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人权理事会
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增进和保护所有人权、公民、政治、经济、
社会和文化权利，包括发展权

使用雇佣军侵犯人权和阻挠行使民族
自决权问题工作组的报告

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增 编

访问智利 *

(2007年7月9日至13日)

* 本访问报告的内容提要以所有正式语文分发。报告本身载于内容提要附件，仅以原文和英文分发。

内 容 提 要

应智利政府的邀请，工作组于 2007 年 7 月 9 日至 13 日访问了智利。工作组对这项邀请、合作层次和磋商期间进行的建设性对话表示感谢。

工作组赞赏智利政府采取行动，限制招募前智利军事和警察人员到伊拉克去工作的现象。所采取的行动包括：向众议院国防委员会初步提出一个涉及智利加入《反对招募、使用、资助和训练雇佣军国际公约》的法案草案；设立了一个机构间工作队，负责审议在国内制定最新、有效的规则制度以便制止和惩罚与雇佣军相关的新做法并将其定罪所需的立法措施；力图用保安法取代现行关于私人保镖的法律；拟订旨在改革军人职业的初步法案草案。工作组也注意到智利对保安公司有着范围广泛的法律、条例和监督制度。

工作组对招募、训练和雇用智利人出国到伊拉克保安公司工作这个自 2003 年出现的现象感到关切。对有关资料的审查揭露存在着合同方面的违法乱纪行为和恶劣的工作条件，例如：过度拥挤、工作时间过长、逾期不付工资或只付部分工资、有辱人格的待遇和与外界隔绝、无视健康等基本需要。尽管作为“独立立约人”或“保安员”被雇用，这些人都在美利坚合众国、约旦或伊拉克接受军事培训，并最终执行军事任务。工作组对这种招募活动继续展开的可能性感到关切。招募数以百计的智利人到伊拉克的美国公司工作的两家公司在智利经营，但总部分别设在乌拉圭和巴拿马。工作组还收到资料指称林业公司雇用的私人保安公司的雇员践踏了土著社区的人权，对此也表示关切。

工作组建议，机构间工作队应尽快完成其研究工作，以便在国内能将与雇佣军相关的活动定罪并制定有关的法律；确保智利加入《公约》；主管当局(特别是军事法庭)应当尽快完成对 José Miguel Pizarro 的公司的调查，他为美国黑水公司和 Triple Canopy 公司招募智利公民去伊拉克工作；采取紧急措施保护当前在伊拉克的智利人的权利；在最高行政一级(部或副部一级)设立一个机构，赋予该机构权力，由其负责监督私人保安公司和新形式的雇佣军；制定新的保安法，确保人人能够作为公共利益享有安全这一普遍权利；确保新法案包含具体措施，为负责保安的人员提供合适的培

训，包括关于国际人权标准和公平理念的指示；建立一个机制，负责监督保安公司的活动，并接受有关申诉；尽早建立符合《巴黎原则》的国家人权机构；考虑举办一个多学科研讨会，以传播机构间工作队得出的结论以及联合国雇佣军问题工作组关于智利的报告，以期将研讨会的建议纳入公共政策。

Annex

**REPORT OF THE WORKING GROUP ON THE QUESTION OF
THE USE OF MERCENARIES AS A MEANS OF VIOLATING
HUMAN RIGHTS AND IMPEDING THE EXERCISE OF THE
RIGHT OF PEOPLES TO SELF-DETERMINATION:
MISSION TO CHILE (9-13 JULY 2007)**

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Introduction

1. At the invitation of the Government, the Working Group, represented by its Chairperson-Rapporteur, Mr. José Luís Gómez del Prado, and one of its members, Ms. Amada Benavides Pérez, visited Chile from 9 to 13 July 2007.
2. The purpose of the visit was to obtain information that would contribute to fulfilling the Working Group's mandate to study and identify emerging issues, indications and trends with regard to mercenaries, mercenary-related activities and the functioning of private military and security companies and their impact on human rights.¹ The visit to Chile forms part of a regional assessment undertaken by the Working Group on the tendency towards the privatization of security in Latin America, which includes a phenomenon observed in recent years consisting of the contracting of nationals from the countries in the region by private military and security companies.² These companies are subsidiaries of, or have themselves been subcontracted by foreign-based companies that operate in armed conflict or post-conflict situations, such as those in Afghanistan and Iraq.
3. The following topics were addressed:
 - (a) The recruitment and military training of Chileans by private security companies with the aim of providing security services in Iraq;
 - (b) Private security in Chile;
 - (c) The involvement in social conflicts of private security companies that provide protection services to forestry companies; and
 - (d) Chile's accession to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries.
4. The Working Group held meetings with legislative, executive and judicial authorities and with other State bodies. It had meetings with: ministers, vice-ministers, senior and State officials from the Office of the Minister and Secretary-General of the Presidency, Ministry of Foreign Affairs, Ministry of National Defence, Ministry of the Interior, Ministry of Justice, Ministry of Labour and Social Insurance; the Human Rights, Nationality and Citizenship Commission of the Senate and the chairperson of the National Defence Commission of the Senate; the Human Rights Commission of the Chamber of Deputies, the president of the Supreme Court, the public prosecutor, the commander-in-chief of the army, the chief of the defence staff, the

¹ The Working Group refers to private military and private security companies as enterprises that provide all types of security assistance, training, procurement and consulting services, ranging from unarmed logistical support to armed guards participating in defensive or offensive military operations.

² The Working Group has requested invitations from Chile, Colombia, Ecuador, Honduras and Peru (E/CN.4/2006/11/Add.1, para. 23).

assessor-general of the army, the assessor of the Second Military Court of Santiago and the prosecutor of the Fifth Military Prosecutor's Office of Santiago, the director-general of the carabineros and the director-general of the criminal investigation police. The Working Group delegation also had the opportunity to meet with various members of Chilean civil society, including representatives of non-governmental organizations (NGOs), academics, private security companies, individuals and the media, as well as representatives of the United Nations system in Chile.

