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人权理事会

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增进和保护所有人权——公民权利、政治权利、
经济、社会和文化权利，包括发展权

以雇佣军为手段侵犯人权和阻挠人民行使自决权问题 工作组的报告

增编

对索马里的访问(2012年12月8日至14日)*

概要

以雇佣军为手段侵犯人权并阻扰行使民族自决权问题工作组应联邦政府的邀请于 2012 年 12 月 8 日至 14 日对索马里进行了访问。工作组按照其任务规定，收集了私营军事和保安公司（私营军保公司）的资料，包括这些公司的活动对享受人权的影响。

工作组赞扬索马里联邦政府在经历 23 年的冲突之后，努力争取在索马里建立一个和平、民主、安全和安定的社会。向工作组表示的主要人权问题之一是，在索马里重建的过程中，将会有大量的外国私营军事和保安公司涌入，而政府又无法进行足够的管理和控制。如果安理会撤销迄今仍执行的对索马里的武器禁运，国际私营军事和保安公司将加速涌入，因为武器禁运迄今导致这些公司难以在索马里营业。私营军事和保安公司的涌入可能会增加已经脆弱的安全环境不稳定性，因为私营军保公司雇员与平民之间的摩擦可能引起工作组在伊拉克和阿富汗所记录的那类侵犯人权

* 本报告的概要以所有正式语文分发。报告本身载于概要附件，仅以原文分发。

在这方面，工作组赞同地注意到，索马里政府正努力提供通过全国委员会制定规范索马里私营军事和保安公司的注册和监管规则。除了通过条例法规之外，工作组建议索马里政府确保它建立的发照制度不限于只进行一次性的审批，而且还应包括持续的监控，并应提供足够的经费，以使该制度能够运作。全国委员会也应确保建立机制，保证私营军事和保安公司对侵犯人权的事件负责。工作组将欢迎有机会向索马里政府提供其他国家发照制度的信息，以协助其制定有效的制度。工作组还建议，索马里政府规定收集和传播在索马里经营的私营军事和保安公司的活动的信息。

工作组还指出，保护索马里人民安全的主要责任由政府承担，并警告说，将安全职责外包给私人行为者不应免除建设索马里官方安全部门的重要工作。

至于提供军事训练的公司，工作组注意到训练任务特别敏感，强调这些任务需要严格的监管。这类行动应属于全国委员会制定的任何监管计划的适用范围。最起码，这种训练的合同安排应列入严格的审查和训练要求，以及确保教官和导师不参加动能军事行动（例如，要求与前线或敌对区保持一定的距离）。

联合国索马里和厄立特里亚监测组指出，Saracen 私营军保公司违反安全理事会的规章向邦特兰海事警察部队提供军事训练和装备。有人指控 Saracen 侵犯学员的人权，其中一些行为已经监测组证实。虽然 Saracen 大部分的训练活动似乎已经结束，但外国承包商继续以各种身份支助邦特兰海事警察部队，不受任何明确的问责制结构的管制。此外，由于邦特兰海事警察部队在法律框架之外执行安全部队的任务，还有一个风险是，它可能被用于行使打击海盗之外的其他目的，工作组收到的关于若干事件报告已经加以证明。工作组敦促当局将该部队纳入经议定的索马里国家安全结构，确保该部队只用于实现它成立的目标。所有向邦特兰海事警察部队提供训练的私营军保公司的员工应该受到有关主管部门的监管和监督。

关于海上保安公司，未向工作组提供有关未举报的侵犯人权行为的情况的信息。工作组认为应制定具有约束力的国际法规，就船舶使用武装警卫进行规范。

Annex

[English 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 Somalia (8 to 14 December 2012)

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I. Introduction

1. At the invitation of the Federal Government of Somalia, 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 (Working Group) visited Somalia from 8 to 14 December 2012. The Working Group was represented by two of its members, Faiza Patel and Anton Katz.¹

2. In accordance with 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 on the enjoyment of human rights, particularly the right of peoples to self-determination of the activities of private companies offering military assistance, consultancy and security services in the international market.

