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تعزيز وحماية جميع حقوق الإنسان، المدنية والسياسية والاقتصادية والاجتماعية والثقافية، بما في ذلك الحق في التنمية

تقرير الفريق العامل المعني بمسألة استخدام المرتزقة وسيلة لانتهاك حقوق الإنسان وإعاقة ممارسة حق الشعوب في تقرير المصير

الرئيس - المقرر: السيد خوسيه لويس غومس دل برادو

إضافة

البعثة التي قام بها إلى بيرو\*

(٢٩ كانون الثاني/يناير - ٢ شباط/فبراير ٢٠٠٧)

\* يُعمم موجز هذا التقرير بجميع اللغات الرسمية. أما التقرير نفسه، الوارد في مرفق الموجز، فيعمم باللغة التي قدم بها وبالإنكليزية.

## موجز

زار الفريق العامل بيرو في الفترة من ٢٩ كانون الثاني/يناير إلى ٢ شباط/فبراير ٢٠٠٧ بناء على دعوة من حكومة البلد. ويتوجه الفريق العامل بالشكر إلى سلطات بيرو على تعاونها معه وعلى الحوار البناء الذي ساد مشاوراته معها.

ويهنئ الفريق العامل بيرو على انضمامها إلى الاتفاقية الدولية لمناهضة تجنيد المرتزقة واستخدامهم وتمويلهم وتدريبهم، وعلى صياغة كونغرس بيرو مشروع قانون يحظر على مواطني البلد تقديم خدمات أمنية في مناطق النزاع المسلح. ويقر الفريق بما تبذله الحكومة من جهود في سبيل وضع لوائح ناظمة لعمل شركات الأمن الخاصة، حيث أصدرت في عام ٢٠٠٦ القانون ٢٨٨٧٩، الذي يجري بناء عليه إعداد لائحة ناظمة لكيفية تطبيق، كما أصدرت القانون ٢٨٨٠٦ العام للتفتيش في العمل، والقانون ٢٨٩٥٠ لمكافحة الاتجار بالأشخاص وتهريب المهاجرين.

بيد أن الفريق العامل ما زال قلقاً إزاء تجنيد رعايا بيرويين من قبل شركات بيروية وشركات من الولايات المتحدة الأمريكية، متعاقدة من الباطن مع شركتي MVM Inc. (من ولاية كاليفورنيا) و Triple Canopy (من ولاية إلينوي)، وإزاء الحالة التي يواجهها أولئك الرعايا في أفغانستان والعراق لدى تنفيذهم أحكام العقود التي أبرمتها وزارة خارجية الولايات المتحدة في البلدين المذكورين. فقد أبرمت شركات الأمن الخاصة الأمريكية الشمالية عقوداً تتضمن أنشطة مرتزقة، من قبيل تجنيد أشخاص وتدريبهم وتمويلهم واستخدامهم لغرض تجاري مربح. وأفيد عن حدوث مخالفات في التعاقد معهم، وقساوة في أوضاع تشغيلهم، مع إفراط في عدد ساعات عملهم، وعدم دفع أجورهم كاملة، وإساءة معاملتهم وعزلهم، وغياب لأبسط الضروريات، من قبيل الرعاية الصحية، فضلاً عن وفاة اثنين منهم على الأقل في ظروف مريبة. ويلاحظ الفريق حدوث تجاوزات من جانب بيرو، كما في تدريب رعاياها في منشآت العسكرية، وفي ارتكاب مخالفات في عقود العمل في العراق، وعدم تضمين تلك العقود أحكاماً وقائية. وإن عدم وجود تشريعات ولوائح وضوابط وطنية مناسبة في بيرو قد أحدث فراغاً قانونياً يعود بالنفع والفائدة على شركات الأمن الخاصة لدى بحثها في السوق الدولية على مواطني بلدان أخرى للتعاقد معهم بوصفهم "حرس" أمن في مناطق النزاع المسلح. ويعرب الفريق العامل عن قلقه إزاء ما يتعرض له سكان إقليم كاخاماركا على أيدي جماعات الأمن الخاصة أو رجال الشرطة، لدى قيامهم بمهام أمنية خاصة، من تهريب وتهديد موجهين خصوصاً إلى المدافعين عن الحقوق الاقتصادية والاجتماعية والبيئية.

ويوصي الفريق العامل بتعزيز الإطار التنظيمي. كما يوصي السلطات بإعداد سجلات شفافة بالشركات الأمنية الخاصة، تتضمن كل ما يتعلق بالملكية والأنظمة والوظائف والغايات، كما تتضمن نظاماً لعمليات التفتيش الدورية. ويوصيها كذلك باتخاذ تدابير تشريعية وتنظيمية للحيلولة دون إمكانية حدوث تضارب في المصالح عندما يتصرف موظفو الدولة كمالكين لتلك الشركات أو كقيمين عليها. ويوصي الفريق العامل السلطات المختصة، وبخاصة مكتب المدعي العام للدولة، بالتحقيق في كل الحالات التي لم يتم استجلاؤها على النحو الواجب، وبخاصة حالات وفاة مواطنين بيرويين في أفغانستان والعراق. ويحث السلطات على أن تواصل تزويد زعماء المجتمعات المحلية في إقليم كاخاماركا بتدابير الحماية التي طالبت لجنة البلدان الأمريكية لحقوق الإنسان بتوفيرها.

## 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 PERU**

(29 January to 2 February 2007)

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## Introduction

1. At the invitation of the Government, the Working Group, represented by its then Chairperson, Ms. Amada Benavides de Pérez, and one of its members, Mr. José Luis Gómez del Prado, visited Peru from 29 January to 2 February 2007.
2. The purpose of the visit was to obtain information in order to fulfil its mandate to study and identify emerging issues, manifestations and trends regarding mercenaries or mercenary-related activities, and the functioning of private military and security companies (PMSCs) and their impact on human rights.<sup>1</sup> The visit to Peru forms part of a regional assessment by the Working Group on the trend towards the privatization of security in Latin America, including the phenomenon observed in recent years where nationals of countries in the region have been recruited by PMSCs.<sup>2</sup> Many of these companies are subsidiaries of foreign-based companies, which operate in armed conflict situations such as Iraq and Afghanistan.
3. The following areas were dealt with: (a) the recruitment and military training of Peruvians by private security companies to provide services in Iraq; (b) the activities, operations, functioning and oversight of private security companies in Peru; (c) involvement in social conflicts of some private security companies providing protection services to transnational natural resource extraction companies; and (d) Peru's accession to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries.
4. The Working Group held meetings with State legislative, executive, judicial and other organs. It met with ministers, deputy ministers, and senior officials at the Ministries of Foreign Affairs, Defence, the Interior and the Police, Justice and Labour; the chairpersons of the Justice and Human Rights Commission and the Labour Commission of the National Congress; the President of the Supreme Court of Justice, the Senior Prosecutor of the Higher National General Criminal Prosecutor's Office, the National Director of the Institute of Forensic Medicine and the Ombudsman's Office. It also met with other sectors of Peruvian civil society, including representatives of the Bar Association, a significant number of non-governmental organizations (NGOs), private security companies, individuals and the media.

