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**ADDIS ABABA UNIVERSITY**  
**FACULTY OF LAW**  
**SCHOOL OF GRADUATE STUDIES**

**BY**  
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**January 2023**  
**ADDIS ABABA**

**ADDIS ABABA UNIVERSITY FACULTY OF LAW SCHOOL OF  
GRADUATE STUDIES**

**NORMS GOVERNING CRIMINAL ACCOUNTABILITY OF  
AFRICAN UNION PEACEKEEPING FORCES IN SOMALIA  
FOR SEXUAL EXPLOITATION AND ABUSE:-FOCUSING ON  
ETHIOPIAN TROOPS**

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**A THESIS SUBMITTED IN PARTIAL FULFILLMENT FOR  
THE REQUIREMENTS FOR A MASTER OF DEGREE  
OF LAWS /LL.M/**

January 2023  
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**Approval Sheet**

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## **Acknowledgment**

I have received tremendous support and assistance from many people. First and foremost, I am grateful to My God, Almighty, the unfailing Father, for making the journey of life and this LLM research possible.

I would like also to express my gratitude to the members of my large family who never ceased to encourage and support me during my LLM studies. It is my pleasure to record my profound indebtedness to my advisor Dr. Wondwossen Demissie for his unreserved professional guidance. Whatever worthwhile emerges from this study, I owe to his constructive criticism and supervision.

Last but not least, I would like to thank all those that were not willing to assist me since they created in me the desire to work harder and make this research become what is now.

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## Abbreviations

ACRWC	African Charter on the Rights and Welfare of the Child
AMIB	African Union Mission in Burundi
AMIS	African Union Mission in Sudan
AMISOM	African Union Mission in Somalia
AU	African Union
AU PSO	Africa Union Peace Support Operation
AU WGDD	African Union Women Gender and Development Directorate
BOI	Board of Inquiry
CAAC	Children affected by armed conflict
CAT	Committee against Torture
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
ECOWAS	Economic Community of West African States
EU	European Union
FC	Force Commander
FDRE	Federal Democratic Republic of Ethiopia
FDRE-PSTC	Federal Democratic Republic of Ethiopia Peace Support Training Center
FGS	Federal Government of Somalia
GBV	Gender-Based Violence
GC	General Comment
GR	General Recommendation Number
HoM	Head of Missions
HRW	Human Right Watch
IAGAD	Intergovernmental Authority on Development
IDPs	Internally displaced persons
IHL	International humanitarian law
IHRL	International human rights law
MOU	Memorandum of understanding
NGOs	Non-governmental organizations
NIO	National Investigation Officer
OAU	Organization of African Unity
PSC	Peace and Security Council
PSO	Peace Support Operation
PSOD	Peace Support Operations Division
REC	Regional Economic Communities
SADC	Southern African Development Community
SEA	Sexual Exploitation and Abuse
SGBV	Sexual and Gender-Based Violence

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SOMA	Status of Mission Agreement
TCC	Troop contributing country
TFG	Transitional Federal Government
UNHCR	United Nations High Commissioner for Human Rights
UNSC	United Nations Security Council
UN	United Nations

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## **Abstract**

*Sexual exploitation and abuse (SEA) by peacekeepers arise in crisis and conflict settings, where systems of protection, security, and justice break down and women and girls are left particularly vulnerable. The issue of SEA by AU peacekeepers remains a problem in ever-changing regions where conflict dynamics are evolving at every moment. There needs much to be done to implement AU's zero-tolerance policy on the ground to completely eradicate sexual exploitation and abuse caused by its peacekeepers. Likewise, African Union Mission in Somalia (AMISOM) mission has been criticized for sexual and gender-based violence (SGBV) against Somali women and girls that is mandated to protect. There are indeed lot tones of research in this area but little is known regarding criminal accountability of sexual exploitation and abuse committed by Ethiopian troops in the AMISOM mission particularly. Thus, the present study aimed to investigate and assess the respective responsibility of AU and troop-contributing countries to prevent SEA in the AMISOM mission and the applicable legal and policy frameworks that address SEA during peace support operations. The research reviewed reports and investigations on SEA in AMISOM mission by international and regional organizations and also evaluated legal instruments including laws, conventions, and resolutions. In addition, a semi-structured interview was conducted with Ethiopian legal advisor to the AMISOM mission, Ethiopian military Court and Training and Education Dean. According to the study, the current legal and policy frameworks regarding SEA in peacekeeping missions remain to be insufficient where there is no comprehensive law to address sexual abuse with specific provisions for investigation, prosecution, and punishment of the perpetrator. Thus, this research recommends the Ethiopian legislative organ to ensure the appropriateness and adequacy of laws against sexual exploitation and abuse in peacekeeping missions. In addition, the law does not govern how the Ethiopian law enforcement agencies work in cooperation with host states, the AMISOM, and its agencies in bringing suspects to justice. Therefore, Ethiopian military court shall be entitled to assume jurisdiction because violation of jus cogens elements force a states to assume jurisdiction.*

**KEYWORD:** AMISOM, sexual exploitation and abuse, criminal accountability, legal and policy frameworks.



# CHAPTER ONE

## 1.1 Background

Africa has been a hotbed of violent conflicts with increasing civilian casualties and peacekeeping operations that happen frequently.<sup>1</sup> Since the AU's Peace and Security Council (PSC) was fully operational in 2004, it has sent or authorized over sixty-four thousand uniformed peacekeepers (troops and police) to missions on the continent.<sup>2</sup> Over the last half-decade, the AU has undertaken three major peace operations with the approval of United Nation (UN) involving approximately 12,000 peacekeepers at a total cost of approximately \$700 million.<sup>3</sup> Africa is, of course, also a significant troop contributor to UN peace operations, with 34 African countries contributing 28% of the UN's uniformed peacekeepers.<sup>4</sup> Over the course of time, the AU and Regional Economic Communities (RECs) like the Economic Community of West African States (ECOWAS), Intergovernmental Authority on Development (IGAD), and Southern African Development Community (SADC), have also significantly increased their capacity to undertake and manage peace operations.<sup>5</sup> The AU, in particular, has played a leading role by deploying its first peace operations in African Mission in Burundi (AMIB), African Union Mission in Somalia (AMISOM), and African Union Mission in Sudan (AMIS).<sup>6</sup> The African Union Mission in Somalia (AMISOM) was the Union's longest-running, largest, most costly, and most deadly operation.<sup>7</sup>

Following years of political instability and recurring conflicts in Somalia, the AU created AMISOM in January 2007, and the United Nations Security Council (UNSC) endorsed its deployment in February 2007.<sup>8</sup> Its primary mandate was to support the Somali Transitional

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<sup>1</sup> Williams Bove and Elia, *The African Union and Peacekeeping in Africa: Goals, Strategies and Challenges*, Cocodia Jude : Journal of Global Social Sciences , Niger Delta University; June 2020, Volume 1, Number 2, 17-36.

<sup>2</sup> Paul D. Williams. *The African Union's Peace Operations*, *African Security* Vol. 2, No. 2/3 (May-December 2009), pp. 97-118 (22 pages) Published By: Taylor & Francis, Ltd.

<sup>3</sup> Festus Aboagye's, „The African Mission in Burundi: Lessons Learned from the First African Union Peacekeeping Operation“, in *Conflict Trends*, Issue 2/2004, [http://www.accord.org.za/ct/2004-2/CT2\\_2004%20PG9-15.pdf](http://www.accord.org.za/ct/2004-2/CT2_2004%20PG9-15.pdf).

<sup>4</sup> Cedric de Coning 2007, *Peace Operations in Africa: the Next Decade*, NUPI.

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.*

<sup>7</sup> Paul D. Williams, *Joining AMISOM: why six African states contributed troops to the African Union Mission in Somalia*, December 20, 2017, Pages 172-192.

<sup>8</sup> AU PSC Communique, 69th Meeting, 19 January 2007 and UN Security Council, Resolution 1744 (2007) *The Situation in Somalia*, 21 February 2007, S/RES/1744 (2007), available at: <https://www.refworld.org/docid/4600f97e2.html> (Accessed 13 January 2022)

Federal government (TFG), facilitate the provision of humanitarian assistance, assist with the return of displaced populations, create conducive conditions for long-term stabilization, reconstruction, and development in Somalia, and support the reestablishment and training of Somali national forces (*UNSC Resolution 1725, adopted in December 2006*).<sup>9</sup> However, the overall mandates and objectives are still evolving depending on Somalia's changing reality which is reflected in *UN Security Council Resolution 2372(2017)*.<sup>10</sup>

The total number of personnel under AMISOM (including armed personnel and non-armed) was reported around 20,736 and of the 54 AU members, only 6 contributed troops to AMISOM: Uganda (2007), Burundi (2007), Djibouti (2011), Kenya (2012), Sierra Leone (2013) and Ethiopia (2014).<sup>11</sup> With Ethiopian troops taking up to 4,395 of the overall contribution.<sup>12</sup> According to the UN recent report 2021, Ethiopia ranks third in the world and second in Africa, in contributing troops for peace support operations.<sup>13</sup> The report also indicated Ethiopia as a leading contributor of female peacekeepers, with a total of 708 female troops around the world.<sup>14</sup> The AMISOM mission is financially supported by many international actors that support the Federal Government of Somalia (FGS) to stabilize the country, including the AU, UN, European Union (EU), and others that are believed to spend over billions of dollars to finance the overall peace support operation.<sup>15</sup>

As the AMISOM mission had made progress on its three current strategic objectives, namely, reducing the threat posed by Al-Shabaab and other armed opposition groups; providing security to enable Somalia's political process and efforts at reconciliation, and handing over its security responsibilities to the Somali security forces.<sup>16</sup> There are shortcomings and challenges that continue to face the peace support missions; one of the shortcomings seen in the AU PSOs in Somalia is related to SEA allegations by peacekeeping

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<sup>9</sup> UN Security Council, Security Council resolution 1725 (2006) [Somalia], 6 December 2006, S/RES/1725 (2006), available at: <https://www.refworld.org/docid/5821d48f7.html> [accessed 13 January 2022]

<sup>10</sup> UN Security Council, Security Council resolution 2372(2017) [Somalia], 30 August 2017, S/RES/2372 (2017), available at: <https://digitallibrary.un.org/record/1317395?ln=en> [accessed 13 January 2022]

<sup>11</sup> SIPRI Multilateral Peace Operations Database, available on [www.sipri.org/databases/pko](http://www.sipri.org/databases/pko).

<sup>12</sup> Supra note 7.

<sup>13</sup> [https://peacekeeping.un.org/sites/default/files/02-country\\_ranking\\_34\\_jan2021.pdf](https://peacekeeping.un.org/sites/default/files/02-country_ranking_34_jan2021.pdf) [accessed 13 January 2022]

<sup>14</sup> Ibid.

<sup>15</sup> Paul D. Williams, The Positive Impacts and Challenges Facing the African Union Mission in Somalia, December 3, 2019, p.3.

<sup>16</sup> Epon Report, Assessing the Effectiveness of the African Union Mission in Somalia (AMISOM), unpublished 2018.

personnel.<sup>17</sup> Years of conflict and famine in Somalia have displaced tens of thousands of women and girls from their communities, family, and clan support networks that exposed them to different forms of sexual violence.<sup>18</sup> Peacekeepers in AMISOM have been accused of engaging in sex trafficking, soliciting prostitutes, forcing children into prostitution, and having sex with minors.<sup>19</sup> The post-conflict environments in which the AU peacekeeping missions operate are typically characterized by collapsed economies, weak judicial systems, corrupt and ineffective law enforcement agencies, weak or non-existent rule of law, and significant power differentials between peacekeepers and the local populations.<sup>20</sup> These factors significantly increase the vulnerability of local populations to sexual exploitation and abuse by peacekeepers.<sup>21</sup>

Even if the AU and AMISOM foster an organizational culture of “Zero tolerance” and also a policy on prevention and response to SEAs, the African Union peacekeeping troops in Somalia with the act of sustaining peace and order in the country have sexually abused and raped Somali women and children on an extensive scale.<sup>22</sup> Similarly, Ethiopian troops under AMISOM were also alleged of sexual exploitation and abuse against Somalia children.<sup>23</sup>

## 1.2 Statement of the Problem

Sexual exploitation and abuse of girls and children is a global problem and overlooked scenario that occurs in every emergency.<sup>24</sup> Peacekeepers are capable of exerting particular influence in the communities, especially over children and young women.<sup>25</sup> This is mainly because they are armed and provide much-needed physical security within contexts of extreme fragility; the vulnerable groups have low economic status.<sup>26</sup>

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<sup>17</sup> Ibid.