I. BACKGROUND

5. The mandate of the Working Group includes monitoring and studying the activities of private military and security companies and their impact on all human beings.³ With the privatization of security functions that have traditionally been carried out by the army or the police, the boundaries between public and private are becoming blurred, giving rise to a dangerous confusion - or a "grey area" - between State public services and those provided by private commercial entities. As indicated in the Working Group's reports,⁴ in conformity with international law⁵ and domestic law, States bear the primary responsibility for maintaining public security and law and order.

6. The trend toward the privatization of security and the use of force is cause for concern, as is the violation of human rights with impunity in connection with the involvement of private military and security companies in armed conflict or post-conflict situations, in ensuring national security or in other situations. This phenomenon is often associated with the establishment by transnational companies of satellite subsidiaries that have legal status in one country, provide services in another and hire personnel in a third country.

7. Another new practice engaged in by some of these companies or their employees involves committing offences against personal liberty, by coercing, harassing or threatening members of human rights organizations - particularly defenders of economic, social, cultural and environmental rights and members of indigenous communities - in connection with social protests.

8. It is essential to establish or strengthen oversight and control at the national level by creating systems for registering and licensing these types of companies and their employees. Such rules should include minimum requirements for transparency and accountability of firms, screening and vetting of personnel, and establishing a monitoring system that includes parliamentary oversight.

³ Commission on Human Rights resolution 2005/2, para. 12 (e).

⁴ See documents A/61/341, paras. 75 and 76, and A/HRC/4/42, paras. 36-59.

⁵ See preamble to the Universal Declaration of Human Rights and general comment No. 31 of the Human Rights Committee on the nature of the general legal obligation imposed on States parties to the International Covenant on Civil and Political Rights.

II. POLITICAL AND LEGAL STRATEGY AND INSTITUTIONAL FRAMEWORK

A. International level

9. Chile is a party to seven of the principal human rights treaties. It has accepted individual complaints mechanisms under the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

10. The 1980 Constitution of the Republic of Chile stipulates that international treaties are an integral part of national legislation and that rights and freedoms must be interpreted in conformity with the Universal Declaration of Human Rights and all international human rights treaties ratified by Chile. Article 5 of the Constitution states that “the exercise of sovereignty recognizes as a limitation the respect for the basic rights inherent in human nature. It is the duty of the organs of the State to respect and promote such rights, which are guaranteed by this Constitution and by the international treaties ratified by Chile and currently in force.

B. National level

11. The Working Group emphasizes that the State is responsible for the safety of all individuals within its jurisdiction, and that when it transfers this right to private companies, it must monitor and control both parent companies and their subsidiaries.

12. The Vice-Minister for Foreign Affairs informed the Working Group that his Ministry had set up and currently presided over an inter-agency working party composed of the various ministries and institutions responsible for overseeing activities related to security and defence. Its purpose is to identify measures that must be incorporated into domestic legislation in order to develop an up-to-date and efficient system of rules for the criminalization, deterrence and punishment of new practices related to mercenarism. During the meeting held by the Working Group with the inter-agency working party, reference was made to the preliminary draft of a bill submitted to the Defence Commission of the Chamber of Deputies concerning Chile’s accession to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries. Taking a multidisciplinary approach and with input from the various ministries that comprise it, the working party examines and analyses the ways in which the Convention can impact domestic law. Also discussed at the meeting were lacunae noted in the Convention and the need to adapt Chile’s domestic law and to develop up-to-date and efficient system of rules with a view to curtailing activities related to mercenarism. Without excluding the possible accession of Chile to the Convention in the medium term, Chile has given priority to drafting domestic legislation aimed at combating the new forms of the phenomenon.

13. In this connection, at the meeting held by the Working Group with the chief of the defence staff, the latter reported that, in an attempt to discourage the recruitment of military personnel, many of whom retire before the age of 45 and see the opportunities proposed by private security companies to work in conflict or post-conflict areas as incentives to remain active and supplement their pensions, efforts were under way to consider lengthening the military career

and offering servicemen better rewards by providing them sufficient pensions to ensure a decent retirement.⁶ Emphasis was placed on the fact that the Chilean armed forces have no authority over the activities of military retirees, given the total lack of jurisdiction in this regard. Several preliminary drafts aimed at reforming the military career had already been prepared with a view to enhancing the utilization of military human resources. In addition, the Chilean authorities noted that the current law concerning private guards would be replaced by a private security act.

14. The office of the director-general of the carabineros informed the Working Group that, pursuant to Decree Law No. 3607, it is responsible for the regulation, control and supervision of private security services. The deputy director of the carabineros and the chief of the private security division of the carabineros provided information on the establishments that make up the private security system overseen by division OS.10 of the office of the director-general of the carabineros. The system currently comprises 21 types of establishments. The private security sector has grown rapidly over the past several years (66,563 establishments in 2002; 116,502 in 2007). According to the Decree Law No. 3607 concerning private guards, guards who can and must carry weapons in performing their work are referred to as *vigilantes* (armed guards), while those who do not carry weapons while on duty are designated as *guardias de seguridad* (security guards). The number of private armed guards has remained stable, and has even declined, over the past five years (6,864 in 2002; 6,540 in 2007). Conversely, the number of security guards has almost doubled, increasing from 48,882 in 2002 to 92,864 in 2007. The system recognizes two types of training establishments: training enterprises (210 in 2007 - virtually the same number as in 2002) and training instructors (1,143 in 2007 - a figure that has nearly doubled in five years). Once they have obtained authorization from the respective carabineros prefecture, training enterprises and training instructors can provide initial and refresher training to private *vigilantes* (the only ones authorized to use firearms) and *guardias de seguridad* (who are not authorized to use weapons). Decree Law No. 3607 stipulates that strategic enterprises, valuable transport companies, government services, and banking and financial institutions may hire private armed guards directly.

