



# The Panel of the Wise

A comprehensive introduction to a critical pillar of the African Peace and Security Architecture

## INTRODUCTION

Lack of political will to deal with issues related to conflict in Africa in a robust manner has arguably been the main impediment to moving the continent forward. The establishment of the African Union (AU) and its elaborate security architecture as a successor to the Organisation of African Unity (OAU) is testimony to the realisation among African leaders that an era characterised by a lack of decisiveness needed to come to an end. Although this shift in thinking is probably the most important change, the AU came with a range of revised and new structures to enable it to work more forcefully towards ending the scourge of conflict on the continent. The Panel of the Wise (Panel) is one of the new mechanisms at the disposal of the AU and exemplifies the organisation's attempt at prioritising the prevention of conflict in Africa.

This paper discusses the newly established Panel, commencing with an overview of its workings, and particularly its mandate, modalities of action, membership, relationship with other relevant organs at the AU, and the structure designed to support the Panel in carrying out its mandate. This is followed by a discussion of the activities undertaken by the Panel thus far. The paper concludes with some observations and recommendations for a further enhancement of the Panel's contribution to peace, security and stability on the continent. It should be noted that in view of the short lifespan of the Panel and because a great deal of information regarding its activities thus far has not (yet) been made public, this paper raises only preliminary remarks on the organ.

## THE AFRICAN PEACE AND SECURITY ARCHITECTURE

After the inauguration of the AU in Durban, South Africa on 9 July 2002, the Assembly of Heads of State and Government (Assembly) adopted the Protocol Relating to the Establishment of the Peace and Security Council

(PSC) of the AU at its first ordinary session, which was held that same day.<sup>1</sup> The PSC replaced the Central Organ of the Mechanism for Conflict Prevention, Management and Resolution that was established in 1993 under the now defunct OAU. Article 2 of the PSC Protocol states that the PSC is 'a standing decision-making organ for the prevention, management and resolution of conflicts. The [PSC] shall be a collective security and early-warning arrangement to facilitate timely and efficient response to conflict and crisis situations in Africa.'

The PSC is responsible for promoting peace, security and stability in Africa, for undertaking early-warning, preventive diplomacy and peace-making activities, and for authorising peace support operations.<sup>2</sup> The fact that it has the power to recommend to the Assembly that it intervenes in a member state where war crimes, genocide or crimes against humanity are being committed, in line with article 4(h) of the Constitutive Act of the AU, is a clear rejection of the non-interference principle previously upheld by the OAU.<sup>3</sup> In carrying out its mandate, the PSC is supported by the office of the Chairperson of the Commission, a Continental Early Warning System, an African Standby Force, a Special Fund, and finally, a Panel of the Wise.<sup>4</sup>

## THE ESTABLISHMENT OF THE PANEL OF THE WISE

Article 11(1) of the PSC Protocol states that 'in order to support the efforts of the PSC and those of the Chairperson of the Commission, particularly in the area of conflict prevention, a Panel of the Wise shall be established'. The article also notes that the Chairperson of the Commission is responsible for drafting the modalities for the functioning of the Panel that will be approved by the PSC.<sup>5</sup> With regard to its membership, article 11(2) of the PSC Protocol states:

The Panel of the Wise shall be composed of five highly respected African personalities from various segments

of society who have made [an] outstanding contribution to the cause of peace, security and development on the continent. They shall be selected by the Chairperson of the Commission after consultation with the Member States concerned, on the basis of regional representation and appointed by the Assembly to serve for a period of three years.

However, it was not until January 2007 that the Chairperson of the Commission selected the following five African personalities to serve on the Panel and recommended their appointment by the Assembly:<sup>6</sup>

- Brigalia Bam, former General Secretary of the South African Council of Churches and current Chairperson of the Independent Electoral Commission of South Africa (representing the Southern Africa region)
- Ahmed Ben Bella, former President of Algeria (representing the North Africa region)
- Elisabeth Pognon, former President of the Constitutional Court of Benin (representing the West Africa region)
- Miguel Trovoada, former Prime Minister and President of São Tomé & Príncipe (representing the Central Africa region)
- Salim Ahmed Salim, former Secretary-General of the OAU and former AU Special Envoy and chief mediator for the inter-Sudanese political talks on Darfur (representing the East Africa region)

The Assembly endorsed the recommendation by the Chairperson of the Commission and confirmed the appointment of the five members at its eighth ordinary session that was held in Addis Ababa on 29–30 January 2007.<sup>7</sup> The PSC subsequently adopted a set of detailed modalities for the functioning of the Panel of the Wise at its 100th meeting on 12 November 2007, which notes that the document shall be revised following the operationalisation of the Panel and on a regular basis thereafter.<sup>8</sup> The adoption of the modalities was followed by the official inauguration of the Panel in Addis Ababa on 18 December 2007<sup>9</sup> and the Panel held its inaugural meeting in Addis Ababa on 20 February 2008, during which it adopted its first annual programme of work.<sup>10</sup>

There has been a significant delay between the adoption of the PSC Protocol and the establishment and operationalisation of the Panel, especially if one compares it with the advanced stages of operationalisation of the other structures. The explanation that was given for this is that relevant decision-makers choose to delay setting up this pillar because the Commission was initially not able to provide the Panel with the required

support structures. Thus, rather than undertaking activities towards setting up of the Panel which would have been in vain at the time, efforts were focused on operationalising those structures for which resources had already been secured.<sup>11</sup>

