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

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

Addendum

Mission to Comoros (7–16 May 2014)*

Summary

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 visited Comoros from 7 to 16 May 2014 at the invitation of the Comorian Government. In accordance with its mandate, the Working Group gathered information on mercenary-related activities, as well as on the effects of activities of private military and security companies on the enjoyment of human rights.

Despite the progress made by Comoros since the early 2000s, the Working Group took note at the start of its visit of the country's difficult and turbulent history since its independence in 1975. A series of coups d'état instigated by mercenaries and the political instability that prevailed during the three decades following independence prevented the country's political, economic and social development.

The Working Group recognizes the profound negative and interdependent effects of mercenarism, separatism and the Mayotte issue on the human rights of Comorians. The overthrow of successive governments by mercenaries and a lack of stability have severely hampered the right of the Comorian people to self-determination. Political instability has also prevented Comorians from achieving national unity, leaving Comorian society

* The summary of the present report is circulated in all official languages. The report itself, which is annexed to the summary, is circulated in the language of submission and in English only.



fragmented and State institutions weak and unable to cater properly to the needs of the population. Being a fledgling democracy also contributes to its continued fragility.

However, despite the immense obstacles faced by Comorians, the Working Group noted positive developments that have brought relative stability to Comoros. The 2009 amendment of the Constitution allowing for the rotation of the presidency has helped counter the problem of separatism and attempted coups d'état.

With respect to private security companies, the Working Group notes that the presence of natural resources in Comoros has the potential to attract investment from multinational corporations in the extractive industry, which often use private security companies to protect their facilities. The likelihood of an increase in the number of private security companies operating in Comoros and ongoing concerns surrounding maritime delimitation issues require the introduction of appropriate regulations.

Annex

[*English and French only*]

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 on its mission to Comoros (7–16 May 2014)

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I. Introduction

1. This report is submitted pursuant to resolution 2005/2 of the Commission on Human Rights, 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 Human Rights Council resolutions 7/21, 15/12 and 24/13, in which the Council extended that mandate.

2. Pursuant to Commission on Human Rights resolution 2005/2 and Human Rights Council resolution 24/13, the Working Group is called upon to monitor mercenaries and mercenary-related activities in all their forms and manifestations in different parts of the world, as well as to study the effects on the enjoyment of human rights, particularly the right of peoples to self-determination, of the activities of private companies offering military security services on the international market.

3. The Working Group visited Comoros from 7 to 16 May 2014, at the invitation of the Comorian Government. In accordance with its general practice, the Working Group was represented by two of its members: its Chairperson-Rapporteur, Patricia Arias, and Gabor Rona.¹

4. The Working Group is grateful to the Government of Comoros for its invitation and for its cooperation throughout the planning and conduct of the mission. In accordance with its mandate, the Working Group focused on the period of Comoros' past immediately following independence that was tainted by mercenarism and marked by a series of coups d'état and attempted coups d'état. It also considered the investigations and prosecutions relating to the alleged attempted coup d'état of April 2013, which reportedly involved mercenaries, and examined the activities of private security companies operating in Comoros.

5. In the present report, the Working Group uses the term "mercenary" as defined in article 1 of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, namely, any person who (a) is especially recruited locally or abroad in order to fight in an armed conflict; (b) is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar rank and functions in the armed forces of that party; (c) is neither a national of a party to the conflict nor a resident of territory controlled by a party to the conflict; (d) is not a member of the armed forces of a party to the conflict; and (e) has not been sent by a State which is not a party to the conflict on official duty as a member of its armed forces.

6. Article 1 of the Convention also provides that the term "mercenary" refers to any person who, in any other situation (a) is specially recruited locally or abroad for the purpose of participating in a concerted act of violence aimed at (i) overthrowing a Government or otherwise undermining the constitutional order of a State; and (ii) undermining the territorial integrity of a State; (b) is motivated to take part therein essentially by the desire for significant private gain and is prompted by the promise or payment of material compensation; (c) is neither a national nor a resident of the State against which such an act

¹ The Working Group is composed of five independent experts serving in their personal capacities. Ms. Patricia Arias (Chile) is the Chairperson-Rapporteur. The other members are Ms. Elżbieta Karska (Poland), Mr. Anton Katz (South Africa), Mr. Saeed Mokbil (Yemen) and Mr. Gabor Rona (United States of America/Hungary).

is directed; (d) has not been sent by a State on official duty; and (e) is not a member of the armed forces of the State on whose territory the act is undertaken.

7. In the present report, a private military and/or security company is to be understood as a corporate entity which provides on a compensatory basis military and/or security services by physical persons and/or legal entities.²

8. The term “military services” refers to specialized services related to military actions including strategic planning, intelligence, investigation, land, sea or air reconnaissance, flight operations of any type, manned or unmanned, satellite surveillance, any kind of knowledge transfer with military applications, material and technical support to armed forces and other related activities. Security services include armed guarding or protection of buildings, installations, property and people, any kind of knowledge transfer with security and policing applications, development and implementation of informational security measures and other related activities.

