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**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

## **Access to justice, accountability and remedies for victims of mercenaries, mercenary-related actors and private military and security companies**

### **Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination**

#### *Summary*

In the present report, the Working Group on the use of mercenaries examines violations of human rights and humanitarian law perpetrated by mercenaries, mercenary-related actors and private military and security companies. The report reflects key intersectional considerations with regard to the impact of the actions of those actors and their differentiated effects on victims. It explores the challenges encountered by victims in accessing justice and adopts a comprehensive approach to accountability by elaborating the main elements of access to justice and remedy.



## **I. Introduction**

1. The present report is submitted pursuant to Commission on Human Rights resolution 2005/2, in which the Commission established the mandate of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, and to Human Rights Council resolution 42/9, in which the Council renewed that mandate. The report covers the activities of the Working Group since its previous report to the Council ([A/HRC/48/51](#)). The thematic section of the report contains an analysis of the access to justice, accountability and remedies for victims of mercenaries, mercenary-related actors and private military and security companies.

## **II. Selected activities of the Working Group**

### **A. Annual sessions**

2. The Working Group on the use of mercenaries held its forty-fourth and forty-fifth sessions from 15 to 19 November 2021 and from 4 to 8 April 2022, respectively. During the sessions, the Working Group held bilateral meetings with representatives of Member States, international and non-governmental organizations, as well as other relevant interlocutors. In November 2021, Sorcha MacLeod was appointed as the new Chair-Rapporteur of the Working Group. In April 2021, Carlos Salazar Couto joined the Working Group as the new member from the Latin American and Caribbean Group of States.

### **B. Communications and statements**

3. During the reporting period, the Working Group issued several communications jointly with other special procedures mandate holders in relation to the alleged continuation of human rights violations and lack of accountability in the context of activities in the Central African Republic, Libya, the Russian Federation and the Syrian Arab Republic.

### **C. Selected activities**

4. On 21 September 2021, Jelena Aparac presented the report of the Working Group on the impact of the use of private military and security companies in humanitarian action.<sup>1</sup>

5. In December 2021 and February 2022, the Working Group convened two virtual multi-stakeholder expert consultations to inform its 2022 reports to the General Assembly and Human Rights Council.

6. Also in December 2021, Sorcha MacLeod, and Chris Kwaja participated in the General Assembly of the International Code of Conduct Association.

7. The Working Group participated in the third session of the open-ended intergovernmental working group to elaborate the content of an international regulatory framework, without prejudging the nature thereof, relating to the activities of private military and security companies, which was held from 9 to 13 May 2022 (including intersessional consultations in April 2022).

### **D. Country visits**

8. The Working Group extends its thanks to all Governments that responded favourably to its requests for country visits and remains engaged in the planning of country visits to Armenia during the month of October 2022 and to Côte d'Ivoire in 2023. Due to the coronavirus disease (COVID-19) pandemic, the planned country visit to Bosnia and Herzegovina in October 2021 was postponed. The Working Group reiterates the importance

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<sup>1</sup> [A/HRC/48/51](#).

it places on undertaking country visits and looks forward to receiving invitations from other Member States for official visits in the near future.

### III. Thematic report

9. In its recent work, the Working Group has observed the increasing use of mercenaries, mercenary-related actors and private military and security companies worldwide in conflict, post-conflict and peacetime contexts, noting with alarm the proliferation of violations of human rights and international humanitarian law accompanying this growth.<sup>2</sup> At the same time, it has identified deplorable gaps in accountability, access to justice and remedies for victims of violations perpetrated by such actors. The present report, therefore, highlights the intersectional impacts of the operations of mercenaries, mercenary-related actors and private military and security companies in the specific contexts in which they operate and the notably differentiated impacts of their activities on different groups, including women, children, migrants and refugees, people with disabilities, LGBTI+ persons, older persons, minorities, indigenous peoples, human rights defenders and journalists. The report also focuses on the challenges and obstacles to accessing effective remedies, observing that accountability is rare and is exacerbated by different factors, including: (a) the secrecy and opacity surrounding the activities of mercenaries, mercenary-related actors and private military and security companies, as well as the lack of transparency and of access to information on their activities; (b) complex business and corporate structures and issues related to jurisdiction; and (c) national and international regulatory gaps. The Working Group urges a victim-centred approach to access justice and remedy, outlining the obligations, responsibilities and roles of States, private military and security companies, non-State clients and other relevant stakeholders, and presents recommendations to fill gaps in accountability.

10. The report is based on extensive desk research, contributions collected during a virtual multi-stakeholder expert consultation in December 2021 and responses to the call for written submissions.<sup>3</sup> During the preparation of the report, it became evident that there is limited public information on or consideration of the situation of the victims of mercenaries, mercenary-related actors and private military and security companies. The lack of attention and reporting on this issue has made it impossible to offer a complete picture of the subject and confirms the urgent need for further research and action.

### IV. Definitional considerations

11. The legal definition of “mercenary” is contained in article 47 of the 1977 Additional Protocol I to the Geneva Conventions of 1949, and relating to the Protection of Victims of International Armed Conflicts. The definition is cumulative in nature, and therefore narrow, but the essence of the definition is that a mercenary directly participates in hostilities for substantial private gain (art. 47 (2) (b) and (c)). Article 47 does not criminalize mercenarism, but it denies mercenaries the automatic right to the protections accorded under prisoner-of-war status.<sup>4</sup> This definition is also reflected in other international and regional instruments discussed in section V below.

12. The Working Group defines the term “private military and security company” as “a corporate entity, which provides on a compensatory basis, military and/or security services by physical persons and/or legal entities”.<sup>5</sup> Focus on the types of services carried out by such private companies is essential, given the mutable nature of their operations, the complex

<sup>2</sup> See Office of the United Nations High Commissioner for Human Rights (OHCHR), “Statement by the UN Working Group on the use of mercenaries warns about the dangers of the growing use of mercenaries around the globe” (2022).

<sup>3</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), Call for inputs: report on victims of mercenaries, mercenary related actors, and private military and security companies.

<sup>4</sup> See International Committee of the Red Cross (ICRC), *Customary International Humanitarian Law Database*, rule 108, Mercenaries, and rule 106, Conditions for Prisoner-of-War Status.

<sup>5</sup> [A/HRC/15/25](#), annex, part I, art. 2.

corporate structures employed by the industry and the potential risks to human rights posed by their operations.

13. In its resolution 60/146, the General Assembly defines “victims” as persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law or serious violations of international humanitarian law.

## **V. International regulatory framework in relation to access to justice and remedy for victims**

14. Responsibility for violations of human rights and international humanitarian law lies primarily with States, which have the principal role in ensuring oversight and accountability of the activities of mercenaries, mercenary-related actors and private military and security companies. States have the obligation to provide the necessary legal frameworks and judicial mechanisms to investigate allegations, hold such actors accountable and ensure victims’ access to justice and remedy. States are also required to exercise due diligence to prevent human rights violations and minimize the harm caused by the above-mentioned actors.

### **A. Mercenaries**

15. Article 47 of Additional Protocol I to the Geneva Conventions is concerned with the definition and status of mercenaries and contains no reference to accountability. However, under customary international humanitarian law (rule 108), mercenaries are accorded the right to a fair trial.

16. The International Convention against the Recruitment, Use, Financing and Training of Mercenaries applies to areas beyond armed conflict. Article 2 reflects the definitional criteria of Additional Protocol I, with the exception of the requirement of direct participation in hostilities. The Convention criminalizes: (a) the recruitment, use, financing or training of mercenaries; (b) direct participation of a mercenary in hostilities or in a concerted act of violence; and (c) attempting or assisting the commission of any of the offences set forth in the Convention. It also requires States parties to punish offences by appropriate penalties, taking into account their grave nature (arts. 2–5).

