An Alternative Approach: The African Union's SEA Regulatory Framework

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Introduction

How peace operations evolve in the future is likely to be dependent on the UN's partnerships with external actors. The UN is increasingly reliant on regional organisations in the implementation of international peace and security. This chapter focuses on the UN's increasing reliance upon regional organisations the African Union (AU), and an aspect of this, AU policies around sexual exploitation and abuse (SEA) and on conduct and discipline applicable to AU peacekeepers. Such partnerships would work better if the partnering organisation aligns with UN peacekeeping norms and policies on SEA, and in accordance with the UN's Due Diligence Policy on United Nations Support to Non-United Nations Security Forces, not least given possible legal implications. That stated, if standards are to be implemented, they must come from the implementing partner

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and be tailored to the partner's practical realities and needs. Any top-down approach is unlikely to be tolerated. Evolving norms and standards pertaining to SEA in AU peacekeeping need to be adapted to the AU context through its lens. Merry and others have referred to this as 'vernacularization', a process of translation of norms, adapting them to more localised contexts and value systems (Levitt and Merry 2009; Finnemore and Sikkink 1998).

The AU is an increasingly important player in peace operations in Africa, with the development of the African Peace and Security Architecture (APSA). The APSA includes the Peace and Security Council created in 2002, the Panel of the Wise, the African Standby Force, and the Continental Early Warning System (AU 2015; Yamashita 2012). The AU has deployed peace operations to Somalia, Darfur, Mali, the Central African Republic, Sudan, Comoros, and Burundi amongst others. AU peacekeepers have contributed much to peace and security and the protection of civilians in the African region and have often proven willing to deploy to highly volatile environments. The AU often operates prior to or in parallel with the UN and other regional actors, and under a UN Security Council (SC) mandate (AU 2022). To facilitate the UN-AU partnership, a Joint UN-AU Framework for enhanced partnership between the UN Secretariat and the AU Commission (AUC) for Peace and Security in the African Continent was signed in 2017 (UNOAU 2022). The most significant AU peace operation proceeding this is the AU Transition Mission in Somalia (ATMIS), which transitioned from the prior AU Mission in Somalia (AMISOM) in April 2022 (Stockholm International Peace Research Institute 2022).

One issue presenting a potential obstacle to partnerships in peacekeeping between the AU and UN is how accountability for SEA is addressed in AU missions. This aligns with UN goals under its Action for Peacekeeping + initiative, as discussed below. It is vital that SEA incidents in AU missions are addressed in accordance with principles of accountability and transparency, especially considering the UN's obligation to ensure the human rights compliance of its partners under UN Human Rights Due Diligence Policy (HRDDP) (UNGA/SC 2013; Burke 2017a, b).[1] Where the UN support's financially, or otherwise, AU peace operations then need to comply with International Humanitarian Law (IHL)

[1] On the importance of the HRDDP in the context of the relationship between the AU and UN in peacekeeping, see further, Róisín Burke. (2017a, b). "Due Diligence and

and International Human Rights Law (IHRL). Any failures in this regard could render both the AU and the UN complicit in wrongdoing. Many instances of SEA may constitute violations of IHL and human rights law, in addition to domestic criminal and military laws. Moreover, any failures to address SEA or other serious misconduct by AU peacekeepers will undermine trust in both the AU and UN, and the protection of local populations. AU peacekeepers are deployed to numerous peace operations and are increasingly re-hatted to UN peace operations within short mission transition periods. Moreover, the AU has made strong commitments at a policy level to addressing conflict-related sexual violence and women's empowerment, including in the context of its Women Peace and Security agenda commitments ('African Union Legal and Policy Documents').

Research suggests that SEA is rife across the humanitarian community and crimes committed by UN uniformed and civilian peacekeepers as well as NGO practitioners have been well documented (UK House of Commons 2018). Allegations made against UN peacekeepers include rape, forced prostitution, sexual abuse of children, and human trafficking (Simic 2004; Tallyrand 2000; Human Rights Watch 2002). When the issue first became a public concern in the 1990s, many scholars linked the prevalence of SEA in peacekeeping operations to a 'hyper-masculine culture' of military institutions (Whitworth 2004; Higate 2004). Other scholars have linked SEA to underlying gender power dynamics, sexism, and race in civil-military relations (Westendorf 2018; Henry 2013).

However, the existing scholarly literature on SEA has placed little attention on regional peace operations, such as the African Union, and on how they deal with the issue of SEA. This includes differing standards and policies between peacekeepers in the context of hybrid AU-UN operations, which also causes difficulty in the context of re-hatting of peacekeepers from one organisation's mission to another. This chapter contributes to existing debates by examining how the AU deals with SEA accountability and by advancing understandings of UN-AU cooperation in this area of peacekeeping governance. Given a general lack of reporting mechanisms and accurate statistics on SEA in AU peace operations, SEA prevalence is difficult to ascertain. However, sufficient information exists to indicate that SEA incidents are not rare in operations led by or

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involving the AU. In 2014, Human Rights Watch (HRW) issued a report documenting SEA allegations by AMISOM peacekeeper. It was alleged that sometimes SEA occurred within AU camps, and that instances included rape, transactional sex, prostitution, and sexual abuse of minors (Human Rights Watch 2014). Further SEA allegations were published in UN reports, as highlighted below. While the veracity of the allegations in the HRW report was questioned by the AU, the report nevertheless highlighted the need for adequate regulation of such conduct (Special Representative of the Chairperson of the Commission for Somalia and Head of AMISOM 2014). The report and the AU's response provided some detail on the AU's regulatory and policy framework applicable to SEA allegations at the time. These response mechanisms were inadequate, not least regarding applicable standards of the AU on SEA and on conduct and discipline of peacekeepers, compliance and accountability mechanisms of the AU when an allegation arises, lack of transparency of what happens to allegation of SEA, little reported tracking of misconduct, unclear SEA reporting mechanisms, inadequate vetting of troops and police personnel, and a lack of remediation for victims (Burke 2017a, b).