9. During its visit, the Working Group went to Moroni (Grande Comore). For technical reasons, the Working Group was unable to carry out its planned visit to the island of Anjouan. It was, however, able to meet the Governor of Anjouan, who was visiting Moroni, and is grateful to him for agreeing to that meeting. The Working Group is the first human rights protection mechanism to have undertaken a mission to Comoros and hopes that this visit will pave the way for other visits by Human Rights Council special procedures mandate holders.

10. The delegation met the President of Comoros and his Chef de Cabinet (who is also Secretary of State for Defence), the Minister for Foreign Affairs, the Minister of Justice, the Minister of the Interior, the Prosecutor-General, the State Prosecutor, the President of the Supreme Court, the President of the National Assembly, the National Directorate for Territorial Security (DNST), the Chief of the National Police, the National Defence and Security Commission, the Commander of the National Gendarmerie, the National Directorate for Documentation and State Protection (DNDPE), the Governors of the islands of Grande Comore and Anjouan, the National Commission for Human Rights and Freedoms, the Ambassadors of France and South Africa, the United Nations country team and civil society representatives, including non-governmental organizations, journalists and academics. The Working Group would like to thank the various persons it met for its fruitful discussions with them during its visit.

II. International human rights commitments

11. Comoros is party to the International Convention on the Elimination of All Forms of Racial Discrimination (2004), the Convention on the Elimination of All Forms of Discrimination against Women (1994) and the Convention on the Rights of the Child (1993) and its Optional Protocol on the sale of children, child prostitution and child pornography (2007). Comoros has twice undergone the universal periodic review – in May 2009 and January 2014. During its visit, the Working Group was informed that the National Assembly had approved the ratification of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, but that the instruments of ratification had not yet been deposited with the Secretary-General of the United Nations. The Working Group has encouraged the Government of Comoros to finalize promptly the ratification process.

12. As regards mercenarism, Comoros has been a party to the Organization of African Unity Convention for the Elimination of Mercenarism in Africa since 2004. It is not a party

² See A/HRC/15/25, Annex, art. 2.

to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries. The Working Group has also called on the Government of Comoros to ratify this international instrument.

III. Historical context

13. One of the main challenges encountered by the Working Group during its visit was a lack of written information, including historical facts. There is a strong oral tradition in Comoros and most of the information collected by the delegation was based on memories and personal experience. However, evidence gathered by the Working Group from a great many interviewees did indicate a direct link between the country's attainment of independence and the mercenarism that prevailed for more than two decades.

14. Comoros officially became a French colony in 1912. Under the leadership of Ahmed Abdallah, Comoros unilaterally declared independence on 6 July 1975, followed by a series of coups d'état that, plunged the country into political and social upheaval.

15. On 3 August 1975, barely a month after independence, the first coup d'état took place, with Ahmed Abdallah being replaced by Saïd Mohammed Jaffar. Jaffar did not remain in power long. In 1976, Ali Soilih seized power by force, retaining it for two years until 1978, when another coup d'état was instigated by Ahmed Abdallah and carried out with the assistance of a well-known mercenary and former French army officer, Bob Denard, whose real name was Gilbert Bourgeaud. Abdallah remained in power until 1989. At the beginning of that period, the Presidential Guard was established under the leadership of Bob Denard. The Guard was made up of both heavily armed mercenaries, brought to Comoros by Denard, and Comorians, belonging for the most part to the national army. The Guard, armed and commanded by Denard, was responsible for protecting the President and maintaining him in power. Denard was thus able to continue to exercise decisive influence during the years that followed.

16. On 26 November 1989, Abdallah was assassinated in murky circumstances. Reports received by the Working Group indicate that Denard was present at and involved in the assassination. Although Denard attributed the killing to the army, he was soon considered to be its instigator. After Abdallah's death, Bob Denard reportedly assumed political power in the country. On 29 November 1989 — three days after Abdallah's death — Denard and the Presidential Guard carried out a coup d'état, during which a number of police officers were reportedly killed, hundreds of people arrested and the regular army disarmed. The President of the Supreme Court, Abdallah's constitutional successor, was ousted and replaced by Mohamed Said Djohar, said to have been chosen by Denard. On 7 December 1989, Djohar reportedly ordered a violent crackdown on demonstrations by students and workers. The general strike that followed caused Denard to surrender to French forces on 15 December 1989. Along with some of his associates, he was flown to Pretoria. On his return to France in February 1993, he was tried and found not guilty of Abdallah's murder. Two years later, he returned to Comoros for one last time in an unsuccessful attempt to regain power.

17. According to information received by the Working Group, at least 20 coups d'état or attempted coups d'état took place in Comoros during the 20 years following independence. The Working Group received reports consistently indicating an inextricable link between the country's three decades of political instability and the resulting mercenarism and violent coups d'état and associated human rights violations.