17. Regionally, the Organization of African Unity Convention for the elimination of mercenarism in Africa (1977) requires States parties to prohibit mercenarism. It is the only international instrument on mercenarism that encompasses both natural and legal actors. Thus the “crime of mercenarism” may be attributed to an “individual, group or association, representative of a State or the State itself” (art. 1, para. 2). Furthermore, it imposes an obligation on States parties to punish mercenary-related offences “by the severest penalties under [its] laws, including capital punishment” (art. 7).

18. The Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights includes mercenarism among the international crimes committed by natural and legal persons over which the African Court of Justice and Human and Peoples Rights has jurisdiction (arts. 46B and 46C). Article 28H, expands the scope of mercenary offences beyond other international instruments to include “assisting a government to maintain power” and “assisting a group of persons to obtain power”.

### **B. Private military and security companies**

19. As the Working Group has noted in its previous reports, statements and press releases, there is an accountability and regulatory gap in relation to the activities of private military and security companies and their effects on human rights and international humanitarian law. The international instruments mentioned above normally do not apply to such private companies, given that their personnel do not usually meet the legal definition of mercenaries.

20. In the absence of an international legally binding instrument for the regulation of the activities of private military and security companies, two regulatory initiatives have been developed to raise standards within the industry: the Montreux Document on Pertinent International Legal Obligations and Good Practices for States related to Operations of Private Military and Security Companies during Armed Conflict (2008) and the International Code of Conduct for Private Security Service Providers (2010).<sup>6</sup> While directed at different actors, both share the objective of enhancing the compliance of such private companies with applicable rules of international humanitarian law and international human rights law. The initiatives provide guidance in relation to accountability and access to remedy for victims.

21. The Montreux Document makes reference to the obligation of States to take appropriate measures to prevent, investigate and provide effective remedies for human rights violations perpetrated by private military and security companies.<sup>7</sup> Specifically, this requires States to exercise due diligence to prevent human rights violations or minimize the harm caused by such private companies and their personnel. Furthermore, it refers to the obligation of States to exercise criminal accountability for all international crimes for which international law demands criminalization, usually by a specific treaty.<sup>8</sup> It also lists circumstances in which a contracting State has direct responsibility for the violations perpetrated by private military and security companies and refers to the obligation of contracting States to provide reparations for violations caused by the wrongful conduct of private military and security companies when such conduct is attributable to the contracting State.<sup>9</sup>

22. Under the International Code of Conduct for Private Security Service Providers, companies are required to cooperate with “competent authorities” with jurisdiction and to establish human rights-compliant, corporate-level grievance mechanisms to address alleged violations of the code and to offer effective remedies.<sup>10</sup> This requirement, however, is not always realized by companies.<sup>11</sup>

23. While acknowledging the importance of initiatives such as the Montreux Document and the International Code of Conduct, the regulatory environment must be strengthened through a comprehensive, international legally binding instrument to ensure uniform regulation of private military and security companies worldwide and adequately ensure human rights protection. In particular, it must include detailed provisions ensuring comprehensive accountability and effective redress and remedies for victims.

## **VI. Victims of mercenaries, mercenary-related actors and private military and security companies: challenges to accountability and redress**

### **A. Evolving forms and occupying new spaces**

24. In the current complex international peace and security environment, the Working Group has expressed alarm about the proliferation of mercenaries and mercenary-related actors, and proxy actors in particular, in contemporary armed conflicts. The recruitment, financing, use and transfer of these actors prolongs conflicts, amplifies levels of violence,

<sup>6</sup> See also the Voluntary Principles on Human Rights and Security (2000), which provide guidance for extractive companies.

<sup>7</sup> See Montreux Document, statements 4, 10, 15 and 19.

<sup>8</sup> *Ibid.*, statements 6, 12, 17 and 21.

<sup>9</sup> *Ibid.*, statements 7 and 8: on good practices see: paras. 10 (d), 12 (b) (2), 15 (c), 19, 20 (c), 22 (b), 35 (d), 37 (b) (2), 46 (b)–(d), 49, 50, 51 (b), 63 (d), 65 (b) (ii), 72 and 73.

<sup>10</sup> See International Code of Conduct, paras. 66–68 See also *Interpretative Guidance: Developing and Operating Fair and Accessible Company Grievance Mechanisms that Offer Effective Remedies*.

<sup>11</sup> S. MacLeod and R. DeWinter-Schmitt (2019), “Certifying private security companies: effectively ensuring the corporate responsibility to respect human rights?”, *Business and Human Rights Journal*, vol. 4, Issue 1 (2019).

increases substantially the risk of violations of human rights and international humanitarian law, undermines peace efforts and destabilizes regions.<sup>12</sup>

25. Private military and security companies are increasingly occupying new public spaces, in some cases offering services that have long been considered inherent to States, thereby increasing the likelihood of violations of human rights and international humanitarian law. Contemporary activities of such private companies cover a spectrum of operational contexts that have been examined by the Working Group, including situations of detention and deprivation of liberty,<sup>13</sup> extractive industries,<sup>14</sup> migration,<sup>15</sup> the cybersphere<sup>16</sup> and maritime security. Furthermore, private military and security companies are perpetually repositioning themselves to appeal to new markets to take advantage of economic opportunities. For instance, during the COVID-19 pandemic, private military and security companies positioned themselves as humanitarian actors, carrying out public health testing and tracking and tracing services.<sup>17</sup>

26. The above-mentioned trends raise serious concerns about the negative impacts of such activities, especially for certain groups of victims. As mercenaries, mercenary-related actors and private military and security companies continue transitioning into new spaces, the profile of individuals affected by their activities continues to expand.

27. Multiple and intersecting forms of discrimination may shape how individuals experience violations committed by such actors. Individuals may be in a situation of aggravated vulnerability owing to underlying grounds of marginalization based on membership in a specific group, or to factors such as age, origin, sexual orientation, gender, race, social situation, disability and migration status. Such discrimination is exacerbated in specific contexts, including armed conflicts and deprivation of liberty.

28. The rights at risk and the violations that result in such contexts have their own specificities attached to the profile of mercenaries, mercenary-related actors and private military and security companies. Victims may experience differentiated and disproportionate human rights impacts and may thus have varied expectations regarding remedies and face different barriers in seeking access to justice and accountability.

29. In drafting the present report, the Working Group encountered serious limitations in obtaining disaggregated data on relevant victims. Available data seldom differentiate between violations of victims' rights committed by mercenaries, private military and security companies or others, particularly in situations of armed conflict. It is therefore difficult to obtain comprehensive information on specific groups and to analyse the root causes of such violations.

## **B. Context of operations and associated human rights violations**

### **Victims in the context of armed conflict and counter-terrorism activities**

30. The Working Group has repeatedly expressed concern regarding allegations received relating to the ever-increasing presence of mercenaries and mercenary-related actors in contemporary armed conflicts and the escalating risks of grave human rights abuses and war crimes.<sup>18</sup> Armed conflicts are increasingly non-international in nature and are accompanied by the proliferation of a multitude of armed non-State actors, including mercenaries and related actors and third-party proxy actors, who create military asymmetries and

<sup>12</sup> OHCHR, Call for inputs.

<sup>13</sup> [A/72/286](#).

<sup>14</sup> [A/HRC/42/42](#).

<sup>15</sup> [A/HRC/45/9](#).

<sup>16</sup> [A/76/151](#).

<sup>17</sup> S. MacLeod, "Private security, human rights and COVID-19: regulatory challenges at the margins", University of Copenhagen Faculty of Law research paper No. 99 (21 October 2020).

<sup>18</sup> OHCHR, Call for inputs.

disproportionate differences in the methods and means of warfare used.<sup>19</sup> These elements create challenges regarding the attribution of responsibility.