## I. GENERAL COMMENTS

5. Part of the mandate of the Working Group is to monitor and study the effects of the activities of PMSCs on all human beings.<sup>3</sup> With the privatization of security functions traditionally performed by the army or the police, the line between public and private is becoming blurred, creating a dangerous confusion, a "grey area", between State public services and services provided by private commercial entities. As indicated in the Working Group's reports,<sup>4</sup> under international law<sup>5</sup> and domestic law, States have the primary responsibility in maintaining public security, law and order.

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<sup>1</sup> The Working Group considers private military and security companies as being companies providing all kinds of assistance, security, training, provision and consulting services, from unarmed logistical support to the provision of armed guards involved in defensive or offensive military operations.

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

<sup>3</sup> Commission on Human Rights resolution 2005/2, 7 April 2005, para. 12.

<sup>4</sup> A/61/341, paras. 75-76, and A/HRC/4/42, paras. 36-59.

6. A cause for concern is the trend towards privatization of security and the use of force and the fact that human rights violations are being committed with impunity when PMSCs operate in armed conflicts, in the control of national security or in other situations. This phenomenon is often associated with the creation by transnational companies of satellite subsidiaries with legal personality in one country, providing services in another country and recruiting personnel from third countries.

7. Another new development is that some of those companies, or their employees, commit offences against personal freedom, coercing, harassing and threatening members of human rights organizations in the context of social protests, in particular defenders of economic, social and environmental rights.

8. It is essential to establish and strengthen national oversight and control, creating registration and licensing systems for PMSCs and their employees. Such regulation should include minimum requirements for transparency and company accountability, screening and vetting of personnel, and as well as a monitoring system with parliamentary oversight.

## **II. POLITICAL AND LEGAL STRATEGY AND INSTITUTIONAL FRAMEWORK**

### **A. International level**

9. Peru is a State party to all seven major international human rights instruments. It has agreed to the mechanisms to examine individual complaints under the International Covenant on Civil and Political Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women; and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It has ratified the two Optional Protocols to the Convention on the Rights of the Child.

10. The 1993 Constitution stipulates that international treaties form an integral part of national legislation and that rights and freedoms shall be interpreted in conformity with the Universal Declaration of Human Rights and with any international human rights treaty ratified by Peru.

### **B. National level**

11. The Labour Minister noted that Act No. 28806 (Labour Inspection Act) and Act No. 28950 on the Prevention of Trafficking in Persons and the Smuggling of Migrants strengthen police power to inspect employment agencies and monitor trafficking in persons. The new legislation also allows mining and construction companies to be inspected without the prior authorization of the Ministry of Energy and Mining. She said that any deficiencies in the employment register for private security companies would be rectified by the new electronic system. The new laws reinforce the principle of “shared responsibility”, under which the parent company is held legally liable should a subcontractor not fulfil its obligations. The Working Group emphasizes that the State is responsible for granting licences and for oversight and control of both parent companies and their subsidiaries.

12. Under Act No. 28879 of 2006, the Ministry of the Interior, through the Office for Oversight of Security Services, Arms, Munitions and Explosives for Civilian Use (DICSCAMEC), is responsible for the regulation, control and oversight of private security services. The Minister and the Director of

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<sup>5</sup> See the preamble to the Universal Declaration of Human Rights and the Human Rights Committee’s general comment No. 21 on the humane treatment of persons deprived of their liberty.

DICSCAMEC informed the Working Group that regulations had already been drafted for the implementation of the Private Security Services Act which will strengthen the Ministry's powers, but that they had yet to be finalized. Private security activities are aimed at safeguarding and protecting the life and physical integrity of persons and providing security for the assets of natural and legal persons. Private security companies are prohibited from providing services that put national security at risk; performing functions that properly fall to the armed forces or national police; and hiring, preparing and training mercenaries. There are some 50,000 private guards and probably another 50,000 in the informal sector. Many of the informal companies provide security to municipalities. They explained the requirements for registering a private security company. Only some private security companies were registered. The training of Peruvians for Afghanistan and Iraq had been carried out before the Act was passed.

### **III. PRIVATE SECURITY COMPANIES IN PERU**

#### **A. Recruitment and military training of Peruvians by private security companies to provide security services in Afghanistan and Iraq**

13. Since mid-2005, intermediary companies have been selecting Peruvians for two American private security companies, Triple Canopy<sup>6</sup> and MVM Inc.,<sup>7</sup> which were tasked with recruiting, training and sending them to the armed conflict zones of Iraq and Afghanistan. The exact number of Peruvians hired over approximately a year and a half is not known. Figures collated from various sources indicated that there were around 1,100 Peruvians in Iraq: 850 in Baghdad and 300 in Basra. MVM Inc. hired Peruvians for Afghanistan and Triple Canopy for Iraq.

14. MVM Inc. is an American company registered under Californian law. After winning a United States Government contract, it specialized in recruiting Peruvians to provide security services in Afghanistan. The selection process was contracted to 3D Global Solutions and was in turn subcontracted to an intermediary agency, G4S Wackenhut Peru. Following the death by hanging of Martín A. Jara Hichard at the American air base at Bagharam, Kabul, in as yet unexplained circumstances, MVM decided in December 2005 to cancel the contracts and send the 250 Peruvians working in Afghanistan back to Peru.

15. Triple Canopy is an American company registered in Illinois, with headquarters in Virginia, and describes itself as a client of the United States Government. After winning a contract with the Department of State in Iraq, Triple Canopy reportedly subcontracted the services of 3D Global Solutions<sup>8</sup> to select personnel. In its turn, 3D Global Solutions subcontracted Gesegur SAC, Gun Supply SA, G4S Wackenhut Peru SA and Defion Internacional SA. The Peruvian authorities made available information supplied by Defion Internacional stating that, in order to be finally recruited as "independent contractors" by Triple Canopy, those selected had to have military training to ensure they could defend themselves, and that this was stipulated as a requirement in a clause of the Defense Base Act insurance policy issued by the United States Department of State.

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<sup>6</sup> Triple Canopy comprises bankers, high-ranking American military personnel, technical experts and consultants. It specializes in the protection of top executives, buildings and convoys. This company recruited Peruvians for Iraq but has also hired Chileans and Hondurans for the same purpose.

<sup>7</sup> See Isabel Ordóñez's article, "Iraq, Afghanistan lure poor Latin American guards", Reuters, 21 August 2006 (<http://today.reuters.co.uk/News/CrisesArticle.aspx?storyId=N14198783>).

<sup>8</sup> 3D Global Solutions, based in the United States of America, selects personnel with military experience for security work. Its directors are professionals with military and corporate experience.

