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On the Agenda

How Trump's budget cuts impact security in Africa

The African Union (AU) – United States (US) High-Level Dialogue is scheduled for 16 November 2017. The dialogue has been held annually since 2010, and allows both sides to define and develop their areas of partnership. The funding of peacekeeping operations in Africa and the controversial travel bans are currently the main sticking points in the relationship.

US support for the fight against extremist groups in the Sahel, the Lake Chad Basin and the Horn of Africa remains substantial. Nikki Haley, the US Ambassador to the United Nations (UN), recently visited the AU Commission in Addis Ababa, as well as South Sudan and the Democratic Republic of the Congo, to highlight the US' commitment to addressing security challenges on the continent. However, US President Donald Trump's insistence on reducing the US' financial burden has impacted on cooperation with Africa on peace and security.

The most affected areas include the proposal to use UN assessed contributions to support African peace security operations, such as the AU Mission to Somalia (AMISOM) and the G5 Sahel mission. In addition, arbitrary travel bans on African countries could constrain US cooperation with Africa going forward. These areas of disagreement will surely cloud the upcoming AU–US dialogue.

Trump's insistence on reducing the US' financial burden has affected cooperation with Africa

PSC Chairperson

H.E. Cherif Mahamat Zene

The Chadian ambassador to Ethiopia and permanent representative to the AU

Current members of the PSC:

Algeria, Botswana, Burundi, Chad, Egypt, Kenya, Niger, Nigeria, Republic of Congo, Rwanda, South Africa, Sierra Leone, Togo, Uganda, Zambia

Opposition to the use of UN assessed contributions

In January 2016, after the European Union (EU) had announced a 20% cut to the allowances of AMISOM peacekeepers, the AU began lobbying for the use of UN assessed contributions to cover the financing gap. The AU has argued that this is a natural option, given that AMISOM is authorised by the UN Security Council (UNSC) and carried out on behalf of the UN, which has the primary responsibility for international peace and security. Thus far, UN assessed contributions have been utilised for the UN Support Office to Somalia (UNSOS), which provides logistical support to AMISOM, but not for direct allowance payments to AMISOM troops.

In line with its strategy to reduce overall peacekeeping costs, Trump's administration has advocated against the use of UN assessed contributions

to cover AMISOM's funding gap, without detailing useful alternatives. The UNSOS budget has also come under fire, with proposed reductions beginning to affect the mission's performance. This has dealt a double blow to AMISOM at a crucial time, as the mission prepares for a drawdown next year and eventual withdrawal by 2020.

AMISOM is not the only mission affected by the Trump budget cuts – a June 2017 agreement cut US\$600 million from the total UN peacekeeping budget, and 7.5% from the US share.

Instead of supporting further UN assistance to AMISOM as an avenue to defeat al-Shabaab, the US appears to have prioritised a US-specific military response. In March 2017 Trump declared southern Somalia a war zone for 180 days, allowing greater leeway for precision airstrikes against al-Shabaab. US forces have since played a more active role in ground operations, as the death of a US soldier in Somalia this May – the first since the infamous 1993 'Black Hawk down' incident – demonstrated.

Instead of supporting further UN assistance to AMISOM the US appears to have prioritised a US-specific military response

While the airstrikes increase pressure, their overall efficacy in crushing al-Shabaab is questionable. As the 14 October truck bomb blast in Mogadishu, which killed over 350 in the deadliest militant attack in the country's history, would suggest, the group is far from defeated.

The drop in financial support for AMISOM coincides with the increase in US military operations in Somalia, substituting US dollars with the involvement of US military personnel in various clandestine missions.

These direct US operations on the continent contradict the need to support African initiatives in line with the AU's commitment to finding African solutions for African problems. African institutions, including the AU, are attempting to provide remedies to the continent's challenges, but they require international partnership and support.

The deployment of US military personnel also comes with its own risks. Besides the death of a US soldier in Somalia, as indicated above, four members of the Special Forces were killed during an ambush by an extremist group in Niger in October 2017.

Opposition to UN financing for the G5 Sahel Force

Both the US and the United Kingdom have also opposed suggestions to provide UN financial and logistical support to the G5 Sahel Force, established in February 2017 by Chad, Burkina Faso, Mauritania, Mali and Niger. The mission is expected to fight terrorism and organised crime in the Sahel, but

\$600 million
PROPOSED US CUTS TO
PEACEKEEPING MISSIONS

is encumbered by financial and logistic constraints. Its preliminary budget for one year is around 423 million euros. Based on a recommendation from France, which wants the force to serve as an exit strategy for its troops involved in Operation Barkhane, the EU agreed to provide 50 million euros. The five member states will contribute 10 million euros each, but this still leaves the mission with a significant financing gap.

