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including the right to development**

Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination

Addendum

Mission to Honduras (18–22 February 2013)*

Summary

The Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination visited Honduras from 18 to 22 February 2013 at the invitation of the Government. In accordance with its mandate (Human Rights Council resolutions 7/21, 15/12 and 21/8), the Working Group gathered information on mercenaries and mercenary-related activities, as well as on the effects of activities of private military and security companies on the enjoyment of human rights. It also discussed with the authorities the progress on the implementation of its recommendations made after the Working Group's previous visit to Honduras in 2006.

The Working Group notes a number of positive developments since its last visit, such as the accession of Honduras in 2008 to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries and its adoption of the Organic Law of the National Police (the Law) and the Regulations for the Control of Private Security Services (the Regulations) in the efforts to regulate and monitor activities of private security companies (PSCs) at a national level.

However, the Working Group regrets that the domestic law has not been amended to define and prohibit mercenaries, despite the accession to the Convention in 2008. As far as activities of PSCs are concerned, the Working Group found that there had been little

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

progress in regulating and monitoring the activities of PSCs and many of its recommendations still remain to be implemented. Regrettably, PSCs in Honduras are still powerful entities operating beyond the State's control and the Government faces significant legal, structural and institutional challenges in exercising effective oversight over PSCs. The existing legal and regulatory framework falls short of international standards and its implementation is hampered by the lack of institutional capacity of the authorities responsible for regulating PSCs. These shortcomings, coupled with the prevailing violence and insecurity in the country and the lack of guarantee of security by the State, produce an environment in which PSCs have grown exponentially and have gained power in the security sector and have acted in some situations with impunity. The unprecedented level of crimes and violence in the country has added to the confusion of roles and functions between PSCs and the security forces of the State, where these companies operate often in concert with or with knowledge of the police and the military. This has not been adequately addressed by the State and there is a critical need for immediate legal and institutional reforms to fight this culture of impunity.

The Working Group recommended, *inter alia*, amending the Law and the Regulations to strengthen the criteria for granting a licence to PMSCs; allocating resources to the Ministry of Security and building the institutional capacity to properly administer the licensing and registration processes for PMSCs and to monitor their activities; enhancing the capacity of the police and public prosecutors, particularly at the regional level, to properly investigate and prosecute crimes committed by private security guards and to ensure that victims receive effective remedies; and including a definition of "mercenaries" in domestic legislation and amending the Penal Code to include a definition of "mercenary" and specifically prohibit their activities.

Annex

[English and Spanish only]

Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination on its mission to Honduras (18–22 February 2013)

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I. Introduction

1. The Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination visited Honduras from 18 to 22 February 2013 at the invitation of the Government of Honduras. In accordance with its general practice, the Working Group was represented by two of its members, Patricia Arias and Elzbieta Karska, on this occasion.

2. Pursuant to Commission on Human Rights resolution 2005/2 and Human Rights Council resolution 15/12, the Working Group is called upon to monitor mercenaries and mercenary-related activities in all their forms and manifestations in different parts of the world, as well as to study the effects of the activities of private companies offering military assistance, consultancy and security services on the international market on the enjoyment of human rights, particularly the right of peoples to self-determination.

3. In the present report, a private military and/or security company (PMSC) is to be understood as a corporate entity which provides on a compensatory basis military and/or security services by physical persons and/or legal entities. Military services include specialized services related to military actions including strategic planning, intelligence, investigation, land, sea or air reconnaissance, flight operations of any type, manned or unmanned, satellite surveillance, any kind of knowledge transfer with military applications, material and technical support to Armed Forces and other related activities. Security services include armed guarding or protection of buildings, installations, property and people, any kind of knowledge transfer with security and policing applications, development and implementation of informational security measures and other related activities.¹

4. During the five-day visit, the Working Group visited Tegucigalpa and San Pedro Sula. Owing to the security constraints, the Working Group was unable to visit the Bajo Aguán region in the Department of Colón. In Tegucigalpa, the Working Group met the Vice-President, María Antonieta de Bográn, and held meetings with representatives of the Ministries of External Relations, Internal Affairs, Justice and Human Rights, Defence and Public Security, as well as members of the National Congress, prosecutors of the Public Prosecutor's Office and the National Commissioner for Human Rights. In San Pedro Sula, the Working Group met the Mayor, Juan Carlos Zúniga, the Governor of the Department of Cortés, Gabriel García Ardón, and the Police Commissioner. In addition to government officials, the Working Group met representatives of civil society organizations, the diplomatic community and international organizations, as well as private companies, including private security companies (PSCs) in Tegucigalpa and San Pedro Sula.

II. International human rights commitments

5. Honduras has ratified all of the key international human rights instruments, including the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Elimination of All Forms of Discrimination against Women, the International Convention for the Protection of All Persons from Enforced

¹ See the draft of a possible Convention on Private Military and Security Companies, A/HRC/15/25, annex, art. 2.

