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大会 2006 年 3 月 15 日题为“人权理事会”的
第 60/251 号决议的执行情况

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

主席：阿马达·贝纳维德斯·德佩雷斯女士

增 编

出访洪都拉斯 * * *

* 本访问报告的内容提要以所有正式语文分发，报告本身附于内容提要之后，仅以英文和西班牙文分发。

** 本报告提交较迟，以尽可能反映最新情况。

内容提要

应洪都拉斯政府邀请，使用雇佣军侵犯人权和阻挠行使民族自决权问题工作组 2006 年 8 月 21 至 25 日访问了该国。工作组赞赏洪都拉斯当局的合作与开放态度，这促进了进行建设性对话。

工作组很高兴洪都拉斯采取措施，毫不拖延地加入《反对招募、使用、支助和训练雇佣军国际公约》，并加强洪都拉斯《刑法》。工作组欢迎以下事态，包括 2005 年 6 月通过规章条例，按照 1998 年的《警察法》，监督私人军事和保安公司；公共安全部、劳动部和社会保障部联合视察私人保安公司；在公共安全部中设立专员，专门负责登记和监测私人保安公司。

工作组继续关注有信息表明，洪都拉斯国民受雇于在洪都拉斯登记的公司并在洪都拉斯接受训练，这些公司则为外国总部公司的附属公司，同时还继续关注大量此类人员奔赴伊拉克的情况。这一情况发生在洪都拉斯的 Your Solutions 公司，这是位于美利坚合众国伊利诺斯州的 Your Solutions 公司的附属公司，该美国公司接受设在哥伦比亚特区华盛顿的 Triple Canopy 公司的分包合同，而后者则与美国国防部签约。工作组从一系列消息来源获得的信息表明了合同不规范，工作条件恶劣，工作时间过长，工资支付不足或拒付，虐待和隔离，以及缺乏必需品，例如医疗和卫生。工作组还对 105 名智利人前往洪都拉斯接受或进行训练表示关注。这一报告显示了监测工作的缺失，包括未经国民议会批准在洪都拉斯训练外国国民，以及私人保安公司招募洪都拉斯国民前往伊拉克工作的合同不规范和缺乏保护。

工作组建议应加强并公告私人保安公司的管理框架，在私人保安公司向其招募人员提供的训练中纳入人权和有关的联合国准则部分，同时，当局应坚持私人保安公司登记的透明度，包括公司所有权、管理和可能的利害冲突等问题。工作组进一步敦促有关当局采取措施，以对从伊拉克返回人员的投诉迅速作出积极反应，并追究私人保安公司与当事个人可能的共谋关系和责任。

Annex

**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:
MISSION TO HONDURAS (21-25 AUGUST 2006)**

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Introduction

1. At the invitation of the Government, the Working Group visited Honduras from 21 to 25 August 2006. The Working Group delegation was composed of its Chairperson, Ms. Amada Benavides de Pérez, and one of its members, Mr. José Luis Gómez del Prado. The Working Group is grateful to the Government of Honduras for its prompt and positive response to the request to visit. The Working Group enjoyed excellent assistance from and cooperation with the Honduran authorities throughout the planning and conduct of this visit, and it commends the Government for its efforts and its readiness to consult in a constructive and progressive manner. It also expresses appreciation for the fact that, in advance of the visit, Honduras completed the questionnaire sent to all Member States in 2005, providing a useful basis of information in preparation for the visit.
2. The visit to Honduras forms part of a regional assessment by the Working Group of a phenomenon observed in recent years in which nationals of countries in Latin America have been recruited by private military and security companies (referred to below as PMSCs¹). The Working Group had three areas of particular interest in Honduras: (a) a widely reported situation involving Chilean nationals who provided and received security and military training in September 2005, and who were sent to work in Iraq; (b) Honduran nationals contracted by security companies in Honduras which were subsidiaries of foreign companies, and posted to work in Iraq; and (c) legislation and regulations governing private security companies operating in Honduras, including follow-up to the observations made following an earlier visit by the Special Rapporteur on extrajudicial, summary or arbitrary executions on the alleged execution of children by employees of PMSCs.²
3. During the visit, the Working Group delegation held meetings in Tegucigalpa with the Ministers for Foreign Affairs, Defence, Labour, Justice and Security, deputies from the National Congress, the Attorney-General, the President of the Constitutional Court, the National Human Rights Commissioner and the National Bar Association, as well as departmental and municipal leaders in Tegucigalpa and Lepaterique. The Working Group delegation also met other representatives of Honduran society, including representatives of a wide range of non-governmental organizations and private security companies and individuals, and held an open forum at the National Pedagogical University. In Lepaterique, the Working Group delegation was allowed to visit a site where a private security company organized training for Honduran and foreign individuals in 2005.

¹ “Private military and security companies” are companies which provide all kinds of security and consulting services; from non-arms-related logistical support to armed guards involved in defensive or offensive military engagement.

² See document E/CN.4/2003/3/Add.2, para. 80.