<sup>18</sup> Human Right Watch Report, Somalia: Sexual Abuse by African Union Soldiers Troop-Contributing Countries, Donors Should Promote Justice for Victims, September 8, 2014.

<sup>19</sup> Jehan Kaleeli, *Conflict, Sexual Trafficking, and Peacekeeping*, Oct. 8, 2004, <http://www.refugeesinternational.org/content/article/detail/4146>.

<sup>20</sup> Muna Ndulo, *The United Nations Responses to the Sexual Abuse and Exploitation of Women and Girls by Peacekeepers during Peacekeeping Missions*, *Bkly Jnl of Int'l Law*, 2009, p.4.

<sup>21</sup> Ibid.

<sup>22</sup> Lisa Marie Taylor, *Why Has Rape Become an Epidemic in Somali Society?*, July 2, 2020.

<sup>23</sup> U.N. GAOR, 75th Sess., Secretary-General, *Special Measures for Protection from Sexual Exploitation and Abuse: A New Approach*, Report of the Secretary-General, U.N. Doc. A/71/818, at 63- 64 (Feb. 28, 2017)

<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

In Somalia, there have been several reported allegations regarding human rights violations, particularly by AMISOM peacekeepers. Such acts have created a negative perception of the mission among the Somali people where the mission has failed to fulfill its mandate in protecting the civilians and also failed to gain the people's trust.<sup>27</sup> Various international and national organizations which monitor the status of Human rights had reported sexual exploitation and abuse including rape and other unspecified grave abuses of Human rights against Somali women and girls by AMISOM troops, particularly against internally displaced women and girls.<sup>28</sup>

The lack of procedure within the AU's legal framework on how to make a complaint and to whom, and what the specific process will be thereafter is a very critical and clear gap.<sup>29</sup> There is also little to no information available about SEA or other complaint mechanisms and procedures available with respect to AU peace operations, apart from occasional references to the existing regional organization treaties which talk little about women's and girls' sexual violence in a conflict-related situation.

Generally, AU has not conducted a detailed overall examination of the prevalence of sexual abuse and exploitation throughout its peace operations as well as created statistics, and/or seriously addressed the legal framework governing this type of abusive conduct.<sup>30</sup>

Due to underreporting and absence of data the full scope of sexual violence in Somalia remains unknown.<sup>31</sup> As a consequence of this, AU PSO's reputation is suffering from a lot of flooded cases of SEA allegations from the people they are mandated to protect.<sup>32</sup> In addition, Somalia's perception of the African Union mission is clearly affected as a whole as it failed to protect the civilians.<sup>33</sup>

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<sup>27</sup> International Refugee Rights Initiative, "They Say They're Not Here to Protect Us." Civilian perspectives on the African Union Mission in Somalia (IRRI, May 2017)

<sup>28</sup> Australian Department of Foreign Affairs and Trade (DFAT). (2017, June 13). Country Information Report – Somalia". Retrieved from: <https://www.refworld.org/pdfid/5ae2ecc04.pdf> .(Accessed: 18 January 2022)

<sup>29</sup> Ibid.

<sup>30</sup> Róisín Burke, Due Diligence and un Support for African Union Security Forces Peacekeeper Sexual Violence Exploitation and Abuse, School of Law, University of Canterbury, Journal of international peacekeeping, 21 (2017) 1-61, 2018.

<sup>31</sup> Supra note 30

<sup>32</sup> Supra note 33

<sup>33</sup> Supra note 31.

### 1.3 Research Questions

1. What is the respective responsibility of the AU and troop-contributing countries to prevent and prosecute SEA allegations in AMISOM?
2. What are the legal and policy frameworks that address SEA during peace support operations globally, in Africa and Ethiopia?
3. How adequate are the Ethiopian legal and policy frameworks to deal with SEA allegations?

### 1.4 Objective of the Study

Despite peacekeepers' enormous contributions to and sacrifices for the cause of peace and security, they have been increasingly associated with sexual exploitation and abuse of the vulnerable populations they are mandated to protect.<sup>34</sup> Having this in mind, the objective of the study was;

- To assess the respective responsibility of AU and troop-contributing countries to prevent and prosecute SEA allegations in AMISOM.
- To investigate the applicable legal and policy frameworks of Ethiopia to prosecute and punish the SEAs alleged criminals in AMISOM.
- To evaluate the adequacy of the legal and policy frameworks of Ethiopia to deal with SEA allegations.

### 1.5 Significance of the Study

Breaking the silence regarding sexual exploitation and abuse by peacekeepers is an essential step towards preventing vulnerable women and girls in conflict areas. Legal reform and policy development in peacekeeping operations are very crucial in creating legislations, policies, codes, procedures, and practice standards to prevent girls from being sexually exploited and abused. In connection to that, AU has implemented policies on the prevention and response to SEA during peace support operations.<sup>35</sup> SEA has a negative impact on political, legal, military, and security implications for AU and particularly for troop-contributing countries in a peace support

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<sup>34</sup> Ferstman, Carla. Criminalizing Sexual Exploitation and Abuse by Peacekeepers. *USIP Special Report*, 335, 2013.

<sup>35</sup> AU Policy on Prevention and Response to SEA for PSOs AMISOM, "Policy on Prevention and Response to Sexual Exploitation and Abuse," available on, <http://amisomau.org/wp-content/uploads/2014/01/Easy-to-read-guide-AMISOM-SEA-POLICY.pdf> September 2013.

operation.<sup>36</sup> AU considers SEA as serious misconduct and has a “zero tolerance” approach towards it.<sup>37</sup>

There are indeed lot tones of research in this area but little is known about criminal accountability of sexual exploitation and abuse committed by Ethiopian troops in the AMISIOM mission particularly. Thus this paper investigates the national legal instruments adopted and similar regional and international frameworks and policies ratified by Ethiopia to address SEA during peace support operations that are essential to hold the alleged suspects accountable. The finding of the study will pave the way for ensuring AU peacekeeping operations are trusted by the population, particularly by the victims, and also bring transparency and accountability to meet the overall peacekeeping mandate though suggesting measures that should be taken against alleged suspects involved in SEA. Similarly, it will also help the AU and troop-contributing countries in enforcing the “Zero Tolerance” policy during peace support operations. Furthermore, the findings of the present study will insight particularly the legislative body of Ethiopia to address the shortcomings of Ethiopian legal frameworks in place to address SEA offenders in PSO context. It will also be used as a stepping stone for further researches on SEA in AU peacekeeping operations.

## **1.6 Scope of the Study**

The study was limited to the African Union peace support operation in Somalia (AMISOM). The study also focused on the criminal accountability of AU and troop-contributing countries regarding SEA in the specified mission. Moreover, the study investigated the international, regional, and national applicable legal and policy frameworks in relation to SEA in a peacekeeping operation. In addition, the paper evaluated the adequacy of the Ethiopian legal and policy frameworks to prosecute and punish their troops in PSOs.

## **1.7 Methodology**

The article assessed the criminal accountability of AU and troop-contributing countries regarding SEA in AMISOM and also investigated the applicable international, regional and national legal and policy frameworks that address SEA in peacekeeping operations.

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<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

International and regional legal instruments including laws, conventions, and resolutions ratified by Ethiopia as well as legislations adopted by the Ethiopian government to prosecute and punish troops who had committed SEA during PSO were evaluated. Security Council Resolutions and policy of AU on prevention and response to SEA for peace support operations were cited.

Data collection was done through semi-structured interviews and their responses were incorporated to illustrate the practice and challenges in upholding the accountability of Ethiopian troops in peace support operations. In addition, the response given by responsible stakeholders to address the responsibility of AU and TCC including Ethiopia in relation to preventing SEA allegations in AMISOM was incorporated.

Desk review of reports and investigations on SEA in AMISOM mission by international and regional organizations, namely: Human Rights Watch, Australian Department of Foreign Affairs and Trade (DFAT), EASO Country of Origin Information Report, Country Reports on Human Rights Practices: Somalia, Africa Union, and other organizations reports were used to gather information on trends of sexual exploitation and abuse committed by TCC including Ethiopia troops.

## **1.8 Limitation of the Study**

The study was limited to the African Union peacekeeping mission in Somalia and a single SEA accusation report by UNHCR against Ethiopian troops in AMISIOM. These limitations hinder the study from explicitly discussing the practice of investigating and prosecuting Ethiopian troops in AMISIOM peace support operations. Likewise, the paper didn't analyze the practice of the Ethiopian legal system in prosecuting and punishment of military in PSOs in general.

Even though the problem of SEA in AMISOM mission has been researched and investigated by the United Nations (UN), Human Rights Watch (HRW), Australian Department of Foreign Affairs and Trade (DFAT), EASO Country of Origin Information Report, Country Reports on Human Rights Practices: Somalia, there is a scarcity of reports particularly focusing on the responsibility and accusation against Ethiopia as a troop-contributing country.

## **1.9 Organization of the Study**

**Chapter one** focused on introducing African Union peace support operations and explains the statement of the problem, the significance of the study, the objective of the study, the research question, methodology, and limitation of the study.

**Chapter two** discussed about AMISOM mission, including the recent resolution regarding its mandate and objective and collaborators of the AMISOM mission as well as troop-contributing countries' relation to the mission. Additionally, SEA allegations against the AMISOM troop are discussed by referring to international reports. The respective responsibility of AU and troop-contributing countries to prevent and prosecute SEA allegations in the AMISOM mission has been included.

**Chapter three** analyzes different International and regional legal and policy frameworks which address sexual exploitation and abuse during peacekeeping. This chapter also includes national legal instruments that criminalized sexual offenders during PSOs. In addition, the paper deals with the adequacy of Ethiopian legal and policy frameworks in place to address SEA in peacekeeping particularly.

**Chapter four** includes, based on the discussion, the researcher provided a conclusion as well as recommendations.



## CHAPTER TWO

### 2. AMISOM and Sexual Exploitation and Abuse allegation

#### 2.1 AMISOM background

The African Union (AU) in its Charter embodies the aspirations, togetherness, and determination of the African people through enhancing peace, prosperity, human rights, and freedoms for the inhabitants of the African continent.<sup>38</sup> In realizing AU's core objective, the AU established the PSC to promote peace, security, and stability in Africa and undertake peace support operations (PSOs).<sup>39</sup> The authority emanated from the Constitutive Act, AMISOM was created by the African Union's Peace and Security Council in January 2007 and was approved by the United Nations Security Council.<sup>40</sup> AMISOM is largely credited with driving Al-Shabaab out of Mogadishu and major population centers for over fourteen years.<sup>41</sup> With more than 20,736 soldiers operating in Somalia, AMISOM is a multi-national peacekeeping that is comprised of troops drawn from Uganda, Burundi, Djibouti, Kenya, Sierra Leone, and Ethiopia.<sup>42</sup>

Ethiopia has a long history in Somalia and its troops have been in and out of the country since the late 1990s.<sup>43</sup> Besides Uganda and Burundi, Ethiopia is the top troop contributor to AMISOM. In 2021, the African Union Mission in Somalia (AMISOM) has recognized Ethiopian soldiers and awarded AU medals of Honor, for their contribution to the restoration of peace and stability in Somalia.<sup>44</sup>

As per the UN Security Council Resolution 2372 (2017) AMISOM is mandated to pursue strategic objectives like; enabling the gradual handing over of security responsibilities from AMISOM to the Somali security forces contingent on the abilities of the Somali security forces

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<sup>38</sup> Ibid

<sup>39</sup> AU Constitutive act, Article 4(h): The right of the Union to intervene in a Member State pursuant to a decision for the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity; Article 4(j) the right of Member States to request intervention from the Union in order to restore peace and security.

<sup>40</sup> Supra note 8.

<sup>41</sup> COL L. Bortoluzzi Garcia, AMISOM – Background of Conflict, available on, <https://amisom-au.org>, accessed on September 11, 2020.

<sup>42</sup> SIPRI Multilateral Peace Operations Database, available on [www.sipri.org/databases/pko](http://www.sipri.org/databases/pko).

<sup>43</sup> Colin Robinson, The African Union Intervention Force Will Stay in Somalia, but with Whose Troops, 10 August 2021.

