

Peace & Security Council Communiqué

9. If the PSC determines that deploying an AU PSO is the most appropriate step to take, by endorsing the draft Strategic Concept submitted to it the AUC Chairperson, it will then formally authorize the deployment of an AU PSO.

10. Any decision by the PSC to deploy a Mission will include reference to the financial implications for the AU, which will be responsible for covering 25% of the costs of that mission.

11. For those mandates involving the use of force, as stipulated in Article 53 of Chapter VIII of the UN Charter, the PSC communiqué will formally request UNSC authorization, and in those cases where the AU also requests support from the UN via UN assessed contributions, the PSC communiqué will include a request for UN support covering 75% of the mission costs through UN assessed contributions and an AU commitment to cover the remaining 25% of the mission costs.

A Letter of Request from the AUC Chairperson to the UN Secretary-General

12. The PSC communiqué will be submitted by the AUC Chairperson to the UNSG in the form of a letter of request for authorization by the UNSC, including possible support.

UN Security Council Resolution

13. The UNSC will then consider the AU's request and an appropriate response.

Deployment

Planning and Deployment

14. Once authorised by the PSC and UNSC, the AUC Chairperson, in close collaboration with the UNSG, will undertake the detailed implementation planning for the Mission, including its operational level Mission concept of operations, and the force generation plan steps required to deploy the PSO. The AUC Chairperson will appoint the Head of Mission, the Force Commander and other members of the senior Mission leadership team, in line with UN Human Rights Due Diligence compliance requirements.

15. The UNSG will implement the support actions authorised by the UNSC and make the necessary planning and support staff available to enable UN support for the deployment of the AU PSO.

16. Clear benchmarks for an AU exit strategy, should be established at the earliest stages in the planning of the Mission and these should be kept under regular review.

Monitoring and Reporting

General Reporting

17. The AUC Chairperson shall provide regular reports to the PSC, and to the UNSC for UNSC-authorised and financed PSOs, as requested in their authorizing resolutions on the implementation of the mission's mandate.

18. The PSC shall review these reports and the briefings it receives from the AUC Chairperson and Head of Mission, and shall take under review any proposals to renew or adjust the Mission mandate.

Joint Assessments

19. The AU and UN will undertake joint assessment exercises, including joint evaluations and joint benchmarking exercises, throughout the duration of the Mission, in order to inform the PSC and UNSC on the progress made by the Mission towards the achievement of its mandate, as well as to make recommendations for adjustments in the mandate or support provided to the Mission.

Compliance with Human Rights and Conduct and Discipline Framework Obligations and Due Diligence

20. The UN requires that all non-UN entities receiving support from the UN undergo risk assessment to ensure compliance with the UN's Human Rights Due Diligence Policy (HRDDP). The AU shall develop an AU Human Rights and Conduct and Discipline Compliance Framework to incorporate these compliance standards into its Mission planning, force preparation, verification and training of forces, monitoring and reporting procedures, processes and mechanism.

21. All AU Mission planning processes shall make explicit reference to the human rights and conduct and discipline compliance requirements. In particular, the Mission concept for each Mission shall also provide adequate staffing of the Mission to enable it to take the necessary steps to ensure compliance. This should be complemented by appropriate Headquarter level and Mission-level staffing.

22. The Report of the AUC Chairperson to the PSC and the UNSC shall include a section on human rights, including human rights, IHL, conduct and discipline compliance of military, police and civilian personnel in the Mission.

23. All allegations of violations or abuses, including of human rights and IHL, and conduct and discipline shall be investigated and a report shall be submitted to the PSC and to the UNSC on the actions taken by the AU and troop and police contributing countries.

24. The AU shall provide full access to UN oversight mechanisms based on agreed modalities.

Transparency and Access to information

25. The AUC is committed to transparency, and access shall be provided to the UN and other partners on any aspect of the AUC's planning, management and oversight processes, as may be needed.