3. A private military and/or security company (PMSC) is understood to be 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.²

4. During the visit, the Working Group held meetings with several government officials. In Mogadishu, the Working Group met with the Minister of Interior and National Security, the Head of the Security Department in the Ministry, as well as the Police Commissioner. In Bossaso (Puntland), it met with President Farole, representatives of the Ministry of Maritime Transport, Ports and Counter Piracy, the Ministry of Planning and International Cooperation, the Ministry of Interior and National Security and the Ministry of Foreign Affairs. It also met with the Chief of Staff and Puntland Security Forces, the Puntland Police Commissioner, the Deputy Commander and the Coordinator of the Puntland Maritime Police Force (PMPF).

5. The Working Group also held meetings with the Deputy Force Commander, the Marine Commander and the Chief of Training of the African Union Mission in Somalia (AMISOM).

6. The Working Group had the opportunity to meet with representatives of the diplomatic community in Nairobi, and international organizations, notably the Deputy Special Representative of the United Nations Secretary-General for Somalia, the Deputy Humanitarian Coordinator, the United Nations Monitoring Group on Somalia and Eritrea (Monitoring Group), the United Nations Office on Drugs and Crime (UNODC), the United Nations Mine Action Service (UNMAS) in Somalia, the United Nations Support Office for AMISOM (UNSOA), the World Food Programme (WFP), the Office of the United Nations

¹ The Working Group is composed of five independent experts serving in their personal capacities: Anton Katz (South Africa), Chairperson-Rapporteur for the period January to December 2013, Patricia Arias (Chile), Faiza Patel (Pakistan), Elzbieta Karska (Poland) and Gabor Rona (United States of America).

² See Draft of a possible Convention on Private Military and Security Companies (PMSCs) for consideration and action by the Human Rights Council, A/HRC/15/25, annex, art. 2.

High Commissioner for Refugees (UNHCR), the United Nations Children's Fund (UNICEF), and the Office for the Coordination of Humanitarian Affairs (OCHA). Following the country visit, the Working Group sent written requests for information to UNMAS and one security provider, to which replies were received. The Working Group would like to thank the United Nations Political Office for Somalia (UNPOS), especially its Human Rights Unit, for facilitating the mission.

7. Meetings were also held with representatives of PMSCs in Bossaso and Mogadishu.
8. The Working Group commends the efforts of the Federal Government of Somalia to establish a peaceful, democratic, safe and secure society in Somalia, after 23 years of conflict.
9. In 1992, the Security Council responded to the ongoing conflict and alarming humanitarian situation in Somalia by imposing an arms embargo through its resolution 733(1992). In subsequent resolutions, the Council:
 - Authorized exemptions to the embargo for supplies of non-lethal military equipment for use in humanitarian operations;
 - Clarified that the embargo prohibited the financing of arms acquisitions, as well as the direct or indirect sale or supply of technical advice or military training;
 - Authorized the Intergovernmental Authority for Development (IGAD) and African Union member States to deploy the African Union Mission in Somalia to protect Somalia's Transitional Federal Government (TFG) and to arm and train its security forces; and
 - Limited the embargo to non-State actors, allowing for the supply of weapons and military equipment intended solely for the purpose of helping develop Somali security sector institutions.
10. The Security Council also established a sanctions committee on Somalia, which must be notified in advance about a country's intention to avail itself of exemptions and has the power to prevent them. In 2008, Security Council resolution 1844 (2008) amended the arms embargo to specify sanctions for entities that violated the arms embargo or obstructed the delivery of humanitarian assistance to or in Somalia.
11. The Security Council established the United Nations Monitoring Group on Somalia (Monitoring Group) through its resolution 1519 (2003) with a mandate focusing on arms embargo violations.³ The Working Group appreciates the reports of the Monitoring Group which contain a wealth of factual information and were helpful in preparing the country visit.