<sup>44</sup> Ethiopian troops awarded AU medals for contributing to peace and stability in Somalia, Available on <https://amisom-au.org/2021/05/ethiopian-troops-awarded-au-medals-for-contributing-to-peace-and-stability-in-somalia/>

and political and security progress in Somalia; reduce the threat posed by Al-Shabaab and other armed opposition groups and assist the Somali security forces to provide security for the political process at all levels as well as stabilization, reconciliation, and peace building in Somalia.<sup>45</sup> Even if the AU mandate for AMISOM was set to run out in December 2021, the Security Council has adopted a new resolution 2614 (2021) reauthorizing the African Union Mission in Somalia (AMISOM) until 31 March 2022.<sup>46</sup> This resolution authorizes AMISOM to take all necessary measures in full compliance with participating States' obligations under international law, including IHL and international human rights law (IHRL), and in full respect of the sovereignty, territorial integrity, political independence, and unity of Somalia, to carry out its mandate.<sup>47</sup>

From April 1, 2022 African Union Transition Mission in Somalia (ATMIS) has replaced the AMISOM for an initial period of 12 months. It is a multidimensional mission which is authorized by the African Union and mandated by the United Nations Security Council.<sup>48</sup> ATMIS has a clear mandate to fully implement the Somali Transition Plan (STP), a strategic plan that details the handover of security responsibilities from the African Union to the Federal Government of Somalia.<sup>49</sup> The new UNSC Resolution 2628 (2022) requests ATMIS to prevent and respond to sexual violence in conflict, and to take into account these specific concerns throughout the activities of all ATMIS components, and to ensure that risks of sexual violence in. The resolution requests the African Union and troop- and police-contributing countries to screen personnel, undertake risk assessments, deliver all relevant training to personnel, to carry out timely investigations into allegations, to hold perpetrators accountable, and to repatriate units where there is credible evidence of widespread or systemic sexual exploitation or abuse by members.<sup>50</sup>

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<sup>45</sup> Ibid.

<sup>46</sup> Security Council Reauthorizes African Union Mission in Somalia for Three Months, Unanimously Adopting Resolution 2614 in 2021.

<sup>47</sup> Ibid

<sup>48</sup> UN Security Council, *security council resolution 2628 (2022)*(Adopted by the Security Council at its 9009th meeting), 31 March 2022, S/RES/2628 (2022)

<sup>49</sup> UN Security Council, *security council resolution 2628 (2022)*(Adopted by the Security Council at its 9009th meeting), 31 March 2022, S/RES/2628 (2022), Article 22.

<sup>50</sup> UN Security Council, *security council resolution 2628 (2022)*(Adopted by the Security Council at its 9009th meeting), 31 March 2022, S/RES/2628 (2022), Article 34.

The AU, U.N, and Somali governments have created a relationship to decide and address issues relating to strategic objectives, mandate, size, and composition of the AMISIOM.<sup>51</sup> For the African Union (AU), AMISOM was the longest, largest, most expensive, and deadliest peace operation.<sup>52</sup> Since its inception, AMISIOM has created multilateral and bilateral relations with different stakeholders. The relationship between UN and AMISIOM is based on three thematic areas that provide logistical support, political as well as financial support. AMISIOM's relationship with the EU emphasized allowance, training, and other indirect support to the mission personnel.<sup>53</sup> The AMISIOM relationship with bilateral partners like China, the UK, Japan, Canada, and the US is based on providing financial assistance, security force assistance, and training for the troop-contributing countries.<sup>54</sup> AMISIOM's relationship with TCC is a crucial partnership with six African countries where each country contributes a portion of troops for defeating Al-Shabaab and stabilizing Somalia's security situation.<sup>55</sup> Thus, AMISOM remains the crucial military force in protecting the Somali government where the troop-contributing countries have the greatest influence over the future of the mission.<sup>56</sup>

## **2.2SEA allegations**

Despite peacekeepers' enormous contributions to and sacrifices for the cause of peace and security, they have increasingly been associated with sexual exploitation and abuse (SEA) of the vulnerable populations they are mandated to protect.<sup>57</sup> In 2003, the UN secretary-general issued a policy document that prohibits peacekeepers from engaging in sexual exploitation and abuse.<sup>58</sup> These policies explicitly define and prohibit peacekeepers from exchanging any money, goods, or services for sex.<sup>59</sup> In addition, the recent resolution 2614 (2021) requests AMISOM to stress the need to prevent sexual exploitation and abuse and requests the African Union and troop-

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<sup>51</sup> Paul D. Williams, Lessons for "Partnership Peacekeeping" from the African Union Mission in Somalia, International Peace Institute, October 2019.

<sup>52</sup> Paul D. Williams, Joining AMISOM: why six African states contributed troops to the African Union Mission in Somalia, Published online: 20 Dec 2017, Pages 172-192.

<sup>53</sup> Ibid.

<sup>54</sup> Ibid.

<sup>55</sup> Ibid.

<sup>56</sup> Robinson C. The African Union Intervention Force Will Stay in Somalia, but with Whose Troops? (August 2021)

<sup>57</sup> Supra note 39.

<sup>58</sup> The UN secretary-general's 2003 Bulletin on special measures for protection from sexual exploitation and sexual abuse; ST/SGB/2003/13 and U.N. Secretary-General, Secretary-General's Bulletin Observance by United Nations Forces of International Humanitarian Law, §7 paragraph 7.4, ST/SGB/1999/13 (Aug. 6, 1999).

<sup>59</sup> Ibid.

contributing countries to screen personnel, undertake risk assessments, deliver all relevant training to personnel, protect and support the relief and recovery of survivors who report abuse, and to carry out timely investigations into allegations, to hold perpetrators accountable, and to repatriate units where there is credible evidence of widespread or systemic sexual exploitation or abuse by those units.<sup>60</sup>

Somalia women and girls faced sexual exploitation and abuse perpetrated mainly by Somalia government security officers and AMISOM peacekeepers.<sup>61</sup> AMISOM troops have been accused of committing violations of IHL and IHRL, including sexual violence.<sup>62</sup> As AMISOM troops have a significantly higher income and access to goods than many Somalis women and girls who are living in internally displaced places.<sup>63</sup> The soldiers use a range of strategies, including humanitarian aid, medical assistance, or water, to force vulnerable women and girls into sexual activity. As a result of this, the soldiers in Somalia threaten the women that report rape and exploitation.

The UN Security Council Resolutions 2093 and 2124, request AMISOM “to take adequate measures to prevent sexual violence, and SEA, by applying policies consistent with the United Nations zero-tolerance policy on SEAs and address allegations of misconducts in its peacekeeping mission respectively.<sup>64</sup> The Organization is at the cutting edge of endeavors to reform and democratize the governance of states wracked by conflict and to promote as well as advance respect for Human rights requires transparency in government and accountability of public officials to the people they serve. Therefore, regarding the criminal responsibility of AU

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<sup>60</sup> UN Security Council, Resolution 2614 (2021) on authorization to the Member States of the African Union to maintain the deployment of the African Union Mission in Somalia (AMISOM) until 31 Mar, 2022, S/RES/2614 (2021), available at: <https://digitallibrary.un.org/record/3952152?ln=en> [accessed 13 January 2022]

<sup>61</sup> Global Education, Sexual Violence in Mogadishu: „Ending Impunity is Far from Reality on the Ground“. Available on <http://www.globaleducationmagazine.com/>

<sup>62</sup> Sunil Suri, “Barbed wire on our heads” Lessons from counter-terror, stabilization and state building in Somalia, Jun 2016.

<sup>63</sup> “The Power These Men Have Over Us” Sexual Exploitation and Abuse by African Union Forces in Somalia; September 8, 2014.

<sup>64</sup> UN Security Council, Security Council resolution 2093 (2013) [on the situation in Somalia], 6 March 2013, S/RES/2093,(2013), <https://www.refworld.org/docid/5139a40e2.html> and UN Security Council, Security Council resolution 2124 (2013) [on the deployment of the African Union Mission in Somalia (AMISOM) until 31 Oct. 2014], 12 November 2013, S/RES/2124 (2013): <https://www.refworld.org/docid/52908e9e4.html> [accessed 13 January 2022]

in relation to SEA, it has a regulatory and follow-up position in the implementation of its policies.<sup>65</sup>

As stated under the Status of Mission Agreement (SOMA), Somalia relinquishes jurisdiction over AMISOM troops who commit crimes on Somali territory, including sexual abuse and exploitation.<sup>66</sup> Paragraph 54 of the agreement specifies that all AMISOM personnel, including locally recruited Somalis, are immune from local legal processes in the country of deployment for any acts they perform in their official capacity.<sup>67</sup> The troop-contributing countries have exclusive jurisdiction over their personnel for any criminal offenses they commit in the host state (Paragraph 55(b)).<sup>68</sup>

Hence, troop-contributing countries take primary responsibility for guaranteeing the troops on the ground carry out their mission in consideration of the civilian populace's rights and prosecutions respectively.<sup>69</sup> All TCCs are responsible for tackling impunity and ensuring accountability for the acts of SEA.<sup>70</sup> Thus, before deployment, a signed memorandum of understanding (MoU) between the AU and each troop-contributing country guarantees TCC to investigate and prosecute allegations of misconduct and crimes of their respective troops in a course of the PSO.<sup>71</sup> The MoUs further hold troop-contributing countries responsible for the training and discipline of their forces and for holding their forces to account for misconduct, including through suspect prosecutions.<sup>72</sup> Also, there are situations where TCC MoUs empower the AU to initiate investigations into allegations of abuse and exploitation where the TCC is unable or unwilling to do so.<sup>73</sup> Even in cases where a Host State is in a position to request permission from the Special Representative of the Secretary-General to exercise criminal

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<sup>65</sup> African Union Policy on Conduct and Discipline for Peace Support Operations, 2018.

<sup>66</sup> Status of Mission Agreement (SOMA) between the Transitional Federal Government of Somalia and the African Union on AMISOM. Addis Ababa 6th March 2007; Article X.

<sup>67</sup> Status of Mission Agreement (SOMA) between the Transitional Federal Government of Somalia and the African Union on AMISOM. Addis Ababa 6th March 2007; Article XXII, 54.

<sup>68</sup> Status of Mission Agreement (SOMA) between the Transitional Federal Government of Somalia and the African Union on AMISOM. Addis Ababa 6th March 2007; Article XXII, 55(B)

<sup>69</sup> Status of Mission Agreement (SOMA) between the Transitional Federal Government of Somalia and the African Union on AMISOM. Addis Ababa 6th March 2007; Article XXII, 55.

<sup>70</sup> Status of Mission Agreement (SOMA) between the Transitional Federal Government of Somalia and the African Union on AMISOM. Addis Ababa 6th March 2007; Article XX (48).

<sup>71</sup> Supra note 68.

<sup>72</sup> Ibid.

<sup>73</sup> Memorandum of understanding between the Commission of the African Union and the Government of the Republic of Kenya as Troops and Resources Contributing Country to the African Union Mission in Somalia, June 02, 2012.

jurisdiction, it may choose not to do so for an assortment of reasons. The host government may see it as returning a favor to the “saviors”.<sup>74</sup> There may also be misled by the MoU and think that it confers absolute immunity, or it may lack the capacity to deal with cases involving difficult issues (immunity and waiver) before the already overstretched courts.<sup>75</sup> There are also additional issues in the host state exercising criminal jurisdiction and compatibility with human rights law, either because the criminal code itself is not compatible with it or because the way in which the criminal code is enforced is not congruous with it.<sup>76</sup>

However, there is a lack of upholding perpetrators accountable regarding sexual exploitation and abuse by AMISOM forces and many cases would go unreported.<sup>77</sup> There are several challenges in facing to uphold perpetrators accountable. First, victims may be reluctant to report SEA as a result of fearing stigmatization and reprisals from their families about sexual abuse.<sup>78</sup> The victims did not believe in the authorities as they would be able or willing to take any effective action.<sup>79</sup> In addition, peacekeeping troops not being able to be prosecuted by AU or the host state makes the procedure process extremely difficult to follow. Even though African Union troop-contributing countries have exclusive jurisdiction over military contingents for any criminal offenses they commit in host countries, they do not always hold perpetrators accountable due to a lack of political will, and also there may be practical difficulties in holding trials, like accessing evidence or legislative barriers.<sup>80</sup> Moreover, the TCC failed to diligently follow up on allegations reported to them, which leads to undermining the collection of evidence and accountability of perpetrators.<sup>81</sup>

Ethiopia has a long history of participation in peace operations dating back to the 1950s.<sup>82</sup> Since then, Ethiopia has always endorsed the principle of maintaining peace and collective security both in the context of the UN and AU. As a result of this principle, Ethiopian troops currently are

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<sup>74</sup> Ibid.