16. The brief given to candidates by all employment agencies was that they were going to work in Baghdad's "Green Zone"<sup>9</sup> to protect the United States Embassy or private facilities in that country. However, the Working Group has received a copy of a complaint for breach of contract brought by five Peruvian guards hired by 3D Global Solutions<sup>10</sup> and who worked in Baghdad's "Red Zone" for EOD Technology Inc., despite having been hired to work in the Green Zone.

17. None of the contracts signed by the Peruvians were submitted to the Ministry of Labour and Promotion of Employment as, since they were not going to be performed in Peru, they were not considered subject to Peruvian legislation. The Ministry of Labour said that it was only empowered to monitor work carried out in Peru, not abroad, even when Peruvian workers were involved.<sup>11</sup> The Ministry does not have a register of the companies that act as intermediaries for private security companies.

18. According to an executive of Defion Internacional, which operated in Peru for Triple Canopy, the contract of the "independent contractors" was with the United States Government. Mr. Mark Dewitt of Triple Canopy<sup>12</sup> stated that, in the case of the death of a Peruvian in Iraq, any insurance claim had to be lodged with the United States Department of State. The employment contract covered the insurance indirectly, provided the contracted person was in Baghdad's Green Zone.<sup>13</sup> In the case of death or incapacity, the United States Labour Department is responsible for calculating the pension or total amount that the employee or their survivors should receive.

19. The Peruvian authorities have been in contact with the United States Department of State through the Peruvian Embassy in Washington, in order to establish the level of responsibility with respect to the physical safety and working conditions of the Peruvians in Afghanistan and Iraq. According to the Department of State, they were private contracts between the security companies and individuals, and similar contracts had been concluded in other countries, such as Chile and Colombia. It pointed out that the contractual conditions and place of recruitment and employment were internal decisions of Triple Canopy and did not require coordination with the United States Government. The Department of State suggested that the Peruvian Government should contact the headquarters of Triple Canopy directly.<sup>14</sup>

20. The degree of involvement of the companies that selected the Peruvians to work as "independent contractors" varies. Wackenhut del Perú (registered as G4S Perú S.A.),<sup>15</sup> carried out a single round of selection of 500 Peruvians for 3D Global Solutions USA, in Indiana, which in turn had been

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<sup>9</sup> Private security companies admit that the Green Zone is a highly dangerous armed conflict zone where there is a risk of death. On 25 November 2004, four Nepalese security employees died in an attack on the Green Zone, <http://icasualties.org.oif/>.

<sup>10</sup> The 3D Global Solutions representative in Lima who had hired or selected them was apparently Ms. Isaura Marca and, in the United States, Mr. Michael Dodd.

<sup>11</sup> Act No. 27711 (Ministry of Labour and Promotion of Employment Act), Act No. 27626 (Activity of Special Companies and Workers' Cooperatives Act) and the Labour Inspection and Worker Protection Act, Legislative Decree No. 910, are only applicable in the national territory.

<sup>12</sup> Report provided by the Peruvian Ministry of Foreign Affairs.

<sup>13</sup> According to information received, in January 2007, there were also Peruvians in Basra and not just in Baghdad, as well as Peruvians who had worked outside the Green Zone.

<sup>14</sup> United States of America Department of State diplomatic note provided by the Peruvian Ministry of Foreign Affairs.

<sup>15</sup> Subsidiary of Group 4 Securicor, United Kingdom. The request to hire personnel came from its parent company in the United States. This company provides security to the United States Embassy in Lima. According to information received by the Ministry of the Interior, Wackenhut had trained Peruvians in Huachipa.

subcontracted by Triple Canopy. According to its directors, Wackenhut merely selected personnel, between October 2005 and January 2006, verified that they met certain requirements and was paid for each selection.<sup>16</sup> The company could not supply information on how many of the 500 Peruvians selected were hired for Iraq; 3D Global Solutions had apparently been responsible for contacting applicants directly and assessing, training and hiring them.

21. Gesegur SAC (Peru) was contracted by 3D Global Solutions Inc. to select Peruvians on behalf of Triple Canopy. Despite repeated attempts, the Working Group did not manage to meet with Gesegur.<sup>17</sup> Defion Internacional acted as the sole representative of Triple Canopy in Peru, selecting Peruvians for Iraq and handling the logistical and administrative formalities for Triple Canopy (tickets, contracts, opening of bank accounts and airport transfers). Defion acted under the supervision of Triple Canopy as an intermediary company between the contracted persons and their families in Peru. Information supplied by that company<sup>18</sup> indicated that 1,130 Peruvians were providing services in Iraq for Triple Canopy Inc., and that 266 of them had been selected by Gesegur SAC and 864 by Defion Internacional. Defion said that two Peruvians had died and four had been injured.<sup>19</sup>

22. G4S Wackenhut is listed on Peru's registers as an intermediary services company, on the Ministry of the Interior's DICSCAMEC<sup>20</sup> register as one of 1,578 private security companies and on the register of the National Public Records Oversight Agency. Neither Gun Supply, Gesegur SAC, Defion Internacional, 3D Global Solutions, Triple Canopy Inc. nor MVM Inc., the companies that selected or hired Peruvians to go to Afghanistan or Iraq, were listed on the national register of companies and entities conducting labour intermediation activities in Peru, or on DICSCAMEC's register. However, Defion Internacional SAC and Gesegur SAC were listed with the National Public Records Oversight Agency. There were also "ghost" companies, which rent premises, select personnel and then vanish. One such company is said to have hired 200 Peruvians who reportedly left via Chile to work in Baghdad's Red Zone.<sup>21</sup>

23. Some Peruvians received military training at facilities belonging to Peru's Army Arms and Ammunition Factory (FAME); others completed a theory course in Lima and military training in Amman, Jordan. A contract was concluded between Gun Supply SAC and FAME, under which FAME provided, for 500,000 nuevos soles, premises to house between 200 and 250 people, food, accommodation and 374,000 rounds of ammunition.<sup>22</sup> Gun Supply SAC trained the Peruvians to be recruited by Triple

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<sup>16</sup> Information provided by the company, in an interview conducted on 2 February 2007.

<sup>17</sup> Gesegur had apparently pre-selected some 400 persons in October 2005. Triple Canopy had pointed out that Defion Internacional maintained a permanent relationship with Americas, the company said to be owned by Gesegur SAC. Information supplied by the Peruvian Ministry of Foreign Affairs.

<sup>18</sup> Letter from the Administrative Manager of Defion Internacional, dated 1 February 2007, to the Ministry of Foreign Affairs of Peru. The Working Group met with executives from the company, among whom were Mr. Alejandro Fernández and Mr. Juan Manuel Durán, the latter being an ex-employee of Triple Canopy with experience in Iraq and who had apparently worked in Chile and Honduras before coming to recruit in Peru.