The UN has called for bilateral and multilateral partners to provide logistical, operational and financial assistance to the mission. This decision raises concerns about international support for complementary regional efforts that underpin UN missions. Indeed, the efficiency of the UN mission in Mali depends on its ability to curb the terror groups that operate not only in Mali but also in the entire Sahel region. The G5 Sahel mission comes amid the seeming helplessness of the UN mission in Mali to prevent or address attacks on civilians and peacekeepers. These attacks are carried out by terror elements that operate in Mali and the rest of the Sahel. The US has also suffered casualties in the Sahel as it pursues a more bilateral approach, as illustrated by the events in Niger.

Both the US and the UK have opposed UN financial and logistical support to the G5 Sahel Force

The disagreement over UN assessed contributions may also have ramifications for the operationalisation of the AU Peace Fund. The AU hoped to provide 25% of the funds for its peace operations, under the impression that the remaining 75% would be covered by the UN. But it is unlikely that the UNSC will agree to such support given the current climate.

Arbitrary travel bans further constrain US cooperation with Africa

Besides the financing issues, the seemingly arbitrary US travel bans on some African countries are points of divergence that are likely to feature during the upcoming AU–US dialogue. Soon after his inauguration Trump had ordered a travel ban on six Muslim countries, including

Libya, Sudan and Somalia. The ban jeopardises the security of many migrants who seek a safe haven in the US. In the case of Libya, in particular, the travel restrictions raise concerns given the extent to which the US and its allies have been blamed for the regime change that has thrown the country into crisis.

Further complicating relations with Africa was a revised travel ban in September that dropped Sudan but, surprisingly, added Chad to the mix. Chad was a key US partner in the fight against terrorism in both the Sahel and the Lake Chad Basin, and has low net migration.

US travel bans are likely to feature during the upcoming AU–US dialogue

The US government indicated that Chad did not ‘adequately share public safety and terrorism-related information’. However, in the absence of further explanation or a more convincing rationale, some have defaulted to a conspiratorial account given that Chad imposed a US\$74 billion fine on Exxon Mobile in 2016 for failing to fulfil its tax obligations – a company that at the time was headed by current US Secretary of State Rex Tillerson.

Regardless of the reasoning, it is clear that the inclusion of Chad strikes at the heart of the AU. Chadian President Idriss Déby served as AU president in 2016, and current AU Commission Chairperson Moussa Faki also hails from Chad. He has pledged to raise the matter during the upcoming AU–US dialogue.

Admittedly, the nature of the US’ Africa policy has not yet seen a fundamental change compared to those of previous administrations. However, the US resistance to UN financial support for African peacekeeping could certainly constrain the US’ partnership with Africa going forward. The US should consider a coordinated and supportive partnership that enhances Africa’s capacity to address the challenges on the continent.

On the Agenda

New clash in the AU over Western Sahara



Preparations for the crucial AU–EU summit in Abidjan at the end of November have been overshadowed by a dispute over who should attend. Following deliberations, it was decided that all 55 member states of the AU, including the Sahrawi Arab Democratic Republic (SADR), would be invited.

Just six months on the job, AU Commission chief Moussa Faki Mahamat had to handle a diplomatic crisis that was causing a rift in the organisation. At issue was the conundrum around the participation of the SADR in the 5th AU–EU summit on 28–29 November 2017.

Some member states that side with Morocco in its conflict with the SADR were working behind the scenes to try to exclude the SADR from the meeting to be held in Abidjan, Côte d’Ivoire.

The clash over the AU–EU summit came to the fore at an extraordinary session of the Executive Council (foreign ministers) of the AU in Addis Ababa on 16 October. Mahamat was given until 27 October to report back to member states with a solution. Ultimately it was decided that the SADR should be invited to the meeting.

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A fully fledged member of the AU

The SADR is a founding member of the AU but is recognised by less than half of its members. Many African states that had recognised the SADR have also shifted position over the years. The United Nations (UN), meanwhile, defines Western Sahara as a ‘non-self-governing territory’ – one of 17 in the world. Renewed efforts are expected to be made for negotiations between Morocco and the SADR’s representatives, the Polisario Front, following UN Secretary-General António Guterres’ appointment of former German president Horst Köhler as his personal envoy for Western Sahara last month.

In January, Morocco rejoined the AU to become its 55th member. Morocco says the SADR is not a UN member – and that it does not constitute a state with a clearly defined territory and a sovereign government. An observer in Abidjan said Ivorian authorities did not send an invitation to the SADR since ‘they don’t have an address’. The Polisario Front mainly represents Sahrawis living in exile in refugee camps in Algeria.

28–29

November

THE AU–EU SUMMIT IN ABIDJAN

On the other hand, AU member states that strongly support the SADR argue that it is a fully fledged and founding member of the AU, and that Morocco re-entered the organisation knowing that the SADR was still a member.

Morocco's commitment to play a constructive role

In his inaugural speech at the 28th AU summit on 31 January, Moroccan King Mohammed VI also said he realised Morocco's return was not unanimous, but that the aim of Morocco was 'not to divide the AU'. Morocco wanted to participate fully in the agenda of the organisation, he said.