18. The question of Mayotte was also mentioned on several occasions as a crucial feature of mercenarism in Comoros.

19. Historically, Mayotte is part of the Comoros archipelago. In referendums in 1974 and 1976, the island voted against independence, choosing to remain French. However, to this day, Comorians consider Mayotte to be an integral part of Comoros and challenge the legitimacy of the referendum. However, France has always maintained that Mayotte is part of its territory, and in 2011 the island became a French overseas department.

20. The question of Mayotte has also been discussed by the international community. The Working Group notes a number of General Assembly resolutions between 1976 and 1994 recognizing Mayotte as forming part of Comoros.³ Several of those whom the Working Group met expressed the view that the question of Mayotte was inseparable from mercenarism and the country's political instability.

21. Many of the people interviewed by the Working Group were also of the opinion that the mercenaries had acted with a view to destabilizing Comoros following its independence and weakening it politically, socially and economically. They stressed that the higher standard of living in Mayotte as compared to the rest of the Comoros archipelago highlighted the disastrous state of post-independence Comoros.

22. As to the involvement of foreign powers during the period of mercenarism, the Working Group received numerous reports about the prominent role played by France and South Africa at that time. Many people believe, for example, that France was involved in despatching mercenaries such as Bob Denard to Comoros in order to overthrow successive governments, exacerbate political instability and divert attention from Mayotte. In their opinion, destabilization was used by mercenaries to bolster the view that independence, rather than being a source of progress for Comoros, was the cause of crises and impoverishment. Others believe, however, that the mercenaries were simply individuals attracted by the prospect of financial gain and power. The lack of judicial investigations in both Comoros and the countries concerned by mercenarism and the absence of comprehensive historical and political research make it difficult to establish with certainty the truth about any link that might have existed between Bob Denard — and his mercenaries — and foreign powers, notably France.

23. With the information available to it, the Working Group cannot establish the extent of the responsibility of foreign powers for the country's permanent instability. It has, however, taken note of the concerns expressed by many of the people it met. The question of South Africa's presence in Comoros was also raised in the context of the international isolation of the apartheid regime.

24. According to some of those interviewed, South Africa supported the Abdallah Government between 1978 and 1989 because it did not impose sanctions on the apartheid regime. During that period, Comoros became a destination of choice for South African businesses and tourists, thereby providing a source of considerable income for the country's economy. The revenues thus generated helped to keep some of the mercenary-era governments in power. The Working Group was also informed that, following the assassination of President Abdallah in 1989, Bob Denard found refuge in South Africa and lived there until 1993. Shortly thereafter, in 1995, he was again involved in a coup d'état in

³ United Nations General Assembly resolutions 31/4, 37/65, 39/48, 40/62, 41/30, 42/17, 43/14, 44/9, 45/11, 46/9, 47/9, 48/56 and 49/18. In 1976, by resolution S/11967, the United Nations Security Council called on the Government of France to desist from proceeding with the holding of the referendum in Mayotte and to "respect the sovereignty, unity and territorial integrity of the Comorian State and to refrain from taking any action which may jeopardize the independence, sovereignty, unity and territorial integrity of the Comorian State ... composed of the islands of Anjouan, Grande-Comoro, Mayotte and Moheli".

Comoros. Bob Denard's stay in South Africa was the subject of a 1995 communication by the former Special Rapporteur on mercenaries⁴

25. The question of Mayotte is today still high on the country's political agenda. The comparatively higher standard of living enjoyed by the inhabitants of Mayotte is a factor that still influences the lives of Comorians, with many of them attempting to reach that island in the hope of a better future. However, inhabitants of Comoros cannot currently travel to Mayotte without a visa, which is difficult to obtain. The Working Group was told that, as a result, large numbers regularly try to cross the sea from the neighbouring Comorian islands, in particular from the island of Anjouan. According to reports, many of them are returned forcibly or perish in the attempt.

26. The Working Group was informed that most of the coups d'état — albeit instigated by mercenaries — also involved the collusion of Comorians, attracted not only by the prospect of financial gain but also by political power. The consequences of that difficult past should not be underestimated. The question of Mayotte and successive governments' use of force and violence to seize power created an environment in Comoros that was ripe for long-term political instability. This had a profound impact on the daily lives of Comorians and created a vicious circle preventing the country's development.

27. In analysing the history of Comoros, the Working Group notes that the right of Comorians to self-determination has been seriously impeded by mercenarism. Acts of mercenarism, often associated with violence, have undermined the fundamental rights of Comorians, including their right to life, security, liberty and physical integrity, as well as the economic and social rights needed for the development and proper functioning of Comorian society. In the short term, mercenarism ruined many lives, led to material losses and made economic development impossible. The long-term effects for Comoros have been no less serious. During its visit, the Working Group observed that many political, economic and social challenges, such as those posed by government structures unable to cope with the daily struggle against poverty, inequality and corruption, are clearly related to the country's past. It noted that many Comorians expressed the desire to erase the stigmatization of Comoros linked to mercenarism, and widespread weariness over the country's constant association with mercenaries. Nevertheless, the Working Group gathered a wealth of information about past events and is grateful to the persons it met who wished to share with it their personal experiences and knowledge of the subject.