Allegations of SEA with respect to AU troops also arose in the context of the Central African Republic (CAR) and the AU International Support Mission in the Central African Republic (MISCA). In 2015, a leaked United Nations International Children's Emergency Fund (UNICEF) report highlighted widespread SEA, including of children, implicating non-UN security forces. The report's focus was on French troops but also identified peacekeepers from AU MISCA. While a subsequent independent investigation into the CAR scandal focused on UN failures adequately handle the allegations, it also illustrated the broader problem of SEA by non-UN security personnel involved in peace operations and a lack of regulation (Deschamps et al. 2015). Rapid re-hatting of AU MISCA peacekeepers in 2014 to the subsequent UN MINUSCA operation reportedly caused difficulties with personnel screening, the integration of contingents with poor human rights records, and likely some uncertainty on applicable codes of conduct (Leaked memo 2017). Human rights concerns arose in the context of the operation in Mali (Di Razza and Sherman 2020). In recent UNSG reports on SEA, allegations of reported SEA by non-UN security forces are recorded (UNGA 2017). SEA allegations were also documented by the Office of Internal Oversight Services (OIOS) Inspection and Evaluation Division (IED) report

concerning AU re-hatted peacekeepers in Mali and the Central African Republic (2018). Further SEA allegations towards AU peacekeepers have arisen outside the above contexts, yet AU regulatory responses continue to be slow and lack transparency (UNSOM 2017; MINUSCA Force Commander 2017; Williams 2013; AFP 2013).

The AU has acknowledged the need to build on its prevention and response mechanisms for dealing with SEA and broader conduct and discipline issues. This aligns with the AU's pronounced commitments to the UN's Women, Peace, and Security (WPS) agenda's implementation. Indeed, the AU established an Office of the Special Envoy for WPS in 2014, but the role of the office in addressing SEA issues has been minimal. The trend to disconnect SEA from the WPS agenda is not new and undermines progress. The Envoy has stressed the need for monitoring mechanisms and conduct and discipline policies for AU-led peace operations. Under the AU's Women, Gender, and Development Directorate (WGDD), the AU developed a plan to mainstream gender in AU work. The Directorate developed a Gender Training Manual for African Peacekeepers, which incorporated material on SEA and conduct and discipline (CD) at the time to fill a policy gap. Efforts exerted by the AU over the past few years include two AU policies finalised in 2018, in coordination with the UN: (1) the AU Policy on Prevention and Response to SEA for Peace Support Operations ('SEA Policy'), and (2) the AU Policy on Conduct and Discipline for Peace Support Operations ('CD Policy').

This chapter examines the two main AU policies on SEA accountability. Amidst increasing UN-AU cooperation in peacekeeping the effectiveness and practicality of these policies for AU operations while meeting the UN's human rights due diligence requirement is important for future UN-AU cooperation. How effectively the two institutions work in the formulation and implementation of these policies may then influence the way UN-AU cooperation develops in peacekeeping, or more widely, in hybrid UN-AU peace and security operations. To examine the AU's 2018 SEA and CD policies and investigate the context in which they were devised, we undertook an extensive desk-based review of AU and UN documents and policies and gathered quantitative data from existing

public sources, including that produced by the UN Conduct and Discipline Unit, UN SG Report, and the OIOS.[2] The project took place over the course of the past 2.5 years.

In this chapter, we will first critique the AU's developing CD and SEA regulatory framework, providing particular focus on how the framework could be better implemented to support SEA victims. We will focus on the content of 2018 AU SEA and CD policies and explore issues relating to rationale, assumptions, definitions, and immunity coverage (namely the extent to which different categories of AU peacekeepers have different forms of legal immunities from host state jurisdiction and thereby investigation and possible prosecution by the host State). We will then examine issues related to the structure and processes for implementing the policies, including immunities; SEA and CD reporting and investigation mechanisms; and responsibilities of AU and sending states entities. Finally, we will reflect on emerging issues concerning victim assistance and redress and provide some recommendations.

AU-UN Coordination on SEA and CD

The AU and the UN have been coordinating their work on SEA in peacekeeping and in establishing prevention and response policies and mechanisms for the past few years. Exchanges of experience, including workshops, have taken place between UN bodies, such as the Department of Field Support (DFS) and the Office of the High Commissioner for Human Rights (OHCHR), and the AUC, on compliance with IHL and IHRL by peace operations, and in finalising the AU's CD and SEA policies. A UN-AU experts roundtable took place in December 2014 in which CD, SEA, and whistle-blower policy drafts were discussed. An Annex to Memorandum of Understandings (MOUs) with personnel-sending states on CD and SEA issues was also considered, in addition to the establishment of a misconduct database tracking system. The AU's CD and SEA policies were advanced and finalised with the UN's involvement. However, little is known about what further progress was made with respect to the whistle-blower policy, or towards developing and implementing monitoring and surveillance tools, such as the establishment

[2] Many sources are available through the following link: https://conduct.unmissions.org/.

of a misconduct database tracking system, the creation and roll out of pre-deployment risk assessments, and peacekeeping personnel screening.