Financial Reporting & Audit

26. The AUC is in the process of enhancing its capacity to manage, audit and oversee the financial aspects of its field Missions. It has adopted the International Public Sector Accounting Standards (IPSAS) and is in the process of adapting its internal processes in order to meet these standards. Systems appropriate for the management of field Missions are also being put in place.

27. The AU is committed to full transparency of its procurement and financial management systems and processes, and access shall be arranged for the UN's resident auditors or the UN Office of Programme Planning, Budget and Accounts, or any other UN bodies, as is already being done for the EU.

Table 1: Legal Basis for AU PSOs

Source	Provision	Notes
UN Charter	Chapter 8, Articles 53 and 54 The Security Council shall, where appropriate, utilize such regional arrangements or agencies **for enforcement action** under its authority. But **no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council (Article 53, 5**). And the UN Security Council **shall at all times be kept fully informed of activities undertaken or in contemplation** under regional arrangements or by regional agencies for the maintenance of international peace and security (Article 54). Chapter 7, provides enforcement parameters.	Requires UNSC authorisation UNSC must be kept fully informed of activities undertaken or in contemplation.
African Union Constitutive Act	Article 4 (h), 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 (j), the right of *Member States to request intervention from the Union* in order to restore peace and security.	Article 7 (1), the Assembly shall take its decisions by consensus or, failing which, by a two-thirds majority of the Member States of the Union.
AU Peace and Security Council Protocol	Article 7 (c), the PSC authorizes the mounting and deployment of peace support missions. Article 7 (f), approve the modalities for intervention by the Union in a Member State, following a decision by the Assembly, pursuant to article 4(j) of the Constitutive Act. Article 7 (k), promote and develop a strong "partnership for peace and security" between the Union and the United Nations and its agencies. Article 17 (2), where necessary, recourse will be made to the United Nations to provide the necessary financial, logistical and military support for the African Unions' activities in the promotion and maintenance of peace, security and stability in Africa, in keeping with the provisions of Chapter VIII of the UN Charter on the role of Regional Organizations in the maintenance of international peace and security.	Article 8 (13) Decisions of the Peace and Security Council shall generally be guided by the principle of consensus. In cases where consensus cannot be reached, the Peace and Security Council shall adopt its decisions on procedural matters by a simple majority, while decisions on all other matters shall be made by a two-thirds majority vote of its Members voting.

Annex 3

Towards An Integrated Au Human Rights & Conduct And Discipline Compliance Framework For African Union Peace Support Operations

July 2016

Introduction

1. Compliance with international human rights and humanitarian law is an obligation applicable to all states and international and regional organizations. Not only is it a legal and moral imperative, but in the conduct of peace support operations (PSOs) it also makes strategic and operational sense: in a context where forces are deployed to protect civilians caught up in armed conflict, respect for human rights contributes to forging relations between the forces and the local populations, which is important for achieving the goals of the mission.

2. Accountability in PSOs is generally derived from: International Humanitarian Law (IHL), which provides protections for persons not engaged in hostilities, and which defines the rights and obligations of parties to a conflict; and International Human Rights Law (IHRL), which provides certain rights to individuals, which may apply in times of war depending on the terms of the relevant treaty or obligation.

3. At the operational level, mission-specific documents also apply, and are based on the mandates adopted by the Peace and Security Council (PSC) and the United Nations Security Council (UNSC), and translated into Status of Mission Agreements (SOMA), Status of Forces Agreements (SOFA), the Memoranda of Understanding (MOUs) between the African Union Commission (AUC) and the Troop and Police Contributing Countries (T/PCCs), the Rules of Engagement (RoE), Mission-specific Protection of Civilians (PoC) Guidelines, Standards of Conduct and Discipline, and various directives of the Special Representative of the Chairperson of the Commission (SRCC) and the Force Commander (FC) or Police Commissioner in the mission.