Several incidents since January, however, show that Morocco is still reluctant to accept the SADR as a fellow member state.

The crisis around the AU–EU summit is serious given the struggle to get here in the first place. For years after the first summit in Cairo in 2000, these summits, which were supposed to take place every three years, had to be postponed because of European sanctions against Zimbabwe's President Robert Mugabe. AU member states insisted that Zimbabwe should participate.

Finally, a compromise was reached and the second summit took place in Lisbon in 2007. The summit, like many similar meetings where the outside partners wanted to invite Morocco, was then labelled the Africa–EU summit. The Abidjan summit is the first to be called AU–EU.

The official position of the EU – the largest funder of the AU – is that whether the SADR may attend or not is an internal AU issue. In meetings with South African officials in Pretoria earlier this month, EU officials made it clear that it was up to the AU to decide who would come to the summit. Some EU member states, however, are inclined to side with Morocco.

Many issues on the agenda

John Kotsopoulos, senior research fellow at the University of Pretoria's Centre for the Study of Governance Innovation, says a lot of preparation has gone into the summit, which has to discuss a range

of important issues. Not least of these is the fate of the Cotonou Agreement between the EU and 79 sub-Saharan African, Caribbean and Pacific Ocean states that expires in 2020. The controversial economic partnership agreements with African countries and other EU funding instruments concerning Africa will also be on the table, as well as the tricky issue of migration.

The current situation clearly reveals the many inconsistencies and limits in the AU

Kotsopoulos, an expert on Europe–Africa relations, says now that the summits are officially between the EU and the AU, the two organisations can move to a more sustainable and formalised relationship.

The current situation clearly reveals the many inconsistencies and limits in the AU. A number of questions can be asked. For example, can one member decide not to invite another member to a partnership meeting without risking severe consequences? In a consensus-based organisation like the AU, how should such a situation be dealt with in future?

Going beyond the AU–EU summit, the continued strife between Morocco and the SADR could paralyse the organisation and create further rifts within the AU, which has enough other issues on its plate.

Situation Analysis

Could parts of Kenya really secede?



Kenya is experiencing its worst political crisis in more than a decade, prompting some politicians to suggest extreme solutions – including the division of Kenya into two countries.

The presidential election in Kenya on 8 August 2017 was annulled by the Supreme Court because of gross irregularities. The rerun, held on 26 October, was boycotted by the opposition and marred by more questions surrounding its credibility. Both votes took place against a backdrop of increasing political violence, including dozens of deaths.

Although President Uhuru Kenyatta has been declared the winner of the controversial second vote, with a majority of more than 98% thanks to the opposition's no-show, the crisis is by no means over. Opposition leader Raila Odinga has refused to accept the result, describing the election as 'shambolic'.

'This election must not stand ... It will make a complete mockery of elections and might well be the end of the ballot as a means of instituting government in Kenya. It will completely destroy public confidence in the vote,' said Odinga in a speech in Nairobi.

In the speech, Odinga went one step further, repeating a pre-election pledge to establish a 'national resistance movement' to 'restore democracy'. Odinga did not elaborate on what this resistance movement would look like, what its specific aims would be, or how it would achieve them.

The controversial rerun was marred in the region by police brutality

Calls for secession in Kisumu

As leader of the opposition alliance, Odinga is careful with his words. But in Kisumu, a major opposition stronghold in the west of the country, local leaders were less circumspect. In the wake of the controversial rerun, which was marred in the region by police brutality, Kisumu Governor Anyang' Nyong'o – a member of Odinga's party, and a key ally – told journalists that secession was an option.

'People have a right to refuse to cooperate with a government that has gone against their sovereignty, according to article 1 and 2 of our constitution. We have a right to resist a repressive regime, like Uhuru and [Deputy President William] Ruto's regime; that is our right as citizens, we cannot deny that right.

98%

KENYATTA'S SCORE IN THE
ELECTION RERUN

And when we resist and refuse to cooperate, they should not kill us, they should come and reason with us. If they cannot reason with us, let us divide this country in two,' he said.

He said he was prepared to 'establish the Federal People's Democratic Republic of Kenya'.

'Let [those who voted for Kenyatta] remain with the Republic of Kenya. You cannot remain in a republic where your only fate is to be killed when you are expressing a political right.'

It is a sign of the severity of Kenya's political crisis that Nyong'o's talk of secession is not an outlier. Ahead of the presidential election rerun, the idea gained currency among opposition supporters. A strong advocate was David Ndii, a strategist for the opposition National Super Alliance, who wrote in an op-ed last year: 'When people find that they cannot live together they part company. Kenya is for the most part an abusive relationship. It is about time we start talking about ending it. This ought not be a difficult conversation.'

Eventually Odinga was forced to address the issue head-on. 'We believe in a united Kenya. We do not support secession, but you have seen the disintegration of countries in eastern Europe. This debate about self-determination is gaining currency as a result of mis-governance ... When people become desperate they resort to desperate measures,' he told *Financial Times*.