31. Some private military and security companies fill a demand for military and security services in conflicts, post-conflict and transitional settings. Military services include support to parties to conflicts, military cooperation and training; in some cases, such services are linked to active combat and direct participation in hostilities. Security services include guarding and protecting specific infrastructures and sites.

32. In addition, States are increasingly outsourcing activities to mercenaries, mercenary-related actors and private military and security companies, including in counter-terrorism, counter-insurgency and national security operations.<sup>20</sup> Outsourcing may be necessary to augment State technological or infrastructure capabilities and capacities, for political expediency or to undertake large-scale military engagements with plausible deniability for violations of human rights and international humanitarian law.

33. Armed conflicts exacerbate the situation of vulnerability of civilians and accentuate underlying factors and root causes of marginalization. They place individuals at severe risk, often restricting access to shelter, food, health care, housing and education and increasing vulnerability to violence perpetrated by State and non-State actors, including mercenaries.

34. The Working Group has documented a broad range of violations by mercenaries, mercenary-related actors and private military and security companies through its contact with civilian populations and has expressed serious concerns about attacks and killings of civilians, intimidation and death threats, ill treatment and torture, arbitrary detention, disappearances, sexual and gender-based violence, forced evictions and forced displacements. It has also noted attacks on civilian infrastructure and infrastructures, affecting livelihoods, water and power supplies, as well as looting, occupation and destruction of private property and educational and medical facilities.<sup>21</sup> Mercenaries and related actors have also been accused of placing landmines and improvised explosive devices in civilian residences without markings or warnings, killing and injuring civilians.<sup>22</sup>

35. Although the profile of victims of mercenaries during armed conflict does not differ considerably from that of other victims of conflict, victims of mercenaries may be at increased risk of vulnerability and may experience a heightened sense of fear due to a perception that there is no course of action available against the perpetrators. Specific civilian groups appear to be targeted by mercenaries and related actors, including: inhabitants of peripheral communities (this can be across religious, ethnic, racial and minority lines); inhabitants of rural villages; individuals who are, or are perceived to be, members of or supportive of specific groups that mercenaries and related actors and their allies are fighting; and individuals considered to be a potential threat, such as community or religious leaders, former combatants and young men. These individuals are at increased risk of detention, disappearances, torture and execution.

36. The presence of mercenaries and related actors in armed conflicts contributes to population displacement. Certain groups and individuals may be at aggravated risk because of obstacles to obtaining assistance and protection or inability to flee. For instance, older persons and persons with disabilities often do not manage to evacuate from communities that fall under control of certain groups, including mercenaries and related actors. Limited mobility may mean that older persons remain, assuming they will not be targeted, wanting to protect property or out of exhaustion from having fled previous attacks.<sup>23</sup> Similarly, persons with disabilities are at higher risk because of inaccessible warning systems and evacuation processes.<sup>24</sup>

<sup>19</sup> [S/2019/373](#) and [S/2020/366](#).

<sup>20</sup> “Special issue: proxy forces in modern warfare”, *Security & Defence Quarterly*, vol. 31, No. 4 (2020).

<sup>21</sup> See communication CAF 2/2021. All communications mentioned in the present report are available from <https://spcommreports.ohchr.org/TMsearch/TMdocuments>.

<sup>22</sup> [A/HRC/48/83](#).

<sup>23</sup> Human Rights Watch, *No One is Spared: Abuses against Older People in Armed Conflict* (2022).

<sup>24</sup> [A/76/146](#).

37. Women and girls are rendered particularly vulnerable and are differently and disproportionately affected by violence, facing a heightened risk of sexual and gender-based violence, including trafficking for sexual purposes.<sup>25</sup> Mercenaries and related actors exploit settings and environments where protection systems may be weak, rule of law and oversight diminished and pre-existing levels of discrimination and violence against women high. Sexual violence can be used as a form of reprisal, to create fear or as a form of torture. It may also be used systematically, as an unlawful method of warfare, aimed at destroying the social fabric.<sup>26</sup> Furthermore, despite a dearth of reporting and documentation, cases of sexual violence against men and boys have also been brought to the attention of the Working Group. Men and boys are particularly vulnerable when in detention or forcible recruitment by armed groups.<sup>27</sup>

38. During armed conflicts, children, separated from their families, with their homes destroyed and their education interrupted, or discontinued entirely, are at increased risk of trauma.<sup>28</sup> They are especially vulnerable and are at increased risk of being imprisoned, wounded or killed. The Working Group is particularly concerned by reports of the forceful occupation of schools by mercenaries and related actors and by grave violations against children attributed to such actors.<sup>29</sup> Some private military and security companies have recruited former child soldiers to take part in active combat or to guard the military facilities of States parties. Given the multiple layers of contracts involving subcontractors, lack of records and, in many cases, the lack of effective oversight and vetting procedures, it is difficult to know the exact number of former child soldiers recruited by such companies.<sup>30</sup>

39. Humanitarian actors, grassroots organizations, civil society actors and journalists have also been victims of violent intimidation, harassment or even assassination from mercenary-related actors for their work in supporting victims and in documenting violations.<sup>31</sup> Witnesses are also at increased risk of reprisals for reporting violations.<sup>32</sup>

#### **Victims in the context of detention and deprivation of liberty, including immigration-related detention**

40. Mercenaries and related actors increasingly play a role in the deprivation of liberty in the context of armed conflict, assuming policing and security roles, apprehending and detaining individuals or forcibly transferring specific prisoners from the custody of local police to hold them in their bases without any guarantees of due process or fair trial. Individuals have been subjected to extortion in exchange for their release; held in secret places, some incommunicado; subjected to torture and ill-treatment; and in some cases have been “disappeared” or executed for trying to flee.<sup>33</sup>

41. Increasingly, the Working Group has received reports of close cooperation between the police and military forces with mercenaries and related actors, which hinders victims' access to justice, deterring them from filing complaints or seeking reparations.

42. The Working Group has repeatedly raised concerns about the worrying trend of contracting private military and security companies to operate private prisons and migrant detention facilities and has expressed alarm at the impact on human rights, with little prospect for accountability or remedies.<sup>34</sup> It has also highlighted the perverse economic incentives that

<sup>25</sup> [A/74/244](#).

<sup>26</sup> ICRC, “Q & A: Sexual violence in armed conflict”, 2016.

<sup>27</sup> M. Bastick, Karin Grimm and Rahel Junz, *Sexual Violence in Armed Conflict: Global Overview and Implications for the Security Sector*, Geneva Centre for the Democratic Control of Armed Forces, Geneva (2007).

<sup>28</sup> See <https://www.ohchr.org/en/statements/2022/05/opening-90th-session-committee-rights-child>.

<sup>29</sup> [A/HRC/49/58](#).

<sup>30</sup> [A/HRC/39/49](#).

<sup>31</sup> See communications CAF 2/2021 and CAF 1/2018.

<sup>32</sup> See <https://www.ohchr.org/en/press-releases/2021/11/car-russian-wagner-group-harassing-and-intimidating-civilians-un-expertsOHCHR>.

<sup>33</sup> See communication CAF 2/2021.

<sup>34</sup> [A/HRC/45/9](#).

have led some companies to lobby for repressive criminal legislation and strict national immigration policies in ways that would increase incarcerated populations.<sup>35</sup>

43. Legal or immigration status intensifies vulnerability in detention and is further compounded when individuals are racialized or belong to specific marginalized groups, including LGBTI+ persons, women, children and older persons.