IHL, human rights, and CD compliance by AU peace operations are closely tied with issues of cooperation and financing between the UN and AU. This partly relates to concerns around human rights due diligence in operating with or lending support to non-UN security forces, and liability risks. Addressing and preventing SEA, and improving accountability, are a formative part of this. The UN is conditioning human rights compliance, and the development and implementation of associated conduct and discipline frameworks, including for SEA, to financing arrangements for AU operations mandated by the UN (International Crisis Group 2020). This also relates to UN policy developments, orientating the UN towards increased partnerships with regional actors as stated above. The UN is also continuing to work with the AU on policies and mechanisms relating to personnel vetting and screening, a case management system, data collection on allegations and the establishment of an AU database system, accountability, and other measures to assist aligns with UN goals under its Action for Peacekeeping + initiative accountability for CD of peacekeepers, and wherein WPS is also a cross-cutting theme.

How the AU's, SEA, and CD policies are tailored to the AU's needs while also meeting the UN's human rights due diligence demands, and how effectively UN-AU cooperation works in the formulation and implementation of these policies, are important factors that may indicate future UN-AU cooperation in peacekeeping, and more broadly in peace and security initiatives on the African continent. While the AU's policies are largely derivative of the UN's, they are not merely a copy. Some elements of the policies are more ambitious, while other elements are more restrictive, and they differ in rationale, misconduct definitions, assumptions regarding victims, responsible entities, and reporting mechanisms. Policy implementation is the responsibility of the AU, yet the UN must work closely with the AU on the alignment of SEA policies if the UN is to expand cooperation.

AU's CD and SEA Regulatory Framework

The core of the AU's regulatory framework lies within the Peace and Security Council (PSC), established in 2002. The AU peace and security architecture is therefore in its early phases. In the past, AU responses to SEA allegations appeared to be largely ad hoc and reactionary

(Burke 2017a, b; UNSG 2003). One known policy is the non-binding AMISOM-specific SEA policy, which has existed since 2013. This was largely framed on the UN Secretary-General's (UNSG) 2003 Bulletin on Special Measures for Protection from Sexual Exploitation and Abuse (AMISOM 2013). It is unclear whether this policy is still in use with the release of the 2018 system-wide policies on SEA and CD ('AU Policy on Prevention and Response'; 'AU Policy on Conduct and Discipline'). At least prior to the issuance of the AU's 2018 policies, ad hoc Boards of Inquiry ('BOI') were reportedly established by the AU to investigate allegations of SEA by AU peacekeepers (UNSOM and OHCR 2017). However, questions arose around possible bias and their overall adequacy (HRW 2014; Doc AMISOM/HOM/14/343.14, 5). Otherwise, capacity for minor misconduct incidents existed only within the AU Formed Police Units (FPUs) on mission (HRW 2017, p. 68).

2018 AU SEA and CD Policies

In late 2018, the AU's SEA and CD policies were released. Both the SEA and CD policies are to be read conjunctively as they inform one another in terms of standards and processes (SEA Policy, s.3.3, 10.24). Yet, there appears to be little concrete evidence on the extent of these policies' operationalisation, despite efforts to obtain such information via interviews with international officials and an extensive desk-based search. Implementation appears to be slow and lacks transparency. It is possible that progress has stalled due to the COVID-19 pandemic.

Policy Context—Rationale, Assumptions, Definitions, and Scope

The 2018 policies entail various procedures for addressing SEA according to the category of the accused personnel. The two policies appear to have addressed many of the critiques of the UN's approach to SEA (UNGA 2005; UN Doc, 2016, A/71/99). For example, they addressed victims' rights more holistically and set clear time limits for investigations, reflecting on UN experience. However, as discussed below, in some respects the wording is confusing, sometimes inconsistent, and could be considered ambitious in scope, given staffing and funding constraints within the AU. A CD Unit (CDU) and focal points are to be established. This should work some way towards centralising responsibility for

SEA allegations to be tracked. It is not clear, though, if the CDU is operational.

The rationale of the SEA and CD policies is somewhat problematic. The two policies' common rationale focuses on reputation management, including 'image, credibility, impartiality and integrity of the AU' and '[a]ctions to safeguard the image and reputation of the PSO and the AU', in addition to effectiveness of the mission's mandate delivery. This gives the impression that the AU is more concerned about its image than possible SEA victims. However, it is positive that the SEA Policy refers to the protection and involvement of victims. This is also in line with increasing UN focus towards SEA. However, the SEA and CD policies themselves are not formulated with the rationale of protecting victims' rights, as Sabrina Wright discusses in Chapter 5.

Another issue with the SEA Policy is the exact scope of conduct actually prohibited, peacekeeping personnel covered by the policy, and the geographic areas covered by the policy (within the mission host state, or also beyond when peacekeepers are overseas on leave or otherwise). In terms of conduct, the 2018 SEA Policy refers to sexual abuse and sexual violence and provides these with different definitions. The former has an emphasis on coercing, threatening, or forcing the victim to engage in sexual activity, which the policy considers evidence of unequal power relations. This definition is confusingly close to the characteristics of exploitation, as an unequal relationship is not a condition for sexual abuse. The latter is explained in a similar way, but includes 'rape, sexual slavery, enforced prostitution, forced pregnancy, forced sterilization, or any other form of sexual aggression of comparable gravity'. This may mean that sexual violence is considered more serious than sexual abuse. However, the distinction does not seem to make any difference in terms of the response to the conduct set out in the AU's policy. Secondly, 'transactional sex' is defined very widely. It involves sexual relationships wherein the giving of not necessarily predetermined gifts or services plays an important factor. This may have broader implications for relationships and be dependent on the local culture. Yet, whether it is realistic to prohibit all kinds of transactional sex is questionable. Thirdly, the definition of SEA includes 'other forms of humiliating, degrading or exploitative behaviour', but not all humiliating or degrading behaviour is exploitation. Issues around prohibition of all transactional sex have already been the subject of much critique in the academic literature on SEA, and there is a view that the concepts used in policy discourse may undermine victims' agency

by diverting attention from underlying factors such as poverty, social justice issues, and gender inequalities. In addition, the narrow concept of exploitation often used in policy discourse risks prohibiting what might sometimes be ordinary sexual relationships (Higate 2004; Simic 2009; Otto 2007). The AU SEA Policy's provision of two different definitions of sexual exploitation also undermines coherence.