<sup>19</sup> According to other sources, Defion Internacional alone had sent some 1,200 Peruvians to Iraq; see the article "Iraq, Afghanistan lure poor Latin American guards" (note 7 above).

<sup>20</sup> Office for Oversight of Security Services, Arms, Munitions and Explosives for Civilian Use.

<sup>21</sup> It was not possible to verify that information.

<sup>22</sup> Aide Memoire, 1 February 2007, from the Executive Director of the International and Intersectoral Policy of the Ministry of Defence. The ammunition that Gun Supply SAC requested for training purposes was of 9 mm PB and 5.56 mm calibre. FAME considered it necessary to change the calibre of the ammunition, as civilians could not use it because it was military calibre for exclusive use by the Armed Forces.

Canopy in FAME installations. At the request of a congressman, the Ministry of Defence conducted an investigation that revealed (a) that the Army had not evaluated the political and international implications when approving Triple Canopy Inc.'s proposal to use FAME premises to train Peruvians to serve the Government of the United States of America in its operations in Iraq; (b) that the Managing Director of FAME had contravened the law and the DICSCAMEC rules on the use of weapons of war and ammunition; (c) that Gun Supply SAC and the Higher Institute of Security and Applied Sciences, a private security company, had taught three courses to civilian students in FAME installations; and (d) that neither the Ministry of Foreign Affairs nor the Ministry of Defence had been informed of the contract and its purpose.

24. The results of the investigation and the sanctions imposed were sent to the Office of Provincial Criminal Prosecutor No. 4, specializing in official corruption. The Ministry of Defence has indicated that it is willing to provide all information required to ensure transparency and the protection and observance of the human rights of Peruvian nationals and that this type of situation will not occur in the future.

25. Defion Internacional SAC, in addition to selecting Peruvians to go to Iraq, apparently provided them with 80 hours of theory classes and 40 hours of firearm instruction.

26. The contracts concluded<sup>23</sup> by Peruvians with Triple Canopy Inc. pertain to activities relating to war operations in the context of the armed conflict in Afghanistan and Iraq.<sup>24</sup>

27. The contracts stipulate (a) that the "independent contractor" is not an employee of the company and is not entitled to any employment benefits or rights not specifically stipulated in the contract signed; (b) that the "independent contractor" shall provide a service in Iraq for a period of 12 months, at a daily rate of US\$ 33 (as a simple guard); (c) that payment for such services shall be subject to three conditions: successful completion of training, the independent contractor's availability to travel to the location of the mission, and security clearance for a moderate-risk position of public trust, or any other security clearance as may be applied by the Government of the United States. The company can terminate the contract at any time with immediate effect and without stating a reason, merely by notifying the "independent contractor" of its decision.

28. Article 7, on "Hazardous environment", stipulates that "the independent contractor understands and recognizes that, in providing these services, he shall be exposed to many of the hazards of a high-risk environment, including but not limited to the extreme and unpredictable risks and hazards of war, and other more or less common risks. The independent contractor fully recognizes that the provision of services is intrinsically dangerous, and might result in death or personal injury to himself or other persons, or damage to personal property". According to article 8, the independent contractor "voluntarily, freely, and knowingly accepts each and every risk known and unknown, in any way related to the general training, the provision of services or travel to and from, or residence in, each mission location."

29. In article 12, the independent contractor accepts a disclaimer exonerating the company and the client and their corporate subsidiaries, executives, and so on, from liability even if the harm was caused or generated by the company. All clauses of the contract are legally binding on the independent contractor's heirs.

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<sup>23</sup> Many of these contracts were presented for signature in the bus on the way to the airport.

<sup>24</sup> See the report by E. Bernales Ballesteros on contracts between Peruvian nationals and international security companies.

30. Three of the clauses entail the renunciation of important rights. Article 14 on Applicable law and jurisdiction, stipulates that the contract shall be governed by the laws of the State of Virginia, United States of America. Article 15 states that the authentic text of the contract is the English version. Under the final clause, the independent contractor “renounces some of his legal rights”.

31. The contract constitutes an abuse of rights because it includes unfair clauses that are incompatible with the principles of legality and equality. It imposes inequalities and objective limitations on the independent contractor and compels him to renounce some of his rights, while the hiring party states that it has another contract with the Government of the United States. To define these people as security guards in an armed conflict zone could be interpreted as deception. The National Human Rights Coordinating Committee is of the view that the contracts contain a series of clauses that violate the country’s legal order, public policy and common decency.

32. As indicated above, there have been complaints of breach of contract from the Peruvians so hired. Five guards alleged that one of the companies had failed to pay them a portion of their wages and had forced them to work in Baghdad’s Red Zone. Other complainants described the lack of medical attention and overcrowding in barracks, working days of over 12 hours, with only 1 day off every 10 days worked, low-quality food, a feeling of constantly being watched, and being forced to tell their families that everything was fine. Many relatives have apparently not complained for fear of reprisals or of not receiving a bonus on completing the contract.

33. The most serious cases are those involving the deaths of Wilder F. Gutiérrez López and Martín Jara Hichard. Other deaths are said to have occurred, but relatives have apparently not reported them for fear of not being able to claim the insurance.

34. On 11 October 2005, Wilder F. Gutiérrez López signed a contract with Triple Canopy to work in Iraq as a security guard, having obtained a certificate of attendance on the second international course of the Higher Institute of Security and Applied Sciences and Gesegur. The Solidarity Hospital issued a certificate of good health, which was forwarded to 3D Global Solutions so that he could work with Triple Canopy. In Baghdad, he was diagnosed with acute leukaemia, was returned to Lima and on 5 December 2005 was admitted to the National Institute of Neoplastic Diseases, where he died the following day. His widow accuses the security company of concealing her husband’s illness from her and allowing him to travel without medical assistance. His widow and relatives cannot comprehend how a person in good health could have developed acute leukaemia in such a short time, unless there were external factors, such as radioactive materials, in the place he was working. Moreover, because the contract is governed by the laws of the State of Virginia, his widow is now caught up in a maze of procedures to enforce the provisions of the insurance policy.

35. Martín Jara Hichard, who died in circumstances which are still unclear, signed a one-year contract with MVM Inc. on 7 October 2005. On 2 December 2005, Worldwide Assistance informed his relatives that he had died that day in Kabul from unknown causes, and offered to repatriate his body, cremated or embalmed. The Director of the Institute of Forensic Medicine, of the Public Prosecutor’s Office, decided that it was necessary to repatriate the body in its current state in order to establish the cause of death. Accordingly, the Provincial Criminal Prosecutor instructed the Secretary for Peruvian Communities Abroad to arrange to have the body transported as it was, together with the results of the autopsy carried out in Kabul. On 7 December 2005, 3D Global Solutions, the company that had selected Mr. Hichard, blamed the United States Department of State for failing to provide information about the circumstances and cause of death and pointed out that, as the contract had been concluded with MVM Inc., 3D Global Solutions was not liable. The body arrived as a package at the Lima Airport customs office, with a death certificate stating that cause of death unknown. The autopsy carried out by the Institute of Forensic Medicine in Lima on 25 December 2005 revealed that the cause of death was asphyxiation by hanging due to constriction to the neck. However, because the body was by now at the

reconstitution stage it was not possible to determine the approximate time of death. The autopsy also showed that it was not possible to establish the medical and legal aetiology owing to the lack of information about the events leading up to the death, the scene-of-death investigation, the deceased's medical history and any medical attention he might have received. On 23 February 2006, the consular section of the United States Embassy in Kabul certified that the cause of death was suicide.