## WORKINGS OF THE PANEL

The modalities specify that the Panel is expected to meet at least three times a year, or more often if necessary. Furthermore, the PSC or the Chairperson of the Commission may request the Panel to meet at any time.<sup>12</sup> The duration of a meeting between the Panel members may be between one and three days, or longer if necessary.<sup>13</sup> Unless it decides to invite resource persons to attend a meeting to assist with deliberations on an issue, the Panel's meetings will take place behind closed doors.<sup>14</sup> A Chairperson, elected on a rotating basis for a term of one year but not more than once during a three-year period, presides over the Panel.<sup>15</sup> Regular communication between the members is expected to take place throughout the year, in the form of telephonic consultations or other methods to share information relevant to the Panel's activities.<sup>16</sup> The Panel's secretariat is expected to assist with the facilitation of such communication.<sup>17</sup>

## Mandate

In accordance with the responsibilities of the Panel outlined in article 11 of the PSC Protocol, the modalities specify the following as the mandate of the Panel:

- The Panel shall advise the Council and the Chairperson of the Commission on all issues pertaining to the promotion and maintenance of peace, security and stability in Africa;
- The Panel shall undertake all such actions deemed appropriate to support the efforts of the Council and those of the Chairperson of the Commission for the prevention of conflicts;
- The Panel may, as and when necessary and in the form it considers most appropriate, pronounce itself on any issue relating to the promotion and maintenance of peace, security and stability in Africa.<sup>18</sup>

It is important to emphasise that 'in carrying out its mandate ... the Panel may act either at the request of the Council or the Chairperson of the Commission, or at its own initiative'.<sup>19</sup> This clause is crucial as it allows the Panel a degree of independence, bearing in mind that it nevertheless operates within the larger framework of the AU Peace and Security Architecture.

## Modalities of action

The modalities further detail how the Panel may carry out its mandate. It states that the Panel may undertake various activities ‘in coordination with the Council and the Chairperson of the Commission, and in support of, and complement to, their efforts, including through the Special Envoys/Representatives and other emissaries’.<sup>20</sup> These activities include the following:

- Advise the Council and/or Chairperson of the Commission on all matters within their respective competences pertaining to the promotion and maintenance of peace, security and stability in Africa;
- Facilitate the establishment of channels of communication between the Council and the Chairperson of the Commission, on the one hand, and parties engaged in a dispute, on the other hand, in order to prevent such dispute from escalating into conflict;
- Carry out fact-finding missions as an instrument of conflict prevention in countries and/or regions where the Panel considers there is a danger of conflict either breaking out or seriously escalating;
- Conduct shuttle diplomacy between parties to a conflict in cases where parties are not ready to engage in formal talks;
- Encourage parties, where appropriate, to engage in political dialogue, adopt confidence-building measures, and carry out reconciliation processes, and facilitate such efforts, where appropriate;
- Assist and advise mediation teams engaged in formal negotiations;
- Assist and advise parties on how to resolve disputes related to the implementation of peace agreements;
- Develop and recommend ideas and proposals that can contribute to promoting peace, security and stability.<sup>21</sup>

This clearly demonstrates the wide range of activities that the Panel may undertake, although it is logically required to ensure that any of its activities ‘facilitate appropriate action by the PSC and/or Chairperson of the Commission within their respective competences as provided for by the PSC Protocol’.<sup>22</sup>

## Membership

The modalities confirm that the members are elected for a period of three years and that members may be reappointed for one more term.<sup>23</sup> A member’s mandate may be terminated at any time either by himself or herself by means of a letter addressed to the Chairperson of

the Commission or by the assembly following a recommendation of the Chairperson of the Commission to that effect.<sup>24</sup> No mention is made of a required gender balance with regard to the Panel’s composition.

Most importantly, however, the modalities note that the five members may not hold an active political office while serving on the Panel.<sup>25</sup> This provides the comparative advantage of the Panel over the PSC and the Chairperson of the Commission that both have their own mandates in terms of conflict prevention, management and resolution. The PSC Protocol states that one of the objectives of the PSC is to ‘anticipate and prevent conflicts. In circumstances where conflicts have occurred, the [PSC] shall have the responsibility to undertake peace-making and peace-building functions for the resolution of these conflicts’.<sup>26</sup> Furthermore, the PSC Protocol indicates that the Chairperson of the Commission ‘may, at his/her own initiative or when so requested by the Peace and Security Council, use his/her good offices, either personally or through Special Envoys, Special Representatives, the Panel of the Wise or the Regional Mechanisms, to prevent potential conflicts, resolve actual conflicts and promote peace-building and post-conflict reconstruction’.<sup>27</sup>

However, it should be noted that the PSC is composed of representatives from member states, who are arguably constrained by the foreign policy of their country. At the same time, the Chairperson of the Commission is responsible for implementing decisions made at the various levels at the AU and therefore obviously has limited independence. Furthermore the PSC, and indirectly the Chairperson of the Commission, have so-called enforcement powers in that they are able to institute sanctions against member states.<sup>28</sup> It could be argued that this further limits the ability of the PSC and Chairperson of the Commission to undertake conflict prevention or peace-making activities since it has been noted that ‘enforcement and mediation functions should be performed by different actors’.<sup>29</sup> Without questioning the usefulness of sanctions in certain instances, it should be noted that if a mediator has enforcement functions he or she can hardly be regarded as being non-partisan, a crucial prerequisite for successful mediation efforts.<sup>30</sup> Not having these constraints, the Panel members can be bolder in their approach to certain situations and are free to interact with whom they wish.