44. The Working Group has received persistent and widespread reports of appalling detention conditions, including: the use of force by personnel of private military and security companies against prisoners and detainees, resulting in grave injuries; inhuman and ill-treatment; the arbitrary use of solitary confinement as a punishment; sexual and gender-based violence; failure to enable or permit contact with family members; lack of adequate health care or medical neglect, leading to deaths; economic exploitation; restrictions on religious freedom; the imposition of quasi-judicial decisions that affect the legal status and well-being of prisoners or detainees; and lack of access to legal representation and other due process violations.<sup>36</sup>

### **Victims in the context of the exploitation of natural resources**

45. Hybrid security arrangements involving public, private and in-house security actors are becoming the norm in the extractives sector. Private military and security companies may directly commit human rights violations or may act in complicity with State security and military forces, in-house security, non-State actors or organized crime.<sup>37</sup>

46. Communities that base their economic, social and cultural development on their relationship with the land are disproportionately affected by the exploitation of natural resources.<sup>38</sup> The exploitation of natural resources and development projects often take place in remote areas that coincide with lands and territories historically occupied by indigenous peoples and tribal or rural communities. Those populations live in conditions of exclusion, poverty and marginalization, with minimal State and institutional presence. Such local communities thus face a significant power imbalance and weak negotiating capacity in relation to large companies and private military and security companies, and are often left to face the consequences of an increased security presence alone, with little oversight of those activities. In such circumstances, private military and security companies often become sources of tension between development interests and communities, contributing to increased violence.

47. Since the exploitation of natural resources is itself a factor of conflict, in many cases, the use of private military and security companies can only exacerbate such conflicts, leading to violence and violations of communities' rights. Communities are often denied access to information or inadequately consulted about the impact of such projects. The presence of personnel of private military and security companies during consultations or negotiations can be an intimidating factor for local communities, which may be pressured into agreeing to terms.<sup>39</sup>

48. In cases where adequate mechanisms lack protection of land and natural resource rights, communities are left with limited opportunities to express their concerns regarding their land and resource rights and the impacts of such projects.<sup>40</sup> These concerns may lead to opposition and the social mobilization of diverse groups, including indigenous peoples, human rights and environmental defenders, local communities, farmers and artisanal miners.

49. In countries where extractive projects are considered integral to the national growth and development model, groups opposing these projects are more likely to be treated as a threat to national security and as an impediment to development. Private military and security companies have been accused of surveillance and intimidation against human rights and

<sup>35</sup> [A/72/286](#), para. 62.

<sup>36</sup> [A/HRC/45/9](#), para. 47.

<sup>37</sup> [A/HRC/42/42](#).

<sup>38</sup> Inter-American Commission on Human Rights, *Indigenous Peoples Communities of African Descent: Extractive Industries* (OEA/Ser.L/V/II. Doc. 47/15) (2015).

<sup>39</sup> Business and Human Rights Resource Centre submission for [A/HRC/42/42](#).

<sup>40</sup> [A/HRC/46/74](#).

environmental defenders, including women human rights defenders.<sup>41</sup> Defenders are criminalized, defamed and stigmatized by companies and States, a practice used to distort the perception of their work in the eyes of public opinion and to feed prejudices. This turns them into “legitimate” objects of attacks or persecution, including by non-State actors and private military and security companies.

50. The Working Group is aware of several cases in which personnel of private military and security companies acting alone or in some cases alongside State security forces have subjected individuals opposing extractive projects to intimidation, harassment and threats. Such companies have resorted to disproportionate use of force during demonstrations, including shooting live ammunition and using tear gas, resulting in severe harm and even the death of protestors.<sup>42</sup> The Working Group has also been informed of personnel of such companies being implicated in assaults, torture, rape, illegal evictions, forced removals and evictions from land in the vicinity of a project and compulsory resettlement elsewhere.

51. Farming and rural communities are also among the most affected by the presence of private military and security companies and in some cases are denied access to their lands and livelihood. It is a common occurrence in some areas that local extractors, miners, farmers, and members of local communities may come into a site in search of resources to exploit for profit. In response, security personnel protecting companies against theft, intrusion into concessions and trespassing have resorted to disproportionate use of force, shooting and heavy beatings, as well as unleashing dogs against individuals.<sup>43</sup> Most of these cases remain unreported as local extractors, who many times operate without permission, are said to fear arrest.<sup>44</sup> Other individuals, including children and youth, who may trespass into concessions are at risk of being shot.

52. Sexual violence against women is prevalent, with numerous claims of rape and other forms of sexual violence perpetrated by private security guards. Many women are abandoned by their husbands or acquire injuries or diseases that impair their ability to work:<sup>45</sup> women most affected often suffer compounded forms of discrimination due to gender, race, ethnicity and socioeconomic status.

### **Impact on victims and communities**

53. The presence of mercenaries, mercenary-related actors and private military and security companies may directly or inadvertently expose individuals and groups to heightened risks of insecurity, undermine the enjoyment of their human rights and lead to the normalization and glorification of the use of violence, thus validating divisive practices of exploitation and abuse. These practices increase patterns of insecurity, fracture trust among communities, increase the fragmentation and deterioration of the social fabric and create an “exploitation economy”, which may remain after such actors leave.

54. Violence also stokes fear, weakening organizational and democratic processes and muzzling the voicing of legitimate grievances. The targeting of specific groups has a silencing effect both at the individual and community level. The presence of mercenaries, related actors and private military and security companies also affects freedom of movement, including access to workplaces, markets and health-care facilities, and can lead to forced displacement.<sup>46</sup>

55. Victims often face a double victimization: sustaining potentially dangerous and long-lasting injuries and trauma, including stigmatization and rejection by their families and communities. This is particularly significant in the case of survivors of sexual violence,

<sup>41</sup> Association for Women’s Rights in Development, “Women human rights defenders confronting extractive industries: an overview of critical risks and human rights obligations”, 2017.

<sup>42</sup> International Commission of Jurists, *Empresas y violaciones a los derechos humanos en Guatemala: un desafío para la justicia* (2014).

<sup>43</sup> Rights and Accountability in Development submission for [A/HRC/42/42](#).

<sup>44</sup> International Commission of Jurists submission for [A/HRC/42/42](#).

<sup>45</sup> Mining Watch Canada, “Background brief: adding insult to injury at the North Mara Gold Mine, Tanzania”, 2016

<sup>46</sup> [A/74/244](#), [A/HRC/42/42](#) and [A/73/303](#).

especially women.<sup>47</sup> Sexual and gender-based violence is also used as a means to harm, punish and control entire communities, which has immediate as well as lifelong intergenerational impacts, particularly on children and their families.

56. Fear and vulnerability are dominant prevailing responses of victims to violence experienced at the hands of mercenary and related actors, feelings which may be exacerbated because victims doubt that the perpetrators, with their foreign identities, may not be held accountable for their acts. It is understood that mercenaries and related actors exist outside State structures and national legal frameworks, *inter alia*, because they speak foreign languages, are not known by or are not identifiable to local communities, are motivated by financial gain and leave countries when conflicts end. Civilians anticipate that such foreign actors follow different doctrines and approaches from those that national actors must follow, leading to the assumption that they have no access to remedy. This perception is exploited by such groups to further generate terror among local populations.

### **Predatory recruitment**

57. Predatory recruitment is an emerging phenomenon whereby individuals are recruited as mercenaries in a way that takes advantage of their socioeconomic status and may involve coercion. The Working Group notes with concern ways that mercenaries and related actors are using such recruits and the mounting scale of human rights violations and war crimes that has resulted. Third-party States not involved in armed conflicts are increasingly inserting themselves into conflicts by recruiting, training, financing and deploying mercenaries in so-called proxy wars.