36. The press has kept the Peruvian public informed of all these events. Through the Secretary for Peruvian Communities Abroad, the Ministry of Foreign Affairs met with the private security companies involved, the relatives, and the Ombudsman's Office,<sup>25</sup> and contacted the Department of State in Washington. The Congress of Peru requested information on the matter and called in officials from the Ministries of Defence, Foreign Affairs and Labour. It was apparently also suggested that Peru's National Security Council might ask the United States Government to inspect the living conditions of Peruvians working as "independent contractors" in Iraq and Afghanistan.

37. In a context of a globalized world economy and the privatization of public services, departments of the United States Government, such as the Pentagon and the Department of State, have contracted private security companies to provide protection in armed conflict zones such as Afghanistan and Iraq.<sup>26</sup> The companies that have won a contract with the United States Government have in their turn set up or subcontracted companies registered in the United States or abroad. In Peru, where there is unemployment, these intermediary companies (some of them "ghost" companies that later vanished) have selected ex-members of the military and the police with at least two years' military experience, who would ultimately be recruited by a transnational private security company.

38. In this maze it is impossible to determine liability and accountability. The United States Government says that these were "private contracts between companies and individuals". The intermediary companies say they merely selected personnel on the basis of criteria provided by the contracting companies. When asked for information regarding the purpose, objectives and number of contracts concluded and the Peruvians who travelled to armed conflict zones,<sup>27</sup> they reply that they are unable to provide precise and explicit information on such matters. If the Peruvian authorities ask to see the contract concluded between the intermediary companies and North American parent companies such as Triple Canopy or MVM Inc., they reply that, as private companies, they are under no obligation to provide them. Finally, any claim for compensation must be made under the Base Defense Act in the United States. The insurance company usually refuses to compensate the family, as was the case with the deaths of the two Peruvians, on the grounds that the death was not "caused by or during the performance of work activities".<sup>28</sup> Under the contracts signed, any dispute must be settled by United States courts.

39. The absence of legislation, regulation and appropriate oversight at the national level in Peru, as in many other countries, has produced a legal vacuum that benefits private security companies operating in the international market and looking for third-country nationals to hire as "security guards" in armed conflict zones.

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<sup>25</sup> The Ombudsman is not competent to request information from outside Peru.

<sup>26</sup> The private security companies do not consider the protection of convoys, buildings or people to be direct action.

<sup>27</sup> Letter from the Peruvian prosecution service to a private security company.

<sup>28</sup> Letter from the CNA International Unit, Chicago, claims specialists to the family of Martín Jara Hichard.

## **B. Activities, operations, functioning and oversight of private security companies in Peru**

40. The privatization of security has expanded enormously since the 1990s because the Government does not seem to have increased police numbers. Peru has about 92,000 police for a population of 28 million,<sup>29</sup> which is insufficient, and it is for that reason that private security firms are authorized. In many cases, these companies are run by former members of the Armed Forces or the Police, or they occupy senior positions. Peru also seems to experience the “revolving door” syndrome whereby, when they retire, members of the military and police are hired by private security companies or start their own. The Ministry of the Interior apparently authorizes these companies to hire off-duty police officers to protect buildings; the officer’s weapon is the property of the police, not of the company.

41. A municipal citizen-protection system, known as the *serenazgo* or local watch, has also developed and is paid for out of residents’ taxes. Watchmen are hired to patrol the district or municipality, but off-duty police officers may also be hired to work with them. These workers are very vulnerable in labour terms and earn very little (around US\$ 150 per month). Any action by the watchmen, such as an arrest, must have the approval of a police officer, and should be taken when the police officer is working with the watchman. However, there are cases where such action is taken without a police officer present.

42. Reports were received of the death of a Spaniard, killed and robbed by a watchman. Moreover, of the 69 attacks on transvestites, transgenders or transsexuals investigated by Runa in 2006, 52 were committed by watchmen.<sup>30</sup> Because local taxes vary from municipality to municipality, the rich ones have better protection, which is against the universal principle of non-discrimination in the right to security. In addition, the lack of any overall civic security policy means that each of Peru’s 1,600 districts has a different strategy. The State is thus abdicating its duty to protect its citizens.

43. Another problem is the *guachimanes*, a form of private security provided by individuals acting as guards who protect a residential area by surrounding the houses or preventing free passage to carry out checks. This is a violation of the right to freedom of movement. At the same time, in marginalized districts residents organize their own protection, frequently taking the law into their own hands.

44. There are around 100,000 private individuals offering security services: 50,000 private vigilantes and a further 50,000 casual *guachimanes*,<sup>31</sup> who are badly exploited. Their labour rights are violated: instead of an 8-hour day they are required to work a 12-hour day, with 6 hours off the following day and a wage of US\$ 50 a month and no social security. It is their exploitative working conditions that explain *guachimanes*’ aggressive behaviour.

45. In addition, transnational natural resource extraction companies operating in very deserted spots with little or no police presence have their own private security systems.

46. The peasant patrols, first set up in Cajamarca in the 1980s, are another form of private security arrangement. The Peasant Patrols Act (No. 27908), of 2003, “authorizes such associations to provide security services in their villages, peacefully resolve conflicts in accordance with local custom, actively involve themselves in their villages’ development and monitor the local authorities and watch over public

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<sup>29</sup> Ministry of the Interior figures give 91,500 police officers in Peru.

<sup>30</sup> Runa Institute of Development and Gender Studies, Lima.

<sup>31</sup> Figures from the Ministry of the Interior.

property”.<sup>32</sup> These are groups of some 20 to 60 people from the same village who gather at night to watch over their animals and protect them. They are not armed but carry shepherds’ staffs, ropes and whips. They perform policing tasks and administer justice and have apparently had some success in the absence of State services. They operate in some 14 regions of Peru. Clashes have been reported between peasant patrols and mining companies’ private security companies.

47. There are also Civil Self-Defence Committees, made up of paramilitaries who collude with the Armed Forces, operating in Cuzco and the central region of Peru and with more than 50,000 members.

### **C. Involvement in social conflicts of private security companies providing protection services to transnational mining or natural resource extraction companies**

48. According to information received, members of private security companies and police officers engaged in private security work are intimidating the population of Cajamarca, notably environmental rights defenders.