Disappearance, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Convention on the Rights of Persons with Disabilities.

6. Honduras underwent the universal periodic review in 2010 and made a number of voluntary pledges and commitments. It is relevant for the purpose of the present report that Honduras committed to “increasing the efforts of the State to improve conditions for citizen security, considering as priority elements attention to victims of violence and crime, arms control, the professionalization and modernization of the national police and armed forces, and making accountable all authorities responsible for the implementation of the policy and strategy on citizen security” (A/HRC/16/10, para. 85 (e)).

7. With respect to the issue of mercenaries, Honduras acceded to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries (Convention on Mercenaries) in 2008. Honduras is also a State Party to the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Additional Protocol I), which defines mercenaries and provides that they are not to be granted the right to be a combatant or a prisoner of war.

III. Follow-up on recommendations of the Working Group following its first visit in 2006

8. The Working Group conducted its first visit to Honduras in 2006 (see A/HRC/4/42/Add.1) and examined the legal and institutional framework aimed at regulating activities of PMSCs in Honduras. The Working Group also gathered information about Your Solutions Honduras SRL, a Honduran PSC, which allegedly recruited and trained Hondurans and Chileans between July and October 2005 and sent them to Iraq to work as security guards to protect fixed facilities of the United States army. The Working Group expressed concerns about the lack of control over and monitoring of activities of PMSCs by the Government and the de facto exporting of private security services to other countries. The Working Group made a number of recommendations, including: acceding to the Convention on Mercenaries and amending the relevant article of the Criminal Code accordingly to reflect the objectives of the Convention; strengthening the implementation and enforcement of the existing laws and regulations applicable to PMSCs; ensuring the certification of services provided by PMSCs and the training of their agents; vetting of directors, shareholders, executives and all personnel of PMSCs; establishing an authority over the Ministry of Security to monitor the activities of PMSCs and to receive complaints; and prohibiting the export of private military or security services to other countries.

9. The Working Group discussed with various government officials the progress on the implementation of these recommendations. The Working Group positively noted that Honduras acceded to the Convention on Mercenaries on 1 April 2008, which is an encouraging sign of its commitment and political will to address this issue. In parallel, the Government has strengthened its legal and regulatory framework for exercising oversight over PSCs, as demonstrated by the adoption in 2008 of the Organic Law of the National Police (the Law) and its Regulations for the Control of Private Security Services (the Regulations). Furthermore, the authorities closely followed the case of Your Solutions Honduras SRL and the Special Prosecutor for Human Rights of the Public Prosecutor’s Office investigated and prosecuted the company’s directors as well as government officials in November 2007 in connection with this matter. The charges were ultimately dismissed and the company’s activities have been suspended, according to information provided by the Ministry of Justice and Human Rights.

10. While noting these developments, the Working Group regrets that they have not been reflected in the supervision and effective control of PSCs and that many of its recommendations still remain to be implemented. As will be discussed in detail below, PSCs still largely operate without the necessary control and oversight by the State, as implementation of the existing laws and regulations remains weak and they do not impose specific requirements with respect to the vetting and training of security personnel, the use of force and firearms, and the adoption and implementation of internal policies relating to human rights and internal accountability mechanisms. The Ministry of Security also continues to suffer from a limited institutional capacity to administer the licensing and registration processes and to monitor activities of PSCs. Furthermore, as the Working Group found in 2006, many PSCs are owned by former high-ranking military or police officers, who exercise significant powers and influence in the security sector. The loose control over PSCs has unfortunately become the norm rather than the anomaly in the country and the Working Group regrets that conditions for citizen safety have not improved, or may even have worsened.

11. Furthermore, while noting the precedence of international treaties over Honduran law, the Working Group was concerned that Honduras has not yet included a definition of “mercenarism” in its legal framework following its accession to the Convention on Mercenaries in 2008. The existing Penal Code does not provide for a definition of “mercenary” or prohibit the recruitment, use, financing or training of mercenaries as required by the Convention. The Working Group encouraged the National Congress to do so during a meeting with three of its representatives.

IV. Private security companies operating in Honduras

A. Context

12. A number of countries in Central America have suffered from high levels of violence and Honduras is one of the countries most affected. The increase in violence has reached an unprecedented level over the last several years in Honduras, particularly after the coup d’état in June 2009. The Honduran murder rate of 92 per 100,000 was the highest in the world in 2011 and has more than doubled since 2005. In addition, organized crime and drug trafficking reportedly rose sharply after the coup d’état in the context of the lack of effective law enforcement.

13. In the absence of a guarantee of security by the State, the civilian population in Honduras commonly possess and carry weapons and firearms to protect themselves and this is legally permitted. Pursuant to the Act on Control of Firearms, Ammunition, Explosives and Other Related Instruments, every person may apply for a licence to possess and carry up to five firearms. In addition, there is reportedly a wide circulation of illegal firearms smuggled from the military armoury and other sources. The extremely widespread possession of firearms undoubtedly contributes to the high crime rate and according to the United Nations Office on Drugs and Crime (UNODC), 82 per cent of the homicides committed in Honduras in 2010 involved the use of a firearm.

