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PEACE AND SECURITY COUNCIL
3RD RETREAT

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EZULWINI, KINGDOM OF SWAZILAND

PSC/Retreat.3

CONCLUSIONS OF THE RETREAT OF THE PEACE AND SECURITY COUNCIL OF THE AFRICAN UNION ON EZULWINI FRAMEWORK FOR THE ENHANCEMENT OF THE IMPLEMENTATION OF MEASURES OF THE AFRICAN UNION IN SITUATIONS OF UNCONSTITUTIONAL CHANGES OF GOVERNMENT IN AFRICA

I. INTRODUCTION

1. In pursuance of the Decision of the Peace and Security Council (PSC) of the African Union (AU) at its 178th meeting, held on 13 March 2009, to establish a Committee on Sanctions within the perspective of the overall efforts of the AU to combat and prevent unconstitutional changes of Government in Africa, a Retreat of the Peace and Security Council was held in Ezulwini, Kingdom of Swaziland, from 17 to 19 December 2009. The process was sequel to the Decisions of the Assembly, [Assembly/AU/Dec.220(XII) and [Assembly/AU/Dec.253(XIII)] adopted in February and July 2009, respectively, within the framework of the implementation of preventive measures against unconstitutional changes of Government and the need for consultations with the Regional Economic Communities (RECs), the Pan-African Parliament (PAP), the organs and institutions of the AU. on the ways and means of strengthening the capacity of the AU to deal with the scourge of unconstitutional changes of Government in Africa.

2. In this regard, following extensive deliberations, the Retreat adopted the conclusions outlined below.

II. CONCLUSIONS OF THE RETREAT

A. ENHANCING THE EFFECTIVENESS OF THE LEGAL FRAMEWORK IN THE IMPLEMENTATION OF AU INSTRUMENTS AGAINST UNCONSTITUTIONAL CHANGES OF GOVERNMENT IN AFRICA

3. By the Lomé Declaration, and reinforced by provisions in the AU Constitutive Act and the PSC Protocol, Africa provides leadership in elaborating an institutional framework to address the phenomenon of unconstitutional changes of Government. Nonetheless, with the new trends and manifestations of undemocratic changes of Government in Africa, it has become imperative to put in place further practical strategies and measures with a view to strengthening the existing institutional arrangements for preventing and coin bating unconstitutional changes of Government in Africa.

4. The Peace and Security Council rea lamed the centrality of the African Charter on Democracy, Elections and Governance to addressing the menace of unconstitutional changes of Government and noted that, pending the entry into force of the Charter, the promotion of zero-tolerance of unconstitutional changes of Government in Africa is a challenge that requires urgent action. Based on a renewed determination and a stronger cooperation of member States, the following principles should guide the new momentum against the scourge of unconstitutional changes of Government:

i. coups d'état are illegal and totally unacceptable;

ii. the African Court of Justice and Human Rights should be given the necessary competence to try perpetrators of unconstitutional changes of government;

iii. perpetrators of coups d'état shall be liable for prosecution before the African Court of Justice and Human Rights;

iv. perpetrators of coups d'état shall not stand for elections conducted for return to constitutional order;

v. perpetrators of coups d'état shall not constitute obstacles by negatively influencing the conduct of a transition towards the return to constitutional order;

vi. constitutions shall not be manipulated in order to hold on to power against the will of the people;

vii. constitution-making or constitutional review processes shall not be driven by personal interests and efforts aimed at undermining popular aspirations;

viii. military/security forces shall not interfere in the transition towards the return to constitutional order;

ix. fostering of conditions conducive for a return to constitutional order;

x. sanctions shall apply in a graduated manner from the moment that an unconstitutional change of government takes place.