## Relationship with relevant organs of the African Union

Article 11(5) of the PSC Protocol states that the Panel ‘shall report to the PSC and, through the PSC, to the Assembly’. The modalities further elaborate on the issue and state:

The Panel shall, without prejudice to its independence, maintain regular contact with the [PSC] and Chairperson of the Commission, as well as with the Chairperson of the AU, and keep them fully informed of its activities for the purpose of ensuring close coordination and harmonisation.<sup>31</sup>

The modalities emphasise that especially before a field mission by the Panel, it is important that both the PSC and the Chairperson of the Commission be informed, again for coordination and harmonisation purposes.<sup>32</sup> Possibly with the aim of further ensuring coordination of efforts of the various structures, the provisional agenda of a meeting of the Panel is determined by its Chairperson in consultation with the Chairperson of the PSC, as well as the Chairperson of the Commission.<sup>33</sup>

Furthermore, the Panel is required to provide the PSC with regular reports on its activities and through the PSC it is also required to submit bi-annual reports to the Assembly.<sup>34</sup> The programme of work for 2008 specifies that the Panel must hold at least one joint meeting with the PSC per year as well as regular consultations with relevant structures of the Commission.<sup>35</sup> Where deemed appropriate by the Panel, it may submit its views and recommendations on issues of relevance to the PSC and the Chairperson of the Commission.<sup>36</sup>

The Chairperson of the Panel may also be invited by the Assembly, PSC, Chairperson of the Commission or any other relevant organ of the AU to address them on any relevant issues.<sup>37</sup> In turn, the Panel may, after consultations with the PSC and the Chairperson of the Commission, request to address the Assembly or any other organ of the AU on issues under its purview.<sup>38</sup>

As far as other relevant structures of the AU are concerned, the modalities note that apart from the Panel members, the PSC or the Chairperson of the Commission, the Pan-African Parliament and the African Commission on Human and People's Rights may submit proposals to the Chairperson of the Panel on issues to be discussed at one of its meetings, in accordance with the work of these structures towards promoting and maintaining peace, security and stability on the continent.<sup>39</sup>

## Support structure

The modalities discuss the technical and other support that the Panel would require in order to successfully carry out its mandate. Apart from administrative, technical and logistical support, the Commission is expected to provide substantive services to the Panel. This was anticipated to consist of providing information on relevant situations on the continent and conflict resolution processes. The Commission will in addition provide advisory support.<sup>40</sup>

Acknowledging the complexity of some of the issues that the Panel may work on as well as the rapid response that may be required, the Panel's first programme of work specified that the Panel requires a dedicated secretariat located at the Conflict Management Division of the Department of Peace and Security of the Commission. In recognition of the cross-cutting nature of some of the issues on the agenda of the Panel, the secretariat is expected to collaborate with the various other departments of the Commission.<sup>41</sup> It was suggested that the dedicated secretariat fulfils the following functions:

- Collect and analyse information on developments on the continent and the priority countries and region the Panel may choose to focus on;
- Conduct research and contribute substantial knowledge on conflict prevention, peace-making and mediation;
- Research and draft background papers, briefing notes, and policy briefs in support of the Panel's country-specific engagements;
- Collect and analyse information on non-priority countries and regions of which the Panel should be kept informed in case of future engagement;
- Identify experts on issues and countries the Panel is working on;
- When needed, accompany the Panel to missions or alternatively identify qualified persons to do so;
- Draft and distribute the Panel's reports, and maintain a record of the work of the Panel;
- Facilitate coordination and communication between the Panel and other relevant organs of the AU, including the PSC and the Commission;
- Prepare the necessary material for the Panel's internal meetings and for the meetings with the PSC, the Commission, and other relevant actors;
- Facilitate the Panel's outreach efforts to civil society, research and academic institutions, and other relevant organisations;
- Contribute expertise and support to the Panel's efforts to raise debate on specific issues relating to the promotion of peace and security in Africa.<sup>42</sup>

## OVERVIEW OF ACTIVITIES TO DATE

Apart from concrete activities to be undertaken during the year 2008, the Panel's programme of work for 2008, which was its first, listed its proposed working methods. The Panel aimed to undertake the following types of activities in order to achieve its objectives: deliberations among the Panel members, including formal meetings and informal consultations; collaboration and consultation with the relevant organs of the AU, including the PSC and the Chairperson of the Commission;



engagement in countries and regions affected by conflicts; and consideration of key thematic issues related to conflict prevention and peace-building in Africa. In the discussion that follows on the work of the Panel since its first meeting in February 2008, the activities undertaken by the Panel will be discussed accordingly.

## Deliberations among the Panel members

The Panel decided that at its first meeting of every year, it will discuss and decide on its annual programme of work. At its second and third meetings the Panel will discuss its reports to the Assembly through the PSC and to the PSC itself, in addition to assessing developments in selected countries as well as generally reviewing the state of affairs on the continent 'in order to anticipate and identify any new conflict situations requiring the Panel's attention'.<sup>43</sup> Since its first meeting in February 2008 in Addis Ababa, the Panel has formally met on four occasions.

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### *Second meeting, Addis Ababa, 17 July 2008*

During its second meeting the Panel discussed issues revolving around election-related conflict, the thematic focus for the year 2008. More specifically, the Panel decided upon a series of activities to be undertaken in support of this, the most important of which was a workshop on election-related conflict that was held in Nairobi later in the year. The Panel also reviewed the peace and security situation in Africa and agreed that its members would conduct information-gathering missions to acquaint itself with various situations as well as to examine the modalities of its involvement in peace efforts on the continent (this is discussed in more detail below). Lastly, the Panel discussed the situation in Zimbabwe and the application by the prosecutor of the International Criminal Court (ICC) regarding the situation in Darfur.