14. Security has thus become a commodity in high demand in Honduras and this has led to the exponential growth of the private security sector. Today PSCs dominate and control the security sector in Honduras. According to the Ministry of Security, there are 706 registered PSCs and 14,787 private security guards known to work for these companies in Honduras. This figure is already greater than the estimated number of police officers in the country, which is 14,000 at most. In addition to the registered PSCs and their guards, there are reportedly tens of thousands of unregistered and illegal security guards. According to

the National Police, the number of such private security guards is estimated at 60,000. This makes the ratio of private security personnel to police almost 5 to 1, rendering the authority of the police force minuscule compared to the power and the de facto authority of PSCs. Furthermore, many of the PSCs are reportedly owned by or have close connections with former high-ranking military or police officers, or even active officers in some cases, although the National Police and the Ministry of Defence maintain that no active officers own or work for PMSCs. To that extent, the PSCs in Honduras are undoubtedly powerful entities with significant leverage and there are significant challenges in ensuring that their activities are kept within the four corners of the law.

B. Types of private security companies operating in Honduras

15. According to the Ministry of Security, there are 706 registered PSCs in Honduras, which include 402 for-profit companies providing security services to third parties and 303 so-called “non-profit” companies providing security services to their owners. There is only one company which is registered and authorized by the Ministry of Security to provide training in security services. Maya Security, based in San Pedro Sula, set up the SWAT Academy, which reportedly provides training in security services through its professional foreign trainers, including those from Colombia and Panama. The size of the registered PSCs varies significantly, ranging from a company with two security guards to one with 755 security guards.

16. Given the high crime rate, PSCs are used in various contexts by a wide range of actors, including public establishments such as hospitals, schools and universities, international organizations, private companies and individuals. In particular, PSCs are commonly recruited to protect properties belonging to private companies. For example, Dinant Corporation, an agricultural company specializing in palm oil production in the Bajo Aguán region, hires 62 security guards from Orion, a registered PSC reportedly established upon request by Chiquita Brands International to provide security services in the Bajo Aguán region, and 42 security guards of its own to guard its eight plantation sites, which are allegedly often trespassed upon by armed peasants in the area.

17. While the Working Group did not receive statistics on the nationality of PSC personnel, it appears that the majority of them are Honduran. The regulations require that managers and security personnel of PSCs must be Honduran nationals, and that foreign companies seeking to provide private security services in Honduras must have a partnership with a Honduran company providing similar services. However, the Working Group received information that foreign nationals work as security guards and that Colombians in particular have been identified among such foreign security guards in a number of cases.

18. In addition to the registered PSCs, there are said to be numerous unregistered and illegal security-service providers, who operate without any oversight by the State and are often equipped with military weapons and firearms. Concerns for safety have also led to the rise of community security guards and vigilante groups in enclosed neighbourhoods and residential developments, which are often referred to as “safe neighbourhoods”. These security guards are reportedly not well-educated or professionally trained as security guards, and not registered or controlled by the Ministry of Security.

C. Legal and institutional framework

19. Regarding the mercenaries, as noted above in paragraph 11, the existing laws in Honduras do not yet define mercenaries or prohibit activities relating to mercenaries. It may be relevant to note, however, that article 317 of the Criminal Code prohibits recruitment of

troops in Honduras for the service of a foreign nation, as well as the use of the national territory to invade or harass another nation. These offences are punishable by imprisonment ranging from three to six years.

20. PSCs are regulated by the Police Organic Law and the Regulations; title IV, chapter VI, of the law specifically addresses private security services. In accordance with article 135, the Ministry of Security is responsible for the authorization, regulation and supervision of PSCs. Article 138 of the Law further establishes the Control Unit for Private Security Services, situated within the National Directorate of Preventative Services of the National Police (Dirección nacional de servicios especiales preventivos). The unit is entrusted with the control and monitoring of PSCs, including controlling the types of weapons in their possession. It is extremely understaffed and has very little capacity to monitor the activities of PSCs or their compliance with the Law and the Regulations. The unit is currently composed of only four staff at the national level to oversee 706 registered PSCs with 14,787 private security guards, a task clearly beyond its capacity.

21. The registered PSCs are authorized to provide security services as prescribed in articles 136 and 139 of the Law and in the Regulations, which include protection of property, premises, facilities, fields or crops; protection during the organization of events, contests or conventions; protection of persons; transportation and distribution, custody or escort of goods or products; private investigation services, safety training, and other related services.