58. Recruitment often entails predatory practices, especially among men from low socioeconomic and conflict-affected backgrounds, who see an opportunity for a way out of extreme poverty. Often, they are lured into enlisting by false promises of economic stability and citizenship, sometimes believing that they are being contracted as security guards, unaware that they are to be deployed to fight in armed conflicts, or in other cases falling victim to enlistment by mercenary-related entities that later withhold their salaries or even arrest and detain them.<sup>48</sup> Others are recruited under duress or out of fear of reprisals against their families, particularly women and girls. These practices raise concerns about forced recruitment and trafficking of people for the purpose of providing mercenary-related services and activities.

59. Targets of predatory recruitment suffer from multilayered aspects of victimization, and many recruits are themselves primarily victims of armed conflicts. Their vulnerability is exacerbated in the recruitment process and aggravated through deployment in hostilities in foreign countries, putting their lives, liberty and physical integrity at risk. Those most affected are civilians living in severe poverty, young men previously engaged in armed conflicts and individuals who were forced to leave their communities and settle in camps for internally displaced persons and refugees.

60. Recruits often sustain serious and life-threatening injuries, including long-term disabilities, and are denied proper medical treatment and compensation for their injuries, as promised upon recruitment. Some recruits develop drug addictions, leading to family fragmentation, including intensified domestic violence against female family members.<sup>49</sup>

61. Predatory recruitment has damaging repercussions and harmful effects on families and communities left behind. Many families lose their breadwinners when their relatives are killed or physically disabled in combat. The Working Group was informed that some families of recruits that die in battle have been denied monetary compensation and foreign citizenship guaranteed by the recruiters.<sup>50</sup> Women married or related to recruits that die in battle are disproportionately impacted by such practices: they are often left behind, at increased risk of

<sup>47</sup> Committee on the Elimination of Discrimination against Women, general recommendation No. 33 (2015).

<sup>48</sup> Syria Justice and Accountability Centre, "Mercenarism in Syria: predatory recruitment and the enrichment of criminal militias", 2021.

<sup>49</sup> *Ibid.*

<sup>50</sup> *Ibid.*

abuse and sexual exploitation, with their compensation payments withheld, or conditional upon cooperation with abusers.

62. The Working Group has also been informed of the recruitment of children for mercenary activities, against their will, and in some cases coerced by parents who plan to use their salaries. Such children suffer a broad range of abuses, impacting their human rights, including their rights to life; not to be subjected to torture or sexual abuse; to be protected from economic exploitation and from performing hazardous work; and to health care and education. Unlawfully recruiting, using or otherwise associating children with armed forces or armed groups has a serious, long-lasting and complex impact on children, their families and communities.<sup>51</sup>

63. The Working Group is concerned by reports of men from the global South being recruited by private military and security companies through methods that amount to trafficking for labour exploitation. Often from rural areas and remote villages that offer few employment opportunities, they are hired to perform support functions, such as cooking, driving and other tasks. As victims of informal recruitment and employment practices by unregulated agencies, they are subjected to exploitation and extortion with promises of obtaining work abroad. Many accumulate debts, live in isolation when they are deployed and are in irregular migratory situations.<sup>52</sup>

64. It is also important to note that asymmetric power dynamics play out internally in the highly masculinized mercenary industry, where women and LGBTI+ persons tend to have marginal employment roles and may be targets of violence.<sup>53</sup>

### **C. Accountability challenges encountered by victims of mercenaries, mercenary-related actors and private military and security companies**

#### **Practical barriers**

65. Victims of mercenaries, mercenary-related actors and private military and security companies face common challenges, given the particularities of the perpetrators and how they operate. Their operations are often characterized by pervasive secrecy and opacity, which in practice impedes the identification of perpetrators and the gathering of information on them. States may deny the presence of such actors in their territory. The scope and type of bilateral agreements with host countries or contracts with clients are obscure. Such opacity obstructs efforts of concerned stakeholders to uncover information on the recruitment, funding and deployment of these actors, and prevents victims from seeking accountability

66. Victims are often unable to recognize or identify perpetrators, often viewing them as “foreigners” who “speak another language” and therefore outsiders to their communities. Furthermore, there is often a lack of clarity in relation to the hierarchical structure under which these actors operate, particularly in conflict situations, where there may be a multiplicity of security providers who may not be easily identifiable. In such circumstances, the identification of actors is more difficult when they are complicit through actions that enable, facilitate or contribute to abuses by other individuals or companies or by the State. Those factors hinder documentation of violations, which means that holding such actors to account becomes nigh impossible.

67. These practical barriers are often exacerbated by specific obstacles that different categories of victims may have experienced even before being affected by the actions of such actors. Obstacles to justice and remedies are often aggravated by discriminatory legislation and practices encountered by particular groups. Gender roles, economic marginalization, social stigma or exclusion, religious values and cultural norms and power imbalances between perpetrators and the individuals and communities affected by their operations,

<sup>51</sup> See [A/HRC/39/49](#).

<sup>52</sup> A. Chisholm and S. Stachowitsch, “Everyday matters in global private security supply chains: a feminist global political economy perspective on Gurkhas in private security”, *Globalizations*, vol. 13, No. 6 (2016).

<sup>53</sup> [A/74/244](#).

including lack of trust in the system, fear of retaliation and violent intimidation and harassment, all impede accountability.

68. Furthermore, the location in which violations occur may also impede victims' physical accessibility to justice institutions to lodge complaints or contact national authorities. Victims in conflict zones may find judicial mechanisms inaccessible or unsuitable for addressing serious human rights abuses. In rural contexts, access to support services may be limited or non-existent.

69. Other practical barriers include: court expenses; filing and fees; physical access to legal representation and to evidence and documentation; costs associated with transnational litigation; travel to court; provision of food; and other immediate support, including emergency and safe shelter.

70. Finally, human rights defenders face challenges in accessing information, evidence and victims. Individuals or institutions conducting investigations into such crimes face intimidation and threats, and in some cases have been killed for their work in documenting crimes committed by mercenaries and related actors.<sup>54</sup> In some instances, State institutions have failed to give access to investigators, including United Nations officials, to sites where grave crimes have been allegedly committed by mercenary-related actors.<sup>55</sup> These obstacles present broader challenges in terms of preserving evidence and gathering disaggregated data, with specific variables regarding the gender, age and profile of victims of human rights abuses perpetrated by mercenary-related actors, which impede the accurate documentation and reporting of cases.

#### **Legal and institutional barriers**

71. Existing gaps in legislation regulating the activities of mercenary-related actors regarding penal and civil sanctions for violations perpetrated by them constitute obstacles to ensuring accountability and access to justice for victims. In relation to the regulation of private military and security companies, the Working Group has noted that national laws contain inadequate provisions on licensing; registration; vetting of personnel; the scope of permissible and prohibited activities; the use of force, firearms and other weapons; reporting obligations for infractions or violations of domestic and/or human rights law; and accountability, including penal and civil sanctions for human rights abuses; and remedies for victims.

72. At the national level, factors that thwart accountability and remedy for victims in both territorial and home States include legislative provisions that exempt persons involved in violations from liability.<sup>56</sup> The absence of extraterritorial jurisdiction is also a significant impediment to accountability and to the availability of judicial remedy in the home States where private military and security companies are registered, considering the transnational nature of many companies within the industry. In addition, the lack of uniformity in national legislation on measures to ensure legal cooperation among States also constitutes an obstacle for victims in accessing justice and remedies.

73. The complex corporate structures of transnational private military and security companies present a barrier for victims in accessing justice as they often operate in territorial States that often do not have the capacity or political will to initiate legal proceedings, investigate or prosecute perpetrators, particularly in conflict settings.<sup>57</sup> Consequently, victims of human rights violations are often left without recourse to justice and face obstacles in transnational litigation against corporate entities, including: the organization of the different legal entities within corporate groups; the varying degrees of influence exercised by parent companies on their subsidiaries; and the evidentiary burden to prove the direct involvement of parent companies in the management of harmful acts.