III. PRIVATE SECURITY COMPANIES IN CHILE

A. Recruitment and military training of Chileans by private security companies with the aim of providing security services in Iraq

15. Towards the end of 2003, José Miguel Pizarro's company Red Táctica Inc. began recruiting former Chilean military and police personnel to work as "independent contractors" in Iraq for the American private military company Blackwater. Red Táctica Inc., which was established in 2001 in the United States by José Miguel Pizarro Ovalle with other partners, was apparently responsible for setting up contacts between Latin American Governments and American weapons manufacturers. In Chile, Pizarro established a subsidiary known as

⁶ Over the last few years, Chilean military personnel have reportedly lost not only political power but also economic power. A senior executive in a private enterprise is said to earn easily three times more than a senior officer in the army.

Grupo Táctico Chile. However, for the purposes of transactions with Blackwater and to avoid problems with the Chilean authorities, Pizarro, who conducted his business from Santiago, set up a company called Neskowin that was domiciled in Montevideo and whose president and chief executive officer was none other than Pizarro himself. Although former Chilean⁷ military and police personnel were recruited to work for Blackwater in Iraq, the contracts they signed to work as “independent contractors” or “security guards” were subject to Uruguayan law. Moreover, the hiring location was not Santiago, Chile, but rather North Carolina (United States of America), where Blackwater has its headquarters. The first 150 Chileans recruited and trained by Blackwater at its base in Moyock, North Carolina, departed for Iraq in February 2004 in two separate groups of 77 each, bound for the destinations of Diwaniyah, Al-Hillah, Karbala and Basra. Prior to this, Pizarro had already demonstrated the military preparedness of the Chileans he had selected to Blackwater agents, who had travelled expressly from the United States to Chile, and who had attended several testing sessions in Chile referred to as “castings”. Convinced of the professionalism of the Chileans, Blackwater and Pizarro obtained one-year visas from the Embassy of the United States of America in Chile for the first two groups of Chileans, which included multiple entries in order for them to “attend meetings at Blackwater in Moyock, North Carolina”.

16. Without severing ties with Blackwater, in late 2004, Pizarro began working simultaneously with Triple Canopy, another American private military company. He recruited Chileans to work for Triple Canopy in Iraq or Afghanistan as “private guards” under the name of a different company than the one he used to contract for Blackwater - a company known as Global Guards Corporation, which he represented and which was domiciled in Panama and subject to the laws of that country. At that time, both the contracting and training of the Chileans selected by Pizarro were being conducted in Amman. There were differences in salaries as well: Blackwater was paying approximately US\$ 3,000 a month, whereas Triple Canopy paid only about US\$ 1,000 a month.

17. Through Neskowin in Uruguay and Global Guards in Panama, Pizarro was providing Blackwater and Triple Canopy, respectively, with “independent private security agents” to go work as “private security guards or armed guards” in Iraq, Jordan, Afghanistan and/or Kuwait - although they could conceivably be sent to any other location where those companies had operations. The Blackwater contracts indicate that they were signed in Moyock, North Carolina (United States of America) and the Triple Canopy contracts, in Amman (Jordan). Further down in the contracts, other clauses stipulate that: (a) the parties agree to resolve all differences, disagreements and disputes arising from the contract through the Arbitral Tribunal of Uruguay

⁷ According to information received by the Working Group, thousands of Chileans replied to the ads published in the Chilean press (the first of which was reportedly published in *El Mercurio* on 12 December 2003) and appeared in person at Pizarro’s offices. As a result, he was required to hire several job placement agencies to handle the selection process. Despite this, he is alleged to have previously already begun contacting active military personnel through former military colleagues, given that he had been a captain in the Chilean army, and through the alleged contacts of his sales director, Herman Brady Machiavello, son of the former minister of defence under General Pinochet.

(for Neskowin) and the Arbitral Tribunal of Panama (for Global Guards); and (b) the contract is subject to the laws of Uruguay (for Neskowin) and Panama (for Global Guards). By signing these contracts, Chileans were not only renouncing some of their most fundamental rights - such as the right to be subject to their country's laws, given that its courts did not have jurisdiction - but were also, in effect, incapacitating themselves in the event they had to file a claim against the company.

18. In another of the clauses common to the two companies' contracts, the guards acknowledge that they are offering their services "in a highly dangerous environment that poses a risk to their personal safety and/or integrity and that they freely give their consent and assume full responsibility for working in such conditions". They also acknowledge that they will be working in "countries that are at war, in which there are occupation forces and pockets of resistance". However, as stipulated in another clause common to the two companies' contracts, the guards expressly and irrevocably declare that they release the company that hired them (Neskowin or Global Guards) and the company for which they are working (Blackwater or Triple Canopy), as well as their related enterprises, etc., from any liability, payment, compensation or assistance in connection with any damage or injury to their personal safety and/or integrity, which, in the course of performing their duties, may result from any foreseen or unforeseen action on the part of third parties (beyond what is covered by their life insurance).

19. It is interesting to examine these life insurance policies, since the Working Group has received allegations that, in some cases, compensation has not been provided. Under the federal law of the United States, companies are required to obtain insurance against injury and death in conformity with the Defense Base Act. However, the procedures for doing so are complex. For a start, the employer must deduct a certain amount each month from the "security guard's" wages for this insurance. To that end, employers are required to include a clause in the contract indicating that the job is covered by the Defense Base Act and to inform an insurance broker, who, in turn, negotiates an insurance policy between the employer and an insurance provider working with the U.S. State Department. This labyrinth of claims for life insurance, disability or incapacity is then added to that of private security companies, agents and subsidiaries.

20. When demand was at its highest, Pizarro was estimating that he could send some 3,000 Chileans in 2006. How many did he actually manage to send? According to his own estimates, he selected and contracted 756 Chileans for Blackwater and Triple Canopy, and perhaps for others, such as Boots and Coots International Well Control, Inc. (an American company based in Texas). This figure coincides with the estimate of 749 supplied by the criminal investigation police.