5. With the determination to strengthen Africa's capacity to prevent and combat unconstitutional changes of Government, there is need to:

i. shorten the period of up to six months (180 days) of suspension period, as provided for in the Lomé Declaration to perpetrators of unconstitutional change to restore constitutional order to a period of three months (ninety (90) days);

ii. review the reference in the Lorne Declaration to a regime that "stubbornly" refuses to restore constitutional order, in order to make every unconstitutional regime/de facto authority, without any qualification, fully accountable within the framework of AU instruments for combating and preventing unconstitutional changes of Government;

iii. create conditions for imposition and full implementation of targeted sanctions without any dilution or erosion, whenever they are applied to deal with an unconstitutional change of Government;

iv. conduct political engagements of the transition towards the return to constitutional order in a constructive and non-competitive manner or in such a manner as not to compromise the machinery of targeted sanctions;

v. enhance coordination and cooperation between AU Organs, Regional Economic Communities and other Regional Mechanisms, in the implementation of targeted sanctions;

vi. seek the support and cooperation of national Parliaments, through the Pan-African Parliament in the process of implementing sanctions, in particular through the adoption of enabling national legislations;

vii. develop close cooperation between the PSC and the Committee of Intelligence and Security Services in Africa (CISSA);

viii. accelerate the ratification by Member Slates of the African Charter on Democracy, Elections and Governance, as an instrument that further buttresses Africa's relentless efforts against coups;

ix. based on AU early warning indicators, steps should be taken to prepare guidelines for preventive deployment of AU presence before the breakdown of law and order.

B. TOWARDS ENHANCING EFFECTIVENESS IN THE IMPLEMENTATION OF SANCTIONS REGIME

6. The following measures are necessary to enhance the effectiveness of the implementation of sanctions:

i. timely gathering of accurate and relevant information and analysis of facts on the ground for informing the decision-making process, in collaboration with CISSA, the Intelligence and Security Committee (ISC) within the Commission and other relevant bodies and stakeholders;

ii. prompt and widest dissemination to Member States and international community of the decision imposing sanctions;

iii. elaboration of a detailed list of individuals and entities to be targeted by the measures using all the relevant information available to that effect;

iv. secure the cooperation of non-state entities, including commercial interests. transnational corporations and civil society organizations;

v. secure the cooperation between the AU, the RECs and other Regional Mechanisms, the United Nations, the European Union, the League of Arab States, l'Organisation internationale de to Francophonie and other international organizations, as well as with all those other entities whose activities lend support to the sanctions implementation process;

vi. provision of expertise relating to different categories of measures as to be stipulated in a Manual of Sanctions;

vii. periodic requests to Member States and other concerned stakeholders to provide information on the respective actions taken in implementation of sanctions;

viii. undertaking of fact finding missions in the field by or on behalf of the PSC;

ix. inclusion of safeguards to reduce, as much as possible, the negative impacts on the civilian population of measures taken under a sanctions regime.

7. At the expiration of a given period, and if no progress is made towards return to constitutional order, further steps should be taken, including the possibility of deployment of a peace enforcement mission. In this respect, and once operationalized, the African Standby Force will be able to provide some dissuasion and put pressure on coup perpetrators.

C. LEGAL BASIS FOR THE ESTABLISHMENT AND OPERATIONALIZATION OF THE PSC COMMITTEE ON SANCTIONS

8. The decision of the PSC adopted at its 178th meeting held on 13 March 2009 to establish a Committee on Sanctions is in conformity with:

- Article 8 (5) of the Protocol: Council may establish subsidiary bodies and sub-Committees as it deems necessary for the performance of its functions;

- Article 7(g) of the PSC Protocol: Council shall institute sanctions whenever an unconstitutional change of Government takes places in a Member State, as provided for in the Lomé Declaration, the Constitutive Act and the PSC Protocol.

9. Accordingly, the establishment of a Committee on Sanctions within the PSC represents a contribution of the PSC to the implementation of decision Assembly/AU/Dec.220 (XII) of the 12th Ordinary Session of the AU Assembly, held from 1 to 3 February 2009, on the resurgence of the scourge of coups d'état in Africa. In the decision, the Assembly, inter-alia called on Member States to react firmly and unequivocally to put an end to the scourge of unconstitutional changes of government.

D. ESTABLISHMENT OF THE COMMITTEE ON SANCTIONS

a) Nature

10. The Committee on Sanctions is a subsidiary standing body of the Peace and Security Council established pursuant to Articles 7 (g) and 8 (5) of the PSC Protocol and within the broad framework of relevant AU instruments.

b) Composition

11. The Committee shall consist of five members of the PSC, appointed on the basis of regional representation.

c) Mandate

12. The mandate of the Committee shall be to monitor and make recommendations on the implementation of sanctions regimes imposed by the PSC in situations of unconstitutional changes of government.

d) Tenure

13. The tenure of members of the Committee on Sanctions shall be one year renewable.

e) Chairmanship

14. The Chairperson and Vice-Chairperson of the Committee shall be appointed for a one-year term by the Peace and Security Council, on the basis of the principle of geographical rotation.

f) Rules of Procedure

15. The Committee shall prepare a draft of its own rules of procedure and submit it to the PSC for approval.

g) Functions of the Committee

16. The Committee shall perform the following functions:

i. monitor the implementation of sanctions measures imposed by the PSC;

ii. seek from all Member States, relevant information regarding the actions taken by them to implement effectively the sanctions measures imposed by the PSC and whatever additional information it may consider useful in this regard;

iii. examine information regarding alleged violations of sanctions measures imposed by the PSC and recommend appropriate action if necessary;

iv. identify individuals and entities to be included in the list for the imposition of targeted sanctions pursuant to the provisions of a PSC communiqué imposing sanctions;

v. consider and recommend, upon request, exemptions from sanctions measures as set out in a PSC communique;

vi. review regularly the list of individuals and entities designated by the PSC, with a view to keeping the list as updated and accurate as possible and to confirm that listing remains appropriate, and to encourage Member States to provide any additional information whenever such information becomes available;

vii. report at least once a month to the PSC on its activities and on the implementation of the communiqué, including on ways to strengthen the effectiveness of the sanctions measures imposed by the PSC:

viii. identify cases of non-compliance with the sanctions measures pursuant to a PSC communique and to recommend the appropriate course of action on each case, for the attention of the PSC;

ix. report on any other matter in relation to Article 7 (g) of the PSC Protocol, as directed by the PSC.

h) Collaboration with Specialized Institutions and other entities of the AU

17. The Committee shall seek expertise as it may require for the performance of its functions from specialized institutions and entities of the AU, including the Committee of Intelligence and Security Services of Africa, within its area of competence and expertise.

i) Secretariat of the Committee on Sanctions

18. The Secretariat of the Committee shall be the PSC Secretariat.

j) Manual on Sanctions Measures

19. 1n order to facilitate speedy response to unconstitutional changes of Government with measures intended to minimize adverse impact on civilian populations, a manual on sanctions providing for the categories of measures that could be applied in such cases, as well as guidelines for the granting of exemptions from the sanctions measures, shall be elaborated, taking into account the existing relevant AU instruments, such as the Lomé Declaration, the Constitutive Act and the Peace and Security Council Protocol. The manual shall provide, inter-alia, for a gradual process in the application of the different categories of sanctions set out in the existing legal instruments relating to unconstitutional changes of Government, as well as other measures that may be deemed necessary by the PSC. The manual shall also provide guidelines for the granting by the PSC of exemptions from the sanctions measures.

k) Enhancing Implementation and Monitoring

20. In order to ensure that the sanctions measures contained in a NC communique are effectively and fully applied, the PSC shall seek the close cooperation and support of AU member Slates, the RECs, other Regional Mechanisms, international community, international organizations and other entities involved in the implementation of sanctions measures so imposed by the PSC in any situation of unconstitutional changes of Government.

21. The Committee recommends measures to the PSC to be applied to member States that fail to comply with the sanctions regime imposed by the PSC.