The AU's SEA policy also conceptualises sexual violence and abuse in a problematic, narrow way, focusing solely on sexual violence by men against female victims. This is likely largely based on assumptions that sexual violence is only perpetrated by men against women and girls, yet peacekeeper complicity in SEA has at least also targeted boys. The SEA Policy describes circumstances where sexual abuse occurs as 'under coercive conditions, which are often reflective of unequal power relations and harmful behaviour', and the circumstance where sexual exploitation occurs as when 'a particular person would have had no substantial option' (Sect. 6.2). Male to male abuse and exploitation, or abuse and exploitation involving minors may not be responded to effectively with this policy. This is apparent in the assumption of the vulnerability and lack of education of the victims the policy describes; in the way assistance to victims is discussed; and also in the way that the policy refers to children born 'as a result of misconduct'. Furthermore, the CD Policy seems to assume that SEA is committed exclusively, or at least largely, by military contingents and FPU members, rather than all personnel, including civilian personnel. This is problematic given that previous research indicates that more SEA incidents are committed by civilian personnel than uniformed personnel who are often deployed under stricter conduct and discipline regulations of military institutions (Kihara-Hunt 2017). The assumption that SEA perpetrators are military personnel is reflected in the way in which the CD Policy discusses its rationale, as well as the vulnerability of victims, and the assistance and redress needs of victims. It is also apparent from the processes following misconduct allegations, focusing on States sending personnel. For civilian personnel, Individual Police Officers (IPOs), and consultants/contractors, there is generally no contributing State as they are individually contracted to a post and not sent by a state as a unit as is the case with military contingents and FPUs, as discussed below (UN ECOSOC 2005). In fact, IPOs do not appear at all in the CD Policy.

The type of personnel covered by the two policies is also confusing. The policies apparently cover all peace operations personnel, including consultants, contractors, and local personnel (SEA Policy, s.3.1; CD

Policy, s.3.1). Both policies discuss AU member states deploying personnel, but consultants or contractors are not deployed by their states. Their relationship with the AU is not governed through their States. Moreover, the policies' standards are not incorporated into the bilateral binding legal agreements with deploying States, minimising their standing. The two AU policies set out obligations and responsibilities of countries deploying civilian personnel, which is far-reaching in comparison to equivalent UN policies (SEA Policy, s.15.3; CD Policy, s.8.1.e and 10.10). However, the majority of civilian personnel are deployed under an individual employee contract with the AU and include those who are locally employed.[3] In addition, the AU's, SEA, and CD policies reference 'countries sending civilian personnel' as if the only civilian personnel deployed are foreign nationals. This may be related to the SEA Policy's strong discouragement of sexual relationships between any member of the mission and anyone in the local population (SEA Policy, s.6.4). However, obviously this does not work in relation to local personnel who will often be embedded in the local community and have relationships with members of the local population that they themselves are part of.

The geographic scope of the policies also invites confusion. While the two policies state they apply both inside and outside the 'mission area' (CD Policy, 3.2; SEA Policy, s.3.1) (otherwise known as the host State), the policies assume that peacekeeping personnel are within the mission area and that the codes they are subject to are those that are only applicable in the mission area (SEA Policy, Definition 3 and s.13 (i)). It is unclear whether the policies apply outside the mission area where the peace operation has been deployed, for example when a person goes on leave outside the mission area, and what codes apply outside the mission area. There is also a different interpretation of the geographic scope between the two policies. The CD policy applies to personnel conduct outside the mission area regardless of whether the individual was on an official duty at the time of the offence, applying 'at all times, at the workplace and outside of the workplace, on duty and off-duty, including when on leave' (s.3.2.; s.12.1). This contradicts the SEA Policy, which applies to personnel conduct outside the mission area only when the individual is on an 'official duty and/or performing tasks in the name of the mission or

[3] As given in the SEA Policy's Definition 5, which states "'Civilian Personnel' comprises of all individuals in the service of the PSO… who are not members of the police or military component…".

the AU' (s.3.1). If both policies are to be read conjunctively, this wording needs to be revised for clarity and coherence and in their current existence may provide a convenient loophole to allow states to dodge accountability issues.

More positively, the link between SEA and WPS, as well as the relationship between SEA and inequality, discrimination, and patterns of violence, is clearly written in the SEA policy (s.1.3, 9.1). This is noticeable in comparison to the UN's SEA policy, which lacks reference to such links, and the aforementioned tendency to disconnect considerations around SEA from the WPS agenda.

Immunity and the Status of Personnel

In order to pursue individual accountability for SEA, immunity can work as a legal or practical obstacle. It is therefore important to discuss immunity and personnel status as a determinative factor for immunity. The two AU policies have several unique characteristics. The first is that, as discussed, they assume that civilians, not only military and police, are deployed by contributing States. The second characteristic is that police peacekeepers are generally discussed as FPUs. For example, where the CD policy discusses disciplinary proceedings, it states that disciplinary proceedings should be in situ for police and military. FPUs are treated in the same way as military contingents in terms of their status and immunity. This is different from the UN's approach, where police, including FPUs, are clearly differentiated from military contingents. This may be suitable, given the nature of the police's work in AU missions and the history of sending police to overseas missions under military command. Overall, police peacekeepers in AU policies are imaged as militarised actors.