21. Nevertheless, the number of Chileans who have actually gone to Iraq is probably higher, for various reasons. Grupo Táctico Chile, Neskowin and Global Guards were reportedly not the only companies recruiting Chileans to go to Iraq. In 2005, for example, the company Your Solutions Honduras SRL - an agent of the American company Your Solutions Inc., based in the state of Illinois (United States) - selected and recruited 105 former members of the Chilean military and police to work in Iraq for Triple Canopy. These Chileans, who entered the country on tourist visas, were trained in Honduras along with other Hondurans before departing to Iraq. At this same time, another 50 Chileans were in El Salvador, also for the purpose of receiving

training in Honduras.⁸ It is interesting to note that Oscar Aspe, an old friend of Pizarro's who had already worked with him in Iraq, was among the Chileans in charge of operating Your Solutions in Honduras.⁹

22. Moreover, according to information received by the Working Group, a number of companies were currently operating clandestinely in Chile and recruiting Chileans to go to Iraq, such as Your Solutions, Loft Security, Land and Fire Integral Services and Britain Security, in Viña del Mar and Santiago. Some of the individuals managing those companies are thought to have worked closely with Pizarro in the past. The Working Group transmitted these data, which it received during its visit to Chile, to the private security division of the carabineros.

23. Very early on, in 2003, Televisión Nacional de Chile broadcast an initial report in which it showed military exercises being conducted with rifles on a private estate near Santiago. The individuals training were apparently former servicemen, but it was thought that military personnel still on active duty might also have participated, owing to the fact that Pizarro had reportedly placed posters inside some barracks and had consequently been barred entry to them. According to the testimony gathered by the Working Group from one of the "security guards" who had been in Iraq after being contracted by one of Pizarro's companies, 17 active military troops, like himself, from a single unit had requested leave in order to be recruited.

24. The commander-in-chief of the army General Oscar Izurieta corroborated this information, indicating to the Working Group that, in one case, efforts had been made to hire active military personnel from a naval base by means of e-mail. The incident was investigated following requests for early retirement from a number of servicemen, all of whom were stationed at the same base. It was found that one of the soldiers was acting as a recruiting agent for Grupo Táctico. As a result, the army launched an internal campaign to discourage military personnel from retiring, informing them of the risks they faced and the long-term benefits of staying in the army. In addition, the agent who had been recruiting in the barracks was expelled. In late 2003, the Department of National Mobilization filed a complaint with the Military Prosecutor's Office.

25. A few months later, Televisión Nacional de Chile broadcast another report with statements from 15 "security guards" who had returned from Iraq or from relatives of security guards still in Iraq in which they complained of failed promises and ill-treatment.

26. However, it was as a result of the programme "Informe Especial" presented on the national television channel that, at the instruction of the Minister of National Defence, the Military Prosecutor's Office filed a complaint on 21 October 2005 with the military courts against José Miguel Pizarro on charges of establishing an armed combat group and encroaching on the functions of the armed forces and security forces.¹⁰ In its application to the military court, the

⁸ See document A/HRC/4/42/Add.1, paras. 18 and 29.

⁹ J. Scahill, *Blackwater: The Rise of the World's Most Powerful Mercenary Army*, Avalon, New York, 2007, p. 207.

¹⁰ Government of Chile, Ministry of National Defence Press Release, 21 October 2005.

military prosecutor argued that the televised report “is accurate and conclusive in that it shows a group of former servicemen training and preparing for war with hand weapons and, in some cases, combat weapons. Furthermore, we are compelled to mention a fact that increases the gravity of this situation. The images indicate the presence of at least one English-speaking foreigner, whose nationality appears to be American, interacting with the others in training and carrying out certain offensive and defensive exercises alongside José Miguel Pizarro Ovalle. From the context of the news report, one gets the impression that he is a former serviceman in the armed forces of that country”.¹¹

27. According to this same document, the establishment of an armed combat group violates article 8 of Act No. 17798 on the control of weapons. It also points out that offensive and defensive exercises, the use of light and heavy weaponry and door-to-door combat techniques, which fall within the sphere of the military, encroach upon areas that the Chilean Constitution has designated for the armed forces and security forces. The Military Prosecutor subsequently requested, *inter alia*, that:

(a) A restriction order should immediately be issued against Pizarro and his Chilean aides who were involved in providing military instruction;¹²

(b) Official notice should be sent to the Ministry of National Defence for it to determine whether the United States Government had requested authorization or informed the Chilean Government of the presence of former United States military personnel in Chile in connection with military activities linked to Pizarro’s companies;

(c) The Embassy of the United States of America in Chile should investigate the matter;

(d) The Ministry of Foreign Affairs should be requested to determine whether the activities of Pizarro and his companies constituted the international offence of the recruitment of mercenaries.

28. The Chilean authorities explained to the Working Group that it was difficult to judge the activities carried out by Pizarro’s companies since there was no well-defined classification of the corresponding offences in Chile’s legal system. Pizarro’s prosecution was conducted on the basis of three areas of the law:

(a) Under article 8 of the Weapons Control Act, since it was possible to prove that the weapons were made of plastic. However, in the “Informe Especial” report, Pizarro is seen dressed as an “independent contractor” at a civilian artillery range in Santiago and using a

¹¹ According to Pizarro, three Blackwater representatives evaluated in Chile the 300 former Chilean servicemen who had been selected. See J. Scahill, *op. cit.* (footnote 9 above), p. 197.

¹² One of Pizarro’s brothers, a former carabinero and ex-army lieutenant, Government of Chile, Ministry of National Defence Press Release.

military weapon to test the firmness of a bulletproof vest for his recruits. According to information transmitted to the Working Group by General Izurieta, it was as a result of these scenes showing Pizarro with military weapons, that Lieutenant Colonel Martin, who had wrongly issued authorization, was forced to resign;

(b) Under the Criminal Code - for encroachment on the functions of the armed forces, such as training combat troops and unlawful agreement;

(c) Under article 5 bis of Decree Law No. 3607 (1981) regulating private security activities in Chile.

29. The action against Pizarro and the activities of his companies, which was initially brought in the military justice system, is currently being conducted in two proceedings: one in the ordinary courts¹³ and a second in the military courts.