IV. Separatism and its possible causes

28. The Working Group was also informed about the separatist tendencies that have posed a greater threat to national unity and provoked political instability in Comoros. The constant changes of government and the lure of political gain have given rise to many factions and led to rivalry between, on the one hand, the three Comorian islands of Anjouan, Mohéli and Grande Comore, where the capital Moroni is located, and Mayotte, on the other.

29. In 1997, the inhabitants of the islands of Anjouan and Mohéli declared their wish to be reunited with France. A referendum was held on Anjouan, the majority voting in favour of the establishment of an independent state. However, France reportedly failed to support the claims of the separatists. The Comorian armed forces subsequently invaded the island of Anjouan, which led to further calls for the creation of an independent Anjouan state. The conflict led to bloody clashes between the rival forces. Persons interviewed by the Working Group also reported gross violations of human rights. Another coup d'état took place in 1999, instigated by Azali Assoumani, who seized power while the Government was busy

⁴ E/CN.4/1996/27, p. 20.

dealing with the separatist crisis. A compromise was reached years later through an agreement to adopt a new constitution aimed at improving relations between the three islands.

30. Many reports stressed that the separatist movement was rooted in the country's economic decline and the people's desire for living conditions similar to those enjoyed on the neighbouring island of Mayotte. According to those reports, the movement can also be explained by the inequalities experienced by the inhabitants of Anjouan and Mohéli, since most of the financial assistance received by Comoros goes primarily to the island of Grande Comore. On Anjouan, the most densely populated of the islands, the main reason for the popular uprising was the demand for equitable resource management.

31. Although separatist movements were born out of economic grievances, they have exacerbated regionalism and national divisions within Comoros and undermined efforts to introduce political stability. Even today, separatism remains a sensitive issue and many interviewees emphasized that the Comorian Government needs to ensure the even distribution of resources among the islands so as to prevent any resurgence of separatist movements.

32. The Governor of Anjouan told the Working Group that weapons previously belonging to Anjouan separatists had not been recovered by the Comorian army and were reportedly concealed on the island. He expressed concern that those weapons might fall into the hands of mercenaries or persons wishing once more to destabilize the country.

33. The Working Group sought to ascertain whether there was a link between separatism and mercenarism. While some interviewees said that the two were clearly connected, most accounts tended instead to reject any such link. Some French nationals had reportedly supported the Anjouan separatists, but they were said to have acted for personal reasons rather than for money. However, most of the people who spoke to the Working Group did link separatism with the question of Mayotte. According to information received, the island of Mayotte served as a support base for the mercenaries during their period of activity. Several separatist leaders are also reported to have been living in Mayotte at the time of the 1999 separatist crisis. Some interviewees expressed the view that France had stirred up separatism in order to divert the attention of the Comorian Government away from the question of Mayotte.

V. Impact of mercenarism on the enjoyment of human rights

34. Given the difficulties encountered in collecting historical information during its visit, due mainly to the absence of records and written documents, the lack of judicial investigations in both Comoros and the countries concerned by mercenarism, and the absence of comprehensive historical and political research, the Working Group is of the view that it is difficult for it at this stage to establish the facts with certainty and to determine the degree of foreign countries' responsibility for mercenarism in Comoros. Be that as it may, it clearly recognizes that the collective actions of foreign actors and local nationals were responsible for the continued destabilization of Comorian society and that they effectively impeded the right of the Comorian people to self-determination.

35. The Working Group was struck by the negative impact left by mercenarism on the enjoyment of human rights today, an impact which can still be seen in the weakness of Comorian State institutions, in particular. The Comorian people lived through a series of coups d'état and attempted coups d'état closely linked to the issue of mercenarism, which profoundly destabilized Comoros and its institutions for nearly three decades. This long period of political turmoil crippled the country from its earliest days, and it has never been able to make significant political, social or economic progress.

36. The representatives of Comorian State institutions that the Working Group met, like those from civil society and the National Commission for Human Rights and Freedoms, confirmed that serious and systematic human rights violations had been committed between 1975 and 1989 by mercenaries and elements of the Presidential Guard formed by Bob Denard. The Working Group heard reports of numerous cases of enforced disappearances, torture, rape and summary executions during that period. According to those reports, a number of armed forces personnel who had attempted to fight the mercenaries were reportedly executed and their bodies sent to their families. The Working Group notes with regret that to date there have been no judicial inquiries into these offences, no prosecutions, nor, *a fortiori*, any penalties handed down against the perpetrators or any redress provided to the victims and their families.