I. GENERAL OBSERVATIONS

4. The mandate of the Working Group was established in 2005 and builds on the work of the former Special Rapporteur on use of mercenaries as a means of impeding the exercise of the right of peoples to self-determination. With the creation of the Working Group, the mandate was widened to include monitoring of PMSCs and the impact of their activities on all human rights.³

5. The Working Group considers that, under international and domestic law, State authorities bear primary responsibility for maintaining public security and law and order in the State. Given the trend towards the privatization of security and the use of force, the Working Group is concerned that whilst operating in armed conflicts and other situations, some PMSCs are committing human rights violations which go unpunished. This phenomenon is often associated with the creation by transnational companies of subsidiaries with legal personality in one country, providing services in another and recruiting personnel from third countries. As indicated in the Working Group's 2006 report to the General Assembly (A/61/341, paras. 65-76), the international legal framework still fails to guarantee transparency in these companies and monitoring of them.⁴

II. POLITICAL AND LEGAL STRATEGY AND INSTITUTIONAL FRAMEWORK

A. International level

6. Honduras is a party to the seven major international human rights instruments, and ratified the Rome Statute of the International Criminal Court in 2002. It is also a party to the two Optional Protocols to the International Covenant on Civil and Political Rights, but has ratified only the first Optional Protocol and the two Optional Protocols to the Convention on the Rights of the Child, but not the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women. The Government of Honduras submitted a core document for use by the treaty bodies in September 1998 (HRI/CORE/1/Add.96). In July 2006, a total of nine periodic reports from Honduras were overdue: two to the Committee against Torture (first and second); one to the Human Rights Committee (second); three to the Committee on the Elimination of Discrimination against Women (fourth to sixth); one to the Committee on the Elimination of Racial Discrimination (first); and the two initial reports due under the Optional Protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography.

7. Honduras is not a party to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, which has been ratified by 28 States. Despite the limitations of this 1989 Convention, accession constitutes an important step towards addressing the problem of mercenaries. The Working Group is encouraged by the verbal statements and

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

⁴ <http://www.ohchr.org/english/issues/mercenaries/index.htm>.

repeated indications from the executive, legislative and judicial branches in Honduras and welcomes indications from the treaty department in the Ministry of Foreign Affairs that the issue of ratification of the Convention could be placed before Congress in the coming months. The Working Group welcomes this step and offers its support and assistance for speedy ratification.

8. One of the Convention's limitations is that PMSCs and their employees fall into a grey area which the Convention does not specifically cover. This demonstrates the need for appropriate national regulation, control and monitoring of the activities of these security companies to guarantee State responsibility for the effective protection of human rights. In terms of human rights obligations, while the responsibilities of non-State actors remain a matter for debate, the Working Group considers that private enterprises, as organs of society, share the obligations set out in the Universal Declaration of Human Rights.

9. Once international treaties enter into force, they become part of domestic law and their provisions can be invoked by individuals or legal entities in any court or before any authority in the country. Any conflict between a treaty and the Constitution is resolved in accordance with the Constitution, which stipulates that, in cases of conflict between a treaty and domestic law, the treaty shall prevail (Constitution of Honduras, arts. 16, 17 and 18).

B. National level

10. Given the limited international regulation of PMSCs, the Working Group notes the critical importance of complementing international efforts by establishing licensing and registration systems for PMSCs and their employees at the national level. Such regulation should include defining minimum requirements for transparency and accountability of firms, screening and vetting personnel, and establishing a monitoring system including parliamentary oversight.

11. With regard to the situation of Chileans trained in Honduras, relevant articles in the Constitution include article 15 (in which Honduras endorses "the principles and practices ... which promote human solidarity, respect for the self-determination of peoples, non-intervention and the strengthening of universal peace and democracy"), as well as articles 30 to 35, in particular article 32, which states that "foreigners may not carry out political activities of a national or international character in the country, on pain of punishment in accordance with the law". The Constitution does allow the National Congress to authorize foreign military missions to provide assistance and technical cooperation in Honduras, and to allow or forbid foreign troops to pass through Honduran territory (art. 205). Although there is no provision specifically dealing with military training of foreign civilians, Congress argues that activities by foreign troops on Honduran soil should be authorized by the legislature and not the Government.

12. The Working Group was informed of the amendment process designed to strengthen the provisions of the Criminal Code in order to counter the use of mercenaries. The National Human Rights Commissioner noted that article 317 of the Criminal Code stipulated up to six years' imprisonment for training of nationals of third countries, with a clear distinction made where the ultimate purpose was training for the security services. Senior representatives of the judiciary were seeking to expand the definitions to fulfil the requirements of the Convention against Mercenaries, and also indicated that a special law could be one legislative avenue to

pursue in this regard. The Procurator-General favoured amending the Criminal Code, where “unlawful association” meant simply belonging to a gang. Another provision which the judiciary considered in need of improvement was article 416 of the Criminal Code, which dealt with the recruitment of troops of foreign nationality.

13. The Working Group was informed that an Interdepartmental Commission had been set up in June 2006 to meet two to three times per month, convened by the Ministry of Foreign Affairs, to ensure greater coordination of the efforts of the authorities for the promotion and protection of human rights. The Commission includes the Procurator-General, the Special Procurator for Human Rights, the Minister of the Interior, the Minister of Internal Affairs and Justice, the Ministry of Labour, the Ministry of Public Security, the Supreme Court and the Procurator.

14. Another measure was the establishment of a “mercenaries unit” in the Ministry of Public Security (Acting Director-General of Special Investigation Services in the DGIC). The Special Unit for Private Security Companies was set up in early 2006, with the task of undertaking joint inspections with the Ministry of Labour. The Unit is to make announced or surprise inspection visits.

15. In October 2002, the Honduran National Congress approved a law regulating the possession of firearms and other weapons. The law bans individuals, including members of private security firms, from possessing weapons such as AK-47s. The Ministry of Security, which also licenses weapons of particular calibres, maintains a ballistics register indicating who is responsible and who owns weapons. A Criminal Unit in the Ministry of Public Security will be administering the ballistics register, while not controlling it. The previous Government privatized the ballistics register in 2004 under a concession arrangement. The figure of US\$ 24 per weapon initially charged has now been reduced to US\$ 17 per weapon. Now all equipment is monitored, and the State keeps US\$ 5 for each weapon registered.

16. Each PMSC must report on its weapons, including their calibre, and register them. Unregistered weapons are confiscated. By law, PMSCs cannot use automatic weapons (nor can the police). Previously, a PMSC could loan weapons to another company, but now such transfers are prohibited. The Ministry of Defence is responsible for authorizing imports of small arms and light weapons and granting licences to importers.

