

Legal Conditions for the Implementation of the "Silencing Weapons by 2020" Program of the African Union Agenda for the Period Up to 2063



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ABSTRACT: Silencing weapons by 2020 is an ambitious project of the African Union contained in the 'Agenda 2063 the Africa we want'. According to aspiration 4 (32) of that Agenda, the achievement of that project requires that mechanisms for peaceful prevention and resolution of conflicts should be functional at all levels. Therefore, that article doesn't name those mechanisms. In the first aspect of his reflection, the author analyzes those mechanisms as being the peace and security architecture, which is the main mechanism designed to prevent and manage conflicts in Africa, as well as to strengthen peace and to which the African Union (AU) adhered, Regional Economic Communities (RECs) as well as Regional mechanisms (RM); and the African Union Court of Justice and Human Rights, which is a merger of the African Court on Human and Peoples' Rights (ACHPR) and the Court of Justice of the African Union (CJAU) and is the primary judicial agency of the African Union and the first regional court with international criminal jurisdiction. Further in his analysis, the author explains that the failure to meet the silence the guns by 2020 program and the postponement until 2030 has been a consequence of the non-achievement of the mechanisms mentioned in aspiration 4(32). The author ends up his analysis on the conclusion according to which if those mechanisms are not put in place there is a high risk that the second deadline scheduled for 2030, will also not be met. He therefore calls for the complete implementation of the ASP and for the ratification of the CJDHUA Treaty. If this is not possible, to demonstrate realism by setting the deadline for silence the guns in a period after the implementation of the mechanisms provided for in aspiration 4 of Agenda 2063.

KEYWORDS: Silence the guns by 2020, African Union(AU), regional Economic communities(REC), Regional mechanism (RM), peace and security architecture(PSA), CJHRAU, ACHPR, CJAU, agenda 2063.

INTRODUCTION

For many centuries, the main challenge of the African continent has long been the domination of foreign powers. Thus, from the 15th to the 19th century, it experienced slave trade, 4 centuries of slavery¹ during which the youngest and strongest Africans were sold as slaves and transported in slave ships to work on sugar cane plantations in America. The abolition of the slave trade during the 19th century gave way at the beginning of the 20th century to colonial² domination over the entire continent, from which only Liberia and Ethiopia escaped³. After obtaining independence for the most part during the decade of the 1960s, the continent was still under the weight of cruel threats namely neo-colonialism⁴, in several former colonies and racial segregation in countries such as Zimbabwe, Namibia, but especially in South Africa, where it happened with a cruelty that moved the entire international society. It is in order to overcome these various threats that the independent nations becoming states set up the organization of African unity (OAU) during a summit held in Nairobi on May 25, 1963 in the presence of 32 African heads of state. The organization then had only 4 bodies namely, The Conference of Heads of State and Government, The Council of Ministers, the General Secretariat, The

¹ <https://www.sunudaara.com/histo-geo/la-traite>

² Charle la Rue. La Colonisation. Les yeux du monde. URL: <https://les-yeux-du-monde.fr/wp-content/uploads/2015/12/La-colonisation-C.-Larue-Les-Yeux-du-Monde-2015.pdf> (accessed 26 march 2024)

³ World Atlanta. Colonialism in Africa. URL: <https://www.worldatlas.com/articles/colonialism-in-africa.html> (accessed 26 march 2024)

⁴ <https://panafricaniste.com/neocolonialisme-la-derniere-etape-de-limperalisme-kwame-nkrumah/>) then the hidden form of colonialism and apartheid (<https://www.history.com/topics/africa/apartheid>