In the press statement that was released after the meeting, the Panel expressed its support for the ongoing peace efforts of the Southern African Development Community in Zimbabwe and requested the PSC and the AU Commission to look into the situation in Sudan

and 'find a peaceful and just solution which takes into account the complementary goals of combating impunity and promotion peace and reconciliation ... in Darfur ...'.<sup>44</sup>

### *Third meeting, Algiers, 12–14 October 2008*

During its third meeting the Panel reviewed the general situation on the continent, after a briefing by the AU Commissioner for Peace and Security. Following this, the Panel expressed opinions on the developments in various countries, such as the Democratic Republic of Congo, Zimbabwe and Mauritania. With regard to the situation in Somalia, the Panel requested the conflicting parties to renounce violence and join the ongoing Djibouti peace process. With regard to Sudan, the Panel requested all the parties to collaborate with amongst others the AU, in an urgent effort to revive the Darfur peace process.<sup>45</sup>

### *Fourth meeting, Nairobi, 28–29 November 2008*

The fourth meeting was held in Nairobi to coincide with the workshop on election-related conflict. During the meeting the Panel's programme of work for 2009 was discussed and adopted. Apart from identifying a number of priority countries, the Panel decided to select the issue of impunity, reconciliation and healing as its thematic focus for 2009.<sup>46</sup> The Panel also issued a statement on the situation in Somalia, which it had discussed in detail during the meeting.<sup>47</sup>

### *Fifth meeting, Addis Ababa, 5–6 March 2009*

During the last meeting held by the Panel to date it reviewed the implementation thus far of its programme of work for 2009. The Panel discussed the continuation of missions to countries that are expected to hold elections in the near future (see below). Modalities of other missions planned for 2009 were also discussed and agreed upon. The Panel held discussions with various departments on the finalisation of the recommendations emerging from the workshop held in November 2008 on electoral-related conflicts. It also continued preparations for activities as part of its thematic focus for 2009. In reflecting on the current state of peace and security in Africa, the Panel specifically discussed the situation in Madagascar and Guinea-Bissau. It also expressed support for the various decisions taken by the PSC on the issue of the indictment of President Omar Al Bashir of Sudan by the ICC. During this time the Panel held its first formal meeting with the PSC (see below).<sup>48</sup>

## Collaboration and consultation with relevant organs of the AU

There are no further public records of the various interactions for collaboration and consultation purposes

between the Panel and other organs, most importantly the PSC and the Chairperson of the Commission, apart from mention of the attendance of representatives of these organs at the Panel's formal meetings. It was confirmed, however, that informal consultations between Panel members and especially the Chairperson of the Commission take place on an ongoing basis.<sup>49</sup>

With regard to consultations with the PSC, the Panel held its first formal meeting with the entire membership of the organ on 6 March 2009. The purpose of the meeting was to brief the PSC on the Panel's activities as well as explore and exchange information on the joint activities to be undertaken to promote peace, security and stability on the continent.<sup>50</sup> The Chairperson of the Commission noted that this first formal encounter provided 'an opportunity to further enhance coordination between the Panel and the PSC'.<sup>51</sup> Although the Panel is expected to have one joint meeting per year with the PSC, it was decided in early 2009 that the two structures would aim to meet at least three times per year.<sup>52</sup> Accordingly, the Panel met with the PSC on 5 June 2009, specifically to discuss the recommendations arising from the Panel's work on preventing election-related conflict,<sup>53</sup> which were subsequently presented at the ordinary session of the Assembly in July 2009.

## Engagement in conflict-affected countries and regions

The Panel's engagement in conflict situations may take several forms. As discussed earlier, the Panel will periodically discuss the situation on the continent from an early warning point of view and make recommendations to the PSC and the Chairperson of the Commission.<sup>54</sup> In addition to this general overview, the Panel will select up to three 'priority conflict situations' per year which it will monitor constantly. The selected countries may also be visited for fact-finding or sensitisation purposes, the antagonists in the conflict may be engaged or ongoing peace-making initiatives may be assisted.<sup>55</sup> In addition to maintaining a consistent interaction with priority conflict situations on an annual basis, the Panel recognised that it should be able to respond to unforeseen developments on the continent or situations that unexpectedly require the Panel's involvement.<sup>56</sup>

The 2008 programme of work also outlined various criteria that the Panel may wish to consider in deciding on which situations to focus or to which to respond:

- The degree to which a conflict situation already receives regional and international attention or not. Conflicts that have been neglected for lack of resources or other reason may be especially appropriate cases for the Panel to engage with;

- Whether the PSC is already seized with a particular conflict situation and whether additional attention by the Panel may add further value to existing efforts;
- Whether a given situation has remained in conflict for a considerable amount of time or in danger of descending into conflict, despite multiple mediation and negotiation efforts. In such situations, the Panel may advise and strengthen existing efforts, inject new urgency to mediation processes, or take a fresh look at the conflict dynamics at play;
- Whether a conflict situation has experienced a sudden and speedy decline;
- Whether a conflict situation has experienced difficulties in implementing a peace agreement and, therefore faces the risk of reverting to conflict.<sup>57</sup>

As will be discussed further below, the priority conflict situations selected by the Panel have not been made public. Therefore no detailed information is available on the missions that the Panel has undertaken thus far, except for two instances, namely the Central African Republic (CAR) and South Africa. These are just two of the five missions that have been conducted since the appointment of the Panel members in January 2007 until the end of April 2009<sup>58</sup> and provide some insights into this, arguably the most important, aspect of the Panel's work.