17. The Working Group notes that, although PMSCs do not act as agents of the State, the State is responsible for issuing licences and for monitoring and oversight both of parent companies and of subsidiaries.

III. PRIVATE SECURITY COMPANIES IN HONDURAS

A. Recruitment and military training of Hondurans and foreigners by private security companies for service in Iraq

18. Between July and October 2005, Your Solutions Honduras SRL, a local agent of Your Solutions Incorporated, registered in Illinois, United States of America, which in turn had been subcontracted by Triple Canopy, based in Chicago, United States of America, recruited and

trained 189 Hondurans in Honduras. Triple Canopy had been awarded a contract by the United States Department of State.⁵ The 189-strong contingent left the country by air from San Pedro Sula, Honduras, in several groups (12 persons on 13 July 2005, 12 more on 23 August, 111 on 11 October and 54 on 13 October), with a stopover in Iceland, as confirmed by the Ministry of Labour and Social Security. The majority of the 189 Hondurans were engaged as security guards at fixed facilities in Iraq. Your Solutions Honduras was also reportedly a subsidiary of, or had close ties with, the North American private security company InterCom, which operates in Honduras.⁶

19. As happens in other parts of the world where transnational corporations provide private military and security services in armed conflict zones and subcontract to local companies in third world countries, the private security company Your Solutions Honduras and the company Your Solutions Incorporated engaged Honduran personnel for Triple Canopy, which operates in Iraq, to provide security services in the ongoing conflict there. The Working Group received information concerning irregularities in compliance with the contracts of these employees, who report harsh working conditions, partial payment or non-payment of wages, arbitrary action by superiors including isolation, lack of basic necessities such as food and lodging, as well as a lack of medical treatment and poor sanitation.

20. According to the contracts signed in Tegucigalpa, these persons were going to Iraq as security guards. However, the statements taken indicate that they were given military training and instruction in anti-guerrilla tactics such as possible ambushes and how to avoid them, and deactivation of explosives and mortars. Some are reported to have received this training in Honduras, others on arrival in Iraq. Information received shows they used high-calibre weapons such as M-16 rifles or light machine guns. The instructors in Honduras were reportedly often Chileans and used aliases, but they are also said to have received training from Honduran Army soldiers.⁷ These additional tasks, and conditions of work which included far more hours, were not mentioned or agreed in their contracts. Their identity documents were issued by the United States Embassy in Baghdad.

21. Triple Canopy is said to have been awarded the contract for the defence of Baghdad's heavily fortified "Green Zone" starting in November 2005. Up to that date, the company Global Strategies Group had been in charge of security in the so-called "Green Zone".

⁵ United States Department of State, government contract. *Source:* http://www.sourcewatch.org/index.php?title=Triple_Canopy_Inc.#Defending_the_.22_Green_Zone.22.

⁶ Information confirmed by the Ministry of Security, which reported that Your Solutions was a subsidiary of InterCom but operated independently, although the shareholders were the same in both companies.

⁷ Before they left Honduras, compulsory vaccinations were reportedly administered by Ministry of Health staff.

For the protection of fixed facilities in the “Green Zone”, Triple Canopy, through two subsidiaries, recruited 189 Hondurans and a substantial number of other Latin Americans, including 105 Chileans trained in Honduras.

22. Honduras is one of those third world countries where there are a number of conditions of benefit to the globalized economy: cheap labour, widespread unemployment, a population which traditionally migrates abroad in search of work and an economy heavily dependent on the remittances sent back to the country by that migrant workforce, amounting to around US\$ 250 million a year.

23. The process of engaging the Hondurans was conducted with the consent, and under the supervision, of the Ministry responsible for the portfolios of labour and social security, which, in accordance with its powers under articles 43 to 45 of the Labour Code, as amended by decree No. 32-2003, monitored, and in some cases apparently suggested amendments to, the clauses governing the nature and provision of the work⁸ and verified the legal standing of Your Solutions Incorporated of Illinois, as the employer, and Your Solutions Honduras SRL, as its agent. The Ministry of Labour and Social Security appears to have decided to regard the private security guards as migrant workers.

24. In early May 2005, the Honduran media revealed that the then Minister responsible for the portfolios of labour and social security, Germán Edgardo Leitzelar Vidaurreta, had received visits from United States companies providing security services - mainly to the United States Government - which had expressed an interest in working with specialists in that field to effect transfers of immigrant workers. The Minister had reportedly made it clear that it would be necessary to draw up regulations and an agreement providing Hondurans with the strongest possible guarantees and assurances, in order to discourage clandestine departures, which were common occurrences. He had also pointed out the risk that, without the involvement of the Ministry of Labour, such persons might be recruited from neighbouring Central American countries. Consequently he had reportedly stressed that the Ministry would draft regulations to make sure that Hondurans taking up such offers did not fall prey to fraud or deception.⁹

25. The Hondurans in Iraq had been recruited to provide the following services (though not all had signed a contract before leaving the country): interpreter, personal security detail, fixed-facility security, convoy security and others related to all-round security. With the exception of interpreting services - for which no Hondurans were chosen, as far as the Working Group is aware - the remaining services all involved security situations that might at any moment turn into direct combat situations. Under one of the clauses in the contract, the employer reserved the right to transfer or move the employee from any given post, assignment or task as

⁸ According to clause 9 of the contract, entitled “Presumption of risk”, “the employee knowingly and voluntarily acknowledges the risks to which he will be exposed by the nature of the work, and the known and unknown risks he may face during training and in the performance of his duties, including during transport and travel between destinations. The signatory certifies that the employing authority has advised him of the risks and hazards inherent in the work.”