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Mediation, Conciliation and Arbitration Commission⁵. A structure adapted to the extent of the skills assigned to it, namely: The reinforcement of the unity and solidarity of African States; the coordination and intensification of their cooperation and their efforts to offer better living conditions to the peoples of Africa; the defense of their sovereignty, their territorial integrity and their independence; eliminate in all its forms colonialism from Africa ; promote international cooperation and taking due account of the Charter of the United Nations and the Universal Declaration of Human Rights⁶. Despite having largely achieved its objectives during the 1990s, this through the end of apartheid in 1994⁷ and the decolonization of the last African states⁸, the OAU will still appear as an outdated organization. Indeed, new threats that are beyond its capabilities will take center stage. This is the case of the proliferation of civil wars in countries due to power conflicts, secessionist will; the terrorist threat which will take advantage of the situation of political instability to establish itself well. It is to overcome those new threats that at the instigation of Colonel Gaddafi, a declaration named the Sirte declaration⁹ which outlines the desire for the creation of a new organization. That new organization named the African Union (AU) will be created at the Lomé summit in Togo on July 11, 2000¹⁰ with the adoption of his constitutive declaration. On the organizational level, the AU has a broader structure than the OAU. It is thus composed among others by an Assembly of the Union, an Executive Council, a Pan-African Parliament, a Court of Justice, a Commission, a Permanent Representatives Committee, a Specialized Technical Committees, an Economic Social and Cultural Council and Financial Institutions¹¹. The scope of competence of the AU is broader as well. Its constitutive act enumerates 13 missions which can be summed up as the preservation of security; the protection of human rights and cultural identity, the achievement of unity and development of the continent. In the frame of that new organization, the general assembly of States will set up in 2013 a program to accelerate the resolution of the contemporary problems of the continent named "agenda 2063: the Africa we want".¹² At the core of that program, another important and ambitious goal will be established entitled "silencing the guns by 2020".¹³

As a prerequisite objective for the realization of other projects on the continent, it is currently the subject of all attention. Progress towards its achievement, however, appears to be compromised. The task that the author proposes to resolve is therefore that of knowing what are the factors which hinder this project and what measures must be taken for its realization.

1 The meaning of the objective "silencing the guns by 2030 program"

The program to silence the guns was adopted in a context where the African continent was experiencing an increase in violence. At that period, especially from 1989 to 2017, the continent was among one of the most violent regions in the world. During the period 2013 and 2017 alone, 27000 people died due to armed conflicts¹⁴. The circulation of fire arms increased, in particular AK47s mostly from conflict zones like Libya and the middle East. The context of profound political instability due to post-electoral conflicts and the seizure of power by force is also very characteristic of this period. The terrorist threat in particular in the Sahel, in the Horn of Africa and at Lake Chad¹⁵ are among other problems of this time. The African Union summit in Addis Ababa, during which the organization's member states celebrated the 50th anniversary of the Organization's creation, marked the determination of the African state to undertake the fight against those threats that undermine the development of the continent. Through the adoption of the program to "silence the gun by 2020" on the continent in the framework of the Agenda 2063, African States resolved not to leave this burden to future generations. The purpose of the program is then to achieve peace on the continent in order to allow its

⁵ chapter 7 of the charter of the Organization of African Unity <https://www.peaceau.org/uploads/charte-de-l-oua-fr.pdf>

⁶ Chapter 2. Charter of the Organization of African Unity URL: <https://www.peaceau.org/uploads/charte-de-l-oua-fr.pdf> (accessed 26 march 2024)

⁷ US Department of State Archive. The end of Apartheid. URL: <https://2001-2009.state.gov/r/pa/ho/time/pcw/98678.htm> (accessed 24 march 2024)

⁸ Decolonization of Eritrea on May 24, 1993 .URL: <https://selfstudyhistory.com/2015/01/25/decolonisation-of-africa> (accessed 24 march 2024)

⁹ Fourth extraordinary session of the assembly of heads of state and government. Sirte Declaration. 8-9 september 1999. Lybia. <https://africa.smol.org/files/ency/ency12.pdf>

¹⁰ Official website of the AU. L'UA en bref. URL : <https://au.int/fr/appercu> (accessed 26 march 2024)

¹¹ Article 5 of the constitutive charter of the African union. URL: https://au.int/sites/default/files/pages/34873-file-constitutiveact_en.pdf (accessed 24 march 2024)

¹² Agenda 2063, the africa we want https://www.afdb.org/fileadmin/uploads/afdb/Documents/Policy-Documents/Agenda2063_Popular_Version_English.pdf accessed 26 march 2024)

¹³ ASPIRATION 4.(32) A peaceful and secure Africa .URL: https://www.afdb.org/fileadmin/uploads/afdb/Documents/Policy-Documents/Agenda2063_Popular_Version_English.pdf (accessed 26 march 2024)

¹⁴ 41480-doc-2nd_Continental_Progress_Report_on_Agenda_2063_English.pdf

¹⁵ <https://customwritings.co/analysis-of-the-political-instability-in-africa/>

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development. A number of steps have been established for its fulfillment namely: the prevention of genocides, make peace a reality for all and putting an end to human rights violations and humanitarian disasters.