Shortly after the appointment of the Panel members and thus even before the modalities had been adopted and the Panel officially inaugurated, the Panel undertook a mission to the CAR, in recognition of the fragility of the situation in the country. During its mission to the country the Panel consulted with a number of stakeholders, such as political parties, trade unions, civil society organisations and members of the diplomatic corps. It emerged that a political dialogue is required to move the country forward, and that it should be guided by the principle of inclusivity. In light of this, the Panel received the mandate from President François Bozizé to also engage rebel movements that had recently conducted armed activities against his government. The Panel indeed met with various rebel leaders who are based outside the country, including the former president, Ange-Félix Patassé, who was overthrown by Bozizé in March 2003. In March 2007, the Panel submitted a report on the need to organise an inclusive political dialogue to President Bozizé, who subsequently forwarded the report to the country's National Assembly and Constitutional Court, as well as to political parties, civil society organisations and the diplomatic community.<sup>59</sup> Such a dialogue was eventually held in December 2008.<sup>60</sup> However, since then fighting by various movements, including those who had taken part in the dialogue, has resumed.<sup>61</sup>

The February 2009 visit of Dr Salim to South Africa, which held elections on 22 April 2009, as part of the Panel's efforts to enhance capacity to prevent electoral-related conflict, is another example of the Panel's engagement that was nevertheless made public. During the mission Dr Salim shared recommendations and suggestions for the upcoming elections with the Independent Electoral Commission (IEC) of South Africa, which is chaired by fellow Panel member Ms Brigalia Bam. During his meetings with various political parties Dr Salim insisted that political leaders were responsible for ensuring violence-free elections.<sup>62</sup> The Panel indicated that it would undertake more missions of this nature,<sup>63</sup> although the Chairperson of the Commission is expected to sustain the momentum gained on this issue as the Panel moved on to work in support of its theme for 2009.<sup>64</sup>

The most important observation regarding the Panel concerns the emphasis its creators have placed in its mandate on preventing conflict as opposed to only managing or resolving existing conflicts

As mentioned during the discussion on the Panel's second official meeting, its missions to selected countries were used to refine the modalities of the Panel's future engagements in conflict situations. At its first official meeting, the Panel commenced a discussion on these modalities, with a focus on the minimum number of Panel members required to undertake a mission. It acknowledged that its busy programme may not allow all members to partake<sup>65</sup> and that certain missions may not require all five members to be present. To date, however, these specific guidelines for the Panel's engagement have not yet been finalised, mainly because the five missions undertaken thus far are not considered to be sufficient for coming to a conclusion or making valid generalisations.<sup>66</sup>

### Consideration of key thematic issues

As part of the Panel's mandate to make pronouncements on issues of relevance, it decided to select a thematic focus on an annual basis. Its purpose is to promote

debate and raise awareness on an issue that, in the opinion of the Panel, may presently not receive adequate attention from relevant decision-makers. Activities in support of such a focus may consist of commissioning a report on the issue and the organisation of workshops or seminars.<sup>67</sup>

### *Election-related conflict*

Triggered by the events in Kenya in late 2007 and early 2008, and at request of the Assembly,<sup>68</sup> the Panel's first thematic focus was on election-related conflict. The Panel's activities on the matter culminated in an international workshop on the strengthening of the role of the AU in the prevention, management and resolution of election-related conflicts in Africa, which was held on 26 and 27 November 2008 in Nairobi, Kenya. The workshop brought together a large number of stakeholders and resulted in a set of concrete recommendations,<sup>69</sup> amongst others regarding strategic interventions by the Panel at the pre- and post-voting stages.<sup>70</sup> The recommendations were scheduled to be submitted to the Assembly at its ordinary session in January 2009, but this was postponed to July 2009 to allow further consultations with relevant organs, including the PSC.<sup>71</sup>

### *Impunity, reconciliation and healing*

The Panel's second thematic focus on the issues of impunity, reconciliation and healing will assist the AU in further enhancing its approach to the vexing question of balancing the need for peace on the one hand and the demand for justice on the other. The Panel's activities on the issue involved most importantly the commissioning of a report, which recommended, amongst others, an advocacy role that the Panel could play in this regard.<sup>72</sup> The report was discussed at a workshop held in Monrovia, Liberia, on 28 and 29 May 2009 and revised policy recommendations for the various organs of the AU will be presented to the Assembly at the beginning of 2010.

## OBSERVATIONS AND RECOMMENDATIONS

### Preventing versus managing or resolving conflict

Arguably the most important observation that can be made regarding the Panel at this early stage of its existence concerns the emphasis that its creators have placed in the Panel's mandate on preventing conflict as opposed to only managing or resolving existing conflicts. As will be discussed below, similar structures that have been established are expected to respond swiftly to a conflict that has erupted or led to violence. However, in recognition of a need for a more vigorous focus on

conflict prevention (and not only conflict management or resolution), the Panel's mandate and modalities of action enable it to lead or proactively contribute to the AU's efforts in this regard. As noted by the Chairperson of the Commission, 'the experience over the past years highlighted the importance of conflict prevention. The establishment of the Panel of the Wise will make it possible to instil new impetus into our efforts in this area'.<sup>73</sup>