37. It was widely reported that the absence of political alternation was a key element in both the successive coups d'état and the question of mercenarism, since, in the context of a country with little experience of democracy, it encouraged Comorian politicians wishing to gain power to do so by force with the support of mercenaries from abroad. In this connection, the Working Group welcomes the adoption of the 2001 Constitution and its 2009 amendment introducing the principle of a rotating presidency among the Comorian islands, which represents an important factor of stability for the country. The Working Group was informed that, by ensuring a democratic change of power every five years among the islands, the strategy of presidential rotation is aimed at preventing further coups d'état. Article 8 of the Referendum Act amending the Constitution of the Union of the Comoros of 23 December 2001 provides that "the President and Vice-President shall be elected together by direct universal suffrage on the basis of majority vote in one round for a term of five (5) years, subject to rotation among the islands". Article 11 of the Act further states that "the Assembly of the Union shall be composed of twenty-four (24) representatives of the Nation, elected by universal suffrage in single-member constituencies on the basis of majority vote in two rounds; [and] representatives of the autonomous islands appointed by the Island Councils from among their members (three representatives per autonomous island) ...". Article 7-2 of the Act states:

"In the autonomous islands, the executive and deliberative functions shall be exercised by different organs. The executive function shall be exercised by a governor assisted by commissioners. The Governor shall be elected by direct universal suffrage in one round for a term of five years, renewable for one further term. The Governor shall be the head of the autonomous island. He shall exercise by way of order the powers assigned to him under the Constitution and the statutory act of the autonomous island The deliberative function shall be exercised by an island council. The Island Council shall regulate the affairs of the autonomous island through its deliberations. The Councillors of the Island shall be elected together with their alternates by majority vote in single-member constituencies for a term of five years. A law of the Union shall determine the number of constituencies and the modalities of the vote."

38. Despite the progress made by Comoros since the early 2000s and the country's relative stability, the direct and indirect consequences of mercenarism on Comorian society are reflected today in a number of deficiencies that affect Comorians' enjoyment of their human rights.

39. The primary direct consequence of mercenarism has been the restriction on the right of the Comorian people to self-determination. The successive coups d'état that have occurred since independence have prevented the Comorian people from experiencing genuine democracy and from building institutions in accordance with the principles of the rule of law.

40. Attacks linked to mercenarism, which began immediately after the emergence of the Comorian State, have severely hampered the country's development, leading in particular to fragile State institutions, a lack of coordination among those institutions and a shortage of State resources. As a result, the State is unable to meet the needs of Comorians or to guarantee their economic, social, civil and political rights.

41. The frequent changes of government have undermined all attempts at nation-building and made for a lack of trust in the public service, which is still quite noticeable today. The Working Group noted that, because of the past political turmoil, Comorians nowadays rely more on their local communities than on the Government to meet their daily needs. In many respects, Comoros has remained in a political and economic limbo, while most of the neighbouring countries have advanced and even prospered in recent decades.

42. In its discussions with civil society organizations, the Working Group was informed that poverty continues to be one of the most serious consequences of the mercenary activities associated with the coups d'état and political instability. The resulting serious social and economic problems have made Comoros one of the poorest countries in the world, with a high mortality rate and a low level of education. To a large extent, its economy depends on foreign aid and remittances from families living abroad. In this connection, the Working Group was informed that several hundred Comorians drown every year attempting to flee poverty by reaching Mayotte in makeshift craft.

43. Owing to the political instability, foreign investment is sadly lacking, while private sector development is non-existent. Despite the Government's efforts to attract investment, basic infrastructure and the education and health sectors continue to be funded by local communities rather than by the Government. Hospital equipment and road infrastructure are in poor condition. The unemployment rate is high, and State institutions are short of specialized staff in various fields, including justice and human rights.

44. Besides the weakness of Comorian institutions, the Working Group considers that a further barrier to good governance lies in the complexity and lack of transparency of the institutional architecture inherited from the past. Another aggravating factor is the corruption affecting Comorian institutions, denounced by the President of the Republic during his meeting with the Working Group. Today the Government is the main employer in Comoros. The Working Group noted the abysmally low level of coordination between ministries and departments and between those bodies and the private sector and civil society, a lack of coordination evident when officials at times gave contradictory replies to questions about Government policies and activities.

45. During its meetings with the Comorian authorities, the Working Group was struck by the lack of institutional memory, particularly with regard to the issue of mercenarism. For instance, the Working Group was unable to obtain from Government officials documents that would enable an official timeline of the coups d'état and attempted coups d'état involving mercenaries to be established. This was due to the lack of historical documents and the oral tradition that prevails in Comoros.

46. The Working Group noted the need for the Government and the Comorian people to undertake work related to historical memory, documentation and data collection in order to demonstrate the link between the past and the current impact of mercenarism and the destabilization of Comoros. The aim of that work would be to prevent history from repeating itself. The Working Group observed that the absence of statistics and written information has prevented the Government from carrying out an in-depth analysis of the causes of mercenarism and from learning from the past.