A global trend

Supporters of secession in Kenya would not be alone: they would fit into a global trend that is threatening the sovereignty of established nation states. From the calls for Catalan independence in Spain to the referendum on Kurdish independence in Iraq and the growing support for self-determination in the Anglophone regions of Cameroon, self-determination movements are growing in stature.

But the example of the Catalans and the Kurds – both facing strong resistance from their respective national governments – highlights just how difficult it is to secede, no matter how much support an independence movement enjoys. Kenya would be no different.

For one thing, there is little consensus on what a divided Kenya would look like: would it constitute all opposition-held territory, or just regions of western Kenya, or could it even entail the division of Kenya into four or five separate countries? For another, any plans for secession would face enormous legal and political obstacles.

'For practical reasons, I think the prospects of secession are slim though the constitution provides for it. Parliament is dominated by Jubilee [the ruling party] and it would be an uphill task to get MPs to approve a referendum by 20 counties or so [out of 47] seeking to secede,' said Deo Gumba, an analyst with the Institute for Security Studies. 'The opposition, if it's serious, may need to go through a number of legal motions to convince the country that all options have been exhaustively explored.'

It is also far from clear that independence for regions would deliver the kind of positive change promised by politicians. The most recent example in Africa of a successful secessionist movement is South Sudan, whose post-independence honeymoon was crushed by a brutal civil war that continues to this day. Its citizens are arguably worse off than they were as part of a united Sudan.

The example of the Catalans and the Kurds highlights just how difficult it is to secede

For now, the talk of secession in Kenya remains just that – talk. The practical difficulties of making it happen present insurmountable obstacles, and there is not yet consensus among opposition leaders that it is the right way forward, as evidenced by Odinga's rejection of the idea.

But regardless of the practicalities, the promise of independence for various marginalised regions is a potent rallying cry. As political tensions continue to rise in the wake of the controversial presidential election rerun, it is a subject that is likely to remain in the headlines, even if a legally divided Kenya remains a distant prospect

Addis Insight

The PSC in Burundi – one year on



Over the past year the situation in Burundi, following the election-related crisis in 2015, has been shifted to the backburner by PSC. In October Burundi had been included on the agenda of the PSC while it was chaired, paradoxically, by Burundi. The meeting never took place. Meanwhile, the situation in the country has become a bone of contention between AU member states and non-African states in both Brussels and Geneva.

The political crisis that began in Burundi in 2015 and the subsequent intervention by the PSC is often seen as an illustration of the dysfunctional nature of the African Union (AU), and its lack of political will. This is because the African heads of state cancelled a decision to deploy a preventive mission in the country in January 2016. On the other hand, the AU's response to the crisis in Burundi has showcased the full operationalisation of various pillars of the African Peace and Security Architecture (APSA): early warning triggering early action by both the PSC and the AU Commission; the deployment of human rights observers and military experts; and the adoption of sanctions. All of this culminated in the planning of the preventive mission at the regional level of the African Standby Force, in this case the East Africa Brigade.

The AU's response to the crisis in Burundi showcased the various pillars of the African Peace and Security Architecture

The fact that these interventions – based on the pillars of the APSA – have so far failed does not necessarily mean that the AU is dysfunctional or that the AU Commission is not doing its job.

An apparent calm in Burundi

In its last decision on Burundi on 6 October 2016, the PSC acknowledged that the situation had improved in Bujumbura and surrounding areas. This view has been corroborated by other observers, who have noted the resumption of normal life in the capital. Some have indicated that the international scrutiny of Burundi has played a role in this recovery, especially after the threat of military intervention.

Yet despite the apparent improvement, the United Nations (UN) Commission of Inquiry on Burundi recently said that it had 'reasonable grounds to believe that crimes against humanity have been committed and continue to be

6 October
2016

The last PSC meeting on Burundi

committed in Burundi since April 2015'. The commission stated that 'these crimes are taking place in a context of serious human rights violations, including extrajudicial executions, arbitrary arrests and detention, torture, sexual violence, cruel, inhuman or degrading treatment, and enforced disappearances'. Clearly, while there are fewer killings, there is continued repression in Burundi.

Moreover, the number of refugees has continued to grow, from 218 960 refugees in 2015 to 422 387 currently. The UN Refugee Agency has predicted that the number of Burundian refugees could reach 534 000 by the end of the year. It is, however, not clear that this figure should serve as a benchmark for the evolution of the political situation. Many actors claim that the refugee flow is largely caused by the economic crisis affecting Burundi, and that people are fleeing economic distress rather than political instability. According to the International Monetary Fund, economic growth in Burundi has been 0% in 2017.

While there are fewer killings, there is continued repression in Burundi

Fewer PSC meetings on Burundi

The reversal of the decision to deploy the African Prevention and Protection Mission to Burundi (MAPROBU) rankled with various stakeholders in Addis Ababa.