It must be emphasised that the PSC Protocol and the modalities require the Panel to work in coordination with various other structures of the AU, the most important of which is the PSC and the Chairperson of the Commission, both of which have peace-making mandates as well. However, as was discussed above, both structures may be limited in carrying out their mandate. Nevertheless, the Panel of the Wise is just one structure that the AU can call upon in its peace-making efforts, in addition to mechanisms of regional organisations, such as the Council of the Wise, as will be discussed below. Furthermore, distinguished personalities willing to assist with the settlement of conflicts appear to be in abundance, as demonstrated recently by the situations in Kenya and Madagascar.<sup>74</sup> Rather than being concerned with finding a willing and experienced mediator or facilitator, the focus should be on how to manage the coordination of mediation efforts by various individuals, international organisations and regional bodies.<sup>75</sup>

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The success of the Panel's work greatly depends on collaboration and buy-in from AU member states

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Accordingly, the advantage of a Panel which is composed of distinguished African personalities with a wealth of experience and who are not representing their countries, is that it can first and foremost undertake activities towards anticipating and preventing conflict. Raising awareness among decision-makers in a country that a certain situation or policy may pose a threat to stability, for instance, is a rather sensitive endeavour. It requires experienced and knowledgeable individuals who will also have the ear of the actors involved. Another concrete example of the Panel's conflict prevention focus is its annual thematic reflection. This involves exploring and making recommendations to various key decision-makers (including the Assembly) on an issue that could lead to conflict if not properly addressed and illustrates how the Panel members use their moral

authority and experience to advance the AU's conflict-prevention agenda.

## Communication strategy

In further reflecting on the work of the Panel thus far, one observation that can be made concerns the little media coverage that the Panel's activities have enjoyed, which could lead to the erroneous conclusion that nothing much is being done. Although one must bear in mind that the Panel has indeed only recently commenced its work, it should be noted that the Panel, often hastily and unduly compared with The Elders (discussed below), is part of a larger structure aimed at bringing peace and prosperity to the African people.

While it is an advantage that the Panel is not composed of government representatives, the success of the Panel's work greatly depends on collaboration and buy-in from AU member states. This, in addition to the need for the Panel members to be non-partisan in the case of mediation efforts, prevents the Panel from making public pronouncements on certain developments or sharing information on some of its activities. Mediation and conflict prevention efforts involve a great deal of 'behind the scenes' work and the outcomes, especially if successful, are not always tangible. Furthermore, the Panel was never expected to use its weight to publicly voice its concerns or provide a critique on a given development or situation.<sup>76</sup> The modalities clearly stipulate that the Panel is only expected to issue a public statement in relation to a matter it discussed during a meeting or consultation.<sup>77</sup>

Nevertheless, it would be to the advantage of the Panel to raise awareness of its aims and objectives as well as to share information on those activities that can be disclosed. For instance, while the programme of work for 2008 is available to the public, little information has been shared on the programme of work for 2009. It was explained that this programme, unlike the one of the previous year, was rather specific and lists situations of concern in various countries. Some countries may not be comfortable with the public announcement of its name on the list of the Panel of the Wise, whose involvement is obviously associated with conflict prevention and thus with possible challenges.<sup>78</sup> This concern is a reality and it is therefore suggested that the listing of specific countries be removed from a publicised programme of work. If the basic aspects of a programme of work, as well as other relevant information are made available to the public, it would contribute to a better understanding of and appreciation for the Panel and build support for its work. It will also allow the exploration of opportunities for collaboration with other actors. Other steps can be taken as part of this effort, such as establishing a separate section on the Panel on the AU website, which could provide an



overview of the communiqués, statements, information on the members, and so on.

## Comparison with similar structures

The Panel of the Wise is often compared, if not confused, with various other structures that, *prima facie*, appear to have a similar mandate. It is therefore worthwhile to briefly discuss these structures, to demonstrate the uniqueness of the Panel, and indeed the uniqueness of these other initiatives, as well as possibilities for collaboration.

### *Council of the Wise*

The Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security of the Economic Community of West African States (ECOWAS) mentions a Council of the Wise (previously called the Council of Elders) to assist the body's Mediation and Security Council (MSC). This mechanism is often quoted as having inspired the founders of the Panel of the Wise.<sup>79</sup> Nevertheless, there are some fundamental differences between the two structures. Unlike the Panel of the Wise, the Council of the Wise is not a standing structure, but takes the form of 'a list of eminent personalities, who, on behalf of ECOWAS, can use their good offices and experience to play a role of mediators, conciliators and facilitators'.<sup>80</sup> When needed, the Executive Secretary of the MSC may call upon individuals on the list to intervene in a given situation. Those selected individuals will then form a Council of the Wise. The list is drafted annually and approved by the MSC at the level of Heads of State and Government. Personalities on the list are influential in various spheres of society.<sup>81</sup>

The Council of the Wise of ECOWAS is often quoted as having inspired the founders of the Panel of the Wise

Apart from the fact that the Council of the Wise is not a standing structure, its focus also appears to be solely on resolving an existing conflict. As clearly stated, the members of the Council of the Wise are expected to undertake mediation, conciliation and facilitation efforts on behalf of ECOWAS. Although these efforts may take place during a conflict that has not yet escalated, the roster type of approach to its composition and establishment implies that the idea is to have experienced individuals on standby to intervene in urgent cases, which

are likely to be conflicts that have become violent and are already posing a serious threat to security in the region.