47. One of the notable effects of mercenarism is the culture of impunity that is still rife present in Comoros. To date, no case of mercenarism has been tried there, even though mercenaries have been implicated in most of the coups d'état and attempted coups d'état

and that allegedly committed serious violations of human rights. It should be emphasized that the problem of impunity is aggravated by the fact that most of the foreigners implicated in those mercenary activities have also not stood trial in their countries of origin for those acts or the alleged human rights violations. For instance, in June 2006 Bob Denard was sentenced to a 5-year suspended prison term by the Paris Criminal Court solely for his participation in the 1995 coup d'état. He was found guilty only of the arrest and illegal restraint of Saïd Mohamed Djohar, the former President of Comoros. His 26 associates, who were tried along with him, were also sentenced to suspended prison terms or convicted but exempted from punishment.

48. The Working Group received reports that former elements of the Presidential Guard — Comorians and persons close to the mercenaries — joined the army or took senior posts in the public service and still hold those positions today. The Working Group considers that this aggravating circumstance has contributed to perpetrators of human rights violations remaining unpunished and victims not receiving redress. It notes that the new draft criminal code provides for the punishment of Comorian citizens who perform actions to destabilize the Comorian State, but that it does not cover actions relating to mercenarism involving foreign nationals, thereby leaving a serious gap in Comorian law.

49. The Working Group also received reports that impunity extends to human rights violations committed at present, including violence against women and children, arbitrary detention, denial of the rights of detainees, lack of independence of the judiciary and reprisals against human rights defenders.

50. The Working Group also observed that the Comorian judicial system fails to meet the needs of the population. It considers this to be one of the many indirect consequences of mercenarism, the vicious circle of coups d'état and the political destabilization that have affected Comorian institutions. Furthermore, according to information received by the Working Group, the fundamental rights of detainees are not guaranteed and the presumption of innocence is not respected.

51. Reports indicate inhuman conditions of detention, prison overcrowding (facilities operating at 300 per cent of capacity), a failure to separate adult and juvenile detainees and ill-treatment of detainees resulting in some deaths in custody. Representatives of the Ministry of Justice confirmed that under Comorian law a confession constitutes evidence which is valid in itself, and this in a context in which, as those representatives acknowledged, there is an acute lack of resources available for the verification of information obtained in this way. In fact, investigations by the judicial police are very summary in nature, since forensic medicine is still in its infancy and the police do not have the necessary scientific resources. This creates a significant risk of judicial error. There were also reports that no written decisions were made in some criminal cases.

52. The Working Group took note of the efforts made by the Ministry of Justice to train judges but remains convinced that more resources and technical support are needed to strengthen the judicial system and ensure its proper functioning.

53. The Working Group is also concerned that the army is responsible for providing public security, a role that should be carried out by the national police. It noted the lack of training for police officers, who are trained on the job. It also noted that the national police, unlike the army, does not have an adequate operating budget. The Working Group raised the issue of the risk of human rights violations arising from the fact that the army's responsibility for public security, although it is not trained to interact with the civilian population.

54. The Working Group notes the creation of the National Defence and Security Commission, following a seminar on defence held in March 2014 with a view to introducing a new security policy. The Commission is tasked with following up on the

recommendations made at the seminar. It consists of representatives of the defence and security sector, including the national police, and the President of the National Commission for Human Rights and Freedoms. Those recommendations are intended to form the basis of a future Green Paper aimed at defining a comprehensive and multi-sectoral defence and national security policy. The Green Paper will seek to address a number of shortcomings, including the politicization of the defence and security forces, the lack of internal coordination, the absence of a clear hierarchy, lax staff recruitment procedures and poor training.

55. According to information received by the Working Group, one of the direct consequences of mercenarism and the resulting instability is the continuing fear on the part of the Comorian authorities and people of having to face a coup d'état. Indeed, the Working Group heard various reports about frequent rumours of coups d'état; this shows that the stability enjoyed by Comoros for the last decade or so continues to be fragile and that the country's institutions must be strengthened.

56. The Working Group spoke to various people about the "power grab" of April 2013. Some of those interviewed said there had been a foiled coup attempt aimed at ousting the serving President, involving not only Comorian nationals but also mercenaries from the Democratic Republic of the Congo, Chad and Niger. Mention was also made of a French national, close to the mercenary Bob Denard, who is reported to have been the instigator of the "power grab". Other interviewees, however, seemed to contradict the theory of an attempted coup, arguing that those involved had no weapons and that they had been used for political ends.

57. The Working Group has not been able to obtain information about the current investigation that is under way and which remains confidential at this stage of the proceedings. However, it was informed that those suspected of participating in the organization of the alleged coup attempt are still detained and awaiting trial. The Working Group was also informed of the existence of a letter of request to allow the investigating judge assigned to the case to travel to France in the near future in order to consult the minutes of the hearing of the French national who might be involved in this case. According to information received by the Working Group, an agreement on mutual legal assistance between Comoros and France, drawn up on the latter's initiative, is due to be considered shortly by the Assembly. If approved, the agreement will allow for the systematic exchange of information in criminal matters.

58. The Working Group is concerned that persons suspected of participating in coups d'état or attempts to overthrow the Government are tried by a special court, established during the mercenary period, and that those convicted cannot appeal the court's decisions on the merits. The Working Group emphasizes that the right of a convicted person to appeal a conviction remains a fundamental right, and encourages the Comorian Government to consider abolishing that special court and to declare ordinary criminal courts competent to try cases connected to State security.

59. The events of April 2013, in which a number of foreign nationals and Comorians are suspected of conspiring to violate State security, demonstrate the country's continuing fragile state. The Working Group notes with regret that the matter is yet to be resolved and encourages the Comorian Government to ensure that the accused are brought to trial promptly, with all the judicial guarantees that are recognized as indispensable under international law, or that they are released if the allegations against them cannot be confirmed.

VI. Private security companies

60. In accordance with its mandate, the Working Group considered the issue of private military and security companies operating in Comoros. It was informed that there are no private military companies in Comoros, but that some five private security companies are operating in the country. Most of those companies provide services such as custodial services and the protection of buildings such as ministries, embassies and the central prison.

61. A number of people reported that hydrocarbons, including oil and natural gas, had recently been discovered in Comoros and that this would increase the presence of exploration companies there. The number of private security companies could also increase as a result.

62. The Working Group was informed that there was no legal framework in place to regulate the activities of private security companies, but that the Government had recently begun work on a bill to address that issue. Given the possible rapid expansion of this industrial sector, the Working Group underlined the need to regulate the activities of private security companies and promptly to enact relevant legislation.

63. The Working Group has recommended that the Government require that all private security companies must register in order to be allowed to operate in Comoros. It has further suggested that the Government require that, as a precondition for registration, all private security companies should join the International Code of Conduct for Private Security Providers' Association (ICoCA).⁵ The Code of Conduct sets forth the obligations of private security companies in respect of international humanitarian law and international human rights law. The Working Group has recommended that the Government should draw on the provisions of the Code of Conduct when deciding on the major elements to be included in the future law on private security companies.

VII. Conclusions and recommendations

64. The Working Group wishes to reiterate its gratitude to the Government of Comoros for its invitation that made the visit possible.

65. From the beginning of its visit, the Working Group noted the difficult and turbulent nature of the country's history since independence in 1975. National political, economic and social development was stalled by a series of coups d'état instigated by mercenaries and the political instability that prevailed over the three subsequent decades.

66. Despite the actual long-term presence of mercenaries in the country, the Working Group regrets that it did not receive any written information on the various issues raised, particularly on past mercenary interventions. The Working Group noted that the period of mercenarism was a painful episode in Comorian history and that the lack of historical information is a consequence of both the oral tradition and reluctance on the part of the Government and the Comorian people to face up to a difficult past.

67. The Working Group recognizes the profound negative and interdependent effects of mercenarism, separatism and the issue of Mayotte on the human rights of Comorians. The overthrow of successive administrations by mercenaries and a lack of stability have severely undermined the right of the Comorian people to self-

⁵ International Code of Conduct for Private Security Providers, 9 November 2010, (available at the following address: www.icoc-psp.org).

determination. The failure to bring perpetrators of past human rights violations, including mercenaries and political leaders active during the period in question, to trial, has spawned a culture of impunity that still prevails, thanks in part to the continued absence of a stable and effective judicial system.

68. The Working Group further notes that, in addition to the political instability brought about by mercenarism, the country still faces the major issue of its precarious economic situation. Throughout the course of its visit, the Working Group pointed out that it was important to make a connection between the history of mercenarism in Comoros and the many human rights challenges that the country must address, such as poverty. The Working Group believes that, by making that vital link with the past, the country will finally be able to tackle contemporary issues.

69. However, notwithstanding the huge obstacles Comorians have had to face, the Working Group noted positive developments that have led to relative stability in the country: for example, an amendment to the Constitution allowing for the rotation of the presidency, which has helped counter the problem of separatism and attempted coups d'état.

70. The Working Group welcomes the establishment of the National Commission for Human Rights and Freedoms and notes with satisfaction the amendments to the Criminal Code and the Code of Criminal Procedure currently before the Assembly for consideration. A number of those amendments will help strengthen legislation on the protection of the rule of law against future coups d'état. There is an increased diplomatic presence in the country, proof that a number of States wish to work closely with Comoros and to provide financial assistance for development.

71. Notwithstanding the lack of foreign investment in the country, the presence of natural resources has the potential to attract investors in the form of multinational companies in the extractive industry, which often employ private security companies to protect their facilities. The likelihood of an increase in the number of private security companies operating in Comoros and current concerns surrounding maritime delimitation issues require the introduction of appropriate legal regulations.

72. The Working Group benefited from full Government cooperation during its visit and welcomes the Government's willingness to move forward and to tackle the human rights challenges currently facing the country.

73. In the light of the above, the Working Group makes the following recommendations:

To the Government of Comoros:

(a) Good governance is vital if Comoros is to make progress and achieve significant development. The Government is invited to focus on actions and measures to boost and strengthen democracy and respect for human rights. Efforts to bolster multisectoral institutions such as the judiciary, the National Commission for Human Rights and Freedoms, the Anti-Corruption Commission and law-enforcement bodies would also be valuable in that regard;

(b) Improved coordination between state institutions and with civil society is both necessary and essential in terms of strengthening national infrastructure, enhancing knowledge sharing and transparency regarding public management and boosting collective efforts to promote and safeguard human rights;

(c) Human rights training and capacity building must be promoted and extended to all three branches of government (executive, legislative and judicial) and to civil society. There is a serious lack of appropriate training within many institutions,

such as the police force and the judiciary. The Working Group wishes to reassert the importance of providing judicial training with a human rights standards component;

(d) Robust institutions and solid legislation built on the principles of the rule of law can offer a measure of protection against mercenarism and potential coups d'état. In order to make progress in that regard, the Government must take a firm stance against impunity by strengthening the legislation in force. Mercenarism is not specifically prohibited under Comorian law. The draft Criminal Code contains provisions on crimes against State security. However, the Working Group recommends incorporating a specific offence regarding mercenarism into the new Code to close any legal loopholes giving rise to impunity. The Government may wish to refer to the provisions of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, which contain significant elements that could be taken into account in Comorian law.

(e) In order to safeguard both the independence of the judiciary and access to effective justice, the Working Group urges the Government to abolish the Court of State Security, which seems to operate on an ad hoc basis, and to use the ordinary criminal courts to try cases involving national security offences;

(f) As to criminal justice, the Working Group is concerned at the fact that uncorroborated confessions constitute evidence sufficient in itself for a conviction. In that regard, information obtained as a part of a confession should be carefully verified during the investigation stage. The Working Group also recommends that appropriate training be provided to law enforcement agents carrying out criminal inquiries. The Working Group wishes to point out that, in order to ensure access to effective justice, specialists such as forensic doctors must be recruited. The Working Group recommends establishing a unit made up of technical and scientific police officials, as well as forensic reports, to ensure that confessions are not treated as evidence which is valid in itself and to avoid judicial errors. The Working Group also points out that it is vital to safeguard the rights of detainees when obtaining confessions.

(g) Civil society participation is essential to the consolidation of a culture of human rights. The Working Group recognizes that more resources must be provided in support of civil society efforts and that there is a pressing need for capacity-building and technical assistance. Aware of the huge human rights challenges facing the country, such as poverty, inadequate social services and increasing violence against women and children, the Working Group calls for civil society to be strengthened;

(h) The Working Group recommends that the Government and the Comorian people begin the process of documenting the mercenary period, in order to establish a link between the past and its consequences, which are hampering national development. Such an approach would contribute to a better understanding of the effects of the country's destabilization by the mercenaries and to efforts to prevent history from repeating itself.

(i) The Working Group recommends shedding light on the alleged responsibility of foreign powers regarding the role of mercenaries, such as Bob Denard and his allies, in Comorian history.

(j) The Working Group invites the Government and the States of origin of the mercenaries to improve cooperation and the free exchange of information in order to facilitate inquiries into mercenarism and to swiftly bring those responsible to justice. Such an approach would also make it possible to strengthen measures against

impunity and to address the issues surrounding transborder investigations, which often arise in cases of mercenarism.

(k) As to those persons detained in connection with the events of April 2013, the Working Group requests the Government to ensure that they are tried promptly, in line with all the legal guarantees provided for under international human rights law. The detainees should be released if none of the charges against them can be proven;

(l) Regarding military and private security companies, the Working Group recommends that the Government adopt a law regulating their activities and those of their staff. The Working Group urges the Government to ensure that private security companies are registered and that they have joined the International Code of Conduct for Private Security Providers' Association (ICoCA) prior to registration;

(m) The Working Group welcomes the ratification by Comoros of the Organization of African Unity (OAU) Convention for the Elimination of Mercenarism in Africa in 2004 and recommends that the Comorian State also consider ratifying the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights;

(n) The Working Group recommends that the National Defence and Security Commission set out an overall, multisectoral, national defence and security strategy protecting and promoting human rights. The Group urges the Commission to ensure that members of the armed forces and the police force are held responsible for human rights violations and for involvement in activities linked to mercenarism;

To the United Nations specialized agencies:

(o) The Working Group recommends that the United Nations specialized agencies increase technical assistance for capacity-building of the National Commission for Human Rights and Freedoms, so that it can operate as a fully independent and effective body;

To the international community:

(p) The Working Group requests the international community to take steps to provide resources and technical assistance to Comoros to help the country build its institutional capacities and improve the people's living conditions. A collective effort to provide this crucial aid would help to maintain national stability, strengthen democratic structures and make for all citizens' better enjoyment their human rights.