22. During its visit, however, the Working Group received information that some PSCs are performing functions inherent to the law enforcement authorities, such as investigation of crimes, arresting and detaining individuals suspected of crimes, controlling demonstrations and executing eviction orders, thereby stepping outside the scope of permissible activities prescribed in the Regulations. For example, International Security Systems, a PSC based in San Pedro Sula, publicly advertises investigation of crimes as one of its services. As discussed below in paragraphs 37 and 38, some PSCs in the Bajo Aguán region also allegedly conduct joint operations with the police and the military in arresting and detaining individuals and executing eviction orders, which has serious implications for the enjoyment of human rights.

D. Licensing process

23. According to article 10 of the Regulations, private security service providers with more than two security guards must be registered with the Control Unit for Private Security Services. PSCs must hold licences to provide services and unlicensed providers are subject to sanctions under article 299, No. 3, of the Penal Code. According to article 138 of the Law, the Control Unit for Private Security Services provides an opinion to the National Police on the granting of licences to private security providers. No licence will be delivered to natural or legal persons who have criminal records, nor to any firm that has active members of the Armed Forces or the National Police among its partners. Officials of the National Police dismissed for serious misconduct or offences will not be able to own or form part of a security company.

24. Article 138 of the Law provides that to be granted a licence foreign PSCs are required to enter into a partnership with a Honduran company providing similar services. They are also required to appoint as manager a Honduran national by birth duly qualified in the field of security services. The article further provides that the security personnel working for these companies are required to be Honduran nationals. Article 154 of the Law prohibits PSCs from employing a number of guards that exceeds 6 per cent of the total National Police forces.

25. Licences to PSCs are granted for a two-year period and are renewed subject to compliance with provisions of the Law and Regulations and payment of fees in accordance with article 144. In accordance with article 146 of the Law, natural and legal persons are authorized to provide for their own private security subject to the issuance of a licence by the Control Unit for Private Security Services and the payment of a fee equivalent to that of a PSC. Article 148 of the Law provides that individual guards and community groups entrusted with the security of neighbourhoods, residential areas and homesteads should register free of charge with the Control Unit for Private Security Services and will be granted a special authorization.

26. Licences may be revoked and renewal may be refused whenever the private security service provider fails to fulfil the obligations imposed by the Law and the Regulations. Article 50 of the Regulations sets out a range of obligations on the part of PSCs, including conducting anti-doping and psychometric tests that are determined by the Ministry of Security on an annual basis, and ensuring that their security personnel wear distinctive uniforms with their names, photo and identification document, approved by the Control Unit for Private Security Services, to differentiate them from State entities. Article 50 also obliges PSCs to report to the Control Unit for Private Security Services on a number of matters. Pursuant to article 50 (h) of the Regulations, PSCs are required to keep an inventory of weapons and ammunition, transportation and communication equipment, and a customer list, and to report any changes to this inventory to the Control Unit for Private Security Services on a monthly basis. These reports must also include the updated staff payroll and any modifications thereto. Article 50 (s) of the Regulations further provides that where companies with authorization to sell, exchange, transfer or donate weapons (or engage in other transactions) engage in such transactions, they must inform the Ministry of Security within 30 days of the transactions.

27. Article 39 of the Regulations requires PSCs to use only the authorized and duly registered weapons and prohibits the use of weapons reserved for the exclusive use of the National Police or Armed Forces. Article 7 of the Act on Control of Firearms, Ammunition, Explosives and Other Related Instruments specifies the weapons that PSCs are permitted to use, including handguns or sidearms of certain calibres.

28. The use of weapons and firearms in breach of the Regulations amounts to offences of various degrees. According to article 46 of the Regulations, providing services without carrying a weapons permit or with weapons in disrepair, weapons without ammunition or prohibited weapons, makeshift weapons or imitations, amounts to a misdemeanour. Furthermore, according to article 47 of the Regulations, "serious" offences include:

(a) Exchanging weapons between companies or allowing staff to provide these without proper authorization;

(b) Possessing weapons and ammunitions which are not included in the inventory;

(c) Selling or exchanging weapons, ammunitions, armoured equipment and communication equipment with similar companies or individuals without proper authorization by the Ministry of Security.

29. In the light of an increase in incidents of shooting by unidentified individuals on motorcycles, article 63 of the Regulations prohibits the carrying of weapons by security providers on motorcycles without the company's logo and not wearing the uniform accredited by the Ministry of Security. In this connection, it is also relevant to note that the National Congress enacted a new law on 1 August 2012 banning the carrying of weapons in public in the Department of Colón, which includes the Bajo Aguán region. This law, however, does not apply to the police, the military and private security guards.