4. Since the African Union (AU) is playing an increasingly important role in the deployment of PSOs on the continent, and as the African Standby Force (ASF) will soon be declared operational, the AU needs to identify the additional steps necessary to ensure that, in the deployment of PSOs, it is in compliance with applicable international legal obligations relating to IHL, IHRL and International Refugee Law. With the operationalization of the African Standby Force (ASF), the Regional Economic Communities (RECs) and Regional Mechanisms (RM) that provide regional standby forces in the ASF framework, also have obligations to ensure that their forces comply with international IHL and applicable IHRL obligations. To ensure that the AU, RECs/RMs, T/PCCs, and host countries in which AU-led missions are deployed comply with their international legal obligations in terms of IHL and IHRL, it is necessary that the AU develop an integrated **Human Rights Compliance Framework** and finalize the AU **Conduct and Discipline Policy** for all its personnel. This compliance framework will set out the international legal obligations and due diligence compliance requirements.

5. This annex looks at what such an AU Compliance Framework should include, in terms of (a) legal obligations, (b) the steps to be taken to institutionalize compliance with

these legal obligations and ensure effective implementation, and (c) putting in place the appropriate mechanisms in terms of preventing, monitoring, and responding to violations and abuses, including human rights, international humanitarian law, and conduct and discipline violations and abuses, that may be perpetrated in the context of AU PSOs. An implementation matrix setting out the concrete, measurable actions to be taken, including the timelines for implementation, is included.

6. The elements that will need to be addressed in the AU Compliance Framework include the following: policy development, mainstreaming of IHL and IHRL in the planning processes of PSOs, through pre-deployment verification and training as appropriate in the selection and screening of T/PCCs (and their contingents), due diligence in the support of non-AU forces, strengthening training, monitoring, accountability, and implementation capacity, at the level of the African Union Commission (AUC) and the mission. Alongside this, it is vital that the AU addresses issues related to the welfare of uniformed and civilian personnel deployed in an AU mission.

International Legal Obligations Pertaining To AU PSOs

7. The AU Compliance Framework will enable the operationalization of the obligation to respect and ensure respect for IHL, as enshrined in Common Article 1 to the Geneva Conventions of 1949, the AU Constitutive Act and other relevant regional instruments, and which includes compliance and due diligence aspects, and to respect applicable IHRL.

Obligation of the AU and T/PCCs to respect and ensure respect of IHL

8. **International and regional organizations** involved in peace operations are obliged to respect and to ensure respect for IHL by the forces operating under their auspices as well as by the forces benefiting from their support. International and regional organizations are not directly or formally bound by the Geneva Conventions because only States may become 'High Contracting Parties'. However, as subjects of international law, they are bound by customary international humanitarian law and thus also by the obligations to respect and to ensure respect for that body of law as the latter is widely recognized as being of a customary nature.

9. **T/PCCs** are not released from their obligations under Common Article 1 (CA1) because they are participating in a multinational operation. To the extent that they always retain some authority over their national contingents, T/PCCs must continue to ensure respect for IHL by their contingents even when they place them at the disposal of an international or regional organization, a permanent alliance or an ad hoc coalition.

Applicability of IHL and IHRL to AU PSOs and related obligations

10. There are two broad categories of obligations that are the most relevant in the context of PSOs:

Use of force

11. When engaged in an armed conflict, often alongside the governmental authorities against organized non-state armed groups, AU troops' combat operations (conduct of hostilities) will be governed by the **IHL principles** of distinction, precaution and proportionality. Use of force against non-military targets and during law enforcement operations (such as cordon and search) shall be conducted under the **principles** of necessity, proportionality and precautions, which have in this case a different meaning since use of force should be used here as a last resort and according to an escalation of force procedure.

Treatment of persons, protection of civilians and detainees

12. Core fundamental rights that must be respected at all times are the same under IHL and IHRL, and their obligations are generally incorporated into national criminal

legislation: protection of the dignity of persons, prohibition against torture and cruel, inhuman, or degrading treatment and sexual exploitation and abuse, protection against arbitrary deprivation of life, arbitrary deprivation of liberty, protection against sexual and gender-based violence. In addition, specific requirements shall be considered for detainees, women and children.