Adding insult to injury, the frequency of PSC meetings on Burundi has drastically decreased over the past year. In 2015 the PSC held 10 meetings on Burundi; in 2016, in the aftermath of the January reversal, it met only four times on the issue. Thus far in 2017 the PSC has yet to meet on the country, despite the presence of AU personnel on the ground – the only representatives of an international body monitoring developments in Burundi.

A total of 45 human rights observers and eight military experts are deployed in Burundi. Not only are these figures far below the 200 decided by the PSC in February 2016, but the agreed-upon Memorandum of Understanding (MoU) between the Burundian government and the AU has still not been signed. Therefore, in addition to the limited logistical means at their disposal, hampering their mobility, these AU staff members also operate on fragile legal grounds. The situation is more acute for the military experts who are supposed to oversee the disarmament of militias but who cannot operate effectively without clear rules of engagement.

Furthermore, at the AU there is a lack of clarity on the political strategy that the deployment and reporting of these observers and military experts are supposed to serve. At the last PSC meeting on Burundi in October 2016, the three pillars of the AU's policy on Burundi since January 2015 was spelled

422 387

BURUNDIAN REFUGEES

out: providing support to the East African Community (EAC) mediation led by former Tanzanian president Benjamin Mkapa; urging the Burundian government to sign the MoU with the AU on the human rights observers and military experts; and calling upon the government to address human rights violations, among others.

EAC mediation in a deadlock

Since the PSC supports the mediation by the EAC, any action at the continental level depends on the progress made by the regional body. Earlier this year, the EAC facilitator stated that the negotiations were at a deadlock, pointing to the intransigence of the government.

So far, progress has been limited because of the refusal of the government to engage with the opposition coalition *Conseil National pour le respect de l'Accord d'Arusha pour la Paix et de l'État de Droit* (CNARED, or National Council for the Respect of the Arusha Agreement and Rule of Law). The government says several supporters of the failed coup d'état in May 2015 are members of the CNARED.

But stakeholders still hold diverging views about the purpose of the mediation in the aftermath of the controversial re-election of President Pierre Nkurunziza in 2015.

Several opposition groups are still questioning Nkurunziza's legitimacy two years after his re-election. Meanwhile, some regional actors and the AU wish to focus on the 2020 elections and the consolidation of the Arusha Agreement.

In addition, perceptions of the problem differ among neighbouring countries. Tanzania, which was the first to object to the deployment of MAPROBU, seems to view the Burundian crisis from a domestic perspective. President John Magufuli has put pressure on Burundian refugees, calling on them to return to their own country now that the situation there has calmed.

According to researchers Yolande Bouka and Nanjala Nyabola, there is a lack of consensus among EAC heads of state on how to address the crisis in Burundi. This is mainly because of domestic issues associated with the issue of third terms.

The return of the peace versus justice debate

In late October 2017 the Burundian government proposed to amend the constitution in order to remove both term limitations and references to the Arusha Agreement, and to create the position of prime minister. The ethnic quotas in the army and Parliament, based on the Arusha Agreement, remain in place.

A referendum is tentatively scheduled for early 2018. It is unclear how the PSC will react to the proposed changes eliminating key provisions of the Arusha Agreement, of which the AU is guarantor.

There is clearly a limited appetite for Burundi at the level of ambassadors in the PSC in Addis Ababa. The only relevant decision-making forum on Burundi is now the AU Assembly of heads of state and government. However, it is uncertain whether, in the current context, other heads of state will adopt a path of action that differs from the wait-and-see approach that has prevailed since January 2016.

There is a growing risk that the focus on Burundi is now shifting from the dynamics of the crisis to a spat between the AU and its partners on the issue of human rights. The AU resents what it believes to be the overly legalistic approach of the UN Commission of Inquiry on Burundi. The commission recommended that the Burundi situation be referred to the International Criminal Court (ICC) – a very unpopular organisation at the AU.

There is clearly a limited appetite for Burundi at the level of ambassadors in Addis Ababa

This comes against the background of the NATO intervention in Libya and its aftermath. The ICC indictment of Sudanese President Omar al-Bashir has undeniably strengthened his status among his peers, to the detriment not only of the quest for a fair and equitable peace but also of justice for the victims of the Darfur conflict. The fact that Burundi just withdrew from the Rome Statute could strengthen this shift away from the heart of the matter.

The current crisis further shows the limited options for the PSC in both the Eastern and Central regions, which are dominated by former armed groups that are less open to political pluralism and tend to consolidate their rule in a way that does not necessarily fit with the AU's framework on democracy, governance and human rights.

The fact that Burundi just withdrew from the Rome Statute could strengthen this shift away from the heart of the matter

Options for the PSC

If the PSC wants to have an impact on the situation in Burundi, various options could be considered. First, the PSC should assess the progress of the mediation efforts and consider taking steps to improve their effectiveness. In this regard, in line with the PSC decision on Burundi last year, the facilitator should brief the body on the challenges he is facing. Another question that could be addressed is: what leverage does the PSC have when a regional body fails to deliver?