30. While acknowledging the adoption of these regulatory measures, the Working Group regrets that these do not address some crucial elements in effectively regulating the activities of PMSCs. The Law and the Regulations do not impose sufficiently rigorous requirements with respect to the vetting of security personnel and the only types of individuals vetted from PSCs are those with criminal records, active members of the police or the military, and former police officers who have been dismissed for serious misconduct or offences. Notably, they do not call on PSCs to scrutinize other background information about their prospective security personnel, such as their prior employment records, or to verify that they are sufficiently trained to respect national laws and international humanitarian and human rights law. The lack of scrutiny of the backgrounds of prospective security personnel is a concern, particularly in the light of the lack of an accountability mechanism for private security guards implicated in human rights abuses, as discussed below in paragraphs 46 to 51. Furthermore, the criteria for granting a licence to PSCs as prescribed in the Laws and the Regulations do not require that PSCs have internal policies and regulations relating to human rights law, especially on the use of force and firearms, or on internal accountability mechanisms. With respect to the use of force and firearms, while the Law and the Regulations do specify which type of weapons and firearms may be used by PSCs, they are silent on the circumstances and the manner in which they may be used by private security guards. The Working Group is concerned that, while the adoption of the Law and the Regulations is a positive step in paving the way for regulating and monitoring the activities of PSCs, the Law and Regulations fall short of the existing international standards and in practice these gaps allow PSCs to continue operating in a vacuum.

31. The Working Group also regrets that the basic regulatory framework established by the Law and the Regulations does not seem to be effectively implemented in practice and violations of the Law and the Regulations do not seem to incur any legal consequences, such as the revocation of licences or sanctions. For instance, as discussed in paragraphs 38 and 39 below, the Working Group heard many reports that PSCs possess and use weapons and firearms reserved for military use, such as the AK47.

E. Training

32. According to the Regulations, PSCs have an obligation to train their personnel, but there is no instruction on the content or the minimum number of hours of training private security personnel must complete. Although article 2 of the Regulations states that private security personnel “shall act with strict respect for human rights, maintaining proper treatment of people and avoiding abuses, arbitrariness and violence”, the Law and the Regulations do not specifically require PSCs to train their personnel to respect international humanitarian law and human rights law or rules on the use of force and weapons.

33. Article 8 of the Regulations establishes that natural or legal persons who are granted a licence to provide security training will be supervised by the Control Unit for Private Security Services with the assistance of the Honduran National Police. The Ministry of Security, through the police educational system, may train private security personnel with a view to certifying that the companies’ training programmes strictly comply with national security. The Law prohibits the training of these security providers for the purpose of providing services abroad, a serious offence punishable by law.

34. In order to be granted a licence to deliver security training, PSCs must provide the list of staff who will be responsible for developing the training modules. This list must be certified by the police educational system at the request of the Ministry of Security. Of the 706 registered PSCs in Honduras, there is only one company providing security training, as indicated in paragraph 15.

35. The Working Group notes with concern that the Law and the Regulations merely provide for this broad institutional framework for training of PSC personnel and fail to spell out any specific guidance on the content of the training and selection processes for PMSC personnel. If the Law and the Regulations are to ensure that private security personnel respect human rights and refrain from the arbitrary use of force, it is imperative that they make training on these matters mandatory as a condition of granting and renewing a licence for PSCs and should establish rigorous criteria for the selection of PSC personnel.

V. Human rights impact

A. Impact of private security companies' activities on the local population

36. During its visit the Working Group discussed the human rights situation in the Bajo Aguán region extensively with the Honduran authorities, civil society organizations and the private sector, including PSCs. The region is composed of a number of Departments located in the north of the country, including the Department of Colón on the coast of the Caribbean Sea. There has been a long-standing land dispute between peasants and entrepreneurs in the region, originating in the agrarian reform in the 1970s, which distributed land to peasants in order to promote migration to the less populous Bajo Aguán region. The agrarian reform was subsequently modified in 1992, allowing the peasants to sell their land acquired through the previous land reform to third parties. The entrepreneurs in palm oil production seized the opportunity and acquired a significant percentage of the land, resulting in a high concentration of land in their hands, particularly of three of the entrepreneurs. The validity of those land sales is refuted by the peasants today on the basis that the entrepreneurs would have resorted to multiple forms of illegal means to force the sales and this dispute over the land ownership continues to fuel the conflict between the peasants and the entrepreneurs in the region. In July 2011, the current President of the Republic, Porfirio Lobo, signed the first agreements with the peasants of the Bajo Aguán region for the distribution of lands among them with long-term payment schemes. In the context of these agreements, a few of the main entrepreneurs and landowners agreed to sell a high number of hectares to the Government. On the other hand, the peasants have apparently withdrawn from their farms which they were occupying to concentrate themselves in a few, hoping that they would be granted those lands as indicated in the agreements, which did not happen. The lack of security caused by the conflict, coupled with the geographical location of the Bajo Aguán region with access to the Caribbean Sea and Guatemala through formal and informal border crossing points, reportedly perpetuates the high level of drug trafficking and organized crime in the region. The authorities have increasingly militarized the region in recent years in their effort to regain control of the region.