Immunity Coverage

Like UN peacekeepers, AU peacekeepers are granted immunity from host state jurisdiction. The immunities afforded to individuals depend on the category of AU personnel they belong to. High-ranking members of AU missions, including the Special Representative of the Chairperson or

the Head of Mission (HoM), are given diplomatic immunity in accordance with the OAU General Convention on Privileges and Immunities.[4] Other officials are given Experts on Mission status, which means they are accorded functional immunity (CD Policy, s.8.3.1 and 8.3.2). The meaning of 'Officials' therefore is different from that in the Convention on the Privileges and Immunities of the United Nations ('Convention on the Privileges and Immunities of the United Nations') (1946, p. 16). Civilian personnel are given a unique status in AU missions, governed by the General Convention and Status of Forces Agreement (SOFA) or Status of Mission Agreement (SOMA) (CD Policy, s.9.3). Except for 'Officials', they are subject to legal proceedings in the host State as well as in their country of origin (CD Policy, s.4.9). This is more explicitly stated than in the UN's immunity policy. Where invoking immunity may be against the interest of justice, immunity may be waived by the AU Chairperson (CD Policy, s.9.2).

Military contingent personnel are subject to the Troop Contributing Country (TCC)'s exclusive criminal jurisdiction under Memorandums of Understanding (MOUs) with the TCC, and the Status of Forces Agreement or Status of Mission Agreement (SOFA/SOMA), as is the case with UN peace operations. Unlike in the case of the UN Police, FPUs in AU missions are subject to the contributing State's exclusive criminal jurisdiction and immune from prosecution in the host State (CD Policy, s.11.2). The status and immunity granted to IPOs and Individual Military Officers are to be governed by an agreement between the AU and the sending State, and by the SOFA/SOMA (CD Policy, s.11.3). This leaves a possibility that IPOs are treated differently from FPUs.

Procedure for Dealing with Misconduct Allegations by AU Personnel

Even where it is legally possible to pursue individual accountability for SEA, if the related procedures are non-existent, insufficient, or inappropriate, accountability may not be sought in practice. It is thus important to discuss the procedure of dealing with SEA allegations in the case of the AU. The AU's CD policy entails a set of complicated, sometimes

[4] General Convention on the Privileges and Immunities of the Organization of African Unity. Resolution adopted by Assembly of Heads of State and Government of the AU on 25 October 1965 (Hereinafter 'General Convention').

unclear, and ambitious procedures. It sets out a lengthy, non-exhaustive list of entities within the AU and its peace operations to which an SEA report can be submitted. Beyond the AU itself, other 'designated' entities, including NGOs, are also referred to (CD Policy, s.8.12).[5] SEA allegations should be filtered by the AU's CDU. The CD policy stipulates that this will enable confidential reporting (CD Policy. s.8), but it is not evident how this will operate in practice, not least given the multitude of actors involved. Feasibility is questioned on other points as well. The CD Policy requires the Police Unit Commander or Military Contingent Commander to report all allegations of misconduct to the PC or Force Commander (FC) and the CDU/focal point. It also demands that the HoM share all information regarding all cases of misconduct that they are informed about with the AUC (CD Policy, s.8.2.7, 10.6, 11.6). This means all information, reliable or not, including information concerning minor misconduct. Yet, questions around how feasible this is remain.

Once an allegation is received, procedures for handling the allegation depend on the seriousness of the allegation (with SEA constituting serious misconduct), and on the alleged perpetrator's status. The procedures mirror to some extent that of the UN in terms of the responsibility of military contingent commanders, and indeed those of FPUs. Commanders are obligated to report on and take action against alleged perpetrators of SEA and to inform the Force Commander or Police Commissioner (CD Policy, s. 8.2.4–8.2.5, s.10.4, 11.4, s.10.5, 11.5). Yet, the policies remain ambiguous concerning how to deal with individual military or police personnel, or whether this also falls under the jurisdiction of the national police or military contingent commander. Within the AU mission, the HoM has discretion to instigate a Board of Inquiry (BOI), which will operate as a parallel investigation to any national investigation. This consideration is linked to the seriousness of the misconduct, 'interests of the mission', and reputational concerns (CD Policy, s.10.12, 11.12, 13), rather than victim rights. Where misconduct is substantiated, the BOI can lead to a variety of administrative measures by the AU,

[5] These include, the HoM and Deputy HoM; FC; PC; CDU or focal point; HoM Support; representatives of personnel in mission; supervisory, commanders and chiefs of contingents, components, offices; Offices or Units of Protection, Gender, Human Rights, Child Protection and Civil Affairs; Office of Administration and Human Resources Management; Medical Units; Police Offices; 'Designated Offices and/or officials in the regions'; 'Designated NGOs, Community Organizations and host government offices'; and 'Any other office that the HoM designates'.

such as repatriation, or withholding of mission subsistence (CD Policy, s.10.12–10.16, 11.12–11.16).

One unclear point regarding procedures is those for civilian personnel and consultants and contractors. These personnel are regulated in accordance with the terms of their contract (CD Policy, s.9.3, s.9.8), but it is unclear what the procedure is when a crime is perpetrated. While misconduct can be subjected to AU international disciplinary procedures, including possible review by a Disciplinary Board or a BOI, the HoM,and the Director of Administration and Human Resources Management are all non-judicial mechanisms. The process may result in administrative measures only, since any criminal jurisdiction rests with states. Notwithstanding these issues, the establishment of time limits for investigations is a progressive policy. After specified periods, investigative authority can shift. This can work as an encouraging factor for national actors to take action. These time-limit settings are now integrated in the UN's approach to dealing with SEA in its operations.

