

Special Issue (Policy Brief)

Russia's Military Necessity and the Conscription of African Prisoners in the Russia-Ukraine War: Policy Options for the African Union (AU)

(Photo credit: [Indiatimes.com](https://www.indiatimes.com))

Quote:

“Russia’s Military Necessity and the Conscription of African Prisoners in the Russia-Ukraine War: Policy Options for the African Union (AU)”¹

Background:

As Russia came to terms with the challenge associated with the lack of combat infantry personnel in its war with Ukraine, the resort to conscription of prisoners became a viable option. It was reported that 7,000 to 10,000 convicts had been sent to fight in Ukraine on behalf of the Russian Federation². Another report revealed that out of the 500 prisoners sent to Ukraine, only two are alive³. Unfortunately, Despite evidence that many of the prisoners sent to Ukraine are foreign nationals, there has not been any document that shows their nationalities.

The death of Lemekhani Nyirenda, a 23-year-old Zambian student of the Moscow Physics and Engineering Institute, serving a nine-year jail term for drug-related offences in a Russian prison⁴, represents one of the consequences of prisoner conscription. The deceased was mobilised by the Wagner Group, a Russian mercenary outfit, to fight in Ukraine, where he died in September 2022. In response to the public outcry over the demise of Nyirenda on the frontline of the Russian invasion of Ukraine, the Government of Zambia requested the Russian government to provide it with urgent information regarding the circumstances surrounding the death of its citizen in Ukraine⁵. Unfortunately, though the Zambian embassy in Russia got information regarding the death of Nyirenda in Ukraine⁶, there has not been any cogent explanation regarding the circumstance of the death.

The Wagner Group represents what has been referred to as the deadly fighting force of mercenaries to further Russia’s military interests around the world⁷. The group’s emergence is reminiscent of the defunct South African-based mercenary - Executive Outcome and the United Kingdom-based - Sandline International, which participated in direct hostilities in some African countries, notably Angola and Sierra Leone, in the 1990s⁸. Despite the huge public outcry over allegations of human rights violations by the Wagner Group in Africa, particularly in the Central Africa Republic, Libya and Mali , no substantive action has been done to bring the mercenary to justice, despite the existence of a convention enacted by the defunct Organisation of African Unity (OAU) on mercenaries in 1977¹⁰

In February 2022, the Chairperson of the African Union (AU), Macky Sall, and the Chairperson of the AU Commission, Mousa Faki Mahamat, described as unacceptable the maltreatment of Africans fleeing the war in Ukraine, which amounted to a violation of international law¹¹. However, despite their stance, the complexity of the “African dilemma” in this situation is clearly manifest, owing largely to the inability of the AU to adopt proactive measures to protect Africans’ caught in the war’. As reported by an analyst:

“There has been a remarkable failure of advocacy and assertion of diplomatic protection by African countries on behalf of their nationals. They have put no pressure on the UN High Commissioner for Human Rights, the UN High Commissioner for Refugees or, indeed, on the special procedures of the UN Human Rights Council – as if those mechanisms do not exist to protect Africans, too”¹².

Russia’s Prisoners’ Conscription and the Principle of Military Necessity in Ukraine:

In circumstances where troops are needed for war, it is typical to mobilise from the nation’s reserves. These reserves are drawn from retired military or security personnel, as well as citizens that are willing to defend their country. The resort to mobilising foreign nationals, either as mercenaries in exchange for pecuniary gains, or free persons that are not undergoing jail, has been practised by countries during wars. The case of Russia resorting to using prisoners that are citizens of other countries presents real security and human rights challenges.

If it is true that Russia is ‘losing’ the ‘war’ in Ukraine, the reason is the inadequate presence of boots-on-ground soldiers. With soldiers totalling between 170,000 and 200,000 sent to Ukraine at the first instances, coupled with an additional 200,000 deployed through partial mobilisation¹³, Russia was in dire need of additional troops. This situation created what in war is best described as a military necessity. In this context, military necessity recognises that within the framework of war, states are driven by the ultimate and legitimate desire to win the war.

Within the framework of international law, conscription connotes a situation whereby the state or non-state actor compels a person to undertake military service¹⁴. The prisoners’ conscription plan is framed on the logic that the prisoners could win their freedom if they completed a six-month combat tour in Ukraine¹⁵. This context of mobilisation by the Russian Federation and the Wagner Group amounts to what can best be described as predatory recruitment, which has to do with the fact that the prisoners are not doing so on their terms.

Russia’s conscription of prisoners to go and fight in Ukraine presents two scenarios.

This statement was credited to Yevgeny Prigozhin, the leader of the Wagner Group, a Russian mercenary. See <https://www.wionews.com/world/either-prisoners-fight-in-ukraine-or-your-children-decide-for-yourself-russian-mercenary-boss-516855>
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 On the OAU mercenary convention of 1977, see https://au.int/sites/default/files/treaties/37287-treaty-0009_-_oau_convention_for_the_elimination_of_mercenarism_in_africa_e.pdf
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<https://syriaaccountability.org/content/files/2022/08/Forced-Conscription-Under-International-Law.pdf>
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Firstly, Russia was confronted with the reality of an imminent defeat, which presented a military necessity that must be acted upon by mobilising all elements of national power. Secondly, the conscription of prisoners became a viable option, and prisoners were given an opportunity to fight in Ukraine in exchange for their prison sentences. In response to the offer for amnesty, 1,500 prisoners signed up to go and fight in Ukraine.¹⁶ These two scenarios test the utility and efficacy of international humanitarian law on the conduct of wars and dimensions of enforced disappearances perpetrated by states against foreign nationals.