37. The Working Group heard contradictory information on the alleged role of PSCs, landowners and the State in the ongoing land dispute between peasants and landowners. According to information provided by the Ministry of Justice and Human Rights, 46 persons were killed in Bajo Aguán between 2010 and 2011 and 18 in 2012. The Honduran authorities have explained that the level of violence related to the land conflict – apparently aggravated by the ongoing drug and arms smuggling as well as trafficking in persons in this area – has led the Government to deploy a joint armed operation in Bajo Aguán composed of both police and military forces and referred to as the Xatruch III Task Force. According to the authorities, they face significant challenges in guaranteeing security in the Bajo Aguán region owing to the land conflict and the high level of drug trafficking and organized crime, which are intertwined and require a military operation.

38. Civil society organizations with which the Working Group has met also spoke of serious human rights violations allegedly committed by the police, the military and private security guards hired by landowners to protect African Palm plantations, the ownership of which is disputed. According to information provided by civil society organizations, the number of persons killed in Bajo Aguán between 2010 and March 2013 has reached 89. The Working Group was profoundly disturbed at the alleged involvement of private security guards in the killing, disappearance, forced eviction and even sexual violence to which peasants have been subjected in Bajo Aguán, often acting in concert with the police and the military. According to representatives of civil society organizations, private security guards hired by landowners carry prohibited weapons such as AK47s to threaten and kill peasants, a report denied by the representatives of the PSC Orion, which is most referred to in these complaints. This was also denied by representatives of Dinant Corporation, which has contracted Orion.

39. For instance, the Working Group heard reports that, on 15 November 2010, Orion security guards hired by Dinant Corporation shot at peasants occupying El Tumbador farm, resulting in the death of five peasants. Eyewitness described to the Working Group how the Orion security guards, who were identified by their blue uniforms, were carrying prohibited weapons such as AK47s and M60s, which they fired in their attempt to expel the peasants from the farm. Members of the 15th Battalion were seen with Orion security guards at the site and some of them reportedly took off their military uniforms and changed into Orion uniforms before the shooting began. In another case, a peasant disappeared on 2 July 2012 from his garden and his body was later found on the Panama farm controlled by the owner of Dinant Corporation, who is one of the most important landowners in Honduras. According to the peasants, the Panama farm is strictly controlled by Orion security guards and no peasants are able to enter the farm, which led to an inference that Orion security guards may be implicated in his disappearance and death.

40. The Honduran authorities have denied the participation of private security guards in the implementation of eviction orders or any joint operation with the police and the military aimed at removing peasants occupying the disputed land. This information contradicts abundant reports by peasant organizations and national and international non-governmental organizations (NGOs). Both the Honduran authorities and the representative of the Orion PSC interviewed by the Working Group have indicated that private security guards themselves have fallen victim to human rights violations in the context of the land dispute. For instance, Orion informed the Working Group that 14 of its private security guards had been killed and 4 had disappeared between 2010 and 2012.

41. The Working Group was also alarmed at the assassination of Antonio Trejo, a human rights lawyer representing peasants associations in the context of the land dispute in Bajo Aguán, who was shot by unknown gunmen in September 2012. Civil society associations have shared their concern with the Working Group that Mr. Trejo may have been killed by private security guards. The Working Group expressed great concern during its visit in Honduras that the brother of Mr. Trejo, José Trejo Cabrera, and Santos Jacobo Cartagena, both members of peasant associations, were shot dead by unknown gunmen.

42. In addition to these cases in the Bajo Aguán region, the Working Group also heard reports that on 11 May 2012, 16 civilian men, women and children travelling aboard a boat on the Patuca River in Ahúas were shot at by a military-type single rotor helicopter with a door-mounted machine gun resulting in the death of four persons, among whom were two women who, according to some reports, were pregnant, a child of 14 years and a young man of 21 years. It has been reported that the United States Drug Enforcement Administration directly supervised and participated in the operation on 11 May 2012 and that all the helicopter pilots allegedly involved in the operation were either Guatemalan military or contractor pilots temporarily deployed to Honduras from Guatemala. Although

the Government informed the Working Group about the existence of a tripartite agreement between Honduras, the United States of America and Guatemala to combat drug trafficking in Honduras, it was not able to collect necessary information to clarify the country of origin of the helicopter or its pilots during the visit.

43. Furthermore, the Working Group discussed with the Honduran authorities and representatives of civil society the case of the Association for a More Just Society (ASJ) and the killing of its lawyer Dionisio Díaz García, who was representing private security guards working for Delta Security Service and Seguridad Técnica de Honduras (SETECH) in labour disputes. The crime occurred in circumstances in which Mr. Díaz García was making significant advances in labour rights cases on behalf of 12 security guards seeking compensation for labour rights violations, such as 72–96-hour work-weeks without overtime pay, when he was shot and killed on his way to court by two men on a motorcycle in December 2006.

44. The two suspects for the murder of the lawyer were a former SETECH security guard and an agent of the National Directorate of Criminal Investigation. They were convicted of the crime and sentenced by the Tegucigalpa Sentencing Court on 19 March 2009. On 15 May 2012, however, the Supreme Court of Justice acquitted the two men on the basis of “weak evidence”. The Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on independence of judges and lawyers, and the Special Rapporteur on freedom of opinion and expression issued a joint allegation letter on 26 August 2012, raising concerns about the fact that one of the three judges of the Criminal Chamber of the Supreme Court was a legal advisor of Delta Security Systems (a parent company of SETECH) and that the Supreme Court heavily relied on evidence provided by the defence witnesses, who were being investigated for possible perjury.