### *The Elders*

Nelson Mandela, together with Graça Machel and Desmond Tutu, convened the group of Elders in 2007. The Elders can be best described as a group of distinguished leaders<sup>82</sup> who use their status to advocate for solutions to 'ease human suffering'.<sup>83</sup> More specifically, the group aims contribute to the non-violent resolution of conflicts and explore ways in which complex issues may be resolved. Being a collective of highly experienced individuals, The Elders also aspire to share wisdom and work with local structures of elders as well as upcoming leaders. In his speech at the launch of The Elders on 18 July 2007, Nelson Mandela stated that the group 'derives its strength not from political, economic or military power, but from the independence and integrity'<sup>84</sup> of its members. Because of this the group can 'speak freely and boldly'.<sup>85</sup>

Since 2007 The Elders have undertaken a variety of missions to countries like Zimbabwe, Cyprus and Sudan. Both during and after these missions, the participating members of The Elders succeeded in drawing attention to the situation in question and indeed publicly shared its views regarding the causes and possible solutions, even if this meant criticising one of the parties of a conflict.<sup>86</sup> This highlights the most important difference between The Elders and the Panel of the Wise: in the case of the latter, it would not benefit from sharing such views publicly as this may result in the rejection of the Panel by a party to a conflict and thus compromise the peace-making activities that the Panel, or even other structures of the AU, could undertake following such a mission.

### *Standby Team of Mediation Experts*

In March 2008 the United Nations formally established the Standby Team of Mediation Experts. The Standby Team aims to support special envoys, representatives or others involved in peace negotiations by providing 'on-call' expertise on issues that often arise during negotiations, such as justice and reconciliation, disarmament, demobilisation and reintegration and power sharing. Apart from supporting UN peace initiatives, the team may also be deployed to support efforts undertaken jointly with regional organisations such as the AU. The Standby Team falls under the Department of Political Affairs (DPA), which also houses a Mediation Support Unit.<sup>87</sup>

Similar to the Council of the Wise of ECOWAS, the ad hoc nature of the team's work is the main difference with that of the Panel of the Wise, apart from the fact that it focuses on providing support in processes aimed at ending an existing conflict. It is noteworthy that the

DPA, specifically its Mediation Support Unit, aims at generally 'providing expertise and funding to a number of active mediation efforts, training staff in mediation skills',<sup>88</sup> among others. Accordingly, it has worked with structures at the AU to enhance their capacity for mediation<sup>89</sup> and provided a consultant to the secretariat of the Panel to assist with its operationalisation.<sup>90</sup>

## Support structure

As was discussed earlier, the Panel recognised the need for a dedicated secretariat at the beginning of 2008, to be located at the Conflict Management Division of the Department of Peace and Security of the Commission. This requires an expansion of the present one-person secretariat, which, besides providing technical support and institutional guidance, will also be able to ensure that the knowledge in other departments at the AU is tapped into. It was explained that, for the time being, the staff complement of the expanded secretariat will consist of three mediation experts, two administrators and one coordinator, whose recruitments are currently under way.<sup>91</sup> One of the things that the present secretariat is leading is the drafting of a mediation strategy, which would not only guide the Panel but also other structures that may be involved in peace-making activities, such as the Chairperson of the Commission.<sup>92</sup>

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Panel members are aware of the work that the appointments entail and would not have made this commitment if their schedules made it impossible to honour it

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A few observations can be made on this issue. Although the recognition that mediation is a very specific skill is to be welcomed, the location of such skills in the secretariat of the Panel of the Wise is questionable. The Panel's expanded secretariat will house three mediation experts who can provide expert advice on entry into a conflict, mediation techniques and processes, analysis of parties' interests and positions, and so on. However, the Panel is not the only AU organ that engages in peace-making efforts and would require mediation expertise. Furthermore, the Panel's focus is on conflict prevention, and while this may involve mediation as well, it does require a slightly different approach. Having its experts only focussing on mediation issues may distract

the Panel from its current early-warning and conflict-prevention outlook.

In view of this, the establishment of a unit that is composed of a number of mediation experts but which is separate from the Panel should be considered.<sup>93</sup> Such a separate unit of mediation experts could then service a number of structures, the most important of which would be the Panel of the Wise. This will lead to greater coordination between the different bodies and ensure the independence of the Panel. The Panel's secretariat should then focus on analysing information on (priority) conflict situations on the continent, drafting briefing papers and so on. It should also ensure coordination between the Panel and the mediation unit and other structures of the Commission, in particular the Continental Early Warning System and the Department of Political Affairs. The latter often seems to be overshadowed by the Department of Peace and Security, although issues related to conflict prevention, such as democracy, governance and the rule of law, are at the core of the mandate of the Department of Political Affairs.

## The issue of numbers

The limitation of the Panel's membership to five may raise the concern that five members may not be able to respond adequately to every situation requiring attention or intervention. By comparison, the Council of Elders of ECOWAS has a whole list of eminent African personalities that it can call upon. Besides the fact that an expanded membership to either 10 or 15 (since each of the five regions needs to be equally represented) will make it more challenging to coordinate meetings and other activities, the Panel does not exclude the possibility of calling upon other personalities if it is not able to respond to a situation itself. For instance, it has been noted that 'through the burgeoning number of Africa's elder statesmen and other prominent individuals, the Panel will have a wide pool of experienced individuals it can continually draw from in fulfilling its prerogatives'.<sup>94</sup> Most importantly, however, the Panel complements and works in coordination with other structures of the AU, including special representatives/envoys that the AU may have deployed. Thus, one way of addressing a possible shortfall is by strengthening the ongoing consultation and coordination with other structures of the Union.