30. *Ordinary system of justice.* According to information provided by the Supreme Court of Chile, the action instituted by the Military Prosecutor's Office alleging a violation of article 5 bis of Decree Law No. 3607 concerning private guards was referred by the Second Military Court of Santiago to the Seventeenth Criminal Court of Santiago. Article 5 bis prohibits "the act of providing or offering the services of private armed guards, in any form or designation, by any natural or artificial person". In this action, which was merged with another existing case in the above-mentioned ordinary court, Pizarro was sentenced to 61 days' medium-term rigorous imprisonment within the minimum range, a fine equivalent to 200 times his minimum monthly income and permanent disqualification for positions requiring approval of Decree Law No. 3607 concerning private guards. On 23 August 2006, Pizarro appealed this sentence, and the matter is currently before the Court of Appeal. Replying to the question that the Working Group had put to the authorities concerning the mildness of the sentence handed down at first instance, the Working Group was informed that, although the sentence was mild, its legal effects were considerable since, if Pizarro was convicted a second time, he would lose whatever benefits he had acquired, and this time, he would have to serve his sentence in prison without being able to appeal on the basis of extenuating circumstances. The above-mentioned article specifically stipulates that a repeat offence "shall be punishable by medium-term rigorous imprisonment within the medium-to-maximum range and a fine equivalent to between 500 and 1,000 times the minimum monthly income".

31. The complaint filed against Pizarro for unlawful association by then member of the Chamber of Deputies Alejandro Navarro and Chamber of Deputies member Antonio Leal on 8 April 2004 was also heard in the ordinary courts before the Seventeenth Criminal Court. On 5 October 2005, a temporary dismissal was ordered and the case was closed.

¹³ Since the institution of the actions against Pizarro, the Chilean criminal justice system has undergone reforms transforming it from an inquisitorial system into an accusatory system. The case before the ordinary courts will reportedly continue to be prosecuted under the former system of criminal procedure.

32. *Military system of justice.*¹⁴ Case Nos. 1731-05 and 916-06 against José Miguel Pizarro are currently on file with the Fifth Military Prosecutor's Office. Both have been merged under case No. 1731-05, which is at the stage of pretrial proceedings. The court must determine whether there has been a violation of the Weapons Control Act. According to our interpretation, there are grounds for the following three offences: (a) training armed combat groups; (b) possession of prohibited weapons; and (c) unlawful agreement.

33. According to information received from various sources, Pizarro continues to pursue his activities, which currently consist of training dogs to detect car bombs. The explosives allegedly used in the training sessions are said to be genuine explosives stolen from the army. On the same grounds where the dogs are trained, paramilitary training with AK-47 and M-16 rifles is reportedly carried out. On the basis of these reports, Senator Navarro is said to have requested that the case against Pizarro, which had been dismissed temporarily, should be reopened.

34. According to testimony gathered by the Working Group, between 6 and 10 "security guards" who had already been to Iraq and who, at that time, were working in Chile directly for José Miguel Pizarro but without a contract, had filed a complaint with the Chilean Labour Inspectorate in June and July 2005 for unjustified dismissal. The Labour Inspectorate reportedly informed them that they had 11 days to file the complaint through a lawyer. According to information provided to the Working Group during its meeting with the head of the Labour Department, the Ministry of Labour did not have any record of a complaint against Pizarro's companies.

35. With respect to complaints against Pizarro's companies for breaches of the terms of contracts signed by private "security guards" who had been in Iraq, as already indicated previously, the companies were registered in Uruguay or in Panama, and it was the courts of those countries that were competent to settle any dispute. Moreover, the contracts had been signed outside Chile - some in the United States and others in Amman, Jordan. As observed at the time by the former head of the Labour Department, the contracts were virtually unenforceable in Chile. The only request that could be made of a Chilean court, in the event it was declared to have jurisdiction, was to nullify the contracts. Some of the testimony gathered by the Working Group from "security guards" indicates that, faced with the prospect of filing a complaint with an Uruguayan or Panamanian court, they preferred to relinquish their claim and to forfeit any amounts they were due.

36. The Working Group also collected the testimony of a "security guard", who, together with other former servicemen contracted to go to Iraq, had filed a complaint through National Congress representative, Laura Soto González. The complaint was reportedly before a court in Valparaiso. In an interview conducted by the Working Group with the above-mentioned representative, she confirmed this information and indicated that the details of the case presented before the courts would be transmitted to the Working Group in due course.

¹⁴ A bill has been drafted to restrict the competence of the military courts and prohibit the prosecution of civilians under military law.

37. With the exception of an alleged breach of insurance policy in connection with an accident sustained in Iraq by a “security guard” working for Blackwater, the allegations received by the Working Group concerned (a) Pizarro’s companies, were made by “security guards” contracted by Neskowin or Global Guards to work in Iraq and related for the most part to the non-payment of wages; and (b) the company Triple Canopy, were made by “security guards” hired by Global Guards or Your Solutions to work in Iraq and related to contractual irregularities, poor working conditions, overcrowding, excessively long working hours, non-payment of wages, degrading treatment and isolation, and neglect of basic needs, such as health and hygiene.

B. Private security in Chile

38. In 2006, the total number of private security agents in Chile, including private armed guards (6,300) and private security guards (88,600), was 94,900, accounting for more than double the combined number of carabineros (27,000) and criminal investigation police forces (7,300 - 3,600 of which were operational). These private security agents were said to be involved in guarding progressively larger areas forming part of the daily lives of the population.¹⁵ According to data provided by the carabineros, private security generates 116,502 jobs each year. The Working Group asked the private security division of the carabineros (OS-10) to provide a geographical breakdown of private armed guards and security guards over the past 20 years. According to the information it received, the database was being developed but was not yet functional.¹⁶

39. Over the course of the past 10 years, private security in Chile has experienced a rapid surge in growth. Data supplied by the office of the director-general of the carabineros shows that 116,502 individuals are currently employed in the private security sector. The private security industry in Chile generates some US\$ 800 million each year and grew by more than 46 per cent over the last three-year period. In 2005, annual per capita spending on private security in Chile exceeded US\$ 25,000, and revenues generated by private security accounted for approximately 0.63 per cent of gross domestic product (GDP).¹⁷

¹⁵ A. Abelson, “Seguridad privada en Chile, tema pendiente para el Ministerio de Seguridad Pública”, *Boletín del Programa de Seguridad y Ciudadanía*, No. 6, August 2006. FLACSO, Chile.