49. In 2006 the National Human Rights Coordinating Committee reported 83 attacks on environmental and human rights defenders, witnesses, victims and expert witnesses; 35 of these attacks involved environmental rights defenders in La Oroya, Cajamarca and Yurimaguas.

50. The 2 August 2006 protest against water pollution caused by the Carachugo II mine expansion project pitted the community of Combayo against the Yanacocha mining company.<sup>33</sup> In the clash between the mine’s security guards and the villagers of Combayo, one farmer, Isidro Llanos Cheverría, was shot twice and killed. Three police officers working as private security guards at Yanacocha were identified as suspects by investigators. It has yet to be determined whether they were hired to provide such services by the mining company or by the Forza security company,<sup>34</sup> contracted to provide private security services to Yanacocha.

51. The Baños del Inca Provincial Prosecutor’s Office is keeping the investigation open and judicial proceedings have not yet been initiated. The calibre of the weapons and ammunition used by the mining company, which is guarded by Forza, has been tested to ascertain whether any of them were used in firing the shots that killed the farmer.

52. The Working Group also received information concerning an operation called “Operation Diablo”, against members of the Grupo de Formación e Intervención para el Desarrollo Sostenible (GRUFIDES) (Sustainable Development Training and Action Group). Three Catholic priests and members of their families, and 40 local representatives and environmental leaders from farming

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<sup>32</sup> A. Laos Fernández, “Rondando por nuestra ley”, Red Interamericana para la Democracia (Inter-American Democracy Network), Lima, 2003.

<sup>33</sup> Yanacocha, owned by Newmont Gold Corporation, the Buenaventura mining company and the World Bank’s International Finance Corporation, operates in a region containing 65 communities with 20,000 inhabitants and employs 8,000 people ([www.yanacocha.com.pe/yanacocha.htm](http://www.yanacocha.com.pe/yanacocha.htm)). Complaints have been brought against it for destruction of springs, pollution of rivers, streams and irrigation canals that supply thousands of rural families and the town of Cajamarca; the death of flora and fauna; contamination of the soil and grazing lands with mercury, arsenic and cyanide; and failure to comply with its undertakings in respect of development projects in the region. It is also accused of forcibly expropriating farmers’ land between 1992 and 1994.

<sup>34</sup> Founded in 1991 by a group of Navy officers to provide full corporate security services, Forza operates nationwide, has more than 1,000 employees and specializes in the mining, industrial, energy and oil sectors (*La República*, 6 December 2006, p. 3). According to the company’s directors, it has international certification and implements social welfare programmes.

communities allege violation of their rights by Yanacocha. The operation was reportedly launched on 30 August 2006 using Surveillance Unit (OVISE) techniques such as tailing and spying by physical and electronic means, undercover approaches and infiltration; and slander, threats and intimidation - similar methods to those used in the Fujimori-Montesinos era, with the aim of intimidating victims and breaking them down psychologically, as well as running slander campaigns to damage their reputation.

53. The executive director of GRUFIDES, Mirtha Vásquez Chuquilín, and the group's founder, Fr. Marco Antonio Arana Zegarra,<sup>35</sup> have been subjected to threats and intimidation. On 0 October a man was taken in by the Criminal Investigation Department (DEINCRI) for filming GRUFIDES coordinator Luís Urtecho Linares, but was released for lack of evidence.

54. On 14 November 2006 Miguel Ángel Saldaña Medina was arrested as he was following Fr. Arana. The police search of his person<sup>36</sup> and of his home<sup>37</sup> turned up documentation and materials showing that members of GRUFIDES had been under surveillance 19 hours a day for more than 4 months, something that implies a solid espionage infrastructure. A building had been rented next door to the GRUFIDES headquarters and the surveillance was conducted from two street-vendor stalls. Also found were sheets of photos of members of three environmental rights defence organizations Frente Unido de Defensa de la Vida y del Medio Ambiente (Life and Environment United Defence Front), Coordinadora de Pueblos Afectados por la Minería (Coordinating Committee for Villages Affected by Mining), and the Regional Federation of Peasant Patrols of Cajamarca, each labelled with an alias. The statements taken<sup>38</sup> and the property confiscated by the police in the course of the house search indicated links between C & G Investigaciones<sup>39</sup> and Forza.<sup>40</sup>

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<sup>35</sup> On 15 September the executive director of GRUFIDES reported harassment of the group's members to the Office of Preventive Prosecutor No. 1.

<sup>36</sup> Video camera, providing evidence of harassment of GRUFIDES, and two cell phones with phone numbers for "Spy César" and "Spy Cecilia".

<sup>37</sup> Computer with hundreds of photos from the surveillance of Fr. Arana, members of GRUFIDES and environmental activists from the Frente Unido de Defensa de la Vida y del Medio Ambiente (Life and Environment United Defence Front); a sheet of photos of members of GRUFIDES and other NGOs, each one identified by an alias; a PowerPoint file showing the structure of what are labelled "Threats to Yanacocha"; handwritten documents on Surveillance Unit procedures; documents containing analyses and evaluations of information; e-mail exchanges between C & G Investigaciones and Forza personnel; receipts for payment from espionage agents; Surveillance Unit tables.

<sup>38</sup> Taken from decision No. 018-2007-5FPPC, Cajamarca, 25 January 2007, Public Prosecutor's Office, Office of Provincial Criminal Prosecutor No. 5, Cajamarca.

<sup>39</sup> "C & G Investigaciones SRL, based in Lima, provides private investigation services in various fields and also concludes contracts with companies to conduct investigations." (Statements by César Cáceres Garrido, Chief of Operations at C & G Investigaciones, to Provincial Criminal Prosecutor No. 5, Cajamarca. Decision No. 018-2007-5FPPC, Cajamarca, 25 January 2007, Public Prosecutor's Office, Office of Provincial Criminal Prosecutor No. 5, Cajamarca.)

<sup>40</sup> The confiscated computer contains electronic mails in which the photos from the surveillance operation are arranged for transmission by the espionage agents to Forza's Director of Operations. A receipt signed by Marco Antonio Olguín Tadeo was found in the offices of C & G Investigaciones, made out for "1,000 United States dollars, paid by order of Mr. Aldo Schwarz Cossu, Operations Manager, Forza SA". On the back are two e-mail addresses, one for Forza and the other for C & G Investigaciones. Olguín Tadeo describes himself in his statement to the prosecutor as operations assistant at Forza, for which he "carries out surveillance activities on various companies and in the course of his duties drafts reports which are sent to Lima via the Forza intranet" (Statements to Provincial Criminal Prosecutor No. 5, Cajamarca. Decision No. 018-2007-5FPPC, Cajamarca, 25 January 2007, Public Prosecutor's Office, Office of Provincial Criminal Prosecutor No. 5, Cajamarca).

55. The Government ordered the police and the Public Prosecutor's Office to investigate and to bring proceedings against those responsible for the undercover action against GRUFIDES<sup>41</sup> and repudiated the use of all illegal methods of surveillance and monitoring of any citizen. However, the authorities let it be known that the spying operations were a private undertaking and the State was unconnected with any of them.