13. Principles involving protection of civilians and detainees are reflected in mission level documents, such as directives of the SRCC, the Force Commander or the Police Commissioner, Standard Operating Procedures (SOPs) on the handling of detainees, SOPs pertaining to the protection of the civilian population, SOPs on reception and handling of children separated from armed forces or armed groups, but also at the strategic level, such as AU guidelines for Detention, Disarmament, Demobilization and Reintegration (DDR) in AU PSOs and related operational frameworks, AU draft Guidelines on the Protection of civilians, whistleblowers, etc.

From Legal Obligations To Implementation Mechanisms

14. All stakeholders involved in the PSO (including the AU as the mandating and authorizing body, T/PCCs, the supported host state, and other stakeholders – be they belligerent or not), at their own level and also with regard to the support they provide to others, are required to take concrete steps to translate these international legal obligations into concrete measures or mechanisms.

15. Ensuring respect for IHL and applicable IHRL is challenging, and requires action at a number of levels. If the AU mandates and/or deploys a PSO under its command and control, it has an even greater obligation to take all necessary steps to prevent, investigate and respond to any violations or abuses of IHL or IHRL, as applicable, committed by its own forces and by those forces to which the AU provides support (such as the host state's security forces, local allied forces, etc. especially when joint operations are conducted).

The AU Compliance Framework shall include in the following areas

16. **Policies:** The AU has already developed and/or is in the process of finalizing a number of policies and generic documents, as well as mission specific documents pertaining to IHL/IHRL, protection and compliance. It intends to identify, as a first step, those priority policies and documents that should be included in the AU Compliance Framework, and/or that need to be either developed, reviewed or finalized. Key priorities will be to ensure the inclusion of human rights compliance in the ASF/PSO doctrine, and to finalize the Conduct and Discipline Policy, which already exists in draft form.

17. **Selection and screening:** As part of the ASF concept, the AU intends to develop an assessment mechanism in order to screen and select the T/PCCs to ensure that only personnel who meet international law compliance standards are deployed. Such a mechanism, which would exist at the levels of contingents, would assist potential T/PCCs to comply with the required standards for deployment, and to enable the AU to have personnel on the ground that would satisfy the compliance criteria. This would also assist in transitioning RECs/RMs PSOs to AU PSOs to UN missions, whenever such transitions take place. Screening and selection would also be done at the level of individuals for appointment to senior mission leadership positions.

18. **Training:** It is crucial that military and police personnel deployed under the AU's authority are trained in IHL and IHRL and related protection frameworks, both prior to their deployment and in the mission area. While pre-deployment training in these fields is generally the responsibility of the T/PCCs, the AU compliance framework would require that the AU ensures a harmonized and contextualized pre-deployment training, by AU vetted training providers, that would act in a coordinated fashion in line with international standards. The pre-deployment visits conducted by the AU shall

include a verification that such "compliance related" training has been provided in the context of pre-deployment for a specific AU PSO. At mission level, the AU will continue ensuring the provision of appropriate training (that can be also conducted as a mitigating measure) and the dissemination of the relevant mission documents pertaining to IHL/IHRL and related protection frameworks (mission specific policies, ROEs, SOPs and other mission directives).