<sup>54</sup> See CAF 1/2018.

<sup>55</sup> See <https://www.ohchr.org/en/statements/2022/04/comment-un-human-rights-office-spokesperson-seif-magango-malian-authoritiesOHCHR>.

<sup>56</sup> A/HRC/36/47.

<sup>57</sup> Geneva Centre for Security Sector Governance, *Legislative Guidance Tool for States to Regulate Private Military and Security Companies*, Geneva, 2016.

74. In general, victims of mercenaries, mercenary-related actors and private military and security companies encounter severe challenges when seeking access to justice due to: lack or weak judicial infrastructure; high costs associated with bringing cases to court and lack of legal aid funding; lack of legal professionals with the required knowledge, and/or experience and/or willingness to pursue cases in some jurisdictions; lack of adequate legal assistance in addressing transnational legal processes or claims; lack of qualified members of the judiciary and of judicial independence and threats of reprisals against members of the judiciary; lack of trust and confidence in the judicial system or fear of reprisals if they decide to report abuses, including lack of victim and witness protection programmes; weak judicial systems; lengthy court proceedings; and the climate of impunity and corruption in which violations take place, which further discourages victims to report cases.

75. If cases are brought to court, they may be declined without reason.<sup>58</sup> Alternatively, out-of-court settlements are agreed and usually comprise financial compensation.<sup>59</sup> Settlements frequently arise after prolonged and arguably instrumentalized litigation processes in which power imbalances mitigate against victims. Such arrangements do not create legal precedent, nor do they serve as exemplary deterrents to prevent further occurrences, thus falling short of achieving effective accountability and holistic remedies.

76. Finally, barriers arise in contexts where the rule of law is diminished and judicial mechanisms may be inaccessible or dysfunctional due to weak State institutions or overlapping or competing political and judicial functions.<sup>60</sup> Additionally, corporate-level grievance mechanisms may be non-existent or manifestly inadequate in terms of legitimacy, accessibility, predictability, equity, transparency and rights compatibility.<sup>61</sup> In both situations, victims may experience, inter alia: increased levels of risk and fear in reporting grievances, particularly in armed conflicts; issues of confidentiality; insecurity in accessing accountability mechanisms; mechanisms that are poorly equipped to deal with the complexities of serious human rights abuses, such as the protection of victims from reprisals and providing other forms of support to engage with the process (for example, information about their rights and the mechanism); and pressure to sign waivers that deny victims the right to seek judicial remedy. The repression of civil society organizations that provide avenues for the voices of communities is also common.

77. The Working Group has noted with concern that in cases in which accountability and access to justice has been achieved, States have adopted measures that undermine those achievements through the granting of pardons, amnesties or other forms of exculpation to personnel of private military and security companies.<sup>62</sup>

#### **D. Victim-centred approach to access to justice and effective remedy**

##### **Accountability and access to remedy for victims of mercenaries, mercenary-related actors, and private military and security companies**

78. The Working Group has reported on grave violations, including disappearances, summary executions, indiscriminate killings, sexual and gendered-based violence, torture, arbitrary detention, mass killings, looting and the indiscriminate targeting of civilians during armed conflicts. States have obligations under international human rights law to prevent human rights violations in the arena in which these actors operate and to protect victims of mercenaries, mercenary-related actors and private military and security companies. Additionally, the violation of certain non-derogable human rights, such as the rights to life

<sup>58</sup> See Center for Constitutional Rights, “*Saleh, et al. v. Titan, et al.*: historic case” (2011).

<sup>59</sup> See Center for Constitutional Rights, “*Abtan, et al. v. Prince, et al.; Albazzaz, et al. v. Prince, et al.*: historic case”; and “*Al-Quraishi, et al. v. Nakhla and L-3 Services*: historic case”. See also England and Wales High Court (Queen’s Bench Division 3198), *Kesabo & Ors v. African Barrick Gold Plc & another* (2013).

<sup>60</sup> See CAF 2/2021; see also <https://news.un.org/en/story/2021/07/1096752UN News>.

<sup>61</sup> OHCHR, Call for inputs.

<sup>62</sup> OHCHR, “US pardons for Blackwater guards an ‘affront to justice’ – UN experts”, 2020 (<https://www.ohchr.org/en/press-releases/2020/12/us-pardons-blackwater-guards-affront-justice-un-experts>).

and to be free from torture and cruel, inhuman and degrading treatment, cannot be justified by these actors in the context of armed conflict. States are required to uphold their obligations under international human rights law in exercise of their extraterritorial jurisdiction or in relation to anyone within their power or effective control even if not situated in the territory of the State. This applies particularly in situations where the operations of private military and security companies involve more than one State, such as the home State of the company, the hiring State and the host State. State responsibility can thus arise directly for the conduct of and harm caused by agents who act on its behalf, as well as for hiring, hosting and monitoring such entities. States have an obligation to prevent, punish, investigate and provide effective remedies to the victims; this obligation entails the implementation of positive measures such as the adoption of domestic legislation that regulates the activities of those actors, punishes perpetrators and provides redress for victims.

79. In relation to accountability and justice for victims of mercenaries, mercenary-related actors and personnel of private military and security companies, international humanitarian law addresses States' responsibility for their organs in the Fourth Hague Convention on the War on Land and in the Additional Protocol to the Geneva Conventions.<sup>63</sup> Furthermore, the International Law Commission's articles on responsibility for States for internationally wrongful acts (A/56/10 and Corr.1) provide guidance regarding State responsibility for violations of international human rights law and humanitarian law by non-State actors, attributing responsibility to the State for private entities when they are "empowered by the law of that State to exercise elements of governmental authority" (art. 5) or are de facto acting on its instructions or under its direction and control (art. 8).<sup>64</sup>

80. Since violations perpetrated by mercenaries, mercenary-related actors and private military and security companies may amount to war crimes or crimes against humanity, legal obligations arising from such crimes include the duty to investigate, prosecute or extradite, as well as to ensure the non-applicability of statutes of limitation for such crimes or any immunities. Universal jurisdiction is an existing mechanism to which States may turn to address gaps in the enforcement of norms. The principle of universal jurisdiction is based on the notion that "the fight against impunity is borderless"<sup>65</sup> and that some crimes are considered so heinous that they should be prosecuted regardless of where the crimes may have been committed or of the nationality of the perpetrators and the victims. Depending on whether the national legislation of a State includes a universal jurisdiction clause, and depending on the scope of that clause, some States may have jurisdiction to investigate and prosecute the gravest crimes committed by mercenaries and related actors and to impose criminal liability against perpetrators.

81. Ensuring corporate accountability for international crimes is also essential. The involvement of corporations in international crimes has been recognized since the Nuremberg Tribunal. While economic and armed non-State actors increasingly operate through their transnational activities, international crimes committed by private military and security companies are often associated with criminal liability, with very few judicial attempts to ensure corporate accountability. When realized, those attempts usually raise the issue of possible corporate complicity by a State, while setting aside potential corporate contribution to crimes committed by armed non-State groups.<sup>66</sup> The possibility of holding corporate entities with complex structures accountable for crimes against humanity is an area that has been decided at the national judicial level, which could pave the way for holding private military and security companies accountable for those crimes.<sup>67</sup>

<sup>63</sup> Convention respecting the Laws and Customs of War on Land (1907), art. 3; Additional Protocol I, art. 91.

<sup>64</sup> See Customary international humanitarian law, rule 150, Reparation. See also ICRC, *Guidelines on Investigating Violations of IHL: Law, Policy, and Good Practice*, guideline 14.

<sup>65</sup> I. Bantekas, "Criminal jurisdiction of States under international law", in *The Max Planck Encyclopedia of Public International Law* (Oxford University Press, 2008).

<sup>66</sup> J. Aparac, "Business and armed non-State groups: challenging the landscape of corporate (un)accountability in armed conflicts", *Business and Human Rights Journal*, vol. 5, No. 2 (2020).

<sup>67</sup> European Court of Human Rights, "Historic victory before French Supreme Court on the indictment of multinational Lafarge for complicity in crimes against humanity in Syria", press release, 2021.

82. Corporate accountability through civil liability may enable victims or their representatives to set in motion a judicial inquiry to obtain material compensation for their suffering (not always possible in criminal proceedings) and standards of proof that would provide an easier way for victims to obtain the moral compensation afforded by recognition of liability by courts. Finally, it may lead to a change in the corporate culture, raising awareness about responsibilities of corporations and their shareholders.<sup>68</sup>

83. At the national level, the adoption of legislation that criminalizes mercenarism and regulates the activities of private military and security companies is a first step in ensuring access to justice for victims. In relation to legislation concerning mercenarism in areas such as licensing, registration, vetting of personnel, the scope of permissible and prohibited activities, the use of force, the use of firearms and other weapons, accountability and remedies must be regulated. Furthermore, considering the transnational nature of private military and security companies, the adoption of legislation that covers their activities abroad is of key importance.

84. On a regional and international level, the promotion of international, regional and subregional agreements for the regulation of private military and security companies are necessary to effectively protect the rule of law. The Working Group acknowledges the valuable impact of initiatives such as the Montreux Document, the International Code of Conduct for Private Security Service Providers and the Voluntary Principles on Human Rights and Security in improving regulatory standards across the private military and security industry. However, the Working Group considers that the adoption of an international legally binding instrument on private military and security companies is necessary to strengthen legislation at the national level, particularly provisions on the accountability of private military and security companies and their personnel, as well as the establishment of standardized and effective accountability mechanisms to ensure that the regulation of the activities of such companies is adequately enforced.

85. It is also essential that these mechanisms cover criminal accountability and civil liability of individuals and corporate actors for human rights violations, as well as an oversight framework for the activities of private military and security companies, including reparation and remedy for victims. An international binding instrument could also set out the legitimate role and functions of such companies and prohibit their involvement in inherently governmental functions such as combat or military activities.

86. Ensuring effective access to justice and remedy for victims of violations committed by mercenaries, mercenary-related actors and private military and security companies is therefore contingent on the existence of effective and equitable delivery of public services, including: criminal and civil justice; the accessibility of avenues through which to pursue a case against a corporate entity or an individual; legal aid and the required immediate and long-term assistance (accommodation, medical care and psychological assistance and material assistance); support to victims, including the provision of information and assistance to enable them to access their legal rights in a language and manner that they can understand; and independent authorities that ensure that victims have access to their rights. Furthermore, necessary steps need to be taken at the national level to ensure that these services are provided in a fair, effective and non-discriminatory manner, and are easily accessible by vulnerable groups.

87. Reparation for victims must be a priority and should be accessible, affordable, timely, full and effective, with the principles of appropriateness and proportionality respected. As set out in General Assembly resolution 60/147, reparation may include cessation of continuing violations, compensation, rehabilitation, satisfaction, guarantees of non-repetition and a commitment to take disciplinary or penal action against those responsible for the harm. The nature of the procedural remedies should be judicial, however, and may be complemented by non-judicial remedies.

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<sup>68</sup> E. Mongelard, "Corporate civil liability for violations of international humanitarian law", *International Review of the Red Cross*, vol. 88, No. 868 (2006).

## Transitional justice

88. Transitional justice is one of the key mechanisms for the provision of remedies to victims, ensuring accountability and addressing legacies of grave human rights violations. While transitional justice includes criminal accountability, “it is underpinned by a broader understanding of justice that considers a range of victims’ needs and societal priorities”<sup>69</sup> and promotes truth, reparation, rehabilitation, reintegration, memorialization and reform.

89. In the context of the consultations for the present report, the Working Group invited experts in transitional justice to examine if and how transitional justice frameworks should address the role of mercenaries, mercenary-related actors and private military and security companies, particularly after legacies of serious human rights and violations of international humanitarian law. The experts concluded that the issue has rarely been examined and that little to no attempt has been made by States to include such actors in transitional justice efforts. Questions arose as to whether it was desirable to include mercenaries and related actors in such processes, given their role in prolonging conflicts and destabilizing peace efforts. While there is still little to offer in terms of good practices, and more research is needed, some useful insights emerged that demand future consideration.

90. There is no singular approach or one-size model for transitional justice as the process is context specific and, in the case of mercenaries and private military and security companies, perpetrator specific. Nonetheless, considering the phenomenon and transnational dynamic, some parallels and similarities can be found in and drawn from recent work and findings on transitional justice and business and human rights<sup>70</sup> and transitional justice and foreign fighters.<sup>71</sup>

91. While States have used transitional justice mechanisms such as truth commissions to address the responsibility of businesses in conflicts, including in Colombia, Liberia, Sierra Leone and South Africa,<sup>72</sup> the responsibility of private military and security companies has not been explicitly addressed. Parallels can also be drawn between mercenaries and foreign fighters, particularly discussions on measures that can be implemented in foreign fighters’ countries-of-origin, countries where violations have been committed and third countries, because transitional justice “can help to centre human rights obligations in responses to foreign fighters – shifting the focus from security and punishment to justice and the rule of law”.<sup>73</sup>

92. Transitional justice calls for a comprehensive and collective approach that goes beyond one case to include all victims and by which private actors are encouraged to become part of the public realm of political responsibility. Similarly, and particularly when dealing with patterns of abuse, transitional justice highlights that States have the primary leading role in acknowledging the gravity of massive abuses and the responsibility to sponsor solutions.

93. In particular, transitional justice offers a broader notion of justice and societal reform that can contribute to long-term prevention of violence and abuse.<sup>74</sup> Such an approach allows for remedies that are suited to the widespread and/or systematic nature of violations and for the consideration of reparations and other rights of victims of mercenaries and private military and security companies not as isolated incidents but through a holistic lens. This entails considering the responsibilities, as well as the rights and contributions, of different stakeholders and includes forms of acknowledgement, clarification of facts and guarantees of non-repetition. Furthermore, although it might make settlements with victims more difficult, guarantees of non-repetition and the acknowledgement of wrongdoing by the different actors, including States, mercenaries, related actors and private military and security

<sup>69</sup> International Centre for Transitional Justice, “On solid ground: building sustainable peace and development after massive human rights violations”, 2019.

<sup>70</sup> [A/75/212](#).

<sup>71</sup> C. Correa, *A transitional justice approach to foreign fighters*, International Centre for Transitional Justice, 2021.

<sup>72</sup> J. Van de Sandt and M. Moore, *Peace, Everyone’s Business! Corporate Accountability in Transitional Justice: Lessons for Colombia* (PAX, the Netherlands, 2017).

<sup>73</sup> C. Correa, *A transitional justice approach to foreign fighters*.

<sup>74</sup> *Ibid.*

companies, would allow for concrete measures, in consultation with victims, to address failures and institute reforms to prevent them.

#### **Role of United Nations investigative bodies**

94. United Nations mandated inquiries, fact-finding missions and investigative mechanisms could also play an important role and contribute to establishing the truth by documenting crimes committed by mercenaries, mercenary-related actors and private military and security companies and highlighting their effects on society. To the extent that corporations play a fundamental role in armed conflict, documenting their wrongdoing is directly related to the protection of international peace and security and to the process of transitional justice. This information can serve as a preventive tool for future abuses and can also be used to seek justice and accountability for the victims.<sup>75</sup>

#### **Protection of civilians and the role of humanitarian and human rights actors**

95. In politically complex situations, it is extremely challenging for different United Nations entities to pursue a consensual approach and to support or reinforce existing mechanisms to detect rights abuses at an early stage and even prevent conflict. The Secretary-General's call to action for human rights highlights the need for a much stronger and more coherent internal orientation towards rights protection as the primary guiding principle for all United Nations action.

96. Humanitarian actors and peacekeeping missions have a central role in providing protection to victims of mercenaries, mercenary-related actors and private military and security companies. However, the existing framework on victims' protection needs to be further reinforced and extended to strengthen collaboration between humanitarian and human rights actors. This gap is particularly true in relation to monitoring, documenting and reporting on such violations, as well as ensuring a culture that is people-centred and particularly conscious of the specific needs of people in vulnerable situations.

97. Synergies must be developed with a focus on preserving human dignity, preventing human rights violations and responding promptly and effectively when such violations occur, including at the hands of non-State actors, including mercenaries, mercenary related actors and private military and security companies.

98. Finally, the Secretary-General's call also highlights that the responsibility to ensure and protect human rights is no longer the domain of States and international organizations alone but also of the many civil society and private sector actors who have a role to play. Stronger multilateralism must be more inclusive and more networked and must place human rights at its very centre.

## **VII. Conclusions and recommendations**

### **A. Conclusions**

99. **What is clear from the analysis of the Working Group is that the proliferation of mercenaries, mercenary-related actors and private military and security companies in multiple contexts is giving rise to increasing violations of human rights and international humanitarian law without concomitant accountability, including access to justice and effective remedies for victims. While responses such as punishment of perpetrators or financial compensation can be important and integral elements of justice, an intersectional victim-centred approach demands a more holistic outlook, addressing regulatory gaps in order to prevent future violations and to create remedies that truly meet the needs of victims.**

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<sup>75</sup> Ibid.

## B. Recommendations

100. The Working Group recommends that States:

- (a) Investigate, prosecute and sanction violations committed by mercenaries, mercenary-related actors and private military and security companies, including in relation to crimes committed at home or abroad, and ensure effective access to justice, accountability and remedy for victims;
- (b) Ensure the creation of a comprehensive system to provide remedies for violations perpetrated by such actors, in which administrative, legislative and other non-judicial mechanisms complement and support judicial mechanisms;
- (c) Ensure disaggregated data-gathering as a critical first step towards the adoption of tailored legal and policy responses at the level of the State;
- (d) Ensure the independence of the judiciary and its ability to address cases of non-State actors and corporate-related human rights abuses, including when victims or perpetrators may be located in more than one jurisdiction;
- (e) Consider mutual cooperation in order to facilitate investigations and prosecution, including through legal assistance and extradition agreements, to ensure effective remedies locally and extraterritorially;
- (f) Remove financial, administrative and other barriers to accessing remedies and ensure that rights-holders and human rights defenders are not victimized while seeking legitimate remedies or while documenting violations committed by mercenaries or private military and security companies;
- (g) Adopt legislation regulating the activities of private military and security companies, particularly in the areas of licensing, registration, vetting of personnel, the scope of permissible and prohibited activities, the use of force, the use of firearms and other weapons, accountability and remedies for violations, taking into account the transnational nature and activities of some private military and security companies;
- (h) Adopt an international legally binding instrument on the activities of private military and security companies to ensure consistent regulation at the national level, including standards on adequate prevention of human rights violations, protection of victims, accountability and effective remedies;
- (i) Undertake measures that foster the establishment and effective functioning of non-State-based grievance mechanisms within private military and security companies and ensure a clear differentiation between the purposes and nature of non-State based grievance mechanisms and State-based mechanisms;
- (j) Ensure that private military and security companies and their personnel are subject to civil liability and penal accountability for violations of human rights: such civil and criminal accountability must be judicially enforceable and not subject to State or other immunities;
- (k) Ensure, in the context of predatory recruitment, due consideration of the root causes and vulnerable situations in which recruited individuals may find themselves: recruited individuals should be treated primarily as victims and offered specific protections, in line with international law, and the root causes that foster the recruitment of children should be addressed;
- (l) Maintain the centrality of rights holders to the entire remedy process by ensuring that all remedial mechanisms are responsive to their diverse experiences and expectations, especially marginalized or vulnerable groups;
- (m) Ensure preventive, redressive and deterrent remedies for harm to rights holders by mercenaries, mercenary-related actors and private military and security companies and ensure that remedies are accessible, affordable, adequate and timely;
- (n) Emphasize a victim-centred approach to the development of transitional justice processes, including with regard to the national prosecution of crimes falling

under the Rome Statute of the International Criminal Court, including truth-seeking processes and long-term development measures for prevention and non-recurrence;

(o) Implement truth-seeking processes to facilitate community acceptance and reintegration and to identify factors that lead individuals to undertake mercenary-related activities, including exclusion and structural discrimination.

101. The Working Group recommends that private military and security companies:

(a) Conduct and prioritize human rights due diligence, in particular country- and sector-specific human rights impact assessments, wherever the rights of specific groups and communities are potentially affected: due diligence should include the participation of potentially affected communities;

(b) Ensure that grievance mechanisms adopt a conflict-sensitive approach and that they actively and meaningfully engage with local communities, including unions, human rights defenders, representatives of affected communities and civil society organizations and groups, to ensure that they are properly responsive to the needs and experiences of affected stakeholders;

(c) Ensure that effective remedies are understood in a broad sense rather than merely as compensatory payment, and meaningfully consult with affected individuals and communities to ensure that operational-level grievance mechanisms are effective in terms of process and remedial outcomes;

(d) Make public the codes of conduct their personnel are expected to respect and be transparent about the activities they carry out while working for extractive companies: to facilitate identification of their personnel, such companies should ensure that their employees wear uniforms or insignia that makes them distinguishable from other security providers operating in the same area;

(e) Ensure that their employees respect and receive adequate and continuous training on human rights and international humanitarian law: private military and security companies should conduct extensive background searches to ensure employees have not been involved in misconduct during previous assignments and consider how their regular security activities might be used by other actors to commit human rights violations and take steps to mitigate the risks of complicity;

(f) Establish effective accountability, oversight and remedy mechanisms, including non-judicial remedies, for victims: contracts and legislation must not make the exhaustion of contractual and/or non-judicial remedies a precondition for resort to judicial enforcement of accountability and remedy;

(g) Actively participate in truth and reconciliation processes and provide reparations and guarantees of non-repetition as part of their commitment to building peace.

102. The Working Group recommends that:

(a) The International Code of Conduct Association and other relevant stakeholder initiatives consider how to explicitly address regulatory gaps in relation to accountability and remedy, especially corporate-level grievance mechanisms;

(b) All actors, including civil society organizations, humanitarian actors, human rights defenders and United Nations bodies, consider the compilation of disaggregated data on activities of mercenaries, mercenary-related actors and private military and security companies, with detailed information on victims and marginalized groups;

(c) All actors increase the monitoring of actions of private military and security companies and mercenaries, including in remote locations, with a view to strengthening the documentation of violations and abuses: the Working Group encourages human rights mechanisms, civil society organizations and others to make every effort in their investigations and reporting to distinguish and identify perpetrators, to the extent possible, and to gather disaggregated data.

103. **The Working Group recommends that the United Nations:**

(a) **Incorporate an appropriate level of awareness into its peace and security pillar on the issue of mercenaries, mercenary-related actors and private military and security companies, establish a robust cooperation to ensure that all United Nations entities encountering private military and security companies or mercenaries in their operations in conflict-affected contexts share their knowledge and information;**

(b) **Strengthen in-house knowledge and develop tools and specific guidance on monitoring, documenting, gathering information and reporting on violations of human rights and international humanitarian law committed by mercenaries, mercenary-related actors and private military and security companies in order to establish facts and contribute to ensuring justice and accountability.**

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