Another numeric issue relates to the time that the Panel members need to spend to execute their mandate. More specifically, some Panel members serve on the Panel in addition to holding another, often demanding, position in their respective countries. Although the Panel members obviously bear the responsibility to ensure that their respective positions do not conflict with any activities of the Panel, it is debatable whether their active

schedules allow for additional duties. Two issues can be noted in response to this. First, it can be assumed that when they agreed to the appointment by the Assembly to serve on the Panel, members are aware of the work that this entails and would not have made this commitment if their schedules made it impossible to honour it. Second, the fact that some of the Panel members are still on active duty may be helpful when they are required to use contacts to mobilise support or when expertise on a specific subject is required.<sup>95</sup> For instance, being the Chairperson of the IEC of South Africa would have contributed to Ms Bam's efforts as part of the Panel's work on the issue of election-related conflict in Africa.

### Civil society engagement

A final issue concerns the Panel's engagement with civil society. Although not explicitly referred to, the modalities note that the Panel may decide to open up a meeting by inviting civil society representatives to contribute knowledge to a discussion on a specific issue.<sup>96</sup> In terms of agenda setting, civil society is mentioned as one of the groups that may make suggestions for putting an issue on the Panel's agenda.<sup>97</sup> The programme of work specifies civil society as one of the groups with which the Panel may interact during its meetings.<sup>98</sup> Indeed, one of the tasks of the dedicated secretariat will be to 'facilitate the Panel's outreach efforts to civil society'.<sup>99</sup>

While these acknowledgements are welcomed, civil society's contribution to the work of the Panel should be broad, in view of the ever-increasing need for skills and expertise on the part of the AU to which civil society can contribute, given the wealth of information and experience at its disposal. The Panel's engagement with civil society should be guided by the Livingston Formula which was adopted in December 2008 as the appropriate mechanism for the PSC's interaction with civil society.<sup>100</sup>

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For instance, civil society groups could be engaged for information-gathering purposes as well as advisory support during fact-finding, sensitisation or indeed peace-making missions. Some civil society groups may have actually developed relations with one or more parties to a conflict and could assist with establishing contact

between the antagonists and the Panel members. Contact with civil society may also be helpful for the sensitisation of communities regarding a negotiation process. Civil society's engagement with the Panel should thus be at a very practical level. It is commendable that civil society experts have already been invited to partake in the workshops organised by the Panel as part of its annual thematic reflection. Ongoing contributions by civil society to information gathering and early warning, constituting an important alternative source of information, should be more systematic and coordinated and be effected through the AU Continental Early Warning System.

### CONCLUSION

It is important to note that the Panel members were not only given the responsibility of contributing to ongoing efforts to secure peace, security and stability on the continent but also, as its first members, the responsibility of ensuring that this new structure works as efficiently as possible. The past year provided the Panel with an opportunity to explore what works, what does not and exactly what support it requires. Given the initial delay in the operationalisation of the Panel, it is essential that dealing with the outstanding issues is prioritised, also bearing in mind that the current mandate of the members comes to an end at the beginning of 2010.

Most crucial amongst these issues is the structuring and staffing of the mediation unit, as an independent structure in the Department of Peace and Security of the Commission. Having dedicated mediation experts to provide assistance not only to the Panel but also to other AU structures, will enhance the organisation's efforts at conflict prevention, resolution and management. Such a unit could lead the implementation of the mediation strategy that is currently being drafted, thereby ensuring consistency and coordination in efforts. Indeed, coordination appears to be the key to the success of the Panel's work, although it must remain vigilant that this does not hinder its ability to undertake activities on its own initiative, should it feel the need to do so. The matter of its own secretariat with a number of staff dedicated to coordinating with other AU departments as well as to organising the Panel's activities needs to be finalised urgently.

Another pertinent issue that needs to be finalised is the modalities of the Panel's engagements in conflict situations. In this process the Panel must take into account the mediation strategy that is currently being drafted, as this provides a holistic framework for peace-making efforts by the AU. Having clear modalities that inform the Panel's engagement in selected situations will make it possible for other stakeholders, such as civil society actors, to assess how best it could contribute to the Panel's efforts. A communication strategy will

further contribute to this. Limiting the sometimes necessary ‘culture of secrecy’ to the bare essentials will facilitate a greater understanding of the Panel’s work and open up possibilities for collaboration. In one or two years’ time this will also allow a proper assessment of the Panel’s contributions and its impact on peace on the African continent.

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## ABOUT THIS PAPER

This paper is an attempt to provide a comprehensive introduction to the recently established Panel of the Wise of the African Union. It commences with an overview of the developments leading up to the establishment of the Panel of the Wise, its structure and basic workings as well as the activities undertaken by this organ since its inauguration on 18 December 2007. Despite the short lifespan of the Panel, several preliminary observations are discussed and some recommendations for a further enhancement of the Panel's contribution to peace, security and stability on the African continent are made.

## ABOUT THE AUTHOR

Jamila El Abdellaoui is currently a senior researcher in the Conflict Prevention Programme at the ISS office in Addis Ababa, Ethiopia. Prior to joining the ISS, Jamila worked for the African Centre for the Constructive Resolution of Disputes (ACCORD) as a programme officer in the ACCORD office in Bujumbura, Burundi, from July 2003 to December 2005. Thereafter she continued her studies in the Middle East and South Africa and in August 2007 she joined ACCORD's head office in Durban, South Africa, as a senior department officer in the Intervention Department. She holds a bachelor's degree in European Studies with a specialisation in Public Administration and a master's degree in International Law (with a focus on International Humanitarian Law and International Criminal Law).

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iss@issafrica.org

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