However, peace will not come on the continent just because of a simple declaration. A number of conducive mechanisms have to be put in place. This is in particular the idea found in aspiration 4 of Agenda 2063 which stated: "Mechanism for peaceful prevention and resolution of conflicts will be functional at all levels. As a first step, dialogue-centered conflict prevention and resolution will be actively promoted in such a way that by 2020 all guns will be silent...".

2. Conflict prevention body to assist in the implementation of the programs silencing the guns by 2020

The aspiration 4 of the Agenda 2063 speaks of the dialogue-centered conflict prevention and resolution¹⁶ without specifying to which organ it's referred. However, to understand which bodies ensure this role on the African continent, it is appropriate to refer to certain major legal instruments of the African Union in this case, the charter on the organization of the African union¹⁷, the protocol to the charter establishing the peace and security council¹⁸ and the protocol to the charter establishing a court of justice of human rights of the African Union¹⁹. These various instruments foresee and implement the Peace and Security Architecture of the African continent and the court of justice of human rights and the African Union.

The APSA is the generic name given to the set of bodies ensuring collective security and the prevention of the occurrence of disputes in Africa. It is composed of the peace and security council, a panel of wise, a continental early warning system, an African standby force and a special fund. The organization and composition of these bodies is provided for by the protocol of the AU Charter on the establishment of the peace and security council²⁰.

- First of all, with regard to the peace and security council, it is the decision-making body for actions relating to peace and security. It is composed of 15 members according to a distribution that corresponds to all the members of the union. These are related to the promotion of peace, security and stability in Africa, preventive diplomacy, peace-making, good offices, mediation, conciliation and investigation, Support and interventions for peace, peace-building, post-conflict reconstruction, humanitarian actions, disaster management, and any other function as may be decided by the assembly. It is composed of two subsidiary bodies namely the Military Staff Committee²¹, which advises and assists the SPC in all matters relating to military and security requirements for the promotion and maintenance of peace and security in Africa. It is composed of the senior military representatives of the 15 Member States. The committee of Experts, which helps the SPC to prepare its documents, including its draft decisions. The Committee is composed of 15 designated experts, each representing a Member State of the SPC

- The Panel of Wise (PanWise)²² is composed of five highly respected African personalities from various segments of society who have made outstanding contributions to the cause of peace, security and development on the continent. PanWise's mission is to strengthen, coordinate and harmonize, under a single structure, conflict prevention and peacemaking efforts in Africa under a single umbrella. PanWise's activities focus, among other things, on mediation, conciliation and investigative missions, the promotion of democratic principles, human rights and international humanitarian law.

- The African standby force²³ Carries out other types of peace support missions, namely, intervention in a Member State in certain serious circumstances or at the request of a Member State in order to restore peace and security, prevent the escalation of a dispute or conflict, participate in the consolidation of peace, in particular through post-conflict disarmament and demobilization, provide humanitarian aid, exercise any other function that the Peace and Security Council or the AU Assembly may entrust to it.

- The continental early warning system²⁴, which is an organ consisting of an observation center called "the situation room" located at the union's conflict management directorate and a control and observation unit that ensures the collection of information for their processing and transmission. It is therefore a tool that facilitates the anticipation and prevention of conflicts.

¹⁶Aspiratio of the Agenda 2063. A peaceful and secure Africa .URL:

https://www.afdb.org/fileadmin/uploads/afdb/Documents/Policy-Documents/Agenda2063_Popular_Version_English.pdf (Accessed 26 march 2024)

¹⁷ Constitutive act of the African Union.URL:https://au.int/sites/default/files/pages/34873-file-constitutiveact_en.pdf (accessed 26 march 2024)

¹⁸ Protocol Relating to the establishment of the peace and security council of the African Union. URL: <https://www.peaceau.org/uploads/psc-protocol-en.pdf> (accessed 26 march 2024)