45. During the visit, the Working Group voiced its concern to the Government of Honduras and members of the judiciary about the lack of investigation and prosecution in cases involving various complaints of serious human rights violations perpetrated by PSCs, leading to complete impunity as discussed below in paragraphs 46 to 51.

B. Accountability and compensation to victims

46. Despite the serious allegations of killings, torture, enforced disappearances, sexual and physical violence, acts of threats and intimidation committed by private security guards, the authorities have not taken adequate steps to hold the perpetrators accountable or to provide remedies to the victims. The Working Group received consistent and recurring reports that complaints submitted by the victims are not properly investigated and the defendants are not prosecuted, which has resulted in the loss of public confidence in the judicial system. The Public Prosecutor’s Office acknowledged that in the Bajo Aguán region alone, 73 complaints mostly relating to killings of peasants and a few of private security guards and others have been filed and the perpetrators have not been apprehended, prosecuted or punished in these cases. While the Public Prosecutor’s Office stated that 66 of those cases are currently under investigation, the information received from other sources indicates that there has been little or no progress in the investigation and prosecution of the offenders. The Working Group was informed, for instance, that no meaningful efforts have been made to investigate the killing of peasants on the Panama farm on 2 July 2012 and on El Tumbador farm on 15 November 2010, discussed in paragraph 39. In both cases, security guards working for Orion have been identified as suspects for the crimes and the perpetrators have not been prosecuted to date. There is “denunciation fatigue” on the part of the victims and their families and supporters, as filing complaints with the Public Prosecutor’s Office does not result, in most cases, in any investigations or action. In many cases, the victims do not report crimes to the authorities

owing to a fear of reprisals and a deep mistrust of the law enforcement authorities and the judicial system.

47. In this regard, the Working Group also notes with concern that the law enforcement authorities have not yet resolved two cases of murder that the Working Group addressed in their communications to the Government of 5 December 2006 and 31 October 2012 respectively. The first case is the killing of the lawyer, Dionisio Díaz García, discussed in paragraphs 43 and 44 above. The second case is the killing of Antonio Trejo, discussed in paragraph 41 above. In neither of these cases have the perpetrators of the crime yet been identified or prosecuted. The total lack of progress in investigations into these cases is a sign of the ineffectiveness of the judicial system and the persistent pattern of impunity in Honduras.

48. According to the Public Prosecutor's Office, the low level of prosecution of crimes is largely attributable to the lack of capacity of the National Police (National Directorate of Criminal Investigation), which is responsible for conducting initial investigations of crimes. The public prosecutors may only direct the investigative process once the police have conducted initial investigations and gathered sufficient evidence of the commission of the crimes. According to the Public Prosecutor's Office, however, the National Police reportedly lacks the necessary skills, scientific knowledge, equipment and resources to carry out effective investigations, which in turn negatively affects the ability of public prosecutors to prosecute the offenders. Moreover, as the alleged human rights violations on the part of private security guards occur in the context of joint operations involving the police and army forces in which these guards allegedly participated, the fact that the Criminal Investigation Unit is part of the National Police makes it difficult to make progress on these investigations.

49. The Public Prosecutor's Office also identified other obstacles to its ability to effectively prosecute crimes. Firstly, it said that, in the case of murder, victims' families are often reluctant to allow the police and prosecutors to remove the bodies and conduct autopsies. According to the information received from other sources, however, there are very few cases, if at all, in which the victims' families refused the authorities permission to remove the deceased and conduct an autopsy. Any refusal to do so would be based on their distrust in the police and the justice system and the fear that they might destroy the evidence or would not properly investigate the case. Secondly, the Public Prosecutor's Office also identified the lack of direct contact with the victims and witnesses as one of the factors impeding its ability to prosecute crimes. They stated that NGOs often have access to the victims and witnesses before the authorities commence investigations and take evidence away with them. While the Working Group was unable to verify this claim, its plausibility needs to be carefully assessed in the light of the fact that there are effectively no NGOs based in the Bajo Aguán region at present. On the other hand, the representatives of civil society indicated that this statement is not accurate and does not correspond to the reality.

50. One factor which certainly does impact the effectiveness of the Public Prosecutor's Office is its limited capacity at a departmental level. According to the Public Prosecutor's Office, there are only four investigators in the Tocoa office and another four in the Trujillo office in the Department of Colón. The number is hardly sufficient to deal with the numerous complaints of killings and crimes in the department.