⁹ *La Tribuna*, 13 May 2005.

required. All the Hondurans known by the Working Group to have served in Iraq went as security guards in Baghdad's "Green Zone". The initial offers reportedly received by the Ministry mentioned a wage of US\$ 300 a day (around US\$ 9,000 a month). By the time the contracts were signed the wages had fallen sharply, and according to a Your Solutions Honduras advertisement, wages ranged between US\$ 990 and US\$ 1,500 a month.

26. The hazardous nature of these assignments is reflected in several clauses in the contract, which the Hondurans were obliged to accept before signing. For example, the employee *"understands and accepts that, in providing the services referred to in the present contract, he will be exposed to great risk and immediate danger and to the many risks associated with a hostile environment, including but not limited to the threats inherent in a war situation, and therefore recognizes and is aware that the performance of his duties may expose him to physical and material injury or result in death, disablement or incapacitation"*. In this connection, the contract states that the employer will provide recruits with a life insurance policy and medical and hospital insurance, effective from the date of entry into service.

27. The Working Group has not had access to the policy mentioned in the previous paragraph, but wishes to point out that one of the main complaints of the Hondurans who served in Iraq was precisely to do with medical assistance. Thus, for example, in one of the statements made to the Office of the Attorney for Human Rights, the complainant alleges that, although he had fractured his right ankle and was unfit for work, his superiors did not secure medical assistance for him so that he could be declared unfit for work: he had to continue working with no medical assistance whatsoever. When he invoked the medical and hospital insurance provisions in the contract, his superiors replied that the contract he had signed in Honduras was "in their view not valid".¹⁰ The same kind of situation was confirmed by at least one other of those who served in Iraq, who had one foot badly swollen as a result of a fall, but nevertheless had to perform his duties in a lookout tower on crutches, complete with machine gun and bullet-proof vest. To save time, since he could move around only very slowly, he was ferried by car to the canteen and to the place where he was on guard duty.

28. A year after the Minister of Labour's statements to the press, and following recruitment, training and service in the "Green Zone", some 16 persons engaged by Your Solutions Honduras and Your Solutions Inc. lodged claims with the Honduran authorities (a) on labour grounds, for breach of individual fixed-term contracts and unilateral termination of contract, and (b) on criminal grounds, with the Attorney for Human Rights in the Public Prosecutor's Office. The Attorney reportedly brought charges against government officials who had permitted Your Solutions to engage Hondurans for security service in Iraq and force them to fight alongside United States soldiers. He reportedly submitted 3 of the 16 statements by Hondurans so recruited to the Tegucigalpa Criminal Court as evidence in criminal proceedings against public servants or employees for permitting illegal recruitment.¹¹

¹⁰ Information confirmed by documents signed solely by officials of the Triple Canopy corporation in Iraq as notice of dismissal.

¹¹ *La Tribuna*, 27 September 2006.

29. In parallel with the recruitment and training of the 189 Hondurans, 105 Chileans, apparently recruited in Chile, were either undergoing (in 97 cases) or providing (in 8 cases) training in Honduras for the Iraq contingent. The Chileans had entered Honduras as tourists in September 2005. When, on completion of the training course,¹² the press discovered and revealed that Chilean ex-soldiers were receiving training in Honduras, the Migration Department announced that they had entered the country as tourists, were there illegally and must leave. Fifty other Chileans then in El Salvador awaiting training in Honduras were reportedly denied entry. After having been granted a 72-hour extension by the Migration Department, the 105 Chileans were escorted to the Nicaraguan border, where the Nicaraguan authorities denied them entry on suspicion that they were mercenaries. A further 72-hour extension enabled them to prolong their stay in Honduras, and an appeal to the Ministry of Internal Affairs to be allowed to stay in the country, in a hotel in Choluteca in the custody of the migration authorities, enabled them to stay until early October 2005, when they left on the same aircraft that was to take the third group of Hondurans to Iraq.

30. The Hondurans and Chileans recruited for Iraq were trained at the development centre of the Honduras Forestry Development Corporation (COHDEFOR), a former army base in the municipality of Lepaterique,¹³ some 40 kilometres from the capital, where the facilities had reportedly been rented to the Scout Association of Honduras. Several statements indicated that some of the Honduran and Chilean recruits were trained not only at Lepaterique but also at the Army Military Training Centre (CAME) in Olancho. This information was not confirmed at the Working Group's interview with the Minister of Defence, the Chair of the Joint Chiefs of Staff and the Armed Forces Chief of Military Intelligence. However, according to statements made to the press by the former Minister of Defence, Federico Brevé Travieso, Your Solutions did at one point request permission to use the CAME facilities in Olancho, but permission was denied.

31. Various sources agree that the training conducted at Lepaterique was of a military nature involving the use of weapons of the M-16 type, which are considered illegal in Honduras.¹⁴ The director of Your Solutions Honduras himself admitted, in an interview with the daily *La Tribuna*,

¹² All the Chileans had successfully completed the training course in Honduras except three, who were sent back to Chile.

¹³ Known to have been used in the 1980s as a training camp for the Nicaraguan Contras and Argentina's 601st Intelligence Battalion, a specialist counter-terrorist unit under Operación Condor. In 2005 the director of COHDEFOR is said to have signed an agreement with the head of the Scout Association, at that time the Deputy Minister of Labour. The presidency of the Scout Association later passed to the then Chair of the Joint Chiefs of Staff of the Armed Forces, now retired from the Army.

¹⁴ Statements from local residents, articles in the press and statements from some of the guards who underwent training mention deafening bursts of gunfire reminiscent of the 1980s, when Contra forces were being trained. Also, shell cartridges found at the training sites are the calibre of illegal firearms.

that he had borrowed or rented some of the M-16s. The Chair of the Joint Chiefs of Staff stressed to the Working Group that the Armed Forces were not involved in or in any way responsible for the training - which he maintained had been security, not military, training.

32. The contracts were signed by the director of Your Solutions Inc. of Illinois, and the individual contracted in Honduras. The signature of the director of Your Solutions Honduras did not appear on the contracts. Nevertheless, a clause in the contract states that “Your Solutions Honduras shall be jointly responsible with Your Solutions Inc. for payment of the emoluments contracted”. Another clause establishes that “the contract shall be governed by the laws of the State of Illinois, United States of America, and of Honduras, as though signed in that location, nullifying any conflict of laws to which it may give rise. In the event of compliance disputes, the competent courts shall in all cases be determined at the employee’s request, or wherever the service is being provided ...”.

33. The contract contains clauses on (a) the location and performance of duties (in and around Iraq); (b) length and duration (12 months); (c) working conditions (up to 12 hours remunerable, one day a week off); (d) remuneration, compensation and expenses (in most cases the pay is US\$ 990 a month); (e) provision of board, lodging and equipment; (f) the dangerous nature of the situation and presumption of risk; and (g) guidelines as to conduct, which should comply with applicable laws and regulations in the United States and the employee’s country of residence. But there is no clause dealing with employees’ individual liability for any serious violations of human rights or of international humanitarian law which they might commit in a situation of armed conflict where they are constantly exposed to “great risk and immediate danger” in a “hostile environment” including but not limited to “the threats inherent in a war situation”.

34. The Working Group notes with concern that Your Solutions Honduras, which recruited, trained and dispatched 189 Hondurans and 105 Chileans for service in Iraq, was not listed among the 123 legally established private security companies registered with the Ministry of Security. This information was confirmed by the Ministry of Security’s Commissioner on the oversight of private security companies, who is responsible for enforcing the regulations. According to the information provided, private security companies are required to register with the Ministry of Security and the Property Institute; registration with the Chamber of Commerce is optional. Your Solutions Honduras was not registered with the Ministry of Security.¹⁵ Another disturbing fact is that the director of Your Solutions Honduras is a former army major and that the person in charge of training the Honduran and Chilean contingent that went to Iraq is also a former army colonel who reportedly continues to hold a senior security post in the present Government. Besides not being legally registered with the Ministry of Security, Your Solutions Honduras carried out activities for which there is no provision in the Police Act or in article 22 of the regulations, such as, for example, the export of military and security services to another country.

¹⁵ Your Solutions Honduras apparently submitted a declaration in 2005 but has apparently not paid the Central District municipal tax on industry, trade and services.

B. Activities, coverage, operation and oversight of private security companies in Honduras

35. The State of Honduras is constitutionally responsible for the country's internal security and the protection of its citizens. The National Police is responsible for maintaining law and order, preventing, controlling and combating crime and ensuring the safety of persons and their property.¹⁶ However, the country is currently plagued by a breakdown in law and order that, according to the National Human Rights Commissioner, has assumed the characteristics of a national emergency. Improper conduct by many police officers, and the fact that the police have clearly taken the administration of justice into their own hands, bypassing the rule of law, are two of the many factors contributing to this situation.¹⁷ The Commissioner warned as early as 2003 that fear and insecurity were infesting the people's everyday lives little by little. The country's internal security is increasingly being handed over to private individuals and private security companies.

36. The Ministry of Security is responsible for the regulation and oversight of private security companies. Under the Police Act (art. 102), civil society is allowed to involve itself in the area of law and order. The Ministry of Security may encourage the formation of security or neighbourhood watch committees, which already exist in many communities in Honduras, in accordance with article 57 of the Regulations on Registration, Monitoring, Supervision and Oversight of Private Security, Investigation and Training Companies and Internal Security Units, though these were previously encouraged by the Ministry of Security and the Government. These security committees, according to a report by the Arias Foundation,¹⁸ give cause for concern. Members have been involved in murders and other crimes, as well as unlawful detentions and violations of the right to freedom of movement. It is said that not even the police are adequately equipped to control the committees. According to the report, "the formation by communities of security or neighbourhood watch committees has in recent years become a matter of concern for human rights bodies in Honduras, because this form of involvement has resulted in a shift of police powers into private hands". Ministry of Security figures show that there were 180 citizens' security committees in 2000 and more than 200 in 2006. In recent years the Public Prosecutor's Office is said to have brought to court a number of murder cases against members of citizens' security committees.

37. Before the creation of the National Police in 1996, it was the Ministry of Defence that issued operating permits to private security companies. Security companies' operations are now governed by article 10, paragraph 5, of the Police Act. Although under article 91 of the Act it is

¹⁶ Police Act, art. 10. Decree No. 156-98.

¹⁷ In April 2006, the National Human Rights Commissioner, alarmed at the breakdown in law and order and the behaviour of the police, wrote an open letter to the President, published in the media, urging him to launch a clean-up of the police force. *La Tribuna*, 27 April 2006.

¹⁸ Cited in the United Nations Development Programme (UNDP) 2005 report on Honduras, "Funcionamiento de las empresas de seguridad privada en Honduras".

the Ministry of Security that authorizes private security companies to operate, on the basis of a decision by one of the Ministry's departments, the Act does not specify which department. The companies are supposed to be regulated by the Ministry of Security's Security Company Supervision and Oversight Unit, which, according to information received, only commenced operations in 2006, though it was set up in 2003, and is not well staffed. The regulations on registration, supervision and oversight, which under the 1998 Police Act should have been drawn up around eight months after the Act entered into force, were in fact drafted only in 2005.

38. Although article 92 of the Police Act lists and defines the private security services such companies may provide, the Ministry of Security seems to disregard these definitions when issuing licences to private security companies. This means the companies can provide whatever form of security clients may request without regulation by the Honduran authorities. This situation would not only make it difficult to categorize the security companies according to service provided, as required by law, but would also create problems of control for the Ministry of Security's supervision unit.¹⁹

39. The regulations and manuals that are supposed to govern private security companies are reportedly the responsibility of the National Council for Internal Security (CONASIN), a collegiate body which, among other tasks, is expected to "examine and rule on police regulations and manuals", in accordance with article 4 of the Police Act. However, the Working Group only learnt of this institution on reading through the Police Act.

40. There are 123 legally constituted private security companies in Honduras.²⁰ Some 30 of these belong to the Asociación de Empresas de Seguridad e Investigación Privada de Honduras (Honduran Association of Private Security and Investigation Companies), which estimates the total number of private security companies operating legally and illegally in Honduras at more than 350. According to article 101 of the Police Act, "no agency authorized to provide private security services may employ security operatives equivalent in number to more than 15 per cent of the total National Police force or use firearms of unauthorized calibre or type. Firearms shall in all cases be different from those used by the National Police".

41. In this regard, it should be noted that, under article 292 of the Constitution, the Armed Forces have sole rights to the manufacture, import, distribution and sale of firearms. Arms registration and purchase are carried out through the Armed Forces armoury.

¹⁹ Ibid.

²⁰ Information provided by the Registration, Supervision and Oversight Unit in the Ministry of Security. This report indicates that the total number of registrations is 250, a figure that includes, apart from the 123 legally constituted private security companies, the following categories: 36 business security companies; 32 neighbourhood watch organizations; 34 permit applications pending; 22 permit applications rejected and 3 companies closed down following cessation of operations or liquidation.

42. Alongside the 250 private security companies registered with the Ministry of Security, of which only 123 are legally constituted, there are reportedly more than 280 operating illegally in Honduras - though their precise number and the nature of their operations are not known. Referred to as “briefcase companies”, they have no fixed address and no overheads other than the wages of the agents working for them and the weapons they purchase once they have obtained a contract. Use is made of these companies because of the low prices they charge. Nothing at all is known about them: who owns them, who works for them, how they select their employees, what training they have, what weapons they use or who supplies them. Frequently, such briefcase companies, or even just a single vigilante operating on his own, offer security services to the residents of a neighbourhood or area. It often happens that the residents reject the offer and the vigilantes themselves or their accomplices break into their houses and rob or wreck them. Employees of such companies reportedly work 24 hours at a stretch followed by 24 hours off, and have no social security whatsoever.

43. Various sources agree that, counting the legally registered companies and the illegal operations, the number of people employed by private security companies in Honduras as private guards and vigilantes must range between 20,000 at a minimum and 70,000 at most.²¹ The National Police numbers 12,000, of whom 7,300 belong to the uniformed Preventive Police. These figures are very disturbing. There seems to be no authority with any control over these companies’ actions, which pose a serious threat to the general public and to law and order. These illegal companies reportedly have thousands of banned weapons acquired on the black market, such as AK-47 and M-16 assault rifles and Uzi submachine guns.²²

44. Other provisions of the Police Act and the Regulations on Registration, Monitoring, Supervision and Oversight of Private Security Companies allow private individuals or organizations to make their own security arrangements without any need for a licence, providing the number of security personnel employed does not exceed 100 and that such arrangements are not for profit.

IV. CONCLUSIONS

45. **As mentioned above, Honduras is a party to the main international human rights instruments. It has ratified the Rome Statute of the International Criminal Court, which has jurisdiction over persons who commit serious international crimes. It has acceded to the Geneva Conventions of 12 August 1949 and Additional Protocols I and II thereto.**

46. **In the context of international humanitarian law governing the rules of war (*jus in bello*), article 47 of Additional Protocol I defines a mercenary and establishes that a mercenary is not a combatant and shall not be considered a prisoner of war in case of capture, but does not define mercenary activities as an international crime or establish any obligation to punish such activities.**

²¹ The Ministry of Security indicates that there are around 12,500 guards registered, but that the overall total could be anywhere between 18,000 and 20,000.

²² See UNDP report (note 19 above).

47. In the context of international law on human rights, the stability of Governments, non-intervention and the territorial integrity of States, the International Convention against the Recruitment, Use, Financing and Training of Mercenaries ensures the protection of human rights and the application of *jus ad bellum*.²³ In defining mercenaries, the Convention adopts the criteria established in article 47 of Additional Protocol I, but it also categorizes as offences both the activities of mercenaries themselves and those of persons involved in recruiting, using, financing or training mercenaries. The provisions of the Convention establish an obligation to punish a mercenary who “effectively participates directly in hostilities or in an act of violence”. Honduras is not a party to this Convention.

48. The Hondurans and Chileans recruited and trained in Honduras meet some of the Convention criteria. In the first place, mention should be made of the fact that they have received military training, have been provided with combat weapons such as machine guns or assault rifles, and have been issued with uniforms very similar to those worn by United States soldiers in Iraq and with bullet-proof vests and helmets. The fact that they had to do front-line guard duty in the “Green Zone” in Baghdad could very well be interpreted as indicating that they were specially recruited abroad in order to fight in an armed conflict. In an armed conflict such as the one in Iraq it is impossible to distinguish between regular combat troops and auxiliary support forces, particularly in situations where private guards provide protection to convoys, buildings, people or equipment.

49. They also meet certain other criteria in the Convention definition, such as the fact that both the private security companies involved in the recruitment, training and financing of those engaged and the individual Hondurans and Chileans were motivated essentially by the desire for private gain. They also meet the criteria of being neither nationals of a party to the conflict nor residents of territory controlled by a party to the conflict, and not having been sent by a State which is not a party to the conflict on official duty as a member of its armed forces.

50. It remains to be determined whether the Hondurans and Chileans were acting as members of the armed forces of a party to the conflict, i.e., whether, having been recruited under a contract with the United States Department of State, they were members of the United States Army.

51. It also remains to be determined whether the Hondurans and Chileans participated in the hostilities. In an armed conflict such as the one in Iraq, the line separating the passive services for which they were recruited, such as personal security detail, fixed-facility security or convoy security, from actions involving participation in the hostilities in case of attack, is a very fine one that may easily be crossed.

52. The Convention states in its preamble that “matters not regulated by such a convention continue to be governed by the rules and principles of international law”.

²³ F.J. Hampson, “Mercenaries: Diagnosis before Proscription”, *Netherlands Yearbook of International Law*, 1991.

53. In the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations,²⁴ the General Assembly affirmed that “the principles of the Charter which are embodied in this Declaration constitute basic principles of international law”,²⁵ and “consequently [appealed] to all States to be guided by these principles in their international conduct and to develop their mutual relations on the basis of the strict observance of these principles”.

54. As a Member of the United Nations and of the international community, Honduras has undertaken to observe international law. This was recently affirmed by the Ministry of Foreign Affairs²⁶ in its reply to the Working Group on Mercenaries by reference to article 15 of the Constitution, which states that “Honduras endorses the principles and practices of international law, which promote solidarity, respect for the self-determination of peoples, non-intervention and the strengthening of universal peace and democracy”.

55. By making it possible for a Honduran private security company, a subsidiary of a North American private security company that was itself subcontracted by another company to which the United States Department of State had awarded a security contract in the “Green Zone” in Baghdad to recruit and train Honduran and Chilean nationals on its territory and send them to Iraq, Honduras has failed to uphold principles of international law. Furthermore, as a State party to the Rome Statute, Honduras should have refrained from exposing its own nationals to military service in a situation of armed conflict, or sending the nationals of another country through its territory for that purpose.

56. The fact of delegating what are normally functions of the State to private entities does not relieve Honduras of its obligation to guarantee security, law and order, the rule of law and respect for human rights, or of its responsibility to uphold the principles of international law.

57. It is worth asking how far a State can cede control of public security to foreign private security companies before losing part of its sovereignty and before the situation becomes one of interference in the internal affairs of that State.

58. In the case of Iraq, the Honduran authorities should have made an assessment of the services to be provided by the persons recruited by the private security company. In a situation of armed conflict such as the one in Iraq, services such as personal security detail, fixed-facility security or convoy security and other general security-related duties would inevitably require the Hondurans to carry heavy weapons in order to deal with war situations and involve a constant risk of entering into direct engagement with Iraqi

²⁴ General Assembly resolution 2625 (XXV) of 24 October 1970, annex.

²⁵ Text in bold characters added.

²⁶ Memorandum No. 764-DGAE, of 24 July 2006, from the Ministry of Foreign Affairs of the Republic of Honduras to the United Nations.

insurgents or becoming cannon fodder. Several persons who provided statements made the point that they were given clear orders that if they were attacked, they should not respond and open fire on the attackers. In the specific case of one Honduran who was reportedly attacked by mortar fire and opened fire in self-defence, his contract was terminated on the spot and he was expelled from Iraq.

59. In the context of the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, and under customary international law,²⁷ Honduras, as a member of the international community, had a responsibility to prevent the use of its territory for the recruitment and training of persons and the financing of activities for the purpose of participation in an armed conflict.

60. Any illegal acts committed during an armed conflict such as the one in Iraq by the persons recruited and trained by private military and security companies in Honduras are subject to international human rights law and international humanitarian law. As a State on whose territory private military and security companies operate, Honduras has a responsibility not only to regulate the activities and services such companies might offer but also to exercise effective supervision and control.

61. Honduras appears to have violated by negligence the principles established in articles 205 and 245 of the Constitution,²⁸ as well as articles 43 to 45 of the Labour Code, as amended by decree No. 32-2003, which stipulates that the Ministry shall see to it that in the granting of contracts for the provision of services abroad proper steps are taken to ensure that the contracts guarantee the dignity of Honduran workers and do not expose them to harm in any other way.

62. The Honduran authorities, through the Department of Migration and Alien Affairs, decided to treat the military training of Chileans on Honduran territory as a labour issue. They therefore decided: (a) to declare the presence of the 105 Chileans in Honduras unlawful; (b) to fine each of them 1,149 lempiras and 15 centavos, informing the legal representative of Your Solutions Honduras accordingly; (c) to deport the 105 Chilean nationals; and (d) to fine Your Solutions Honduras 6,894 lempiras and 90 centavos. The authorities failed to deport the Chileans to their own country, however, and let the time pass until the Chileans left Honduras in October 2005 as part of the contingent of persons who were going to serve in Iraq.

²⁷ The International Court of Justice has taken the view that the Declaration forms part of customary international law. See the case *Nicaragua v. United States*.

²⁸ Article 205, paragraph 25, of the Constitution stipulates that it is for Congress to “authorize or refuse to allow the transit of foreign troops through Honduran territory”. Article 245, paragraph 43, stipulates that one of the powers of the President is “following prior authorization by Congress, to allow or refuse to allow the troops of another country to pass through Honduran territory”.

63. With regard to the 105 Chileans who, after having been recruited by Your Solutions, entered Honduras on tourist visas, 97 of whom received training in Honduras while 8 acted as instructors, and all of whom left the country by plane, presumably illegally via San Pedro Sula and bound for Iraq, the Working Group would like to request the Honduran authorities to look into these events and consider whether this allegation does not in part imply a violation of article 317 of the Criminal Code, on offences which endanger the peace, external security or dignity of the nation, which punishes “*anyone who recruits troops in Honduras to serve a foreign nation, for any purpose whatsoever*”. It also wonders whether there have not been any violations of the relevant provisions of the Honduran Criminal Code relating to arms control, abuse of power, use of weapons, involvement of foreign ex-soldiers in activities of a military nature, and unlawful association.