19. **Monitoring, tracking and reporting:** The AU shall ensure that appropriate monitoring and tracking mechanisms are put in place at the level of the Strategic Headquarters (SHQ) to address allegations of violations or abuses perpetrated at Mission level. This could be done by a "monitoring and protection capacity" that shall be established within the AUC, (see the Capacity section below). In addition to the inclusion of human rights, IHL and conduct and discipline compliance in routine reports of the Chairperson to the PSC and UNSC (see below), the Chairperson will also issue an annual report on compliance, including on the steps taken to improve compliance and address violations or abuses. In addition, appropriate mechanisms shall be put in place at the Mission level, according to the type of mandate and/or needs identified in the field (such as a Civilian Casualties Tracking, Analysis and Response Cell – CCTARC), to monitor conduct and compliance by AU personnel as well as supported parties (e.g. host state security forces), recommend or take measures pertaining to the use of force, protection of civilians, sexual exploitation and abuse (SEA), protection of detainees, and other issues as deemed necessary. It could have an investigation capacity for IHL/IHRL violations or abuses, in parallel to those of the T/PCCs. In addition, the Chairperson of the Commission will establish an independent monitoring and investigation capacity.

20. **Accountability:** Accountability for violations or abuses is a key issue and can be considered under several aspects.

    - **Accountability by TCCs:** TCCs retain exclusive criminal jurisdiction over their personnel. The AU has a responsibility to ensure that the TCCs' respective national legislations criminalize violations relating to the use of force and the treatment of persons, investigate allegations, and initiate prosecution where sufficient evidence exists. To this end, the AU concludes with each of the TCCs an MoU that requires their commitment to respect applicable IHL/IHRL, including a commitment to hold its personnel accountable, including through prosecution where appropriate, for violations or abuses. Further consultations with TCCs are proposed on the feasibility of deploying courts martial in the mission area, to administer military justice, where appropriate. The AU shall also put in place mechanisms to follow up on actions taken by the TCCs, including prosecutions, to hold to account their personnel repatriated from the mission area. The AU shall also assist Member States to put in place appropriate military justice mechanisms as required and facilitate the sharing

of best practices and lessons learned among TCCs, for instance through the creation of a military justice best practice network. The African Charter of Human and People's Rights also provides for the right of redress for victims of violations under the Charter, that would allow victims to address their claims to TCCs if command and control by the AU for a particular violation is not established.

- **At the AU level,** be it at SHQ or Mission Headquarters (MHQ), appropriate accountability and response mechanisms need to be put in place. The establishment of a conduct and discipline Unit at SHQ is a priority. In addition, there is a need to reflect on what should be the most appropriate modalities to ensure individual accountability for IHL/IHRL violations or abuses.

- Regarding **internal investigations**, the AU shall put in place at HQ and mission level a standing investigative capacity to investigate alleged IHL/IHRL and other protection-related violations or abuses (such as SEA). The Chairperson should consider whether it is necessary to establish an independent investigative authority for certain categories of misconduct.

- **International responsibility of the AUC:** This is a key aspect, which is particularly important in addressing victim claims and redress for violations or abuses committed. The International Law Commission adopted in 2011 the Draft Articles on the responsibility of international organization ("DARIO"), defining when an international wrongful act committed by an agent should be attributable to the international organization on behalf of which s/he is acting. The issue of command and control is therefore crucial to establish whether conduct is attributable to the AU, (or to the TCCs) that if confirmed would give way to claims by third party.

21. **Capacity:** Provision of adequate resources (human and financial) at strategic level and mission level is crucial. There is a need to reinforce the AUC's capacity to ensure respect of the law through the establishment of a "protection capacity" that could be directly attached to the Peace and Security Commissioner's office, with an additional reporting line to the AUC Chairperson's office. Such a protection capacity should be involved in mission planning, be given the authority to monitor protection aspects (legal compliance) in liaison with AU PSOs reinforced MHQ protection teams, and take or recommend action. In addition, the rapid establishment of a Conduct and Discipline office at the level of the AUC would be highly recommended to support Conduct and Discipline units in the field.

22. **Welfare issues:** In addition to addressing the legal aspects related to compliance with IHL and IHRL, as applicable, it is important to address the human aspects related to the deployment of PSOs, as these relate to the welfare of those serving in what are

highly dangerous, volatile, unpredictable, and extremely stressful situations. In such situations, it is incumbent on the AU to take into account the wellbeing of the personnel, and provide for recreational avenues to maintain their morale. Psycho-social support needs to be provided, both in the mission and after personnel has returned home. The AU also needs to develop SOPs on rotation, including on the maximum length of deployment in any single tour in peace enforcement operations; and the maximum number of tours any individual soldier can make.