Second, the PSC should define the goal of the current mediation in Burundi in the post-2015 election context. Is it about safeguarding the Arusha Agreement? Or is it to consolidate the governance of elections and address the closure of the political space?

Third, the PSC could consider adopting measures ensuring that the coming electoral consultations in Burundi respect the basic principles of the African Charter on Democracy, Elections and Governance. It has yet to be seen whether the PSC has the leverage to ensure that these principles are enforced, and whether its members are willing to implement it.

Addis Insight

Does Africa really want a continental Parliament?



The Pan-African Parliament (PAP) met last month for its fifth session in Midrand, Johannesburg, attended by 229 parliamentarians from 51 countries. Questions are being asked, however, about the effectiveness of the PAP given its lack of legislative powers.

It is one of the many ironies of the AU that two of its most important recent instruments – which theoretically increased the continent's judicial and legislative powers – are both referred to, colloquially, as the 'Malabo Protocol'. That's because they were both adopted in the city of that name, Equatorial Guinea's capital, during the AU summit there in June 2014.

One 'Malabo Protocol' – more correctly called the 'Protocol to the Constitutive Act of the African Union on the Pan-African Parliament' – would give that body some legislative powers. The other 'Malabo Protocol' – officially the 'Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights' – would give that court important powers to adjudicate very serious crimes, such as genocide.

Too few African leaders are prepared to cede any real power to their own national parliaments

The irony is that both of these important legal and democratic instruments are commonly referred to by the name of the capital of a country where neither true judicial nor legislative power actually exist.

No real willingness to cede power

But perhaps calling them 'Malabo Protocols' is therefore appropriate after all, because neither protocol has actually conferred the powers envisaged in them on the pan-African institutions concerned. Nor do they seem likely to in the foreseeable future. That's because too few African leaders are prepared to cede any real power to their own national parliaments, let alone a continental, would-be legislature far away in South Africa.

Only five countries – The Gambia, Mali, the Sahrawi Arab Democratic Republic, Sierra Leone and Togo – have ratified the new PAP Protocol, far short of the 28 ratifications needed to bring it into force. Those five conspicuously exclude South Africa, even though the PAP's headquarters are in Midrand, between Johannesburg and Pretoria. As the host country for PAP since 2004, South Africa incurs considerable extra costs to maintain it, apart from its share of the US\$22 million overall annual budget.

229

PARLIAMENTARIANS AT THE
LAST SESSION OF THE PAP

The PAP was established by the AU with a protocol adopted in 2001. It was envisaged as one of the new AU's many continental institutions. Its intention was to give a voice to the African people 'in discussion and decision-making on the problems and challenges facing the continent'. Its members are indirectly elected from national parliaments and are supposed to reflect the diversity of political opinions there. At least one of the five members from each country has to be a woman.

The original protocol said the PAP would eventually be vested with legislative powers 'to be decided by the Assembly' (the AU heads of state). In the meantime, it would exercise purely advisory and administrative powers. Even the legislative powers then provisionally conferred on it in 2014 by the Malabo Protocol were quite severely qualified. They would allow it to submit 'draft model laws to the Assembly... for its consideration and approval'.

But even relinquishing such small power has clearly proved too much for the AU member states.

The original protocol said the PAP would eventually be vested with legislative powers

A sense of frustration

And so the PAP has remained a mere talk shop, discussing no doubt many serious African issues, but in a bubble divorced from the real world. By contrast, the European Parliament in Strasbourg, on which it is based, is directly elected by the European people and enjoys significant powers. This includes equal control, with the European Council (representing the member states), over the European Union (EU) budget. The European Commission, the EU's executive, is accountable to the European Parliament, which elects the commission's president, approves or rejects the appointment of the commission as a whole and may dismiss it with a motion of censure.

The PAP meets at least twice a year for sessions of about two weeks each. The fourth Parliament is currently in its fifth session, gathering 229 parliamentarians from

51 countries. Over three years after the Malabo Protocol was adopted, the sense of frustration about their continuing political impotence is palpable.

'Every time we're here, we obsess over the same things. If we are not making laws, then what's the point of being here?' the Agence France-Presse (AFP) reported Corneille Padonou of Benin as complaining to his fellow parliamentarians. 'This forum is not a parliament, it is just a discussion platform that does not have any legislative powers,' AFP quoted Floyd Shivambu, a parliamentarian from South Africa's Economic Freedom Fighters, as saying. 'As it is, it is a waste of time and money.'

The PAP's committee on audit and public accounts detailed several budget overruns and discrepancies

And not only the money that is budgeted for and properly spent, it seems. Last week the PAP's committee on audit and public accounts sharply criticised PAP management for failing to 'implement adequate proper record-keeping controls' and detailed several budget overruns and discrepancies.