¹⁹ <https://au.int/sites/default/files/treaties/36396-treaty-0035>

²⁰ Protocol relating to the establishment of the peace and security council of the african union.URL: <https://www.peaceau.org/uploads/psc-protocol-en.pdf>

²¹ Article 13 Alineat 8. CDHUA. URL : <https://www.peaceau.org/uploads/psc-protocol-en.pdf> (accessed 26 march2024)

²² Article 11 PSCAU. URL : <https://www.peaceau.org/uploads/psc-protocol-en.pdf> (accessed 26 march 2024)

²³ Article 13 PSCAU URL : <https://www.peaceau.org/uploads/psc-protocol-en.pdf> (accessed 26 march 2024)

²⁴ Article 12 PSCAU. URL : <https://www.peaceau.org/uploads/psc-protocol-en.pdf> (accessed 26 march 2024)

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Regarding the African court of justice and human rights (ACJHR), which by virtue of its founding statute, namely the protocol establishing the statute of the African court of justice and human rights²⁵, is the main judicial organ of the court. Indeed, this body is all the more important insofar as it is the result of the twinning of the two previous courts of the Union, namely, the African court of human rights (ACHR)²⁶ and the court of justice of the African Union (CJAU)²⁷ and therefore has the increased skills while limiting the financial hit. Indeed, the ACHR which was the only judicial body to date, had substantive competence limited to the knowledge of any case or dispute before it concerning the interpretation and application of the ACHR, the ACHR Protocol, and any other relevant human rights instrument ratified by the States concerned" and a power of referral limited to the human rights commission, the State party that referred the matter to the commission, the State party against which a complaint has been lodged, the State Party whose national is the victim of a violation of human rights, African inter-governmental organizations.²⁸ With the new jurisdiction that is the ACJHR, we not only have an expanded area of competence, namely among other, the interpretation and application of the constitutive act, the interpretation, application or validity of the other treaties of the Union and of all the derivative legal instruments adopted within the framework of the union or the organization of African unity, any issues provided for in any other agreement that the States parties may conclude between themselves, or with the Union and which gives jurisdiction to the court, the existence of any fact which, if established, would constitute the violation of an obligation towards a State Party or the Union, the hearing of war crimes, genocide, apartheid crimes, crimes against humanity; but also a more extensive competence. Indeed, the court can not only be seized by the same bodies as the CDHUA but also by these other bodies: The conference, the Parliament and the other organs of the Union authorized by the conference and a member of the staff of the union, on appeal, in a dispute and within the limits and conditions defined in the statutes and staff regulations of the union.

3- The failure to fully implement the continent's security organs as the cause of the failure of the "silence the guns in 2020" objective.

The most recent report on the implementation of Agenda 2063, namely second continental report on the implementation of agenda 2063, February 2022²⁹, notes some positive aspect towards the realization of the silencing the gun agenda, namely the amelioration of security in some places, in this case in Swahili, which since its independence in 1968 has been kept out of conflicts; or even Sierra Leone, which is considered during the reporting period to have made the most significant progress³⁰. Another indicator of progress is that of national platforms for the peaceful resolution of disputes which is an organ which enables the peaceful settlement of disputes. The report does show an evolution of 60% over the year 2020³¹ in the implementation of such structure at the national level. However, this figure of progress is not representative of reality in view of the small number of countries that have reported, just 38.

Although there are some positive aspects in the implementation of security on the continent, it turns out that the security context is far from the objectives set, to know, silence the weapons by 2020. Indeed, the report also notes the increase of violence in some places. The report mentions the example of Niger where the regions of Diffa and Tillabéri have been affected by insecurity vis-à-

²⁵ Protocole on amendments to the protocol on the statute of the african court of justice and human rights. URL:

https://au.int/sites/default/files/treaties/36398-treaty-0045_-_protocol_on_amendments_to_the_protocol_on_the_statute_of_the_african_court_of_justice_and_human_rights_e.pdf (accessed 26 march 2024)

²⁶ https://au.int/sites/default/files/treaties/36393-treaty-0019_-_protocol_to_the_african_charter_on_human_and_peoplesrights_on_the_establishment_of_an_african_court_on_human_and_peoples_rights_f.pdf (26 march 2024)

²⁷ https://au.int/sites/default/files/treaties/36395-treaty-0026_-_protocol_of_the_court_of_justice_of_the_african_union_e.pdf (26 march 2024)