56. The Office of Provincial Criminal Prosecutor No. 5 in Cajamarca opened an investigation.<sup>42</sup> An order was issued assigning a personal security and protection detail to Marco Arana Zegarra<sup>43</sup> and a preliminary inquiry requested by Mirtha Vásquez Chuquilín was opened with a view to preventing a violation of personal freedom.<sup>44</sup>

57. However, on 25 January 2007, the Office of Provincial Criminal Prosecutor No. 5 in Cajamarca closed the criminal proceedings for lack of grounds for bringing criminal charges.<sup>45</sup> On 2 February 2007, the President of the Council of Ministers, on learning that the alleged perpetrators had not been summoned, urged the Procurator's Office to act more responsibly.<sup>46</sup>

58. On 23 April 2007 the Inter-American Court of Human Rights requested the Peruvian State to take precautionary measures to safeguard the life and personal safety of Fr. Marco Arana and Mirtha Alvarez, asking for them to be assigned a police guard and requesting information on any judicial action taken by the State to resolve the case.<sup>47</sup>

59. Another case involves the murder in Yanacanchilla, on 1 December 2006, of environmentalist leader Esmundo Becerra Cotrina, who was shot 17 times by a hired killer. He had been intimidated and received death threats for his complaints against opencast gold mining and the pollution it caused in 200 lagoons that supply the community in the lower part of the mine. Becerra Cotrina had reported the threats to the authorities.

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<sup>41</sup> *La República*, 5 December 2006, p. 4.

<sup>42</sup> Investigation No. 2006-495 in respect of Miguel Ángel Saldaña Medina for a suspected offence against personal freedom, by moral coercion, against Marco Arana Zegarra.

<sup>43</sup> Decree No. 764-06-RPNP/SEC of 19 December 2006.

<sup>44</sup> Office of Provincial Preventive Prosecutor No. 2, Cajamarca, which opened preliminary investigation No. 93-2006.

<sup>45</sup> On 25 January 2007, by decision No. 018-2007-5FPPC, the Office of Provincial Criminal Prosecutor No. 5 in Cajamarca declared "the criminal complaint against Miguel Ángel Saldaña Medina and César Helí Cáceres Garrido for an alleged offence against personal freedom, by moral coercion against Marco Antonio Arana Zegarra and Mirtha Vásquez Chuquilín, finally closed for lack of grounds for bringing criminal charges". In his decision, the Prosecutor points out that "Peru's Criminal Code currently contains no criminal offence defining the behaviour evinced by the investigators as a crime; while such behaviour may well be contrary to morality and decency or ethics, it is not a criminal offence ...".

<sup>46</sup> As the President of the Council of Ministers told *La República*, "It has not escaped my notice that the suspected perpetrators have not been summoned to appear. That is the least that should have been done before deciding whether or not to proceed with an investigation." National Radio Coordinator, 5 February 2007, [www.cnr.org.pe](http://www.cnr.org.pe).

<sup>47</sup> Members of GRUFIDES commented in the press on the fact that Fr. Arana was given police security but not other members of the organization. Protection is provided from 9 a.m. to 6 p.m.; the remainder of the time he is unprotected.

60. The Provincial Prosecutor of the Combined Provincial Prosecutor's Office of Baños del Inca, Cajamarca, filed a criminal complaint against Aguinaldo Rodríguez Chuqimango and Fortunato Rodríguez Chuqimango for the murder. Fortunately, Rodríguez Chuqimango was arrested on suspicion of the murder and Aguinaldo Rodríguez Chuqimango was shot and killed in February 2007.

61. All this shows that these are not isolated cases but repeated occurrences in Cajamarca province, and indeed in other regions of Peru. Media enquiries have revealed links between private security companies and intelligence agents, apparently for the purpose of spying on environmental rights defence organizations in La Oroya, Yauli and Atalaya, in Ucayali province. These inquiries appear to indicate that private security companies are purchasing information gathered by State intelligence services on environmental leaders and selling it on to mining companies.<sup>48</sup>

62. There seems to be a campaign in Peru to discredit NGOs, the Church, community members and small farmers, with the aim of provoking a confrontation with those who earn their livelihood from mining.<sup>49</sup> In 2004, information started circulating<sup>50</sup> warning the population about the activities of community radio stations, NGOs, peasant patrols and certain circles of the Church, who are charged with working with left-wing groups to attack mining projects in Peru. It is these campaigns that formed the backdrop to the murder of Esmundo Becerra Cotrina and the clashes between the residents of Cajamarca and GRUFIDES.

#### IV. CONCLUSIONS

63. The Working Group is grateful to the Peruvian authorities for their speedy issuance of an invitation and their close cooperation with the Working Group, which was consistent with the standing invitation issued by Peru to all special procedures mandates and its current membership of the Human Rights Council.

64. The Working Group commends the Peruvian State for its prompt accession to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, as part of its policy of preventing the recruitment of Peruvians as mercenaries.

65. The Working Group recognizes the efforts made by the Government to regulate private security companies under Act No. 28879, for which implementing regulations are in preparation, and under Act No. 28806 (Labour Inspection Act) and Act No. 28950, on the Prevention of Trafficking in Persons and Smuggling of Migrants, but also notes with concern the appearance of new modalities in private security.

66. The Working Group sees the use of "independent contractors" by transnational private security companies in Iraq and Afghanistan as one of the new forms of mercenarism to emerge in the twenty-first century. These contracts can be viewed as establishing the same, or very similar, conditions to those set forth in article 1 of the 1989 International Convention. Although the contract does not state it in so many words, these "independent contractors" are individuals who have been recruited abroad, are motivated by

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<sup>48</sup> *El Mercurio*, Cajamarca, 27 April 2007.

<sup>49</sup> On 24 May 2006, a PowerPoint presentation on "Threats to Yanacocha", prepared by the group that was spying on GRUFIDES, was reportedly shown to Army Intelligence.

<sup>50</sup> Research report, "Analysis of the situation in Peru's northern mining region. Communication strategy", June 2004, no author given. The documentation gives a detailed account of the activities of community radio stations, religious communities, environmental groups and peasant patrols in towns in Peru's northern mining region.

the desire for private gain<sup>51</sup> to fight in an armed conflict - for in providing such services they will be exposed to the extreme and unpredictable risks and perils of war - and to take part in the hostilities. Unlike article 47 of Additional Protocol I to the Geneva Conventions, the 1989 Convention does not use the term “direct part”, which means an independent contractor may perfectly well carry out passive functions but still be taking part in the hostilities.<sup>52</sup> The Peruvians recruited in this way are neither nationals nor residents of either of the parties to the conflict. Nor are they military, members of the Army of the United States, one of the parties to the conflict, and they are not civilians since they are armed. They have not been sent by a State on official duty. The fine legal point is the fact that MVM Inc. and Triple Canopy, the contracting companies, admit to working directly for the United States Department of State.<sup>53</sup> American private security companies have concluded contracts that appear to detail activities related to mercenarism, such as recruitment, training, financing and use of persons for the purposes of commercial gain.<sup>54</sup>

67. The Working Group is concerned at the signing of a contract between Gun Supply SAC and the Army Arms and Ammunition Factory SA that allowed the use of military facilities. The Working Group welcomes the Ministry of Defence investigation showing that the Army failed to evaluate the political and international implications or to inform the Ministry of Foreign Affairs or the Ministry of Defence; it also welcomes the authorities’ assurances that situations of this kind will not arise again.

68. The Working Group is concerned at the recruitment and training of hundreds of Peruvians by private security companies for service in Afghanistan and Iraq. Some of these companies, subsidiaries of foreign multinationals, were registered in Peru, while others were operating illegally. Two Peruvians have been killed and a number of others injured. There are allegations of contractual irregularities, poor working conditions, overcrowding, unreasonable hours, failure to pay wages, abusive treatment and isolation, and failure to meet basic health and hygiene needs. Despite having been hired as security guards, they received military training in Peru or a third country and ended up performing tasks not specified in their contracts and thus not agreed.

69. The Working Group is aware that the actions of certain private security companies constitute new forms of mercenarism and that they may have taken the Peruvian authorities by surprise. Nevertheless, serious omissions on the part of the Peruvian State have been noted, along with shortcomings in compliance with its obligations under international law. The unfavourable socio-economic situation and marked level of unemployment that make contracts of this kind attractive to people do not diminish the Government’s responsibility. The Working Group is concerned at the lack of action on the part of State bodies, particularly the Ministry of Labour and the Attorney-General’s Office.

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<sup>51</sup> Those who stand to gain most are the private security companies and subcontractors. Between them they take a nine-tenths share of the total amount of the original contract with the Government of the United States for each Peruvian “independent contractor”. See A/HRC/4/42, para. 36.

<sup>52</sup> Triple Canopy, through Gun Supply, had asked the Army Arms and Ammunition Factory for military-calibre ammunition for use in training Peruvian “independent contractors”. The contractors reported that in Baghdad they had been armed with light machine guns. All of this indicates that they are prepared for participation in the hostilities and that the dividing line between passive and active functions in a conflict zone is a very fine one.

<sup>53</sup> Information confirmed by the United States Embassy in Lima in a letter dated 28 September 2005 to the Commander-in-Chief of the Peruvian Army, stating that “Triple Canopy Inc. has a legitimate current contract with the Department of State of the United States of America to provide security services.”

<sup>54</sup> See note 24 above.

70. The Working Group is concerned at private security companies' hiring of off-duty members of the security forces, who use State property such as uniforms, weapons and ammunition; also at the type of arms and ammunition used by these companies, particularly those guarding mines. Peruvian law restricts access to and use of war materiel to the Armed Forces and the police, and possession of weapons of war is an offence under the Criminal Code. Yet it seems that private security companies can purchase unlimited quantities of arms and ammunition.

71. The Working Group draws attention to what is a growing problem in Latin America, namely the ever-closer connection between private security companies guarding key geostrategic sites such as mines, oilfields and water sources and the violent repression of social protest.

72. The Working Group is concerned at the conflation of legitimate social protest by communities in defence of their lands and environmental rights with criminal or terrorist activities and at the elimination, indictment and intimidation of community leaders, as well as intelligence agencies' surveillance of protesters. It is also concerned at the lack of any effective system of protection for human rights defenders. Those responsible for these unlawful acts seem to enjoy a degree of impunity inasmuch as, in many cases of police or judicial complaint, no charges are brought against the perpetrators or else those responsible remain at large.

73. The Working Group deplores the fact that, despite the Government's efforts to protect Fr. Arana, GRUFIDES leaders continued to be subjected to threats, tailing, spying and harassment in 2007.<sup>55</sup>

74. The Working Group welcomes the drafting by the Congressional Defence Commission of a bill prohibiting the hiring of Peruvians to provide security services in armed conflict zones.

## V. RECOMMENDATIONS

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

**(a) The Office of the Ombudsman and sectors of civil society working to protect human rights should be involved in the drafting of the bill to bring Peru's legislation into line with international law, so as to ensure the broadest possible legal interpretation covering not only the offence of acting as a mercenary but also new forms of mercenarism;**

**(b) The Congressional Defence Commission's bill prohibiting the hiring of Peruvians to provide security services in armed conflict zones should be adopted;**

**(c) The authorities should maintain transparent registers of private security companies covering all matters relating to ownership, statutes, purposes and functions, as well as a system of regular inspections. Legislative and regulatory measures should be adopted to prevent any conflicts of interest when serving State officials act as owners or managers of such companies. Inquiries should be made to ascertain whether there are any conflicts of interest between the posts held by those members or former members of the military or police who are involved in private security companies. An authority should be set up over the Ministry of the Interior, either a parliamentary**

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<sup>55</sup> 12 April 2007: Fr. Arana and two German journalists were followed by two vans allegedly belonging to Yanacocha; 26 April: the GRUFIDES doorman was subjected to threats and intimidation by firearms; 12 May: death threats against Patricia Rojas, GRUFIDES project coordinator. "GRUFIDES demands better protection from threats", National Radio Coordinator, Lima, 18 May 2007; "Blatant harassment of Fr. Arana", *La República*, Lima, 18 May 2007; "Harassment of Fr. Marco Arana continues", *Perú 21*, 18 May 2007; "In ongoing proceedings, Fr. Arana complains of continuing threats", *El Comercio*, Lima, 18 May 2007.

**committee or a commissioner, with the power to monitor the activities of private security companies and to receive complaints;**

**(d) The competent authorities, in particular the Attorney-General's Office, should investigate all unresolved cases, especially the deaths of Peruvian nationals in the course of their activities in Afghanistan and Iraq;**

**(e) Urgent measures should be taken to protect the rights of Peruvians still employed in Iraq and Afghanistan;**

**(f) Further judicial measures should be taken as appropriate to conclude the investigations into those responsible for acts of intimidation and espionage against community environmental defence leaders in Cajamarca, in violation of their rights to personal liberty, privacy and life, and those responsible for the murders of community leaders;**

**(g) The necessary judicial action should be taken to determine whether C & G Investigaciones SRL, Forza or the Yanacocha mining company are individually or jointly responsible for illegal acts;**

**(h) It should be established whether members of the national security services, private security companies or mining companies operating in Peru have been involved in acts of intimidation;**

**(i) The life and physical safety of members of GRUFIDES, and in particular of its director and Fr. Marco Arana, should be guaranteed in accordance with the decision of the Inter-American Commission of Human Rights;**

**(j) The mechanisms of prior consultation established under the 1989 ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries should be observed.**

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