64. By exporting personnel services to Iraq through the local agent of a private security company, Your Solutions Honduras, Honduras has become de facto a country from which contingents leave for operations in other countries, regardless of the fact that the employer was Your Solutions Incorporated, of Illinois, United States of America. The Working Group wishes to refer to its report to the General Assembly at its sixty-first session (A/61/341, para. 98), in which it recommended that States from which these private companies export military or security services should adopt the legislative instruments needed to set up regulatory mechanisms to control and monitor their activities, including a system of registering and licensing which would authorize these companies to operate and allow penalties to be imposed on them when the norms are not respected.

65. In this context, the Working Group welcomes indications that the Attorney for Human Rights in the Public Prosecutor’s Office is preparing to bring charges against government officials who allowed Your Solutions to engage Hondurans to go to Iraq to provide security services and obliged them to fight alongside United States soldiers.²⁹

66. What with the Security and Neighbourhood Watch Committees, private security companies operating legally or otherwise, and Honduran nationals’ right to form their own security corps up to 100 strong, Honduras now has some veritable “mini-armies” to which the State has ceded some of its monopoly on the use of force, and which are beyond the control of the authorities.

67. What is more, it is claimed by a number of sources that former members of the Armed Forces and the police are the owners of many of these private security companies or hold important positions in them, and in some cases held such posts while still on active service. Such close ties make for a dangerous conflict of interest. Those private security companies that are owned by ex-police or ex-military personnel are also said to be the most reluctant to comply with the registration and oversight regulations. Another cause for

²⁹ *La Tribuna*, 27 September 2006.

concern is the fact that there were allegations regarding the office of the Commissioner appointed to monitor the private security companies, indicating a murky past that required a clean-up operation to be carried out.

68. It is alarming to find that a relatively small number of the weapons supplied to the legally constituted private security companies should have come from the Armoury, implying that other sources of supply exist.³⁰ It is also disturbing to note that none of the four private security companies described by the Ministry of Security as the most important ones (InterCom, InterSec Security, Walking Hound and Golan Group) is listed in the Ministry's register of legally constituted private security companies. Two of them (InterSec and Golan) are not listed in the public business register either.

69. Another concern is related to the establishment in Honduras of transnational private security companies that allegedly attract not only former members of the Honduran military and police, but also active members of both forces, by offering higher pay, and are also reported to operate outside the proper control and oversight of the appropriate bodies, which poses a threat to national sovereignty. By law, foreign private security companies may operate in Honduras provided they are associated with Honduran companies, but it appears that this requirement is not being met.³¹

70. All these indicators point to an alarming situation in which the State of Honduras has ceded part of its sovereignty in respect of internal security, and apparently continues to do so. In the Working Group's opinion, the State has shown negligence in so delegating its own powers.

71. The Working Group is particularly worried by the measures reportedly taken by the three branches of government on 29 August 2006 in relation to public security policy, which enable some 30,000 private security guards to provide backup to the police and the Armed Forces in fighting crime in Honduras, and which authorized private security guards to take action and even open fire on lawbreakers attempting a robbery. Once again the question must be raised of how far a State can go in handing control of the use of force over to private security companies.

72. The Working Group is also concerned at the campaign of harassment, death threats and slander against the Asociación para una Sociedad Más Justa (Association for a Fairer Society - ASJ) and its project coordinator, journalist Dina Meetabel Meza Elvir, launched by Delta Security Services, a private security company, following the Society's defence of the labour rights of 12 security guards working for Delta who were arbitrarily dismissed, and the support the Society provided to other employees being exploited by State enterprises to which Delta provides private security services.

³⁰ See UNDP report (note 20 above).

³¹ Ibid.

V. RECOMMENDATIONS

73. The Working Group wishes to submit the following seven recommendations to the Honduran Government for its consideration:

(a) It should accede to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries and amend the relevant article of the Criminal Code to take account of the measures contained in the Convention on punishment for the recruitment, use, financing and training of personnel for mercenary purposes;

(b) It should carry out an in-depth study of the manner in which the agencies and institutions responsible for enforcing the law, the Ministry of Security (National Police and Department of Investigation), the Public Prosecutor's Office, the judiciary and the prison system, operate and perform their duties, and make the necessary changes to guarantee law and order, protect people and property and strengthen the rule of law. In formulating and evaluating this policy, the authorities should draw maximum benefit from the advice of the National Commission for Internal Security (CONASIN), a collegiate body comprising State institutions and representatives of civil society;

(c) It should strictly apply the provisions of the Police Act and the Regulations on Registration, Monitoring, Supervision and Oversight of Private Security, Investigation and Training Companies and Internal Security Units, which provide that all private security companies should be legally constituted and registered with the Ministry of Security; a full survey of all private security companies operating in the country should be carried out and their arsenals continuously and effectively monitored in accordance with the law; their agents should wear uniforms and bear the insignia of the service company, the corresponding identification bearing the agent's full name and photograph, approved by the police;

(d) It should ensure the certification of the services provided by the private security companies and the training of their agents, and oversight by the Ministry of Security of entrance tests and recruit training and preparation in accordance with the approved standards. It is recommended that personnel training should include the rules drawn up by the United Nations on the use of firearms and the protection of human rights, such as the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force by Law Enforcement Officials;

(e) It should check the reliability of private security company directors, shareholders and executives, as well as all their personnel, to ensure that they have not previously been implicated in human rights violations, and investigate whether there are any conflicts of interest between the posts held by certain members or former members of the military or police and their involvement in private security companies;

(f) It should set up an authority over the Ministry of Security, either a parliamentary committee or a commissioner, which would have the power to monitor the activities of private security companies and which could receive complaints;

(g) It should prohibit the export of private military or security services to other countries and, where such export does occur, regulate such services by law through the granting of licences and control mechanisms, as recommended by the Working Group in its report to the United Nations General Assembly at its sixty-first session (A/61/341, para. 98).

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