51. It is relevant in this context to note that the Control Unit for Private Security Services of the Ministry of Security has no mandate or power to receive or investigate complaints relating to the conduct of private security personnel. Furthermore, in the absence of any requirements in the Law and the Regulations for PSCs to establish any internal accountability mechanisms, it is unlikely that many PSCs in Honduras have done so, although the Working Group was unable to verify this.

52. The Working Group is concerned that given the lack of effective investigation, prosecution and adjudication of crimes through judicial or non-judicial avenues, the victims are left without any form of remedy. There is also no State-funded mechanism to ensure that the victims have access to remedies through non-judicial avenues, such as a statutory compensation scheme. None of the victims that the Working Group met during the visit was provided with compensation, material or medical assistance to help them recover from the violence and trauma that they had suffered. In some cases, the deceased victims' families have not been able even to recover the bodies of their loved ones, let alone receive compensation.

VI. Conclusion and recommendations

53. Since the last visit of the Working Group in 2006, the Government has made some progress in seeking to regulate activities of PSCs, as evidenced by its adoption of the Organic Law of the National Police and the Regulations for the Control of Private Security Services. However, the Government faces significant legal, structural and institutional challenges to ensuring effective oversight of PSCs. While the adoption of the Law and the Regulations is a positive step, the legal framework has serious gaps, particularly with regard to the training and vetting of security personnel, the rules on the use of force and firearms, the implementation of internal policies and accountability mechanisms, as well as a total absence of mechanisms to provide reparations to the victims. Further, the implementation of the existing laws and regulations is hampered by the lack of institutional capacity of the authorities responsible for regulating PSCs, such as the Ministry of Security and the National Police. These shortcomings, coupled with the prevailing violence and insecurity in the country and the lack of guarantee of security by the State, breed an environment in which PSCs exercise de facto control in the security sector and act with complete impunity. The Working Group stresses that the right to security is an inherent human right of all and underpins the enjoyment of other human rights. Outsourcing the use of force to PMSCs seriously undermines the rule of law and the effective functioning of a democratic State institution responsible for ensuring public safety in accordance with international human rights standards and national laws. The unprecedented level of crime and violence committed by private security guards, often with consent or agreement with the police and the military, has not been adequately addressed by the State and there is a critical need for immediate legal and institutional reforms to fight this culture of impunity.

54. The Working Group also regrets that the domestic legal framework has not been amended to define and prohibit mercenaries, despite the country's accession to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries in 2008.

55. In the light of these observations, the Working Group recommends that the Government of Honduras:

(a) Amend the Organic Law of the National Police and the Regulations for Control of Private Security Services in order to strengthen the criteria for granting a licence to PMSCs, particularly with respect to the vetting and training of personnel, the recruiting processes and related requirements, the implementation of internal policies relating to international human rights law, the use of force and firearms, and the requirement for internal accountability mechanisms. In this regard, the Government is encouraged to consult the existing international law and standards for the protection of human rights;

(b) Allocate adequate resources to the Ministry of Security and strengthen its institutional capacity to properly administer the licensing and registration processes for PMSCs and exercise effective oversight over their activities. In this regard, the Government should consider creating a specialized body or organ responsible for regulating and controlling PMSCs, rather than a section within the Ministry of Security, to fulfil these functions;

(c) Strengthen the implementation and enforcement of the existing law and regulations to ensure that all private security service providers are licensed and registered by the Ministry of Security and that their activities are properly monitored. The Ministry should strengthen its monitoring role through various means such as inspections, reporting, supervising on the ground, and punish private security service providers in violation of the law and regulations, such as those operating without a licence, providing services other than those prescribed in the regulations or possessing and using prohibited weapons;

(d) Amend the Act on Control of Firearms, Ammunition, Explosives and Other Related Instruments to reduce the number of firearms that can be legally possessed by civilians and limit the number of weapons which can be possessed and used by PMSCs. It is necessary that the law distinguishes between possession and carrying of weapons in order to effectively regulate both;

(e) Ensure effective control over the circulation of weapons and firearms and prevent the smuggling of arms through the armoury or other sources;

(f) Enhance the capacity of the police and public prosecutors, particularly at the regional level, to properly investigate and prosecute crimes committed by private security guards and to ensure that victims receive effective remedies;

(g) Provide adequate resources and training to the National Police, so that they may fulfil their inherent and essential functions to guarantee public security and the safety of the Honduran population. In this regard, the Working Group recalls the voluntary commitment of Honduras during the universal periodic review to increasing the efforts to improve conditions for citizen security, including professionalization and modernization of the National Police and Armed Forces;

(h) Effectively enforce the prohibition of the involvement of active members of the police and the military in PMSCs and punish those who are found in violation of this prohibition;

(i) Amend the Penal Code to include a definition of “mercenary” and specifically prohibit their activities in accordance with the International Convention against the Recruitment, Use, Financing and Training of Mercenaries;

(j) Collaborate more effectively with the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights on cases relating to allegations of human rights violations by PMSCs;

(k) Actively participate in the open-ended intergovernmental working group to consider the possibility of elaborating an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies.