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PEACE AND SECURITY COUNCIL
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BRIEFING NOTE

**ON PRIVATE MILITARY AND SECURITY COMPANIES OPERATING IN AFRICA: BRIEFING ON THE
STATUS OF THE REVIEW OF THE OAU/AU CONVENTION ON MERCENARISM**

ON PRIVATE MILITARY AND SECURITY COMPANIES OPERATING IN AFRICA: BRIEFING ON THE STATUS OF THE REVIEW OF THE OAU/AU CONVENTION ON MERCENARISM

I. BACKGROUND

1. Private Military and Security Companies (PMSCs) are legal entities that trade military services, providing armed combat or security services, military or security training and logistical support, among others, for financial gain. These companies have also been increasingly used in services as diverse as anti-poaching efforts and combating maritime piracy.

2. The continued presence of these companies in the Continent stretches back to the struggles for independence during the 1960s through the 1970s, and the subsequent proxy wars by the global blocs during the Cold War. Private military actors were frequently used by colonial powers as resistance instruments to undermine Africa's independence, to plunder natural resources et cetera, for instance the active involvement of foreign forces in the secession of the mineral-rich region of Katanga of the Democratic Republic of the Congo between 1960 and 1963. This unleashed political instability in the country, dubbed the *Congo Criss*, which resulted into one of the early interventions of UN Peacekeepers on the Continent. Also, foreign military figures such as Colonel Bob Dennard's active involvement in destabilizing AU Member States including Angola, Benin, the Democratic Republic of the Congo, the Comoros, Nigeria and Zimbabwe caused considerable social-political upheavals in these countries. The relatively recent misadventure of Simon Mann's attempt to overthrow the government in the Republic of Equatorial Guinea in 2004, was a reminder of the pervasive crave of foreign interests in pillaging Africa's natural resources.

3. Today, Africa still remains a significant theatre of operation of many private military and security companies to date, especially with the spread of terrorism which has revealed the vulnerabilities of security institutions of some of the affected countries. These private military outfits provide a range of services in African states including training, logistical support and even undertaking combat missions. They also protect some politicians and their assets or secure private foreign investments like mining sites. It is pertinent to highlight that, these PMSCs sign contracts that grant them access to various minerals and other natural resources. Reports also indicate that; these companies sometime provide similar services and or fight along-side non-state armed groups on the Continent. It may be noted that there is still no continental instrument on the regulation of PMSCs in Africa.

4. The Continent is also witnessing a closely related phenomenon of foreign forces and fighters – coming from not only within the continent, but also globally. Of particular concern is that Africans have also been going out of the Continent to engage in armed conflicts as private fighters/combatants either for economic or ideological reasons.

5. Despite their apparent disrepute, PMSCs are licensed and legal companies. They are hired by governments to complement the efforts by State security agencies to restore peace, security and stability in specific situations. According to the *UN Working Group on the Use of Mercenaries as a Means of Violating Human Rights and Impeding the Right of Peoples to Self-determination*, these companies also dominate the provision of security services in the Maritime Security domain globally. International shipping lines hire private military companies to protect their ships navigating through pirate-infested waters, including in the Gulf of Guinea, providing enhanced security against pirates. Also, mercenary hacking groups offer services to protect cyberspace and back-end of companies and can be hired to carry out countermeasures against competitors who attack them.

6. There is concern that the easy availability of private military and security companies, including computer companies, may become attractive to criminal groups, and terrorists, who could hire them as military trainers, arms dealers, or as elite Special Forces for specific terrorist attacks. They could be hired to carry out sabotage attacks on critical infrastructure and other national installations.

7. The practice where security and military forces can be bought and sold like any other commodity can be a threat to peace, security and stability in the Continent. This calls for urgent action by Member States to be better prepared to respond to such probable threats in all the five domains of war: land, air, water, and cyber. There is, therefore, urgent need to adopt a strong Continental policy framework in this regard.

8. The rapidly evolving trend of cyber-mercenarism where cyber-capabilities could be deployed alongside combatants as a force-multiplier is a significant threat since the African cyberspace is particularly vulnerable, where PMSCs may take advantage of and launch attacks.

9. Notable PMSCs operating in the Continent originate from mainly the United States, Europe and Russia. These include ASGAARD from Germany, CACI & Academi from the US, AEGIS Defense Services from the UK, the Wagner Group from Russia, and OMEGA Consulting from Ukraine. Within the African Continent, the Dyck Advisory Group (DAG) from South Africa is also active.

II. CONTINENTAL RESPONSES

10. The use of PMSCs is a highly controversial issue, and opinions on their presence in Africa vary. Some vehemently contend that they can contribute to stability and security in conflict zones, while others raise concerns about their potential for abuse and lack of accountability. Specifically at the United Nations Level debates suggest that PMSCs and Mercenaries are distinct issues and that they should be viewed, approached and or regulated separately. Also, the United Nations has expressed concerns about the increasing involvement of private military and security providers in Africa and have called for a binding international legal framework to regulate their activities. Due to the interlinked threats the Continent was ahead of the International efforts to regulate irregular militaries and the then Organization of African Unity (OAU) adopted the *Convention for the Elimination of Mercenarism in Africa* in Libreville, Gabon, in July 1977, prior to the 2001 United Nations Mercenary Convention. Currently, the OAU/AU Convention remains a critical normative tool for preventing and countering mercenarism and other transnational security threats affecting the African continent. However, in spite of its importance, 23 Member States are yet to ratify it.

11. The Commission has also developed an Operational Guidance Note (OGN) on Foreign Fighters in Africa, which is intended to support Member States, Regional Economic Communities (RECs) and Regional Mechanisms (RMs) with operational guidelines to deal with issues related to the Disarmament, Reintegration or Repatriation of Foreign Fighters within their operational contexts.

III. AT THE UNITED NATIONS LEVEL

12. In 2005, the United Nations Commission on Human Rights, established the UN Working Group on the Use of Mercenaries as a Means of Violating Human Rights and Impeding the Exercise of the Right of People to Self Determination. The Working Group has since monitored mercenaries, mercenary related activities in all their forms and manifestations. The Working Group specifically; investigates and communicates to governments and other actors, including PMSCs with regard to specific allegation of human rights violations involving mercenaries, mercenary-related actors and or

PMSCs. It undertakes country visits to assess the impact of suspected mercenary-related activities or private military security companies and regularly submits reports of its findings to the Human Rights Council, with concrete constructive recommendations to governments and other actors to address areas that may benefit from improvement, the Group also submits reports to the General Assembly on issues related to its mandate and mercenary-related activities and private military and security companies.

13. In February 2019, The United Nations Security Council (UNSC) under the presidency of Equatorial Guinea, organized a High-Level debate on mercenaries, with a theme; *mercenary activities as a sources of insecurity and destabilization if Africa*. The debated was presided by President Nguema Mbasogo of Equatorial Guinea, participating AU member states included Central African Republic, Chad, Cote d'Ivoire, Egypt, Gabon, Rwanda and South Africa. President Mbasogo reminded that fact that for last 2 years, his country had experienced 5 attempts by mercenaries intending to overthrow the legitimate government and seize the country's natural resources.

14. The debate deplored the absence of prosecution mechanism of mercenary-related and similar groups under international law which perpetuates impunity. The African Union Commission Chairperson participating at the UNSC's debate underscored the need to fight mercenaries and regulate PMSCs in the overall context of promoting peace and security on the Continent and he recommended that focus must be placed on security sector governance and in instances of countries emerging from conflict to undertake comprehensive disarmament, demobilization and reintegration and contain security threats often associated by incomplete DDR processes.

IV. AT THE AFRICAN UNION LEVEL

15. The issue of irregular militaries in any form, be it PMCs/PSCs and or mercenaries has considerably preoccupied the AU Peace and Security Council, and some of the recent reflections on these phenomena have included; Council's 996th Meeting held on 14th May 2021 on the consideration of the Report of the Fact-Finding Mission to the Republic of Chad, which distinctly flagged the menace related to foreign fighters and mercenaries that the country was facing, which required to take concrete actions and specific support to ensure successful political transition following the death of the President Idriss Deby Itno. Similarly, the PSC at its 1138th Meeting held on 8 February 2023 on the briefing by the Committee of Intelligence and Security Services of Africa (CISSA) on the peace and security, expressed concern over the persistence of a myriad threats to peace, security and development in Africa, including a surge of foreign terrorist fighters and mercenaries, among others.

16. Also in April 2023, at its 1150th Meeting the PSC's deliberations '*Towards National Reconciliation in Libya*' highlighted the need for incremental and sequential withdrawal of Foreign Fighters, Foreign Forces and Mercenaries, as a prerequisite for the implementation of the Ceasefire Agreement. Further, at its 1159th Meeting held at Ministerial level on 22 June 2023, on "*Briefing on the Status of Implementation of the Common African Defence and Security Policy (CADSP) and Other Relevant Defence and Security Instruments on the Continent, with Specific Focus on Update on "Operationalization of the African Standby Force"*"; expressed concern over the influx of mercenaries and foreign fighters in the Continent. More recently, the PSC's 1170th Meeting held on 22 August 2023, on Briefing on Continental Early Warning and Security Outlook by CISSA and the Africa Centre for the Study and Research on Terrorism (ACSRT) and the AU Police Coordination Mechanism (AFRIPOL); expressed concern over a number of resurgence and emergence of peace and security threats including proliferation of foreign fighters, mercenaries and foreign terrorist fighters, illegal exploration of natural resources among others. The meeting recommended the need for comprehensive security sector reform programmes in Member States, particularly those currently

fighting terrorism and violent extremism with a view to further enhance their national law enforcement, defence and security capabilities. Also at the recently concluded 4th meeting of the AU SSR Steering Committee, the challenges and efforts made to contain the unintended consequences of engaging PMSCs were noted. Specifically, it was reported that the ECOWAS region is undertaking a mapping survey on the nature and extent of PMSCs operating in the western Africa region.

V. UPDATE ON THE STATUS OF THE REVIEW OF THE OAU/AU CONVENTION ON MERCENARIES

17. The concerns of the phenomenon of mercenarism posing a threat to the independence, sovereignty, and territorial integrity of Member States culminated into the “Convention for the Elimination of Mercenaries in Africa” which was adopted by the Heads of State and Government of Member States of the Organization of African Unity (OAU) in July 1977, in Libreville, Gabon. The Convention defines a mercenary as a person, but also defines the crime of mercenarism as committed by the individual, group or association, representative of a State or the State itself who, with the aim of opposing by armed violence a process of self-determination stability or the territorial integrity of another State, practices or supports acts of mercenarism.

18. However, suffice to say that contemporary security landscape and dynamics on the African Continent have since significantly changed, especially with the emergence of phenomena such as Non-State Armed Groups (NSAGs), Foreign Fighters / Foreign Terrorist Fighters, Private Military Companies (PMCs) and other for-profit fighters.

19. It is in this context that the Specialized Technical Committee on Defence, Safety and Security (STCDSS), at its 12th meeting held in Cairo, Egypt, in December 2019 directed the Commission to review the OAU Convention for the Elimination of Mercenarism in Africa. This was endorsed by the 33rd AU Ordinary Session of the Assembly of Heads of State and Government.

20. The Commission has since initiated the process to review the Convention to ensure that it addresses the prevailing security threats. To actualize this the Commission has undertaken a number of steps including holding of a virtual consultative engagement with the Defence and Military Attachés of the Embassies of the AU Member States in Addis Ababa in August 2021. The meeting sought to elicit the immediate security concerns from Member States in relation to mercenarism, and identify possible areas that the review of the Convention would focus on. The approach adopted by the Commission is to revise the Convention.

21. Following this, the Commission, through the Political Affairs, Peace and Security (PAPS) Department, produced a zero draft of revised Convention. The draft has been reviewed by the AU Office of Legal Counsel. As part of the peer review process.

22. To enable further input into the zero draft revised Convention, the commission has convened consultative meetings with the following: the Pan African Parliament, the African Commission on Human and Peoples’ Rights, the Peace and Security Cluster of the Economic, Social and Cultural Council (ECOSOCC); the African Centre for the Study and Research on Terrorism, the African Union Mechanism for police Cooperation (AFRIPOL); the African Union Commission on International Law, and the Committee of Intelligence and Security Services of Africa (CISSA).

23. These consultative meetings were intended to strengthen the revised Convention, and the inputs were invaluable in improving the draft. It is now planned that the draft revised Convention will be submitted to Experts of Member States for further elaboration.

VI. RECOMMENDED KEY STRATEGIC INTERVENTION AREAS AND REMEDIAL APPROACHES

24. In view of the foregoing and without prejudice to the strategic guidance by the Peace and Security Council, the following possible intervention areas are recommended:

- (i) There is a need to adopt an approach that addresses the root causes and drivers of recruitment and enlistment of irregular militaries and PMSCs operators as a strategic upstream approach to address the scourge of mercenarism and related formations;
- (ii) Member States have to enhance collaboration and mutual assistance in combating the recruitment, including the predatory recruitment, of mercenary actors;
- (iii) The AU may consider encouraging regional and sub-regional member states to jointly undertake kinetic responses in tackling non-state armed groups, irregular militaries and insurgencies;
- (iv) Need to fast track the operationalization of the African Standby Force (ASF). The ASF could be deployed both as a preventive and management tool for tackling security challenges;
- (v) Accelerate the process of reviewing the Convention for elimination of Mercenaries in Africa and consider incorporating accountability and regulation of PMSCs with robust enforcement mechanism beyond the domestic fulfilment of treaty obligations. There should be a multilayered response that includes complementary enforcement mechanisms at the domestic and regional levels;
- (vi) The AU to enhance working relations with the UN-Working Group and deepen investigation and assessments on all PMSCs and Mercenaries- related activities on the Continent with a view to providing regional specific recommendations to all relevant Policy organs including the African Court on Human and people rights for consideration;
- (vii) Call on PAPS to ensure the full revitalization of the Nouakchott and Djibouti Processes for enhanced intelligence cooperation as part of the fight against foreign fighters, non-state armed groups and criminal gangs;
- (viii) Encourage replication of regional collaborations such as the Multi-National Joint Task Force (MNJTF) and Regional Intelligence Fusion Unit (RIFU) that bolster collaboration within regions on specific security threats, because of their successes; and
- (ix) The AU may wish to stand by its policies and stance as entrenched in various multilateral arrangements and policies including the Convention for the Elimination of Mercenaries in Africa, the AU security Sector Reform Policy Framework work, PSC decisions all of which expressly prohibits Mercenaries.