¹⁶ The consultancy firm of Jorge Lee Mira indicates that, in the past two years, the highest demand has come from the Metropolitan Region, which accounted for more than 46,000 security guards, followed by the regions of Maule (seventh region) and Valparaiso (fifth region).

¹⁷ Leemira Consultores Asociados, “III Estudio Oferta de la Industria de Seguridad Privada en Chile”, Santiago de Chile, 2006.

40. Since it is the market in Chile that determines what needs there are and how to satisfy them, the carabineros contributes its quality-oriented expertise and experience to those private security components that have been selected.¹⁸ The liberalization of the Chilean economy during the 1970s apparently contributed to boosting the demand for private security.¹⁹

41. According to reports, the carabineros view private security not as a parallel police force but rather as a complement to public safety. The expansion of the private security industry in Chile is said to be more likely the result of the difference between citizens' expectations of security and their perception of the level of security that the public forces²⁰ can provide. This information has apparently been confirmed by the results of the national public opinion survey taken in December 2006, which indicated that safety (crime, assault and robbery) was the number one problem for Chileans.

42. The expansion of private security in Chile is thought to be attributable in large part to efforts to prevent property crime, as well as to the growth of semi-public areas, such as residential communities, shopping centres, supermarkets, sports complexes and amusement parks, which are accessible to the public but are governed by regulations and patrolled by private guards.²¹

43. The security industry in Chile comprises regulated and unregulated sectors.²² In accordance with Decree Law No. 3607 (1981) and Act No. 19303 (1994), the carabineros is the agency responsible for monitoring and supervising the regulated sectors of the private security system. To that end, the carabineros have developed a manual outlining the functions corresponding to each category of the system.²³ Approximately 1,350 private training instructors

¹⁸ Interview with the director-general of the carabineros, José A. Bernales Ramírez in the magazine, *Chile Seguro*.

¹⁹ In 2003, the annual growth rate in Latin America was between 9 and 11 per cent (between 6 and 8 per cent in Europe and between 7 and 9 per cent in North America). A. Abelson, op. cit. (see footnote 15 above). According to Inter-American Development Bank estimates, of the US\$ 140,000 to 170,000 million (between 12 and 14 per cent of GDP), corresponding to the cost of armed violence in Latin America, the largest share is accounted for by private security services, which only the privileged classes can afford. Sources: J.L. Londoño et al., *Assault to Development: Violence in Latin America*, Inter-American Development Bank, Washington, D.C., 2000; "Crime, Violence and Development: Trends, Costs, and Policy Options in the Caribbean. A Joint Report by the United Nations Office on Drugs and Crime and the Latin America and the Caribbean Region of the World Bank", Washington, D.C., 2007.

²⁰ A. Abelson, op. cit. (footnote 15 above).

²¹ Ibid.

²² Private investigators, escorts and bodyguards are reportedly the largest unregulated sectors. Leemira Consultores Asociados, loc. cit. (footnote 17 above).

²³ The Working Group was not provided a copy of this manual.

and training enterprises provide initial instruction and refresher training courses to private armed guards and security guards according to the requirements and curricula specified in the legal framework established by the OS-10 division of the office of the director-general of the carabineros.

44. According to the data analysed, 78.5 per cent of guards are employed by subcontracting firms, and the rest (21.5 per cent) are hired by the firms requiring their services. Apparently there are only a few large transnational corporations, while the rest are made up of a fragmented collection of some 1,000 domestic companies. This fragmentation is reported to have a negative impact, particularly in terms of the low wages and level of training provided to the security guards.²⁴

45. According to information transmitted to the Working Group by the private security branch of the carabineros, three stages of control are exercised by various carabineros divisions (oversight authority, operations department, duty officer) from the moment an employing agency requests authorization from carabineros to instruct private security agents through a training course. It is the responsibility of the relevant carabineros prefecture to grant the appropriate accreditation document (identity card) to private armed guards and security guards who have successfully completed the tests. Training instructors and enterprises receive a permit from the carabineros prefecture that is valid for two years. New regulations that went into effect in January 2006 stipulate that private security guards must follow refresher training courses, for which there had previously been no provision.

46. Training curricula have reportedly taken international standards into account; however, the Working Group has not found any reference to the international instruments it considers pertinent to this type of training, such as the Universal Declaration of Human Rights, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the Code of Conduct for Law Enforcement Officials.

47. Moreover, within the private security sector, there are more than 1,100 human or technical resource enterprises acting as job placement agencies for the sector. The Working Group has received no information concerning the modus operandi of these companies or how they are registered or licensed. It infers from the information transmitted to it that the company Grupo Táctico might have fallen into this category within the Chilean private security sector, and that the only administrative sanction imposed on it when its activities were disclosed was to delete it from the registry.

C. The involvement in social conflicts of private security companies that provide protective services to forestry companies

48. The Working Group has received information on the involvement of Chilean private security companies, which have been contracted by forestry companies, in incidents against indigenous communities, especially the Mapuche population in the south of the country.

²⁴ A. Abelson, op. cit. (footnote 15 above).

49. In 2000, nine members of the Mapuche community were charged and convicted under the Anti-Terrorism Act for the offence of setting a forest fire. According to the expert report of the carabineros, in case No. 38774-L, filed in the court of Yumbel (2001) for the alleged setting of a forest fire, it was established that “four individuals from the company, Empresa Forestal Santa Ana Ltda., Rut (tax number) 77,386.030-0, whose business is the private guarding of forest properties, issued threats and forced a third party to set various forest fires, reportedly for the purpose of justifying contracts signed by the above-mentioned security firm with the forestry companies”.

50. Among the conclusions of the report, it was determined that “Empresa Forestal Santa Ana Ltda., which provides on-site guarding services at the premises of various forestry companies, including Forestal Mininco, Forestal Celco S.A., Bosques Arauco S.A. and Forestal Bio Bio, was reportedly not authorized to carry out guard duties, thereby violating article 5 bis of Decree Law No. 3607 [...] and contravening Act No. 17798 on the control of weapons as a result of the illegal carrying of weapons by some individuals”.

51. The sentences handed down against nine members of the Mapuche community were called into question by the Special Rapporteur of the Commission on Human Rights on the situation of human rights and fundamental freedoms of indigenous people during his visit to Chile in November 2003,²⁵ by the Committee on Economic, Social and Cultural Rights at its thirty-third session (November 2004)²⁶ and by reports published by Human Rights Watch²⁷ and the International Federation of Human Rights Leagues.²⁸ Despite the fact that some members of Congress have called for reopening the case in order to punish the security firm allegedly involved, no action has been taken in this regard.

52. In his report, the Special Rapporteur stated that “one of the most pressing problems affecting the native peoples of Chile concerns their ownership of land and territorial rights, particularly in the case of the Mapuche. (...) The communities’ lands are in remote locations on private property, mostly inside vast forest plantations that are fenced off and protected by private guards (leading to transit problems and harassment and cutting off access to the woods)”.²⁹

²⁵ See document E/CN.4/2004/80/Add.3.

²⁶ See *Economic and Social Council, Official Records, 2005, Supplement No. 2* (E/2005/22-E/C.12/2004/9, chapter IV, paras. 528 to 589).

²⁷ See report: “Undue process: Terrorism trials, military courts, and the Mapuche in southern Chile”.

²⁸ “La otra transición chilena: derechos del pueblo Mapuche, política penal y protesta sociales en un estado democrático”, March 2006.

²⁹ See document E/CN.4/2004/80/Add.3, para. 19.

53. According to information supplied by the director-general of the carabineros to the Working Group during its visit, forestry companies do not employ either private security guards or private armed guards (the latter are authorized exclusively for strategic institutions, such as banks). It appears that the security officers acted as armed guards and not as security guards in order to circumvent controls.

IV. CONCLUSIONS

54. The Working Group wishes to thank the Chilean authorities for their invitation to visit Chile and their cooperation, and commends the State for its efforts to regulate private security companies.

55. The Working Group recognizes that the preliminary draft of a bill on Chile's accession to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, which was deposited in the Defence Commission of the Chamber of Deputies, cannot be adopted without the necessary amendments that will be recommended by the inter-agency working party. The latter is charged with examining the measures included in Chile's domestic legislation with a view to developing an efficient and up-to-date system of rules for the criminalization, deterrence and punishment of new practices related to mercenarism. In this connection, if the Government considers it necessary, it may request technical assistance from the Office of the United Nations High Commissioner for Human Rights in preparing for the legal classification of mercenarism as a criminal offence and its inclusion in domestic legislation.

56. The Working Group believes that the adoption of a new private security act, which is currently being drafted in the Ministry of the Interior with technical support from the University of Chile and which will replace the current law concerning private guards, represents an opportunity to strengthen the existing legislation, regulation and control of private security companies in the country, as well as to improve public policies on private security. The preliminary drafts of bills concerning reform of the military career will help to discourage military personnel from recruitment by those private companies.

57. The Working Group expressed concern at the recruitment and training of hundreds of Chileans by private security companies in order to carry out duties in Iraq. It believes that the use of Chilean "independent contractors" or "security guards" by transnational private security companies in Iraq represents new expressions of mercenarism in the twenty-first century.

58. The aim of the contracts can be interpreted as generally to implement the same features or other very similar features as those specified in article 1 of the 1989 Convention. The Chilean "independent contractors" were recruited abroad and were motivated by the desire for private gain³⁰ to offer their services "in countries in a state of war, in which there are occupation forces and pockets of resistance". If attacked, they could, at any time, become combatants in an armed

³⁰ Those who benefit most are the private security companies and subcontracting firms. They reportedly divide among themselves the lion's share of the original tendered contract with the Government of the United States of America for each Chilean "independent contractor"; see document A/HRC/4/42, para. 36.

conflict (offering their services in a highly dangerous environment that poses a risk to their safety and/or personal integrity) and could take part in hostilities. Contrary to article 47 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, the 1989 Convention does not specify what is meant by the word “directly”. Independent contractors may very well carry out passive functions that would involve taking part in hostilities.

59. Some Chileans recruited by the private companies in question and who had been in Iraq informed the Working Group that they had been armed with automatic rifles, sometimes with anti-tank bazookas, that they had returned fire every time they had been attacked by insurgents and had even used weapons banned by international laws on war. All this indicates that they were being prepared to take part in hostilities and that the line between passive and active participation in hostilities in an armed conflict or post-conflict area is very tenuous. Chileans recruited in this manner are neither nationals nor residents of a country that is a party to the conflict. Moreover, they are not soldiers, members of the United States Army, parties to the conflict or civilians - given that they are armed - and have not been sent by a State on official duty.

60. The legal subtlety of the matter resides in the fact that Blackwater and Triple Canopy, the contracting companies, admit to working directly on behalf of the State Department of the Government of the United States of America, which had contracted them with the objective of providing protection services in armed conflict or post-conflict zones, such as Afghanistan and Iraq.³¹ Once they had obtained a contract from the United States Government, these companies, in turn, subcontracted other companies abroad. José Miguel Pizarro’s companies, Grupo Táctico, Neskowin and Global Guards, which selected and contracted Chileans, were based either in Uruguay or Panama. Neskowin had signed a contract with Blackwater, and Global Guards had signed one with Triple Canopy. Of course, information concerning the nature of the organizational relationship or contracts between Neskowin and Blackwater, on the one hand, and between Global Guards and Triple Canopy, on the other, is considered to be private, and the companies are not willing to disclose it.

61. The activities of the companies that hired Chileans as private “security guards” allegedly constitute practices related to mercenarism, such as the recruitment, training, financing and use of individuals as part of a profit-making arrangement.

62. It would be interesting to know to which authority of the Iraqi Government, the coalition in Iraq or the United States Government the companies that contracted Chileans were accountable in the event their employees or the companies themselves committed criminal offences. In this maze of contracting and subcontracting it would also be interesting to know whether there are any mechanisms available to Chileans whose rights have been violated and to which American authorities they can submit their complaints.

³¹ Private military and security companies do not consider the protection of convoys, buildings or individuals as direct involvement in hostilities.

63. The Working Group has received allegations of contractual irregularities, poor working conditions, overcrowding, excessively long working hours, non-payment of wages, degrading treatment and isolation, as well as the neglect of basic needs, such as health and hygiene. This is despite the fact that the persons in question had been hired as security guards, received military training in the United States, in Iraq or in a third country, and ended up performing functions not provided for in their contracts.

64. José Miguel Pizarro's companies apparently took advantage of lacunae and legal loopholes in Chilean domestic legislation to hire Chilean nationals as private "security guards" for American transnational corporations and to send them to armed conflict or post-conflict areas, such as those in Afghanistan and Iraq.

65. The Working Group expressed concern at information it had received indicating that new Chilean job placement agencies apparently continue to recruit former Chilean military and police personnel for American private military and security companies in order to work as private "security guards" in Iraq.

66. The fact that, despite having reacted promptly to the phenomenon, the Chilean authorities initially treated it as a private matter, along with the fact that the manager of Grupo Táctico, Neskowin and Global Guards continues to pursue similar activities regardless of the cases pending before the ordinary and military courts, may have contributed to a certain climate of "tolerance". This has led to the paradoxical situation in which, on the one hand, the Chilean Government's official position in the Security Council discussions of 2003 was to oppose waging a preventive war in Iraq, and on the other, the fact that some 1,000 former members of the Chilean military and police have taken part in that conflict as "independent contractors".

67. In this regard, the Working Group commends the Chilean authorities for the unambiguous statement of Mr. José A. Viera-Gallo, Minister and Secretary-General of the Presidency, which prompted the Working Group's visit to Chile, and in which Mr. Viera-Gallo underscored the paradoxical nature of the situation in which Chile finds itself. On the one hand, there is the official Chilean position to reject the war in Iraq, and on the other, the current situation in which some 1,000 Chileans are "protecting private security in Iraq (...) and are involved in a dirty war (...) of violent acts in which there are no clear boundaries between friends and enemies". In his statement Mr. Viera-Gallo called for "efforts to facilitate Chile's accession to the Convention" and, at the domestic level, "categorically and unequivocally to classify as a criminal offence actions undertaken by these types of private companies, which are sometimes based in developed countries, to recruit and, in some cases, trick Chileans into fighting wars that are not their own".

68. The Working Group is aware of the fact that the practices in which some private security companies engage represent new forms of mercenarism and that these may have initially come as a surprise to the Chilean authorities. It is concerned, however, at the failure of the Chilean State to take appropriate steps to protect the right to life and physical integrity of the hundreds of former members of the military and police who were recruited to work in Iraq, as well as deficiencies noted in terms of Chile's compliance with its obligations under international law.

69. With respect to the transfer of the use of force and/or authority to non-State actors, the Working Group wishes to point out the responsibility of States regarding the privatization of security, which is a public good and a human right. When security is privatized, there is the risk

that it will no longer be available as a public service to those who cannot afford to pay for it, thereby violating the right to equity, in the sense that its access by the poorest members of society has been reduced. It should also be borne in mind that private security guards and armed guards do not defend common interests and the common good, but rather the private interests of those who hire and pay them, and in so doing they transform security into a commodity.

70. In conformity with international human rights standards, the privatization of public services must not at any time prevent such services from being made available to the general public in sufficient quantity. Moreover, public services must be accessible to all without discrimination of any kind (economic or information-based); culturally acceptable; and of good quality - in other words, privatization should not result in lower quality services.³² The privatization process must also be transparent, and information must be disseminated with the aim of ensuring the right to seek, receive and impart information³³ and avoid corruption - an aspect that is often present in the privatization process.

71. With regard to social protests engaged in by indigenous communities in defence of their lands and environmental rights, the Working Group is concerned at the fact that legitimate social protests are being confused with unlawful or terrorist activities, that their leaders are being subjected to accusations and intimidation, and that, when States transfer the use of force and security to private security companies, unlawful acts may be committed.

V. RECOMMENDATIONS

72. **The Working Group wishes to make the following recommendations:**

(a) That, as soon as possible, the inter-agency working party should complete the study on the domestic criminalization of and enactment of legislation concerning activities related to mercenarism, adopting the broadest possible normative interpretation that includes not only the offence of mercenarism but also its new manifestations;

(b) That Chile should, without delay, take steps to accede to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries;

(c) That the competent authorities, particularly in the military courts, should, without delay, complete investigations into the case still pending concerning the recruitment of private security guards to work in Iraq by the companies Neskowin and Global Guards;

(d) That urgent measures should be taken to protect the rights of Chilean citizens still in Iraq;

³² K. De Feyter and F. Gómez Isa, eds., *Privatization and Human Rights in the Age of Globalization*, Intersentia, Antwerp, 2005.

³³ International Covenant on Civil and Political Rights, art. 19.

(e) That efforts should be made to promote the establishment of a body at the highest executive level - ministry or vice-ministry - endowed with authority and charged with monitoring both private security companies and new forms of mercenary activity;

(f) That steps should be taken to guarantee the universal right of all people to security as a public good through the adoption of a new private security act, which must incorporate the principles of efficiency - in relations between public and private sectors - and transparency, responsibility and accountability. The new act should also contain measures aimed at providing suitable training to officials responsible for private security (private armed guards and security guards) that includes: human rights, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the Code of Conduct for Law Enforcement Officials of the United Nations, as well as the notion of equity in order to ensure the accessibility of security as a public good to the entire population;

(g) That steps should be taken to establish a mechanism, whether a parliamentary committee or a commissioner, with authority to monitor the activities of private security companies and to which complaints may be submitted;

(h) That, as soon as possible, steps should be taken to establish a national human rights institution that conforms to the Paris Principles and whose objective is the promotion and protection of human rights;

(i) That consideration should be given to the possibility of organizing a multidisciplinary seminar in order to disseminate the findings of the inter-agency working party and the report on Chile by the Working Group on mercenaries, with a view to incorporating the recommendations of the seminar into public policy.