Conduct and Discipline

23. The AU remains committed to ensuring that its personnel in PSOs are held to the highest standards of conduct. To that end, the AU is in the process of finalizing a comprehensive Conduct and Discipline policy. The policy outlines administrative and/or disciplinary actions that the AU will take with respect to individuals and/or member states that violate the standards of conduct. This policy covers acts that are not in compliance with applicable international or national law or applicable policy.

24. The AU is also in the process of developing guidelines related to the various categories of misconduct, including on preventing and addressing sexual exploitation and abuse (SEA).

25. The guidelines will include provisions on:
    - Tracking of personnel for misconduct
    - SOPs on Reporting allegations of misconduct
    - Guidelines on Investigating misconduct
    - Holding perpetrators accountable
    - Providing assistance to victims

Conclusion

26. The AUC is committed to ensuring compliance and due diligence when it comes to the respect of applicable IHL, IHRL and other protection frameworks and work is already underway. This annex has made recommendations on the issues that still need to be addressed and the implementation matrix provides the pathway to developing and operationalizing these policies and mechanisms in the most effective and efficient manner possible. It is important also to recognize that the AUC will need to invest in developing the appropriate capacity (human, and institutional) to manage such a compliance framework, and this will have financial implications. The AU will also need international partners and institutions with the appropriate expertise to support it in this effort.

INSTITUTIONALIZING AN AFRICAN UNION PEACE SUPPORT OPERATIONS (PSO) INTERNATIONAL HUMANITARIAN LAW (IHL)

AND INTERNATIONAL HUMAN RIGHTS LAW (IHRL) COMPLIANCE FRAMEWORK

IMPLEMENTATION MATRIX 2016 - 2018

The AU Human Rights Compliance and Framework is intended to outline the main obligations of the African Union (AU), its Peace Support Operations (PSOs), contributing--Troop and Police-- countries (T/PCCs) under International Humanitarian Law (IHL) and International Human Rights Law (IHRL), and how to translate these into concrete mechanisms.

At the AU Headquarter (HQ) and Mission levels, three broad categories of mechanisms (prevention/monitoring/response and accountability) are deemed to be necessary to ensure respect of the law. The matrix is divided into "compliance slices" that refer to the relevant mechanisms but that are at times crosscutting.

	Objectives	Action/ process	Time frame
1. Capacity	1.1. Reinforce the AU's capacity to ensure compliance with IHL & IHRL through compliance and due diligence mechanisms at SHQ and on the field.	1.1.1. Establishment of a compliance office attached to the Chairperson's office, consisting of a monitoring & reporting unit and an accountability unit.	**June 2017** ToR for the team and Job Descriptions signed off by: **December 2016** Resource Mobilization & Recruitment finalized by: **June 2017** Funded from Window 3 of Peace Fund
		1.1.2. Establishment of a compliance unit in each PSO, attached to the office of the SRCC, consisting of monitoring, reporting and accountability units. 1.1.3. Recruitment of personnel for the compliance offices at HQ and mission levels.	**As per mission deployment timelines**
		1.1.4. Mission assessment and planning team must involve IHL/IHRL trained personnel + HR & compliance/protection officers.	**Should be already the case**

	Objectives	Action/ process	Time frame
2. Selection and screening	2.1. Ensure that individuals and **contingents** deployed in AU PSOs satisfy **compliance** criteria.	2.1.1. Prepare SOPs on screening and selection, which would include selection criteria for IHL/ IHRL compliance, and capacity and modalities for screening. 2.1.2. MoU between AUC and TCCs and RECs/RM shall include compliance requirements of contingents, as well as guarantees, that the contingents to be deployed have met them.	**SOPs by January 2017**
	2.2 Ensure that national forces / supported party in mission area satisfy **Due Diligence** criteria.	2.2.1. Develop policy and guidelines on Due Diligence, including risk assessment, conditions and mitigating measures for support to host country troops and other non-AU forces.	**July 2017**
3.Training	3.1. Ensure harmonized and contextualized pre-deployment training in IHL/IHRL and other related protection frameworks.	3.1.1. Review and ensure coordination of pre-deployment training offers in IHL/IHRL/ protection for AU/ ASF troops. 3.1.2. Elaborate/confirm an AU PSOs pre-deployment curriculum in IHL/IHRL and related protection frameworks (link with ASF). 3.1.3. Enhance coordination of training capacity and delivery, including training of trainers.	**Review by February 2017** **Consolidated curriculum by June 2017**
		3.1.4. Harmonized ToT for the vetted trainers and TCCs+ RECs/RM representatives.	**December 2017**
		3.1.5. Verify effective provision of IHL/IHRL training before deployment (inclusion of compliance officer in pre-deployment verification - PDV).	**From September 2016**
4.Monitoring and reporting	4.1. Ensure monitoring and reporting by SHQ of allegations/ violations at mission level.	4.1.1. Field reports (incident reports, compliance unit report) and external allegations are sent to and collated by the Compliance Office in the AUC. 4.1.2. The Compliance Office analyzes and takes action with	**January 2018**

		relevant stakeholders within the AUC and outside (T/PCCs, CSO, UN, ICRC, et.al). 4.1.3. Regular reporting to the Chairperson and preparation of special Chairperson's report on compliance by AU PSO personnel. 4.1.4. The Compliance Unit shall establish a database/tracking system of all cases that can be used in future for screening and vetting purposes, as well as to track compliance statistics over time to analyse trends and progress.	
	4.2. Establishment of monitoring and reporting mechanisms at mission level	4.2.1. Establish a monitoring and reporting cell within the Compliance Unit in each PSO. The monitoring and reporting cell should have military legal officers, police internal investigators and civilian staff with the necessary IHL and IHRL expertise. The Compliance Unit shall be established in the office of the SRCC. 4.2.2. Additional mechanisms should be added according to the type of mission/ mandate. For instance, missions that are authorized to use force should include a CCTARCs; missions that support national forces may need additional capacities to ensure due diligence; missions that are authorized to detain people may need additional detention monitoring capabilities, etc 4.2.3. In addition to the line-function reporting within the mission, mission level Compliance Units also have an independent reporting capacity linked to the SHQ level.	(for now only AMISOM - with "mechanism" in place) See with Civilian Roster within PSOD + once Protection capacity established – for new missions

	Objectives	Action/ process	Time frame
5. Policies	5.1. Ensure the AU is provided with relevant compliance related policies	5.1.1. Identify priority policies/documents to review/ finalize and/or develop and capture in a consolidated Legal Framework Aide Memoire.	**January 2017**
		5.1.2. Review / finalize or develop selected priority policies and other documents.	Compliance Framework: Task Force to be convened by **August 2016**
6. Accountability	6.1. Ensure an effective response and accountability mechanisms at SHQ and MHQ	6.1.1. Institutionalized investigation and response mechanisms to be triggered according to type of allegations / violations put in place	**2018**
		6.1.2. Reinforced MoU with the T/PCCs on compliance requirement and consequences of non-compliance 6.1.3. Communication strategy on responding to allegations of violations developed 6.1.4. Compensation/ redress policy and guidelines put in place, to be funded from PF	
	6.2. Support T/PCCs establish effective military justice capacity and criminal legislation incorporating their obligations under IHL and IHRL, including the right of redress for victims.	6.2.1. Review of complementary legislative measures at national level to address criminal violations of IHL/IHRL 6.2.2. Development of a model law to address criminalization of IHL/IHRL into domestic legislation	