²⁸ Article 5 (1): referral to the court URL: https://au.int/sites/default/files/treaties/36393-treaty-0019_-_protocol_to_the_african_charter_on_human_and_peoplesrights_on_the_establishment_of_an_african_court_on_human_and_peoples_rights_f.pdf (accessed 26 march 2024)

²⁹ African Union. Second Continental Report on the implementation of agenda 2063. February 2020. URL: https://au.int/sites/default/files/documents/41480-doc-2nd_Continental_Progress_Report_on_Agenda_2063_English.pdf (accessed 26 march 2022)

³⁰ Following its transition from the conflict zone to the peace zone, it finds itself ranked 46th in the global peace index. https://au.int/sites/default/files/documents/41480-doc-2nd_Continental_Progress_Report_on_Agenda_2063_English.pdf (accessed 26 march 2022)

³¹ Goal 15: A Fully Functional and Operational African Peace and Security Architecture https://au.int/sites/default/files/documents/41480-doc-2nd_Continental_Progress_Report_on_Agenda_2063_English.pdf (accessed 26 march 2024)

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vis civilians, by battles and by explosions³². This set of factors led to the postponement of the deadline of the agenda which is now planned for 2030. The failure of this agenda is not actually a surprise given the incomplete implementation and dysfunction of the mechanisms intended to support it. The special report of the European Union drawn up in 2018 on the aid granted to the development³³ of the APSA, provides information on numerous shortcomings relating to that institution, among others the lack of staff. This is the case of the department of peace and security (DPS) of the African Union, while being an important organ for the functioning of the ASPA lack practically 1/3 of its staff³⁴. At the level of the CEWS(continental early warning system), regional and national branches are struggling to be implemented, a situation which paralyzes its functioning. We also have the problem of funding. Despite the fact that the funding is provided under the pact with the European Union, it's still not enough to ensure the entire functioning of the mechanism. The following ASPA bodies thus lack funds to ensure their missions: The group of wise which today even have broader competences; the standby force whose deployment is still delayed because of the funding problem³⁵.

With regard now to the Court of justice and human rights, it turns out that it is not the subject of any particular attention. Indeed, its implementation depends on the ratification of its treaty by 15 states. But to date the quota has still not been reached. Yet, a plan for the ratification of this treaty does not appear in Agenda 2063, which from our point of view constitutes a mistake. The only judicial body that is functional on the continent therefore remains the African court of human rights whose competence and referral are limited.

CONCLUSION

In view of the nature of the security threat, it therefore turns out that the weapons cannot be silenced without the implementation of these two aspects, namely the SPA, and the AU court of justice and human rights. It is therefore incumbent on the states of the union either to accelerate the process of implementing the SPA and that of the ratification of the CJDHUA Treaty or to set the deadline of the agenda provided for silencing the weapons on the date of the implementation of these bodies provided for in Agenda 2063. However, it should be remembered that even if the implementation of the aforementioned conditions is very important, these are not the only obstacles to the implementation of the program aimed at silencing weapons. There are others in this case, the weakness of the institutions, in particular those of the states, the importation of light weapons, the lack of clear definition of what it is to silence weapons, the lack of appropriation by the population. It is therefore a question that, beyond the complete implementation of the institutions for the peaceful resolution, all political problems should be taken into account.

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³² Goal 14: stable and peaceful Africa https://au.int/sites/default/files/documents/41480-doc-2nd_Continental_Progress_Report_on_Agenda_2063_English.pdf

³³ Report on the implementation of the development cooperation instrument, the Humanitarian Aid Instrument and the European Development Fund. URL: <https://op.europa.eu/webpub/eca/special-reports/apsa-20-2018/en/> (accessed 26 march 2024)

³⁴ Minutes of the 11th meeting of the steering committee relating to the joint financing agreement intended to support the commitment of the AUC staff assigned to the peace and security program, April 2017, and synoptic of the staff of the Peace and Security Department, July 2016. (accessed 26 march 2024)

³⁵ Other reasons related to political will and cultural differences are also missing <https://op.europa.eu/webpub/eca/special-reports/apsa-20-2018/fr> ; (accessed 26 march 2024)

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