Because the PAP had not been 'able to attain our role as fully fledged legislators', it remained largely invisible to the 1.2 billion Africans it was meant to represent, the clerk of the PAP, Vipya Harawa, told reporters in July.

No regular briefings to heads of state

Even within the narrow confines of their purely advisory and administrative role, the PAP MPs complain about frustrations. One function of the PAP is to act as a bridge between the AU Commission in Addis Ababa and the national parliaments of member states, encouraging the latter, for instance, to ratify AU protocols and instruments.

But at a conference of speakers of African national parliaments held at the PAP in August this year, PAP president Roger Nkodo Dang complained that AU legal instruments remained inaccessible to national MPs. And there is no regular, scheduled briefing by the PAP to heads of state and ministers at every AU summit, as there is for other important AU institutions.

So what's to be done about the impotent PAP? Some suggestions from PAP MPs are now starting to smack of desperation and irrationality – or perhaps just facetiousness. *The Independent* in Uganda reported that during the current session some PAP 'legislators' proposed revising the Malabo protocol again 'and removing parts considered unpalatable to nation states'.

'In our own countries, parliaments are suppressed. Can you imagine a parliament that doesn't belong to you legislating for you? It will not happen in Africa,' the paper quoted Ugandan MP Ogenga Latigo as saying. But then he added that before the Malabo Protocol had been drafted, its authors should have obtained consensus among all member states about what they wanted the PAP to be.

Chief Fortune Charumbira, a Zimbabwean MP and head of his country's Chiefs' Council, agreed with Latigo that African presidents were unwilling to cede legislative authority to a 'foreign parliament' and also suggested amending the Malabo Protocol 'so it takes everybody on board'.

These two MPs are probably correct to suggest that African leaders will never, or at least not in the foreseeable future, accept any outside legislative direction. But their remedy hardly makes sense. Even if the Malabo Protocol were to enter into force, any legislation passed by the PAP would have to be approved by the heads of all the AU member states, meeting as the Assembly.

Some suggestions from PAP MPs are now starting to smack of desperation and irrationality

So the only way of amending the protocol again to make it palatable would be to go back to square one and divest it of legislative power. In which case, one might as well change its name to the Pan African Forum, as Shivambu suggested, according to *The Independent*. But then one would have to ask if Africa needs another forum or talk shop, especially one that incurs costs to African taxpayers (and foreign ones via donations).

A parliament, by definition, must legislate. That's what the member states must ensure happens. To settle for anything less would be to prolong the life of an empty shell.



PSC Interview

Little chance of a free and fair poll in Zimbabwe

Zimbabwe is heading for crucial elections in 2018 amid a growing economic crisis and fierce infighting in the ruling Zanu-PF. President Robert Mugabe (93) is eligible for re-election, but there are moves behind the scenes to determine his eventual successor. The *PSC Report* spoke to Derek Matyszak, senior research consultant for the Institute for Security Studies in Zimbabwe, about the run-up to the polls.

At what stage are the preparations for the 2018 elections?

The Zimbabwe Electoral Commission (ZEC) is presently constructing an entirely new voters' roll for the country, and says it will finish the process in January 2018. Nothing is being done, however, to align electoral laws with the new 2013 constitution, and there does not appear to be any political will to do so. There is a big difference between the preparations by the ruling Zanu-PF party for the polls and those of the myriad opposition parties. While Zanu-PF has already been campaigning – suggesting that it will use its parliamentary majority to call elections early – and distributing patronage to secure votes, the opposition parties, including the MDC-T led by Morgan Tsvangirai, are still fumbling in their attempts to form a united front against Mugabe. They are beset with leadership problems and are totally unprepared.

Nothing is being done to align electoral laws with the new 2013 constitution

Do Zimbabweans have the guarantee that it will be a free and fair poll?

There is no possibility of a free and fair election in Zimbabwe under current conditions. Zanu-PF controls all the key institutions of state, including those which are nominally independent. This control extends to the ZEC, the judiciary, the police, military, all electronic media broadcasters and local government. The last is particularly important, as Zanu-PF's influence over traditional leaders helps to secure the rural vote, which constituted 70% of the voting population in the 2013 elections. All 226 traditional chiefs have recently been given an Isuzu twin cab vehicle by the Mugabe administration. The rural voters are more subjects than citizens and the traditional leadership makes it clear that voting against Mugabe and Zanu-PF has severe and adverse repercussions.

70%

PERCENTAGE OF VOTERS
IN RURAL AREAS

There is some dispute over the fairness of the 2013 elections. Some say Zanu-PF won hands down, but in a recent briefing you indicated that those elections were marred by irregularities. Why do you say that?