<sup>75</sup> Ibid.

<sup>76</sup> Ibid.

<sup>77</sup> Supra note 33.

<sup>78</sup> Supra note 65.

<sup>79</sup> Ibid.

<sup>80</sup> Legal Action Worldwide (LAW). OCHCR Report on “Protecting the rights of the child in humanitarian situations”

<sup>81</sup> Ferstman, C., 2017. Sexual Exploitation and Abuse in Peacekeeping Operations: Improving Victims’ Access to Reparation, Support and Assistance.

<sup>82</sup> Solomon A. Dersso, Providing for Peacekeeping, Peacekeeping Contributor Profile: Ethiopia (2013), available on <http://www.providingforpeacekeeping.org/2014/04/03/contributor-profile-ethiopia/>

deployed in five UN Peacekeeping operations (Mali, Haiti, Darfur, Abyei, and South Sudan), and UN-mandated AU missions (AMISOM).<sup>83</sup> Prior to deployment of each mission, Ethiopian troops have received pre-deployment training at the Federal Democratic Republic of Ethiopia Peace Support Training Center (FDRE-PSTC) on matters of the AUC Code of Conduct, Gender, Human Rights, Child protection, rule of law, and other related robust training are among other.<sup>84</sup> Like the rest of the TCC, Ethiopia also has exclusive jurisdiction and responsibility to investigate and establish accountability against its peacekeepers who commit SEA. In this regard, it has tried to establish procedures to deal with its forces' misconducts.<sup>85</sup>

In 2016, United Nations High Commissioner for Human Rights (OHCHR) received 20 allegations, 17 by forces deployed in the Central African Republic, and the remaining three allegations involved members of military contingents of the AMISOM. Of the reported rape cases, two of the allegations were against the Ethiopian military contingent in the AMISOM mission.<sup>86</sup> According to the report, two children were raped with fourteen alleged perpetrators involved.<sup>87</sup> Even if UNHCR has formally communicated the allegations to the Ethiopian government and AU for the purpose of triggering investigations and judicial proceedings, Ethiopia hasn't taken any action to further investigate the allegation.<sup>88</sup> The interviewed officials that have awareness of SEA accusations against Ethiopian troops in AMISOM labeled it as a false allegation. As the Ethiopian Military Court public prosecutor stated, this allegation has been made for many reasons.<sup>89</sup> One is, economic motive, as most of the women that leave around the Ethiopian contingent camp are very poor and they usually tend to use sexual violence allegations against the Ethiopian troops as a way of business.<sup>90</sup> The community leader also

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<sup>83</sup> United Nations Peacekeeping, Summary of Contributions to UN Peacekeeping by Country, Mission and Post. Police, UN Military Experts on Mission, Staff Officers and Troops (June 30, 2017), available on [http://www.un.org/en/peacekeeping/contributors/2017/jun17\\_3.pdf](http://www.un.org/en/peacekeeping/contributors/2017/jun17_3.pdf) [accessed 13 January 2022]

<sup>84</sup> Interview with Kidir Ababulga, Training and Education Dean; Ethiopian Peace Support Training Center (September. 23, 2021) and William J. Durch, Katherine N. Andrews, and Madeline L. England, with Matthew C. Weed, Improving Criminal Accountability in United Nations Peace Operations, Report from the project on rule of law in post-conflict settings future of peace operations program ,June 2009 Stimson center report no. 65 rev. 1

<sup>85</sup> Ibid.

<sup>86</sup> U.N. GAOR, 75th Sess., Secretary-General, Special Measures for Protection from Sexual Exploitation and Abuse: A New Approach, Report of the Secretary-General, U.N. Doc. A/71/818, at 63- 64 (Feb. 28, 2017)

<sup>87</sup> Ibid.

<sup>88</sup> Ibid.

<sup>89</sup> Interview with Major Desalegn Deka, Ethiopian military Court; Public Prosecutor and former probes Marshall in Darful (September. 23, 2021).

<sup>90</sup> Ibid.

pushes the women to settle for compensation rather than a proper legal proceeding.<sup>91</sup> The prosecutor further added that if there was a strong allegation against the Ethiopian troops the AU would have questioned the Ethiopian government and this hasn't been done so far.<sup>92</sup>

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<sup>91</sup> Ibid.

<sup>92</sup> Ibid.



## CHAPTER THREE

### 3. Applicable norms

In every peacekeeping operation, we often see rules, regulations, and laws that set direction as to how the missions should be carried out. In a nutshell, a legal framework is the set of rules or laws that influence the actions, tasks, and conduct of a given peacekeeping operation and its personnel.<sup>93</sup> As stated above, the primary legal authority for AU peace support operation (PSO) derives from the Constitutive Act of the African Union. Some of the specific rules governing the PSO are a combination of the Security Council resolution setting the mandate of the operation, international law, the law of the troop-contributing state, and the host state's laws.<sup>94</sup>

From the point of legitimacy and accountability, the legal framework for a given peacekeeping operation has immeasurable importance. Its importance is notable when the military contingent is aware of its existence and followed the guidelines accordingly. In the course of the PSO, Peacekeeping personnel have a responsibility to ensure special protection of certain groups who are vulnerable or who suffer discrimination, such as women, minorities, children, refugees, and internally displaced persons (IDPs).<sup>95</sup> These frameworks guide peacekeeping personnel in their official functions and personal conduct when they execute their missions' obligations.<sup>96</sup> Therefore, a legal framework must be identified and understood by the peacekeepers on the ground to provide certainty to the peacekeeping force and avoid the perceived need to attack the local population; the very people the operation was designed to protect and support.<sup>97</sup>

Most violations of international human rights and humanitarian law by non-United Nations forces are usually monitored and reported by OHCHR and other NGOs.<sup>98</sup> As this office doesn't have mandates to investigate suspects, the allegations of SEA are left without remedy and

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<sup>93</sup> Lindsey Cameron, *The Legal Basis for Peacekeeping/Peace Operations from Part II - The Legal Framework of UN Peace Operations and the Use of PMSCs*, Cambridge University Press: 06 October 2017.

<sup>94</sup> Nicola Johnston, *Inclusive Security, Sustainable Peace: A toolkit for Advocacy and Action; Peace Support Operations 2017*, p.23.

<sup>95</sup> Wirtz, A.L., Pham, K., Glass, N. *et al.* Gender-based violence in conflict and displacement: qualitative findings from displaced women in Colombia. *Confl Health* 8, 10 (2014). available on <https://doi.org/10.1186/1752-1505-8-10>

<sup>96</sup> *Ibid.*

<sup>97</sup> Muluka Shifa, *Rape Under the Blue Helmets: Ethiopia's Responsibility to Combat Sexual Exploitation and Abuse By its Peacekeepers*, unpublished, September 2019.

<sup>98</sup> Róisín Burke, *Due Diligence and un Support for African Union Security Forces Peacekeeper Sexual Violence Exploitation and Abuse*, University of Canterbury, *Journal of international peacekeeping* 21 (2017), 2018, 1-61.

justice. Thus, AU has a responsibility to put adequate procedures, structures, policy documents, administrative directives, and practices in place to ensure an environment that is not conducive to sexual violence, exploitation, sexual transactions with beneficiaries of assistance, and impunity for sexual abuse in its PSOs.<sup>99</sup> On the ground, responsibility for stopping incidents of sexual violence and ensuring that suspected perpetrators are fully and promptly investigated depends on the establishment of legal frameworks and policies from the context of AU as well as the troop-contributing countries.<sup>100</sup>

### **3.1 Legal and Policy Frameworks on SEA in PSOs**

As described earlier, AU does not undertake any peacekeeping operation without clear authority to do so. It directs the actions or tasks of the peacekeeping operation as well as promotes and protects Human Rights and other international laws. The AU has an AMISOM-specific legal framework and policies that address the prevention of sexual exploitation and abuse by a peacekeeper in peace support operations.<sup>101</sup> There are also other policies, Mission Directives, Standard Operating Procedures as well as a regulatory framework that are implemented within the AMISOM mission to address SEA allegations. The legal framework and policies for the AU PSO mission in Somalia are governed by the Constitutive Act of the African Union, The United Nations Charter, SOMA and Rules of Engagement (ROE), and other guidelines that are implemented throughout peacekeeping operations.<sup>102</sup> The troop-contributing countries play a significant role in outlining legal frameworks for the peace support operation they take part in. Similarly, the Ethiopian Government implements guidelines in accordance with the overall mission to direct as well as control its military contingency, some of which are reflected in the national proclamations and acts.<sup>103</sup> However, there is a significant gap in legislative provisions that specifically address SEA in PSO.

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<sup>99</sup> AU Policy on Prevention and Response to SEA for PSOs AMISOM, “Policy on Prevention and Response to Sexual Exploitation and Abuse,” available on, [http://amisomau.org/wp-content/uploads/2014/01/Easy-to-read-guide\\_AMISOM-SEA-POLICY.pdf](http://amisomau.org/wp-content/uploads/2014/01/Easy-to-read-guide_AMISOM-SEA-POLICY.pdf) September 2013.

<sup>100</sup> Ibid.

<sup>101</sup> African Union Policy on Conduct and Discipline for Peace Support Operations; 2018.

<sup>102</sup> “The Power These Men Have Over Us” Sexual Exploitation and Abuse by African Union Forces in Somalia; September 8, 2014.

<sup>103</sup> Muluka Shifa, Rape Under the Blue Helmets: Ethiopia’s Responsibility to Combat Sexual Exploitation and Abuse By its Peacekeepers, unpublished, September 2019.

Some of the international and regional Legal and Policy Frameworks that protect women from SEA in PSO include but are not limited to, the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), UN Security Council Resolutions, Maputo Protocol, Kampala Convention, African Charter on the Rights and Welfare of the Child (ACRWC), The Solemn Declaration on Gender Equality in Africa (SDGEA), AU Constitutive Act, AU Policy on Conduct and Discipline.

### **3.2 International Legal and Policy Frameworks**

#### **A. The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)**

The CEDAW Convention constitutes an international bill of rights for women where it creates binding legal obligations regarding women's equal enjoyment with men on civil, political, economic, social, and cultural rights.<sup>104</sup> As per the Ethiopian laws, any international treaties signed and ratified by the House of People Representatives become parts of the national laws.<sup>105</sup> Thus, Ethiopia has ratified CEDAW in 1981 as part of the law of the land.<sup>106</sup>

The Committee on the Elimination of Discrimination against Women, in its recommendation no. 30, paragraph 1 provide authoritative guidance to state parties on legislative, policy, and other appropriate measures to ensure full compliance with their obligations under the Convention to protect, respect, and fulfill women's human rights.<sup>107</sup> Article 1-3 and article 5(a) of the convention depicts violence against women and girls as a form of discrimination prohibited by the Convention and as a violation of human rights. Multiple perpetrators of conflict-related gender-based violence may include members of government armed forces, non-state armed groups, and peacekeeping personnel. The failure to prevent, investigate and punish all forms of gender-based violence, in addition to other factors such as ineffective disarmament, demobilization, and reintegration processes, can also lead to further violence against women in post-conflict periods. It also prevents, investigates, and punishes all forms of gender-based

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<sup>104</sup> Francesco Bertolazzi, *Women with a Blue Helmet: The Integration of Women and Gender Issues in UN Peacekeeping Missions*; 2010.

<sup>105</sup> Constitution of the Federal Democratic Republic of Ethiopia, 1995, Proc. No 1, Neg. Gaz. Year 1 No. 1. Art.13(2) of The FDRE Constitution.

<sup>106</sup> Available on <https://www.un.org/press/en/2004/cedaw.doc.htm>.

<sup>107</sup> Committee on the Elimination of Discrimination against Women, *General Recommendation Number 30 on Women in Conflict Prevention, Conflict and Post-Conflict Situations, CEDAW/C/GC/30, 2013. Para. 1.*

violence, in particular, sexual violence perpetrated by state and non-state actors, and implements a policy of zero tolerance. In addition, the state parties must ensure women's and girls' access to justice, adopt gender-sensitive investigative procedures to address SEA and conduct gender-sensitive training, and adopt codes of conduct and protocols for the military, including peacekeepers.<sup>108</sup> Whenever a peacekeeper commits violence against women in a PSO, it violates the very basic obligations of the state under CEDAW and other international Human rights instruments. This means states that have ratified this convention would be deemed to be in breach of their commitment in the course of peace support operations.

In the committee's recommendation no. 19, paragraph 6 explicitly defines discrimination against women including gender-based violence. Such an act of violence may breach that state's obligation under general international Human rights law and under other conventions in addition to this convention.<sup>109</sup> According to article 6, as wars and armed conflicts lead to increased prostitution and sexual assault of women it requires specific protective and punitive measures.<sup>110</sup> Thus, under article 2(e) the Convention calls on state parties to take measures to suppress all forms of traffic in women and exploitation of women committed by individuals or as a public act, which includes acts of SEA by soldiers in peacekeeping missions. It further elaborates states may also be responsible for the breach of obligation if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence and provide compensation.<sup>111</sup>

Therefore, Ethiopia has the obligation to uphold, prevent, investigate as well as punish suspects who have violated this very law whether in the course of PSO or any other conflict within its territory or outside of its territory.

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<sup>108</sup> Committee on the Elimination of Discrimination against Women, *General Recommendation Number 30 on Women in Conflict Prevention, Conflict and Post-Conflict Situations*, CEDAW/C/GC/30, 2013. Para. 34-38.

<sup>109</sup> Committee on the Elimination of Discrimination against Women, *General Recommendation No. 19 on Violence against women*. CEDAW/C/GC/19, 1992. Para. 6

<sup>110</sup> Committee on the Elimination of Discrimination against Women, *General Recommendation No. 19 on Violence against women*. CEDAW/C/GC/19, Article 6, Para. 13-16.

<sup>111</sup> Committee on the Elimination of Discrimination against Women, *General Recommendation No. 19 on Violence against women*. CEDAW/C/GC/19, 1992, Para. 8-9.

## B. Geneva Conventions and their Additional Protocols

IHL undoubtedly gives extensive protection to women.<sup>112</sup> Article 2 of the provision states the convention shall be implemented in peacetime and also apply to all cases of declared war or of any other armed conflict which may arise between two or more of the high contracting parties.<sup>113</sup> Among the approximately 560 articles in the Geneva Conventions of 1949 and the Additional Protocols of 1977, about 40 are of specific concern to women.<sup>114</sup>

Article 3(1)(c) of the 1949 Geneva Conventions provides that in the case of armed conflict not of an international character occurring in the territory of one of the high contracting parties, each party to the conflict shall be bound to outrage upon personal dignity, in particular humiliating and degrading treatment.<sup>115</sup> Similarly, article 27 of the Geneva Convention IV provides that women shall be especially protected against any attack on their honor, in particular against rape, enforced prostitution, or any form of indecent assault.<sup>116</sup>

In general terms the convention benefits women's and girls on their basic principle of Human Rights, including respect for life and physical and moral integrity, particularly forbidding coercion, corporal punishment, torture, collective penalties, reprisals, pillage, and the taking of hostages.<sup>117</sup> The second additional protocol provisions further stipulate protection for women where an attack on their honor, rape, enforced prostitution, or any form of indecent assault.<sup>118</sup> Therefore, as this convention and additional protocol exhaustively set out civilian protection rights in the course of an armed conflict or post-conflict, every AU military personnel who are a party to this Convention shall recognize and observe the special protections owed to women.<sup>119</sup>

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<sup>112</sup> United Nations, Vienna Convention on Consular Relations, 24 April 1963, : <https://www.refworld.org/docid/3ae6b3648.html>

<sup>113</sup> Ibid.

<sup>114</sup> Françoise Krill, The Protection of Women in International Humanitarian Law Article, International Review of the Red Cross, No. 249, 31-12-1985.

<sup>115</sup> International Committee of the Red Cross (ICRC), *Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)*, 12 August 1949; Article 3(1)(c), available at: <https://www.refworld.org/docid/3ae6b36d2.html> [accessed 13 January 2022].

<sup>116</sup> International Committee of the Red Cross (ICRC), *Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)*, 12 August 1949; Article 27, available at: <https://www.refworld.org/docid/3ae6b36d2.html> [accessed 13 January 2022].

<sup>117</sup> Supra note 118.

<sup>118</sup> Second additional protocol to Geneva convention; Art. 27, Para 2, C. IV; Art. 75 and 76, P.I.

<sup>119</sup> Supra note 60.

## **C. UN Security Council Resolutions**

### **Security Council Resolutions 2124 (2013)**

The resolution under paragraph 10 further reiterates paragraph 13 of resolution 2093 (2013) on the strengthening of women and children's protection in AMISOM operations and activities. It requests the AU to advance efforts to implement a system to address allegations of misconduct, which includes clear mechanisms for receiving and tracking allegations, as well as for following up with troop-contributing countries on the results of the investigations and disciplinary actions taken as applicable and requests the United Nations to redouble its efforts to advise and provide guidance to the AU in this endeavor.<sup>120</sup>

### **Security Council Resolution 2093 (2013)**

Paragraph 14 of resolution 2093 (2013) requests AMISOM to take adequate measures to prevent sexual violence, and sexual exploitation and abuse, by applying policies consistent with the United Nations zero-tolerance policy on sexual exploitation and abuse in the context of peacekeeping.<sup>121</sup> In addition, paragraph 13 requests AMISOM to strengthen child and women's protection in its activities and operations, including through the deployment of a child protection adviser and a women's protection adviser, within its existing civilian component to mainstream child and women's protection within AMISOM.<sup>122</sup> Hence, it's well known and suggested that incorporating women in the PSO as a troop or as a decision-making body would mitigate SEA offenses.

## **D. UN Due Diligence Policy for Non-United Nations Security Forces**

Article 17(2) of the Protocol relating to the Establishment of the Peace and Security Council, stipulates, where necessary, recourse will be made to the UN to provide the necessary financial, logistical, and military support for the African Union's activities in the promotion and maintenance of peace, security, and stability in Africa, in keeping with the provisions of Chapter

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<sup>120</sup> UN Security Council, *Security Council resolution 2124 (2013) [on the deployment of the African Union Mission in Somalia (AMISOM) until 31 Oct. 2014]*, 12 November 2013, S/RES/2124 (2013), available at: <https://www.refworld.org/docid/52908e9e4.htm> [accessed 13 January 2022], paragraph 10.

<sup>121</sup> UN Security Council, *Security Council resolution 2093 (2013) [on the situation in Somalia]*, 6 March 2013, S/RES/2093 (2013), available at: <https://www.refworld.org/docid/5139a40e2.html> [accessed 13 January 2022], paragraph 14.

<sup>122</sup> UN Security Council, *Security Council resolution 2093 (2013) [on the situation in Somalia]*, 6 March 2013, S/RES/2093 (2013), available at: <https://www.refworld.org/docid/5139a40e2.html> [accessed 13 January 2022], paragraph 13.

VIII of the UN Charter.<sup>123</sup> In another word, by the declaration of the UN Charter whenever there is an issue of peace at the international level, the UN will help fund the AU PSO. Therefore, in a process of failing to uphold the international law the UN will seize the support once it finds out the contribution is being inadvertently used for the commission of grave violations of IHL, refugee law, and/or human rights.<sup>124</sup> Thus, whenever there is a commission of SEA which is a “Zero Tolerance” within the frameworks of the UN, the organization will stop funding the AMISOM missions as a last resort.

In addition to the above international instruments, other UN Human rights bodies, such as the Human Rights Committee and the Committee against Torture, have also made it clear that States parties’ obligations under the International Covenant on Civil and Political Rights 1966 (ICCPR) and the Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment 1984 (CAT) include eliminating public and private violence against women where regional human rights bodies have reached similar conclusions under their general human rights conventions.<sup>125</sup> As a result of this, the AU has embarked on a process of developing policies and guidelines as well as establishing systems, structures, and mechanisms to ensure that its PSOs are managed in accordance with internationally accepted norms and standards, including by implementing the provisions relating to the protection of civilians and responsibility to protect.

### **3.3 African Union Legal and Policy Frameworks**

#### **E. Maputo Protocol: Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa**

At the regional level, the need of tackling sexual violence and its consequences in PSO is becoming more widely recognized. The Maputo Protocol, for example, which is the cornerstone instrument for the protection of women's human rights in Africa, contains multiple clauses requiring state parties to prevent, protect, and hold perpetrators of sexual violence against

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<sup>123</sup>UN PSC, Article 17(2).

<sup>124</sup> Róisín Burke, Due Diligence and un Support for African Union Security Forces Peacekeeper Sexual Violence Exploitation and Abuse, School of Law, University of Canterbury, *Journal of international peacekeeping* 21 (2017) 1-61, 2018.

<sup>125</sup> Ibid.

women accountable.<sup>126</sup> States parties are also expected to provide financial and other resources to execute and monitor initiatives aimed at preventing and eradicating violence against women under the Maputo Protocol.<sup>127</sup>

Maputo Protocol had around 7 articles that mainly emphasize women, peace, and security rights. As women have the right to participate in the political and decision-making process, the states must promote equal participation of women in political life through affirmative action, enabling national legislation and other measures.<sup>128</sup> States should combat all forms of discrimination against women through appropriate legislative, institutional, and other measures.<sup>129</sup> Thus, states should adopt and implement appropriate measures to prohibit the exploitation or degradation of women and ensure the protection of every woman's right to respect for her dignity and protection of women from all forms of violence.<sup>130</sup> If there is sexual violence against women, the states must identify the causes and consequences of violence and take appropriate measures to prevent, eliminate and punish such violence.<sup>131</sup>

As war frequently leads to sexual violence, article 11(3) of the Maputo Protocol mandates safeguarding asylum seekers, refugees, returnees, and IDPs from all types of violence, rape, and other forms of sexual exploitation.<sup>132</sup> The article further states that these acts should be classified as war crimes, genocide crimes, or crimes against humanity and that those responsible should be prosecuted.<sup>133</sup> In general, the protocol recognizes that accountability, protection against abuses, and equality for women are in place at the highest level on the continent.

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<sup>126</sup> African Union, *Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa*, 11 July 2003, Articles 4, 5(d), 11(3), 22(b) and 23(b), available at: <https://www.refworld.org/docid/3f4b139d4.html> [accessed 13 January 2022]

<sup>127</sup> African Union, *Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa*, 11 July 2003, Art 4(2)(i) and 26(2), available at: <https://www.refworld.org/docid/3f4b139d4.html> [accessed 13 January 2022]

<sup>128</sup> African Union, *Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa*, 11 July 2003 Articles (9), available at: <https://www.refworld.org/docid/3f4b139d4.html> [accessed 13 January 2022]

<sup>129</sup> African Union, *Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa*, 11 July 2003 (2), available at: <https://www.refworld.org/docid/3f4b139d4.html> [accessed 13 January 2022]

<sup>130</sup> African Union, *Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa*, 11 July 2003 Articles (3), available at: <https://www.refworld.org/docid/3f4b139d4.html> [accessed 13 January 2022]

<sup>131</sup> African Union, *Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa*, 11 July 2003, Articles (11), available at: <https://www.refworld.org/docid/3f4b139d4.html> [accessed 13 January 2022]

<sup>132</sup> African Union, *Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa*, 11 July 2003, Article 11(3), available at: <https://www.refworld.org/docid/3f4b139d4.html> [accessed 13 January 2022]

<sup>133</sup> *Ibid.*



## **F. Kampala Convention: African Union Convention on Protection and Assistance of Internally Displaced Persons in Africa**

The Kampala Convention is the world's first and only regional legally enforceable treaty for the protection and aid of IDPs, who are frequently subjected to sexual and other forms of violence while attempting to exercise their basic rights.<sup>134</sup>

IDPs are particularly prone to armed forces and militia organizations' manipulation and recruitment and hence serve as the main vehicle for the continuation of armed conflict and broad destabilization.<sup>135</sup> The Kampala Convention under article 9.1 (d) depicts states parties shall protect the rights of IDPs regardless of the cause of displacement by refraining from, and preventing SGBV in all its forms, notably rape, enforced prostitution, sexual exploitation, and harmful practices, slavery, recruitment of children and their use in hostilities, forced labor, and human trafficking and smuggling.<sup>136</sup> In addition article 7(5)(f) states members of armed groups shall be prohibited from forcibly recruiting persons, kidnapping, abduction or hostage-taking, engaging in sexual slavery, and trafficking persons, especially women and children.<sup>137</sup>

The convention primarily aimed to provide for the respective obligations, responsibilities, and roles of armed groups, non-state actors, and other relevant actors concerning the prevention of internal displacement and protection of, and assistance to, internally displaced persons. Thus, state parties to the convention are responsible for preventing and mitigating sexual and gender-based violence in all its form against women.

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<sup>134</sup> Wirtz, A.L., Pham, K., Glass, N. *et al.* Gender-based violence in conflict and displacement: qualitative findings from displaced women in Colombia. *Confl Health* 8, 10 (2014). <https://doi.org/10.1186/1752-1505-8-10>

<sup>135</sup> Ibid.

<sup>136</sup> African Union, African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa ("Kampala Convention"), 23 October 2009, Article 9.1 (d), available at: <https://www.refworld.org/docid/4ae572d82.html> [accessed 13 January 2022]

<sup>137</sup> African Union, African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa ("Kampala Convention"), 23 October 2009, Article 7(5) (f) available at: <https://www.refworld.org/docid/4ae572d82.html> [accessed 13 January 2022]

## **G. The African Charter on the Rights and Welfare of the Child (ACRWC)**

The African Charter on the Rights and Welfare of the Child (ACRWC) was adopted by the Organization of African Unity (OAU).<sup>138</sup> Article 32 of the Charter created the ACERWC whose function is, inter alia, to interpret provisions of the ACRWC in line with the broad mandate of promoting and protecting the rights contained therein.<sup>139</sup>

Article 16 (1) provided that state parties to the present Charter shall take specific legislative, administrative, social, and educational measures to protect the child from all forms of torture, abuse, neglect, or maltreatment including sexual abuse. The charter under article 22 (1) on armed conflicts describes state parties shall undertake to respect and ensure respect for the rule of IHL applicable in armed conflicts that affect children. Further stipulated in article 22(3) state parties in accordance with their obligations under IHL, protect the civilian population in armed conflicts and shall take all feasible measures regarding the provision of justice such as the judiciary, the prosecution, and the investigation to ensure the protection and care of children who are affected by armed conflicts.<sup>140</sup>

Under article 27 on sexual exploitation, the charter obliges state parties to protect the children from all forms of sexual abuse and exploitation. The states in particular shall prevent a child from being induced, coerced, or encouraged to engage in any sexual activity, as well as the use of children in prostitution or other sexual practices, and the use of children in pornographic activities, performances, or materials.<sup>141</sup> As sexual violence is extremely frequent in armed conflicts and crises, the perpetrators of these crimes are rarely held responsible for their actions.<sup>142</sup> If it is alleged that members of a peacekeeping operation have committed acts of sexual violence during their mission, the personnel must immediately be repatriated to their country of origin to face prosecution and be sentenced according to the laws of TCC .<sup>143</sup> The

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<sup>138</sup> African Charter on the Rights and Welfare of the Child; available on <https://www.acerwc.africa/general-comments/> [accessed 13 January 2022]

<sup>139</sup> The African Committee of Experts on the Rights and Welfare of the Child (ACERWC); Article 32.

<sup>140</sup> The African Committee of Experts on the Rights and Welfare of the Child (ACERWC); Article 22 (3).

<sup>141</sup> The African Committee of Experts on the Rights and Welfare of the Child (ACERWC); Article 27 (3).

<sup>142</sup> Ibid.

<sup>143</sup> The African Committee of Experts on the Rights and Welfare of the Child (ACERWC) General Comment on No 7 :on Art. 27 of “SEXUAL EXPLOITATION, para 110.

article also indicates legal and policy frameworks should be reviewed and where necessary adapted to rapidly changing realities concomitant with developments in the digital world.<sup>144</sup>

## **H. The Solemn Declaration on Gender Equality in Africa (SDGEA)**

The declaration calls for AU member states' continual action toward achieving gender equality and reinforcing their commitment to international and regional women's rights instruments.<sup>145</sup> It also addresses state responsibility for tackling violence against women and gender-based discrimination.<sup>146</sup> The declaration incorporates 6 thematic areas including governance; peace and security; Human rights; health; education; economic empowerment to increase the representation and participation of women in peace processes and to address issues that are necessary for eliminating SEA in AU PSOs.<sup>147</sup> Furthermore, the declaration reinforces existing legislation or legal mechanisms to make gender-based violence a crime and punish perpetrators more severely as well as strengthen policies and provide adequate institutional and financial support to address the needs of victims along with witnesses and rehabilitation of perpetrators.<sup>148</sup>

Although states are largely responsible for developing national action plans to fulfill the commitments in this provision, most including Ethiopia have failed to incorporate it in the national action plan, particularly in the inclusion of women in PSO.<sup>149</sup>

## **I. AU Constitutive Act**

Under a decision of the assembly in respect of grave circumstances, namely war crimes, genocide, and crimes against humanity Article 4(h) of the AU Constitutive Act stipulate the rights of the union to intervene in a member state.<sup>150</sup> This intervention circumstance creates an avenue for the vulnerable group to be protected from crimes against humanity. One of the crimes that have been elevated as a war crime is "Rape".<sup>151</sup> Article 4(1) of the same act incorporates the

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<sup>144</sup> Ibid.

<sup>145</sup> Solemn Declaration on Gender Equality in Africa (SDGEA).

<sup>146</sup> Solemn Declaration on Gender Equality in Africa (SDGEA), paragraph 4.

<sup>147</sup> Solemn Declaration on Gender Equality in Africa (SDGEA).

<sup>148</sup> Ibid.

<sup>149</sup> Interview with Kidir Ababulga, Training and Education Dean; Ethiopian Peace Support Training Center (September. 23, 2021).

<sup>150</sup> AU constitutive Act, Article 4(h).

<sup>151</sup> Luca Poltronieri Rossetti, Intra-party sexual crimes against child soldiers as war crimes in Ntaganda. „Tadić moment“ or unwarranted exercise of judicial activism; Sep 23, 2019.

promotion of gender equality within the organization's aims.<sup>152</sup> Following this, the AU has established the African Union Women Gender and Development Directorate (AU WGDD), which has developed a plan on centralizing gender in the work of the AU, including peace operations.<sup>153</sup> Moreover, the Directorate had developed a Gender Training Manual for African Peacekeepers, which incorporates topics such as conflict-related SGBV, child protection, and SEA for AU PSOs.<sup>154</sup> However, less has been depicted on the implementation of the training manual in peace support operations.<sup>155</sup>

## **J. AU Policy on Conduct and Discipline for PSOs**

Burke's study stated that discussions are ongoing on developing an AU level Conduct and Discipline Framework for the AU Peace Support Operations, and policy documents are internally in circulation for further development.<sup>156</sup> The one that is available policy is also limited to AMISOM PSO.<sup>157</sup> This policy outline standard of conduct and discipline expected of military, police, and civilian personnel in AU PSOs.<sup>158</sup> It is an effort by the AU to ensure that all personnel serving in AU PSOs uphold the highest standards of conduct, behavior, integrity, and accountability in the implementation of their missions' mandates.<sup>159</sup> Recognizing the TCC's right to develop national codes of conduct for serving in AU PSOs, the policy serves as the minimum standard of conduct that the AU requires from its mission personnel.<sup>160</sup>

Furthermore, the policy outline expected conducts from the military personnel to be in line with professionalism, discipline, and a dignified manner as well as respecting the civilians' Human Rights, International laws, and local laws at the same time.<sup>161</sup> Additionally, any peacekeeper, violating Rules of Engagement, Directives on the use of force, Detention SOPs, and other mission-specific documents that generally reflect IHL and IHRL obligations, constitute serious

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<sup>152</sup> Organization of African Unity (OAU), *Constitutive Act of the African Union*, 1 July 2000, Article 4(1), available at: <https://www.refworld.org/docid/4937e0142.html> [accessed 13 January 2022]

<sup>153</sup> Róisín Burke, Due Diligence and un Support for African Union Security Forces Peacekeeper Sexual Violence Exploitation and Abuse, School of Law, University of Canterbury, *Journal of international peacekeeping* 21 (2017) 1-61, 2018.

<sup>154</sup> *Ibid.*

<sup>155</sup> *Ibid.*

<sup>156</sup> *Ibid.*

<sup>157</sup> *Ibid.*

<sup>158</sup> African Union Policy on Conduct and Discipline for Peace Support Operations; 2018.

<sup>159</sup> *Ibid.*

<sup>160</sup> *Ibid.*

<sup>161</sup> *Ibid.*; Article 43 and 44.

misconduct and are grounds for disciplinary sanctions and criminal prosecution by TCC.<sup>162</sup> In connection to this, Article 5.4 (B) tries to address sexual abuse as serious misconduct and puts further approachable mechanisms through prevention, enforcement, and remedial action.<sup>163</sup>

### **K. Status of Mission Agreement (SOMA)**

As per the SOMA, military personnel to the AU peacekeeping that have committed suspect offenses in host countries will be subject to the exclusive jurisdiction of the sending states.<sup>164</sup> The prosecution, as well as investigations of the peacekeepers implicated in SEA allegations once substantiated, is the responsibility of the member states.<sup>165</sup> Article VI of the SOMA further requires all AU personnel to respect local and international laws, including the Geneva Conventions of 1949.<sup>166</sup>

As the host state doesn't have the jurisdiction to prosecute peacekeepers who commit criminal offenses such as sexual exploitation and violence, the national capacity and expertise to investigate and prosecute acts of sexual violence remains one of the main impediments to ensuring accountability for such crimes.<sup>167</sup> As the host state is where the crimes took place and where the witnesses and evidence are to be found, holding the trial in the host state would also have the most concrete impact on the affected victims.<sup>168</sup> Further articles accord the TCC to take all the necessary steps to investigate, prosecute and punish peacekeepers that have committed sexual violence, but most tend to fail to prosecute their troops once the case is reported back to the TCC.<sup>169</sup> As the interviewee, Ethiopian Peace and Security training and Education Dean, Ethiopian Military Court public prosecutor, and Ethiopian legal advisor to the AMISIOM mission, stated even though HRW and other organizations alleged Ethiopian troops in SEA during PSOs in AMISOM, they aren't aware of any cases reported to the Ethiopian government.<sup>170</sup>

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<sup>162</sup> Ibid; Article 47 and 48.

<sup>163</sup> Ibid; Article 5.4 (B).

<sup>164</sup> Art 54 of the Status of Mission Agreement (SOMA) between The transitional FGS and AU on AMISIOM.

<sup>165</sup> Ibid.

<sup>166</sup> Ibid; Article VI (8).

<sup>167</sup> Ibid; Article XX (48).

<sup>168</sup> Carla Ferstman, *Criminalizing Sexual Exploitation and Abuse by Peacekeepers*, United States Institute of Peace, 2013

<sup>169</sup> Ibid; Article XX (48).

<sup>170</sup> Interview with kedir Ababuga, Training and Education Dean, Ethiopian Peace Support Training Center (September. 23, 2021), Interview with Major Desalegn Deka, Ethiopian military Court; Public Prosecutor and

## L. AMISOM Policy on Prevention and Response to SEA

In line with the UN Zero Tolerance policy AMISOM has a policy on prevention and response to SEA.<sup>171</sup> As it hasn't been annexed to TCC MoUs the policy is usually referred to as guidance documents that have no legal binding effect.<sup>172</sup> The Policy state that SEA committed by AMISOM personnel is referred to as gross misconduct and therefore, grounds for repatriation and termination of deployment from AMISOM.<sup>173</sup>

The Policy tries to address what constitutes SEA and what the expected behavior of AU Mission personnel entails. It also stipulates the establishment of appropriate reporting mechanisms for the victims to report their compliance. Additionally, core principle has also been incorporated for every AU personals to uphold. These are to promote and protect women's rights, women empowerment, gender equality, and gender mainstreaming as well as to prohibit sexual violence in all its forms. The policy also tries to cover a whole lot of issues regarding, compensations/assistance, and cooperation with different organs within the AU as well as implementations of different types of training to address SEA.

One of the disciplinary mechanisms to cope with SEA in PSO was the establishment of a Board of Inquiry (BOI) by AU troop-contributing countries, which conducts investigations at the HQ or contingent level.<sup>174</sup>TCC normally establishes this BOI to investigate military misconduct when charges are made.<sup>175</sup> These investigations are generally focused on obtaining facts and evidence about charges that are unrelated to SEA military misconduct.<sup>176</sup>Sexual harassment claims against non-military personnel are normally investigated at the headquarters level, whilst sexual harassment allegations against AMISIOM personnel are investigated by AMISIOM's

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former probes Marshall in Darful(September. 23, 2021) and Interview with Major Chalachew, Ethiopian legal advisor to the AMISIOM mission (September. 23, 2021).

<sup>171</sup> AU Policy on Prevention and Response to SEA for PSOs AMISOM, "Policy on Prevention and Response to Sexual Exploitation and Abuse," Art 4 (a), available on, [http://amisomau.org/wp-content/uploads/2014/01/Easy-to-read-guide\\_AMISOM-SEA-POLICY.pdf](http://amisomau.org/wp-content/uploads/2014/01/Easy-to-read-guide_AMISOM-SEA-POLICY.pdf) September 2013

<sup>172</sup> Róisín Burke, Due Diligence and un Support for African Union Security Forces Peacekeeper Sexual Violence Exploitation and Abuse, School of Law, University of Canterbury, Journal of international peacekeeping 21 (2017) 1-61, 2018.

<sup>173</sup> AU Policy on Prevention and Response to SEA for PSOs AMISOM, "Policy on Prevention and Response to Sexual Exploitation and Abuse," Art 6, available on, [http://amisomau.org/wp-content/uploads/2014/01/Easy-to-read-guide\\_AMISOM-SEA-POLICY.pdf](http://amisomau.org/wp-content/uploads/2014/01/Easy-to-read-guide_AMISOM-SEA-POLICY.pdf) September 2013

<sup>174</sup> Róisín Burke, Due Diligence and un Support for African Union Security Forces Peacekeeper Sexual Violence Exploitation and Abuse, School of Law, University of Canterbury, Journal of international peacekeeping 21 (2017). 1-61, 2018.

<sup>175</sup> Infra note 201.

<sup>176</sup> Ibid.

disciplinary boards.<sup>177</sup> Procedurally, once the investigations are gathered and completed, the HQ will communicate with the AU's Peace Support Operations Division (PSOD) for a final decision on administrative response.

Upon receipt of a report of misconduct, the contingent Commander is required to notify the Force Commander (FC) promptly to report the allegation that has been brought to his/her attention within a reasonable time.<sup>178</sup> If the misconducts are serious, with the receipt of the recommendations from the Board of Inquiry (BOI), the FC will take appropriate administrative disciplinary actions, which in this case will be reparation and termination of deployment with AU PSC.<sup>179</sup> Following this report, the AU will communicate with the TCC to take appropriate measures.<sup>180</sup> As a result of this, if the AU is made aware that no action has been taken by the TCC, the AUC will bring the matter to the attention of the PSC for consideration of future possible action to be taken.<sup>181</sup>

The AU compliance and accountability framework for IHL, IHRL creates conducive environments to sets out steps and approaches for policy development, review, and effective implementation of IHL, Human rights and conduct, and discipline obligations.<sup>182</sup> This includes policies and processes for preventive measures during planning, training, and monitoring as well as response and accountability mechanisms at the mission levels to address allegations and violations if they occur. AU mandate processes for PSO, ROE, and AMISIOM Gender Unit are among the others where SEA preventive measures are implemented during a mission. This mechanism tries to regulate SEA by putting guidelines for mission operations and conducts of the military operations as well as conducting training for AMISOM personnel.

In January 2018 at the AU Headquarters in Addis Ababa, Secretary-General António Guterres acknowledged the need to ensure better preparation for peacekeeping forces. While strengthening training for peacekeepers is only part of the solution for making missions more effective in areas like preventive work on sexual exploitation and abuse, and protection of civilian practices; more need to be done in relation to sustaining the training.

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<sup>177</sup> Ibid.

<sup>178</sup> African Union Policy on Conduct and Discipline for Peace Support Operations, 2018, Article 5.4 (B).

<sup>179</sup> Ibid.

<sup>180</sup> Ibid; Article 10.16.

<sup>181</sup> Infra note 202.

<sup>182</sup> Infra note 210.

The responsibility for training military personnel lies with both the AU and troop-contributing countries. The training takes three forms, pre-deployment, during, and post-deployment. The pre-deployments focus on enlightening the troops on the basic elements of HR, IHL, and GBV. Ensuring that peacekeeping forces receive comprehensive training on relevant standards, the nature and causes of abuses, as well as consequences of violations of these standards can be an important measure for preventing such abuses.

Similarly, the FDRE-PSTC took the mandate of training Ethiopian peacekeepers on the basic principle of international as well as regional Human rights instruments in the course of PS missions.<sup>183</sup> The Peace and Security Training and Education Dean stated that there are three types of training given to the Ethiopian peacekeeping troops currently, Pre-deployment training, On mission training, and Post-deployment training. The pre-deployment training occurs prior to deployment and is given by the Ethiopian government in Dire Dawa city. The training takes 3 months duration of regularly for every person that is deployed under the Ethiopian peacekeeping mission. Having in mind, one peacekeeper only serves one year in a PS mission.<sup>184</sup> Induction or on-mission training occurs at the mission level and is carried out by the AU gender staff.<sup>185</sup> There are also some instances where the Ethiopian governments send Gender Experts on the mission to train Ethiopian peacekeepers on issues related to SEA and GBV.<sup>186</sup> Finally, there is Post-deployment training which is given to the returning troops.<sup>187</sup> The training takes a duration of two weeks before the troops integrate with the society.<sup>188</sup> As the Academic Dean further stated, this post training has been conducted at a research-level where the returned troops' experiences are evaluated in relation to, the gaps within the mission, and their respective troop conducts are thoroughly evaluated.<sup>189</sup> As a result, this post-deployment has been taken as a Good Practice with different regions as well as UN PSOs in addressing GBV in PSO.<sup>190</sup>

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<sup>183</sup> Muluka Shifa, Rape Under the Blue Helmets: Ethiopia's Responsibility to Combat Sexual Exploitation and Abuse By its Peacekeepers, September 2019.

<sup>184</sup> Interview with kedir Ababuga, Training and Education Dean, Ethiopian Peace Support Training Center (September. 23, 2021).

<sup>185</sup> Ibid.

<sup>186</sup> Ibid.

<sup>187</sup> Ibid.

<sup>188</sup> Ibid.

<sup>189</sup> Ibid.

<sup>190</sup> Ibid.



The Peace and Security training and Education Dean stated that the training curriculum is adopted in consideration of the national as well as international human rights instruments that particularly address women's protection in peacekeeping missions.<sup>191</sup> The training also gives overall information on the social context, culture, gender, and religious sphere where the mission will be deployed.<sup>192</sup>

In addition to the training, AU's Gender, Peace, and Security Programme is targeted at supporting the implementation of gender mainstreaming across AU activities, including in the Peace and Security Department.<sup>92</sup> As a result of this the AMISIOM has established Gender Units in peace operations and deployed women to that effect. What has remained peripheral in the geopolitical calculations for mitigating SEA in PSO are the gender dimensions of the intervention process by external powers in intrastate armed conflicts. AMISOM has also recognized that female soldiers provide a meaningful contribution to solidifying peace and security gains in any mission. This suggests that a mere increase in the number of women in peacekeeping does have to equate to a gender-sensitive peace and security operation, which creates there a meaningful correlation between the number of women peacekeepers and the protection of women in conflict areas.

The other preventive mechanism placed to address SEA allegations within AU is pre-deployment verification (PDV). Troop-contributing states are essential to the vetting procedure, which ensures that troops linked to severe violations of international humanitarian and human rights legislation, including sexual violence, are not deployed to the AU PSO. This pre-deployment verification process is designed to guarantee that military personnel with a history of bad behavior are not assigned to the mission. Pre-deployment verifications should be based on a system that verifies any military official, regardless of rank, before deployment is properly verified. In this aspect, the AMISIOM does not appear to have a clear vetting mechanism, with the majority of military personnel being sent for the sole purpose of benefiting a troop economically.

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<sup>191</sup> Ibid.  
<sup>192</sup> Ibid.

### **3.4 Ethiopian Legal and Policy Frameworks**

Ethiopia as a TCC for the AMISOM as well as other PSOs has placed a legal framework and policy to address the misconduct of its troops in a course of PS missions. Some legal frameworks and policies try to address sexual violence and its preventive mechanisms in a general term in this regard. The available legal frameworks and policy in relation to SEAs tend to align with the international instrument as well as regional principles in upholding the highest standard of peacekeepers in a course of PSO. The national legal frameworks that apply to Ethiopian peacekeepers concerning SEA are;

#### **A. Ethiopia Foreign Affairs and National Security Policy and Strategy on PSOs**

The Foreign Affairs and National Security Policy and Strategy (FANSPS) of the Federal Democratic Republic of Ethiopia (FDRE) are based on the proposition that “security policy is a matter of ensuring national survival”.<sup>193</sup> In other words, Ethiopian Foreign affairs and security policy is based on prioritizing national security at first. The objectives of the Ethiopia FANSP reflect the country's advantage over other foreign relations that could contribute to the economic development of Ethiopia.<sup>194</sup> That being the case, while the Ethiopian government has recognized women's participation in peace-making, peace-building, and security and puts measurable steps to accommodate international laws with regard to women’s participation in PSO, there are gaps remaining.

Ethiopia as the world's highest female troops contributor in PSOs, there is quite a significantly low participation in a peacekeeping decision-making body. A recent example could be taken where women were assigned to the Ministry of Defense for a very short time. As stated by the Dean of education and training in the peacekeeping center, the institute had taken affirmative action to accommodate more women peacekeepers to the AMISOM but still remains low.<sup>195</sup>

Nonetheless, the policy does not particularly address specific cases SEA in peacekeeping mission conducted. The country's staunch attitude toward cooperation and mutual benefit in

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<sup>193</sup> Muluka Shifa, Rape Under the Blue Helmets: Ethiopia’s Responsibility to Combat Sexual Exploitation and Abuse By its Peacekeepers, (un published) September 2019.

<sup>194</sup> Ibid.

<sup>195</sup> Interview with kedir Ababuga, Training and Education Dean, Ethiopian Peace Support Training Center (September. 23, 2021).

foreign ties demonstrates the country's determination to stand up to such misbehavior by its peacekeepers.<sup>196</sup>

## **B. The Criminal Code of the Federal Democratic Republic of Ethiopia**

According to the Ethiopian Criminal Code, Ethiopian courts have jurisdiction over an Ethiopian official or expert on a mission who cannot be prosecuted at the place of commission of the crime due to the immunity the person enjoys. The only precondition being the offense committed is punishable both under the Ethiopian criminal code and under the law of the country where it was committed.<sup>197</sup> Although there is no comprehensive law in Ethiopia that addresses issues regarding peacekeeping activities, the Ethiopian Criminal Code governs the conduct of nationals who serve as members of the military and who act in such capacity within the state and foreign countries.<sup>198</sup> Articles 14, 15, and 624 of the Criminal Code specifically apply to Ethiopian peacekeepers deployed in peacekeeping missions.

Sexual violence and abuse, in general, are punishable under the Criminal Code of Ethiopia, which is fully applicable to military personnel as well.<sup>199</sup> Article 15 sub-article (2) of the Criminal Code states that “*where a person who is a member of the Ethiopian Defense Forces committed crimes against international law, the Ethiopian criminal code applies, and that person is tried by the Ethiopian military courts.*”<sup>200</sup> In other words, Ethiopian soldiers sent as peacekeepers who commit sexual violence in host countries are subject to the Criminal Code of Ethiopia.<sup>201</sup>

Article 624 of the Criminal Code also imposes criminal liability where sexual intercourse or an indecent act is committed by a person using the authority exercised over a victim due to one’s position, function, or capacity as a protector.<sup>202</sup> Therefore, Ethiopian peacekeepers in AMISOM that use their position/function as a protector and have been found committing sexual abuse against Somali women will be criminally punished under this law. Additionally,

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<sup>196</sup> Supra note 176.

<sup>197</sup> Art. 14 of the Revised Ethiopian Criminal Code.

<sup>198</sup> Art. 14(1) of the Revised Ethiopian Criminal Code.

<sup>199</sup> Art. 15 of the Revised Ethiopian Criminal Code.

<sup>200</sup> Ibid.

<sup>201</sup> Interview with Major Desalegn Deka, Ethiopian military Court; Public Prosecutor and former probes Marshall in Darful (September. 23, 2021).

<sup>202</sup> Art. of the 624 of the Revised Ethiopian Criminal Code.

Peacekeepers, who commit sexual offenses by compelling women living in vulnerable situations of conflict to be victimized, will also be punished.<sup>203</sup>

In addition, the Criminal procedure Code of Ethiopia, Proclamation No 185/1961 also regulates how Ethiopian troops that have been accused of crime in a foreign country be punished. The procedure in place is no different from other grave violence crimes committed within the Ethiopian territory. The only difference lies in the investigation procedure, as there is no special court operating in AMISOM and the crime is being committed abroad.<sup>204</sup>

As the Ethiopian contingent legal advisor in AMISOM stated, there is National Investigation Officer (NIO) that is deployed with the units.<sup>205</sup> This NIO is given the authority to investigate crimes that are committed within the Ethiopian contingent, investigation could also be carried out in relation to SEA.<sup>206</sup> Once the investigation is carried out the NIO refers the complete report to the FC and then to the Head of the Mission where the suspect troop will be repatriated.<sup>207</sup> The Ethiopia Military Public Prosecutor institutes charge in the military court and formal military court proceedings will follow suit.<sup>208</sup> Therefore, complaints, investigations, prosecutions, and the outcomes regarding SEA in AMISOM that are reported to AU headquarter and shared with TCC must be made official as it will help to improve transparency, accountability, and improve oversight by AMISOM.<sup>209</sup>

Even though the Criminal Code of Ethiopia has put criminal accountability on Ethiopian peacekeepers that have been found committing SEA against women in PSO, no Ethiopian peacekeeper has been tried in Ethiopia military court on allegation of SEA in AMISOM PSO.<sup>210</sup>

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<sup>203</sup> Ibid.

<sup>204</sup> Interview with Major Chalachew, Ethiopian legal advisor to the AMISOM mission (September. 23, 2021).

<sup>205</sup> Ibid.

<sup>206</sup> Ibid.

<sup>207</sup> Ibid.

<sup>208</sup> Accessed on 20 Oct 2021 Available at:

[https://peacekeeping.un.org/sites/default/files/ethiopia\\_fact\\_sheet\\_20181224.pdf](https://peacekeeping.un.org/sites/default/files/ethiopia_fact_sheet_20181224.pdf)

<sup>209</sup> Human Right Watch Report, "The Power These Men Have Over Us" Sexual Exploitation and Abuse by African Union Forces in Somali, September 8, 2014.

<sup>210</sup> Interview with Major Desalegn Deka, Ethiopian military Court; Public Prosecutor and former probes Marshall in Darful (September. 23, 2021).

### C. Ethiopian Defense Forces Proclamation No.1100 /2019

Ethiopia as a TCC has a responsibility to establish clear and transparent procedures to investigate allegations promptly and impartially and appropriately hold those found responsible to account.<sup>211</sup> As a result of this, the Ethiopian Defense force Proclamation puts sexual exploitation and abuse in the PSO mission as a military offense.<sup>212</sup> AS per Article 38 (D) of the proclamation, *“any offense committed by a member of the defense forces or a civilian on a mission along with a section of an army deployed abroad while on task or active combat duty will be prosecuted by the primary Military Court of Ethiopia.”*<sup>213</sup>

As per the Ethiopian Defense Force Administrative Regulation, No 385/2016 military disciplinary offenses are divided into two categories.<sup>214</sup> Any member of the defense forces will be punished with a rigorous disciplinary penalty where he/she commits grave disciplinary offenses.<sup>215</sup> Furthermore, the Regulation Article 72 sub-article (6) puts sexual violence as a grave disciplinary penalty; where a “Military personal commits anywhere sexual harassment or demonstrates improper sexual behavior, or commits acts of adultery and such other acts that strain the solidarity and relationship of the defense forces”.<sup>216</sup>

Although the procedure stipulates sexual violence as an offence subject to a rigorous disciplinary punishment, there are gaps in indicating what constitutes sexual harassment and whether or not rigorous punishment is sufficient. The applicability of the jurisdiction of military courts had territorial limitations where SEA committed by Ethiopian peacekeepers in foreign countries against foreign women might be taken compassionately.

Hence, the law does not govern how the Ethiopian law enforcement agencies work in cooperation with host states, the AMISOM, and its agencies in bringing suspects to justice. This and other legal framework gaps create an avenue for questioning the criminal accountability of a peacekeeper. Therefore, the legislative organ of the country should ensure the appropriateness and adequacy of sexual assault laws in peacekeeping missions accordingly.

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<sup>211</sup> Status of Mission Agreement (SOMA) between the Transitional Federal Government of Somalia and the African Union on AMISOM. Addis Ababa 6th March 2007; Article XXII, 55(B)

<sup>212</sup> Ethiopian Defense Force Proclamation No.1100 /2019; No 15 Addis Ababa 15<sup>th</sup> February 1996, Art. 38 (D)

<sup>213</sup> Ibid.

<sup>214</sup> Council of Ministers Regulation, Ethiopian Defense Force Administrative Regulation No 385/2016; No 65 ADDIS ABABA 6th May, 2016, Article 38.

<sup>215</sup> Ibid; Article 72.

<sup>216</sup> Ibid; Article 72 (6).

## D. Military Justice

OHCHR reported two rape cases against the Ethiopian military contingent in the AMISOM mission.<sup>217</sup> The interviewee, Ethiopian Peace and Security training and Education Dean, Ethiopian Military Court public prosecutor, and Ethiopian legal advisor to the AMISOM mission, claimed that they doesn't have knowledge regarding the above-mentioned reported case against the Ethiopian troops in Somalia. However, the interviewee further asserted that other unsubstantiated SEA allegation reports made against Ethiopian troops are false allegation. As the Ethiopian Military Court public prosecutor stated, this allegation has been made for many reasons.<sup>218</sup> One being, economic motive, as most of the women that leave around the Ethiopian contingent camp are very poor they tend to use sexual violence allegations against the Ethiopian troops as a way of business.<sup>219</sup> The community leader also pushes the women to settle for compensation rather than a proper legal proceeding.<sup>220</sup> The prosecutor further added that if there was a strong allegation against the Ethiopian troops the AU would have questioned the Ethiopian government and this hasn't been done so far.<sup>221</sup> The environment the Ethiopian military peacekeepers operate has also played a significant role that committing sexual abuse would make it impossible; referring to the culture and religion.<sup>222</sup> As a result of this Ethiopian troops are trained not to speak to Somali women individually, useless accompanied by another person during a visit.<sup>223</sup>

### 3.5 Adequacy of Legal and Policy Frameworks

Ethiopia has ratified some of the abovementioned international and regional legal instruments including CEDWA, Kampala Convention, and the African Charter on the Rights and Welfare of the Child (ACRWC). The Ethiopian constitution provides international instruments ratified by the country are an integral part of the law of the land.<sup>224</sup> In addition, Ethiopia has also signed and

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<sup>217</sup> U.N. GAOR, 75th Sess., Secretary-General, Special Measures for Protection from Sexual Exploitation and Abuse: A New Approach, Report of the Secretary-General, U.N. Doc. A/71/818, at 63- 64 (Feb. 28, 2017)

<sup>218</sup> Interview with Major Desalegn Deka, Ethiopian military Court; Public Prosecutor and former probes Marshall in Darful(September. 23, 2021).

<sup>219</sup> Ibid.

<sup>220</sup> Ibid.

<sup>221</sup> Ibid.

<sup>222</sup> Ibid.

<sup>223</sup> Ibid.

<sup>224</sup> Constitution of the Federal Democratic Republic of Ethiopia, 1995, Proc. No 1, Neg. Gaz. Year 1 No. 1. Art.13(2) of The FDRE Constitution, art 9(4).

adopted international instruments regarding Human rights. It has also attempted to meet the international and regional obligations regarding the prosecution and punishment of sexual offenders in a peacekeeping context. However, the current legal frameworks and policies regarding SEA in peacekeeping missions remain to be insufficient. Where there is no comprehensive law to address sexual abuse with specific provisions for investigation, prosecution, and punishment of the perpetrator. Thus the study recommends the legislative measures need to be reconsidered by the relevant actors. In addition, the national policy frameworks addressing sexual exploitation and abuse in peacekeeping operations are inadequate. Thus efforts have to be done in formulation of policies that are specific to SEA in PSOs to prevent and prosecute peacekeepers.

## CHAPTER FOUR

### 4. Conclusion and Recommendation

In spite of the fact that different legal instruments that address sexual exploitation and abuse in peace support operations have been adopted, the AMISIOM mission has been criticized in SGBV. The AU lacks comprehensive legal instruments that particularly give due attention to peacekeepers and sexual violence claims on how to make a complaint and to whom, and what the specific process will be thereafter. Similarly, Ethiopia doesn't particularly have comprehensive legal frameworks and policies that directly address specific cases such as SEA in peacekeeping missions. Hence, Ethiopia as a TCC should have a more comprehensive law that addresses SEA suspects in PSO as it will hasten the legislative process to prosecute and punish the suspects in accordance with the gravity they have. Therefore, the author recommends that the legislative body to adopt comprehensive law and also should ensure the appropriateness and adequacy of sexual assault laws in peacekeeping missions.

In addition, the law does not govern how the Ethiopian law enforcement agencies work in cooperation with host states, the AMISOM, and its agencies in bringing suspects to justice. This and other legal framework gaps create an avenue for questioning the criminal accountability of a peacekeeper. Therefore, Ethiopian military court shall be entitled to assume jurisdiction because violation of jus cogens elements force a states to assume jurisdiction.

Nonetheless, troop-contributing countries have exclusive jurisdiction to pursue investigation and prosecutions over their personnel for any criminal offenses they commit, they failed to hold perpetrators accountable for their actions. Thus, the government of Ethiopia, as well as the AMISIOM mission and AU, should investigate the allegation made against them by different international organizations. This would strengthen the legal standing of any policies and procedures developed to cope with the situation. In addition, focus areas at the AU and TCC levels should be established to assist victims in processing their claims in foreign judicial systems.

Similarly, the Ethiopian government has failed to conduct any further investigation of the reported case by UNHCR. Even if the Ethiopian Peace Support Training Center tries to put mechanisms in addressing SEA in a PSO, there are still gaps in upholding criminal



accountability. Most of the officials in the training center tend to emphasize maintaining the long leave brand of Ethiopian Peacekeeping contribution than addressing the issue on the ground. Rather, establishing a proper system-based communication mechanism within the AU, AMISOM, and Ethiopian government for monitoring, and sharing important information regarding the adjudication process is one vital mechanism for criminal accountability. Furthermore, criminal accountability and zero-tolerance policies should be strictly implemented by which their complaint will be processed and dealt with, and what body is responsible for this, must be clear institutionalized across all Ethiopian contingency in AMISOM.

As per the Peace and Security Training and Education Dean's statement, even if there are no acknowledged SEA allegations in AMISOM committed by Ethiopian troops, allegations in other missions are reported. However, there are no organized bodies within the institutions that follow up the case and present cases to the Ethiopian military Court. In addition, the dean also illustrated that there are some instances where false reports are given when the repatriated troop's documents are not to be found and the responsible person is doing other work and lost or buried the criminal investigation report in the process. Therefore, as the investigated case are finally reported to the Ethiopian government there need to be one centralized body within the Peacekeeping center that follow up the adjudication process of the repatriated troops and report back to the AU regularly. There needs to be a system-based mechanism where the repatriated troops are recorded and constant follow-ups are made against them with the FDRE Peacekeeping center.

Finally, as Ethiopia is the world's highest female troop contributor in PSOs, measures including affirmative actions are taken by the current government to accommodate women in peace building and operations. Such affirmative action taken by the FDRE peacekeeping center is a very substantial mechanism in minimizing SEA allegations against Ethiopian troops in AMISOM. However, the dean stated there is still a lot that needs to be done.

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## **Annex**

### Annex I: Semi-structured Interview

1. There have been reports of SEA allegations by Ethiopian troops serving under the AMISIOM mission. For Instance, the recent allegation of SEA was reported to UNHCR in 2016 where the troops were accused of rape. Do you have any awareness of the allegation? If so, what are the steps taken by the Ethiopian government?
2. Is there an established special court mechanism in the field of standby investigators on-site to handle SEA complaints against Ethiopian peacekeepers?
3. Is there any training offered for the Ethiopian Troops by the Ethiopian government or the AU in relation to Gender, Human rights? If so, is it regular?
4. Is Gender considered a relevant factor in deciding the composition of the troops in Mission? What does the proposition of women to participants as peacekeepers and decision-makers look like? Is there a specific policy, and national action plan for women peacekeepers to be equally participating in PSO?
5. Is there Specific Criminal legislation on peacekeeping issues to resolve SEA?