The Way Forward for the African Union:

Despite the numerous human rights instruments put in place for the protection of the rights of Africans, the 'war' between Russia and Ukraine is putting to test the utility of these instruments, which include the AU Charter, the AU Commission on Human and People's Rights, as well as the AU Court. These principal mechanisms are complemented by other instruments, such as the constitutions of member states of the AU, and the UN Charter, as well as the relevant provisions of the Geneva Protocols and additional protocols, relating to human rights and international humanitarian laws.

In pursuit of its agenda of dealing with a military necessity, Russia is engaged in deploying African prisoners to go and fight in Ukraine, violating their rights. This situation presents a security and human rights imperative, which requires the AU to fulfil its primary duty of protecting its citizens both within and outside the continent, including those in prisons.

The manifest reluctance of the AU¹⁷ to take a proactive stance on the current state of the 'war' between Russia and Ukraine is understandable for two reasons. First is the unwillingness of the AU to get caught up in a great power competition between Russia on the one hand and North America and Europe on the other hand.¹⁸ This is consistent with the non-align position of Africa since its independence¹⁹. Secondly, it has to do with the strategic cooperation between Russia and several African states, framed on the pillars of education, technical support, and economic and security assistance, among others. Russia's relations with Africa are pursued along the path of advancing Russia's strategic goal of expanding its influence in Africa.²⁰

The AU should get the Russian government to provide details of the list of foreign nationals in Russian prisons in the past five years, showing the nature of the crime, nature of the conviction, years of sentence, and location, among others. In this context, an audit to ascertain the whereabouts of African citizens undergoing jail terms in Russian prisons becomes imperative for the AU. The same should apply to African citizens in Ukraine to have detailed information on their whereabouts.

The AU should work with all the embassies and high commissions of African states in Russia and Ukraine to open registers for missing African nationals in the respective countries to be able to account for its citizens in these states. In addition, the Citizens and Diaspora Organisations Directorate (CIDO)²¹ can collaborate with the states to meet this human rights obligation, using all the existing mechanisms for protecting its citizens in foreign lands.

Conclusion:

The protection of African citizens across the world is a responsibility that the AU must not shy away from; where there is evidence that the African involved breached a law or where a crime was committed, they should be allowed to face justice in line with established judicial processes of their country of residence. Any form of extra-judicial treatment by the

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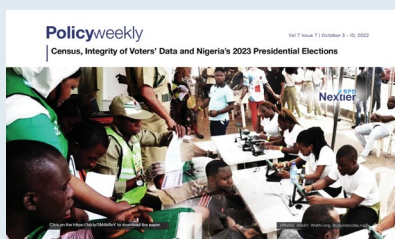
countries concerned, in pursuit of an agenda, as in the case of the forceful recruitment of African citizens to fight wars in Ukraine on behalf of the Russian government, amounts to a clear violation of international human rights law.

Author:

Chris M.A. Kwaja, PhD, is an Associate Professor of International Relations and Strategic Studies at the Centre for Peace and Security Studies, Modibbo Adama University, Yola, Adamawa State, Nigeria. He is also an Associate with Nextier and a Senior Research and Strategy Officer with the United States Institute of Peace (USIP), Nigeria. In addition, he currently serves as the representative of Africa on the United Nations Working Group on Mercenaries.

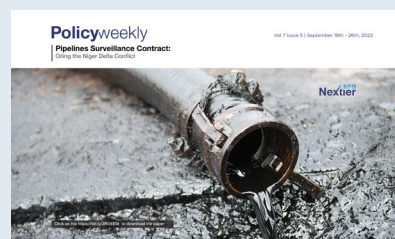
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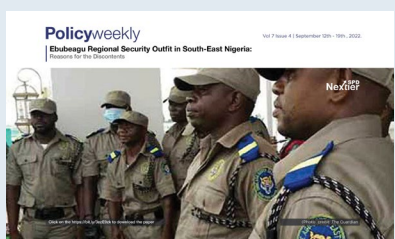
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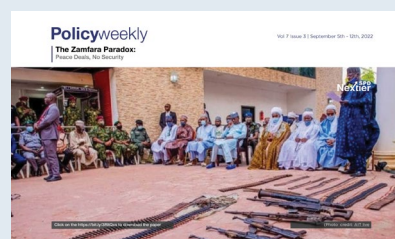
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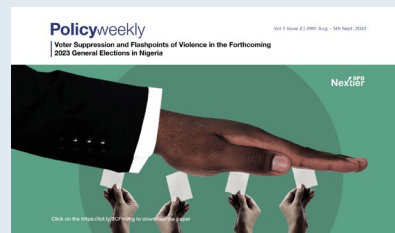
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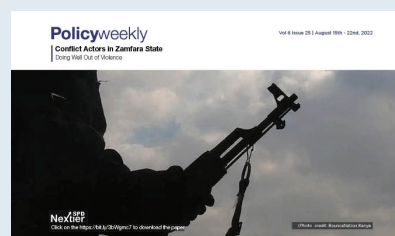
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