Most analyses of the 2013 elections acknowledge that extensive electoral fraud took place. The question is really whether the fraud turned a loss into a win, or a win into a landslide. Certainly, without the fraud Zanu-PF would not have secured its two-thirds majority in Parliament. There are two key numbers from the 2013 presidential election: one is that Tsvangirai's vote remained largely unchanged from 2008, while Mugabe's tally increased by 1.03 million. There were only about 780 000 newly registered voters. So even if every one of these new voters had voted for Mugabe (they obviously did not) the provenance of over 220 000 votes requires explanation. One is that people who did not bother to vote in 2008, when election fever was high, suddenly decided to vote in 2013, when election fever was low. The other is that there was extensive multiple and fraudulent voting. There is considerable evidence of the latter. If these votes are discounted, the numbers are roughly as suggested by the most reliable opinion poll of the time, splitting the votes 53%–47% (a difference of six percentage points) between the two in Mugabe's favour, rather than the 61%–35% (a difference of 26 percentage points) officially announced.

Without the fraud, Zanu-PF would not have secured its two-thirds majority in Parliament

Is it clear at this stage who will succeed Mugabe?

It is not. And it is quite unwise to pronounce definitively on the subject, as it is probable that Mugabe himself does not currently have a clear preference. At various points in time, there are, however, frontrunners. This time last year it was apparent that an accommodation had been reached between Mugabe, his wife Grace and the 'Lacoste' faction in Zanu-PF, which prefer Emmerson Mnangagwa as a successor. Mnangagwa began to look like the president-in-waiting. That accord went sour and, in dramatic events at a rally last weekend, a visibly angry Mugabe indicated that the vice president would soon be fired and replaced by his wife. He subsequently fired Mnangagwa as vice president on 6 November.

Mnangagwa now appears to be out of the succession race, at least from inside Zanu-PF. The number of supporters he can take within him if he leaves the party, which appears inevitable, will test his strength. The G40 group, which coalesces around Grace Mugabe and has suggested Defence Minister Sydney Sekeramayi as a favourable candidate, is now clearly in the ascendancy within Zanu-PF.

1.03 million
NEW VOTES FOR MUGABE
AT THE LAST POLL

What will happen if Mugabe dies or steps down before the elections? What does the constitution say?

Should Mugabe die or retire, the vice-president who last acted as president (there are two) takes over for an interregnum period of no longer than 90 days. In this time Zanu-PF must name a person as president to serve out the term of office remaining before the next presidential election.

Is the opposition able to put up a strong fight in the 2018 elections?

The opposition, by its own admission, is in disarray. It is severely under-resourced, which leads to organisational problems. There is also factionalism within each of the opposition parties and jostling for positions, which make it very difficult for the parties to come together to form a united front against Mugabe and Zanu-PF. Furthermore, Tsvangirai is fighting cancer and there is a large question mark over his candidacy for 2018. If he is unable to stand, the MDC-T may fracture again, right on the brink of the election, which will be completely debilitating.

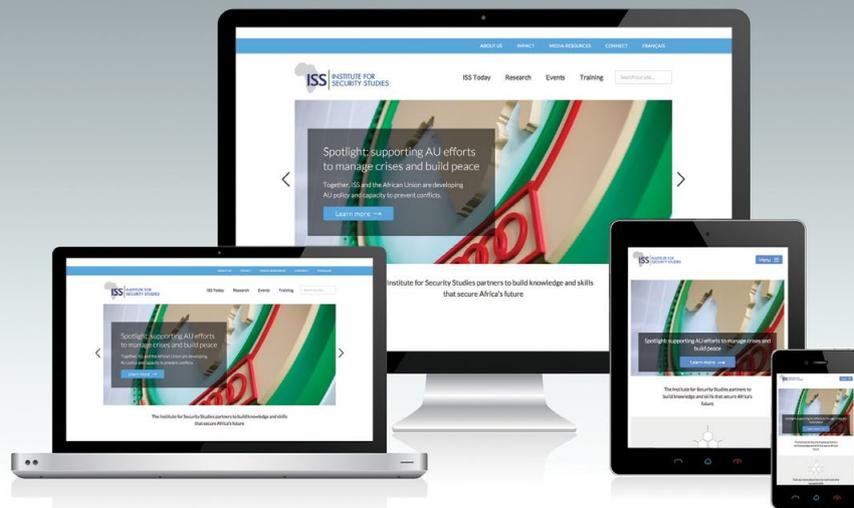
There is factionalism within each of the opposition parties and jostling for positions

Do you think the current economic crisis will have an impact on how the electorate will vote?

The economy is teetering on the brink of a meltdown. Without some sort of rescue package, the only question seems to be when rather than if it will happen. Zanu-PF is hoping that the wheels will stay on until the end of March/April, when it may contrive to hold the early poll. If they fall off before then, this will certainly have an effect on the coming election, as had the 2008 meltdown, which probably contributed to Tsvangirai's first-round win in March that year. If this happens, Zanu-PF may abandon what appears to be a plan to hold an election that appears legitimate, and resort to violence and repression to remain in power.

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