Entities Responsible for Implementation of the Policy Framework

These procedures involve numerous actors. In various sections of the 2018 policies, the responsible actors and the extent of their authority or obligations are unclear. A number of entities within and outside the AU system may receive reports of SEA. The Peace Support Operations Centre (PSOC), the WGDD, and the Office of the Special Envoy on WPS are also vaguely referred to as partially responsible for policy guidance, operationalization, and support (SEA Policy, s.1.5, 9.1). A CDU at the headquarters and the mission-level focal points are to be established to provide a confidential reporting mechanism for misconduct. On top of that, the PSC maintains a degree of oversight of and guidance on mission-related conduct and discipline (CD Policy, s.15.2).

The policies require the AUC to develop an implementable work plan, including progress indicators. The AUC is tasked with establishing a 'capacity' on CD at their inception. It must encourage state action wherein nationals commit SEA. It must also work towards sensitisation on CD and SEA policies, and build operationalization capacities. A core AUC task is, then, to ensure the establishment of an effective screening mechanism to prevent deployment or redeployment of 'prior offenders' (CD Policy, s.15.4).

The HoM is another important actor, holding 'overall' responsibility for good CD and implementation of the 2018 policies. While the HoM is to be supported by the CDU, 'others', and a 'multifaceted working group', the policies' language is rather non-specific in this regard. The HoM must ensure proper procedures are in place to deal with misconduct allegations against peace operations personnel. The HoM must also ensure policy dissemination, develop a mission-specific SEA work plan, ensure investigations are conducted when SEA allegations arise, and maintain data on mission-related conduct and discipline allegations (CD Policy, s.15.5). States' responsibilities are unclear with regard to misconduct by civilian personnel. Under CD policy, States sending military contingents and FPUs must screen personnel, vest their commanders with the authority to take action when misconduct arises, investigate allegations, refer cases to national authorities, and update the HoM on conduct and discipline matters. Moreover, States need to appoint a national liaison point for CD matters (CD Policy, s.15.3). Such liaison points may better enable the processing of child support claims, investigations, and subsequent legal processes within national jurisdictions (CD Policy, s.15.3).

Manager's and commanders' responsibilities are also set out in the policies. Both are responsible under the CD policy for taking measures to prevent misconduct and to address it where it arises (s.12.3, 12.4). This mirrors the UN's revised Model MOU, which embeds command responsibility (A/C.5/63/18, Article 7). Command and managerial responsibility have over the years been identified as pertinent to the prevention of, and response to, SEA in the context of UN peace operations (Report of the Special Committee on Peacekeeping Operations 2010). Accordingly, the AU's policies setting out these responsibilities are commendable.

Victim Assistance

Appropriate redress and assistance to victims[6] are at the core of accountability. Here, the term 'redress' means making the wrong (in this case damage caused by SEA) right, including by providing material and symbolic reparations (UN OHCHR 2023). Assistance, on the other hand, has a narrower meaning: mostly material support. In this regard, the AU's SEA and CD policies are detailed in scope on a proposed victim assistance framework. However, issues remain in that the policies lack clarity in places, and certain parts appear overly ambitious. Problematic assumptions regarding victims may also have something to do with these issues.

SEA policy indicates that the AU takes a 'victim-focused approach'. Presumably, what is meant is a 'victim-centred approach'. This concept is commonly used in policy circles dealing with conflict-related sexual violence and in transitional justice discourses. A victim-centred approach advocates for shifting focus from the perpetrator and the crime, to the needs and rights of the victim, including the right to a remedy, and integrating the victim's voice in that process (Freedman 2018). For example, UNHCR's Policy on a Victim-Centred Approach in UNHCR's response to Sexual Misconduct Sexual Exploitation and Abuse and Sexual Harassment states that protection and the rights and dignity of victims are core to any response to sexual misconduct. A key aspect of developing such a response is to ensure that victim voices are listened to regarding their needs, re-traumatization is avoided, victim safety and well-being are prioritised, and systematically focuses on their safety (UNHCR 2020). Indeed, the UN Victim Rights Advocate in recent years has been advocating for a victim-centred approach to victims of SEA by UN peacekeepers, centring victims' voices, dignity, and rights to SEA responses (2019). The AU's policies appear to be influenced by this approach. Nevertheless, the UN lacks a common understanding of what such an approach practically entails (OIOS IED 2021). Some difficulties with applying a victim-centred approach include: ascertaining who a victim is,

[6] Note that the term survivor is favoured by many. In this chapter the term victim is used, as it aligns with the terminology used in AU and UN policy documents. This is not intended to detract from the position of survivors of SEA and their agency, or to victimise them.

determining which victims' voices matter, and recognising the reality that victims' voices and needs differ (Rudling 2019).

The AU SEA Policy acknowledges the right of victims to a remedy, including of children born as a result of SEA. It notes that a remedy may entail 'access to justice, reparations and being informed about the process'. The AU indicated in 2014 in response to the HRW report, that it is working on a compensation policy for SEA victims, but there is no public evidence of progress on this (HRW 2014; AU Letter annex, 3, 7). The AU SEA policy stipulates that outcomes of investigations and any subsequent process 'should' be communicated with SEA 'victims', framing this in non-obligatory language. One would imagine that 'victims' in this context was meant to cover complainants. The policy further recommends that they should be involved in the criminal justice process if possible.

There are then issues of unclear responsibilities amongst numerous actors at multiple levels apparently involved in victim assistance and redress. The SEA Policy stipulates that, where any AU mission personnel are found to have committed SEA, they must provide 'assistance' or 'pay redress' to the victims, which includes their families (s.8.1.d). It is unclear what is meant by this assistance, financial or otherwise, nor how to pursue this. This would need to be facilitated by the AU and sending States. The same policy sets out that the 'AUC, PSOs, P/TCCs and countries sending civilian personnel' should 'consider' cases for assistance. These multiple avenues may actually serve to undermine the provision of assistance and/or redress. It should be made clear in the wording of the SEA and CD policies exactly how and who decides which victims/complainants need assistance and types of assistance required. The term 'consider' further suggests that redress and/or assistance is not a legal right.

Likewise, the SEA policy states that a mechanism, that it may establish in the future, may 'consider' appointing a Victim Advocate (s.10.40). According to the CD policy, responsibility for establishing a mechanism to support victims rests with the HoM, and the establishment of such a mechanism is particularly necessary when IHL or IHRL allegations arise (s.14.7). Yet, criminal conduct may or may not constitute IHL or IHRL violations. The SEA policy states that the HoM should be assisted by the CDU, CD focal point, 'and/or the gender, civil affairs, political or human rights offices or units' (s.14.3). However, it is unclear what this victim support mechanism constitutes. Moreover, the appointment of a Victim Advocate is discretionary, leading again to a lack of clarity. Even

where a Victim Advocate is appointed, they may be drawn from the local community or NGO, which may jeopardise victim confidentiality unless carefully protected. From the wording of the two policies, any assistance mechanism established should at least cover all types of serious misconduct. It would therefore be logical that such a mechanism should not be ad hoc, given the scope of conduct covered.

The problematic assumption in the SEA policy that 'victims' are presented as vulnerable, powerless, disadvantaged, and uneducated further justifies the appointment of a Victim Advocate or 'victim facilitator' in the CD policy (s.14.6.a). However, this generalised portrayal of survivors of SEA as homogenous, passive victims may not be helpful in assisting them because it further entrenches the idea they have limited agency. The use of the term victim also contradicts the two policies' emphasis on a tailored approach to 'victim assistance' since it suggests mechanisms will meet the needs of all (CD Policy, s.14.5, 14.6(a); SEA Policy, s.10.40(a)). Yet this mirrors many of the stereotypes of Sexual or Gender Based Violence (SGBV) victims, foremost seen as vulnerable females, already prevalent in the international humanitarian community (Anholt 2016; Holmes 2013). The SEA policy does not address the victim's informed consent to avail of the assistance of an Advocate, nor their input in choosing one. However, the policy indicates that is good practice to obtain the consent of the victim to provide any assistance or redress (CD Policy, s.14.6(b); SEA Policy, s.10.40(b)). This should be framed in obligatory language.

Under the CD policy, victims have an entitlement to assistance or redress from the perpetrators' country of origin or 'other sources' deemed appropriate. It is not apparent that the AU has sufficient resources to realise assistance from its own resources, especially taking into consideration that both the CD policy and the SEA policy require assistance to be considered for all cases (s.14.6; s.10.40). The CD policy also requires the AUC to provide victims with support in pursuing such claims (SEA Policy, s.10.32). The forms of support the AUC will provide are not elaborated on. The SEA Policy states that the AUC will establish a mechanism to support the provision of assistance and/or redress to victims and their families. However, the policy also states that the primary responsibility for the provision of redress or assistance remains with the state contributing personnel (SEA Policy, s.10.33.). Further clarity is needed if this is to be implemented effectively. Firstly, it is unclear whether this also covers individual police or military personnel. Secondly, it is not apparent whether

the AUC's proposed mechanism will provide actual assistance or redress, or rather merely support assistance/redress provided by the sending State, or possibly the perpetrator. Thirdly, to date, there is no publicly available evidence on a support mechanism has been established. Finally, the authors recommend that primary responsibility for the provision of assistance and/or redress in case of civilian personnel would be better situated with the AUC.

More questions remain. The AU SEA policy is intended to revolve around three considerations in providing assistance or redress: the best interests of victims and children born as a result of SEA; resources available to the peace support operation; and the minimisation of 'disparities amongst similar or comparable cases' (SEA Policy, s.10.30(a)-(c); CD Policy, s.14.6(c),(d),(f)). However, little is known concerning how decisions are expected to be made regarding the best interests of victims and children, by who, and how these decisions are to be balanced with the rights of the child to assistance and redress. In addition, the AU is faced with funding challenges and there are no clear channels of funding dedicated to supporting survivors of SEA (UNSC 2017).

The third consideration is also problematic if it means that SEA victims will get insufficient assistance/redress in a host State where victims of sexual violence generally do not receive much assistance/redress. In Somalia, for example, support to victims of sexual violence is poor, partially due to a lack of safe houses throughout Somalia, gender and customary norms, the need for capacity building of the justice system and service providers on sexual violence, and difficulties with navigating the plural legal system (Legal Aid Providers 2014). If other local victims' experiences of SGBV go unaddressed, does the AU SEA policy hold that such cases are comparable? If it does, are possible victims of SEA committed by AU personnel to be similarly limited? It is not apparent whether the policy is suggesting that assistance/redress must be lowered to match the local reality. Moreover, the rationale of this section is ambiguous, as is how such a comparison/decision is to be made, and how it relates to victims' rights.

One progressive aspect of the AU SEA policy is its explicit acknowledgement of children born as a result of SEA (s.8.1.e.). This may be because gaps in UN policy in this regard spurred calls for change at the UN level (Blau 2016). The AU SEA Policy states that they must be assisted in obtaining child support, 'including through legal, diplomatic and other appropriate means' (SEA Policy, s.10.41). However, the policy

does not further expand on whose responsibility it will be to facilitate this. AU policies are also progressive in the follow-up requirement of victim assistance/redress. The above-mentioned victim support 'mechanism' is intended to follow-up on assistance or redress provided. It is the responsibility of the mission to develop a system to track and follow-up on victim assistance (CD Policy, s.14.8–14.9), and the tracking of victim assistance has been introduced at the UN only in 2019 (Action for Peacekeeping 2019).

Questions also arise concerning the completion of victim assistance. The CD policy requires assistance to be provided until there is an 'outcome' (s.14.2), yet the policy does not indicate what the parameters of this should be. Nor does the policy outline how longer-term implications and lasting damage caused by SEA should be addressed. Read in parallel with the SEA policy, a case would be considered closed once redress is received and acknowledged by the victim, or it is deemed that the victim is fully assisted and can address 'the needs arising from the misconduct independently' (s.10.36). One questionable requirement is that complainants and victims should receive individually tailored assistance, such as logistical, medical, legal, and/or psycho-social support, and safe shelters (CD Policy, s.14.5; SEA Policy, s.10.35). Such assistance would have to be provided by the AUC or mission, and feed into a network of local NGOs and medical care providers, like in the case of the UN (UN Department of Peacekeeping Operations 2005).

The SEA policy notes the need to consult with local communities in reviewing cases and requests for assistance, but how these consultations will be conducted and the impact they may have is not clear in the policy (SEA Policy, s.10.34). Victims themselves should foremost be consulted. The provision of assistance is not a form of reparation,[7] and can be provided to both victims and complainants (SEA Policy, s.10.40.c). It does not amount to recognition of responsibility. Unlike the CD policy, the SEA policy recognises that SEA victims are not homogenous and that their needs and priorities vary. The situation of SEA victims will differ, and intersect with variables such as gender, socio-economic situation,

[7] Within the UN's response, SEA victims have rarely been assisted. Carla Ferstman, 'Reparations for sexual exploitation and abuse in the (post-)conflict context: the need to address abuses by peacekeepers and humanitarian workers', in eds. Carla Ferstman and Mariana Goetz, Reparations for victims of genocide, war crimes and crimes against humanity, Leiden: Brill/Nijhoff, 2020, 271–97.

age, geographic location, capabilities, minority status, empowerment, and other experiences. While not stated in the SEA and CD policies, taking victim agency as the starting point is critical to a victim-centred approach, enabling them to inform the processes, content, and responses to their experiences. The need for a victim-centred approach in addressing sexual violence is increasingly called for in transitional justice and post-conflict state-building contexts where gendered needs are included. In this context, the AU policies appear to be progressive in recognising the need for the victim's voice, possibly because of the AU's empowerment focus in their general policy (Holmes 2020).

Conclusion

This chapter showed how the AU's 2018 CD and SEA policies respond to a gap in the regulation of SEA in AU peace operations. They set out detailed obligations and responsibilities for AU entities and AU troop and police contributing countries. However, the policies are at times confusing, ambiguous, or contradictory, not least in terms of their inclusion of multiple lines of responsibility for enforcement and prevention. Some provisions only state that the AU mission has an obligation to do something (CD Policy, s.14.7, 14.8, 14.9, 15.5.(a)). In such a case, it is unclear whose responsibility each action is—whether the head of mission, the TCC, PCC, or the AU. There is little evidence that some procedures and tools referred to in the Policies, such as the Misconduct Tracking and Analysis Database (MTAD) and Checklist for TCCs/PCCs, are yet in place or are being implemented (CD Policy, s.15.4.(g) and 15.4.1).

This chapter has shown that several issues remain with the AU's SEA and CD policies: their reputation-centred *rationales*, coherence, and transparency in their implementation. It will be necessary to revisit them to clarify the definitions, the scope of the policies, various types of personnel including non-contingent-type personnel, and accountability procedures for each type of personnel, to ensure feasibility.

In addition, the manner in which assistance and redress are conceptualised within the AU's CD and SEA policies is vague, and often the term assistance is used interchangeably with redress, or as an alternative to redress. Moreover, substantive consideration of witness and victim protection measures is missing from the AU's policies. Reformed processes and structures must include a specific Victim Assistance Strategy as well as focal points for the provision of such assistance. This should be supported

by a specific fund for the provision of assistance to SEA victims. An SEA Trust Fund was established for SEA victims at UN level, which has funded several projects focused on the provision of both indirect and more direct support to SEA victims and their communities, outreach, and livelihood support projects, despite being underfunded (OIOS IED 2021). If the AU is to create a similar fund, the regional body should outline clearly the purpose of the fund and indicate how funds would be allocated to assist SEA survivors directly.

In line with UN Security Council Resolution 1888, vetting, screening, and state-written certification of UN military and police personnel deploying in contingents or units are required prior to deployment to UN peace operations, to better ensure that those deployed have not committed human rights or IHL violations, or 'have been repatriated on disciplinary grounds from a UN operation' (UNSC 2009). A similar approach with regards to AU peacekeepers seems warranted.

In conclusion, the AU's SEA and CD policies appear to reflect lessons learned from the UN's experience, adjusted in part towards the AU's needs, but a number of issues remain. Policy implementation seems to be largely left to the AU without much transparency. Currently, the UN has no means, at least publicly, to know how the SEA accountability framework is working in the AU. This makes it difficult for the UN to expand cooperation with AU while strictly observing due diligence. It may take some time, but it is important for the UN to closely work with the AU on the alignment of SEA policies if the UN is to expand cooperation.

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