II. International human rights commitments

12. Somalia has ratified 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, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

³ Following the adoption of Security Council resolution 1907 (2009), the Monitoring Group changed its name to the Monitoring Group on Somalia and Eritrea

13. Somalia is not a party to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries.⁴ It is also not a party to the Organization of African Unity Convention for the Elimination of Mercenarism in Africa.

III. Private military and security companies operating in Somalia

A. Security context

14. Somalia is divided into three regions: Somaliland (a self-proclaimed independent state, not internationally recognized), Puntland (a semi-autonomous region) and the South Central Region. After more than two decades of conflict, the general security situation in Somalia remains very tense. The biggest security threat is the insurgent group, Al-Shabaab, which has controlled significant territory in the South Central Region. Recently, AMISOM and the Somali National Security Forces fighting alongside them have made significant territorial gains in the South Central Region. Nonetheless, the security situation in many areas of the South Central Region remained unpredictable in 2012, with insurgents increasingly resorting to dangerous asymmetric attacks and intimidating locals. Several Al-Shabaab fighters have moved from the South Central Region to Somaliland and Puntland, although it appears that they are more interested in recruitment than gaining control of these areas.⁵ Puntland also faced continuous challenges from the Al-Shabaab-linked Galgala insurgents, freelance militias, and pirates.⁶

15. The security situation remains particularly volatile in Mogadishu. Although AMISOM and the Somali National Security Forces have maintained their hold on the city, Al-Shabaab attacks occurred frequently, including targeted killings and hand grenade attacks, with an increase in outlying districts. While incidents on the use of improvised explosive devices (IEDs) has decreased recently, periodic suicide attacks, such as those carried out on 12 September 2012 at the Jazeera Hotel while President Mohamud was present, and at the Village Restaurant on 20 September 2012, demonstrate Al-Shabaab's persistent infiltration of the city.⁷ On 14 April 2013, a nine-man suicide commando unit attacked Mogadishu's courthouse leaving 29 civilians dead, while a separate bomb attack killed five more civilians. Al-Shabaab claimed responsibility for the attack that was strongly condemned by the Security Council.⁸ Al-Shabaab became more active in Puntland from late November 2012, undertaking several attacks. Killings and arrests of suspects, discoveries of ordnance and continued reports of troop movements demonstrated the insurgents' enduring presence in the region and neighbouring Galmudug.⁹

16. The volatile security situation in Somalia has led some intergovernmental and non-governmental organizations to enter into contracts with PMSCs to ensure their safety. At this point, personal protection – such as armed guards – is primarily provided by local companies.

17. Thus far, international PMSCs have operated in Somalia only in a limited number of situations. The Working Group is aware of three major instances of such activity:

⁴ General Assembly resolution 44/34, annex.

⁵ Report of the Secretary-General on Somalia, 22 August 2012, S/2012/643, paras. 25-28.

⁶ Ibid.

⁷ Report of the Secretary-General on Somalia, 31 January 2013, S/2013/69, para. 11.

⁸ See Security Council press statement on terrorist attacks in Somalia, available at <http://www.un.org/News/Press/docs/2013/sc10972.doc.htm>.

⁹ S/2013/69, para. 14

- (a) Coordinating police protection for a multi-national oil company in Puntland;
- (b) Providing weapons and training to the Puntland Maritime Police Force (PMPF);
- (c) Bancroft – which is registered as a non-profit, and performs functions similar to that of a PMSC – provides training and mentoring to AMISOM and Somali forces, as well as mine removal assistance to the United Nations.

18. Piracy off the coast of Somalia has also emerged as a security issue of concern to the international community. Since 2008, three Security Council resolutions have addressed piracy in these waters, providing a legal basis for anti-piracy patrols and escorts involving the navies of most of the world's major maritime powers. From 2008 to 2011, piracy increased considerably.¹⁰ During that time, Somali pirates carried out more than 800 attacks on ships from private yachts to oil supertankers, hijacking over 170 vessels. Some 3,500 seafarers were taken hostage and 62 have been killed. According to some estimates, in 2011, pirates took in about US\$160 million in ransom payments and the cost to the global economy was US\$7 billion.¹¹ According to the most recent information¹² available from the International Maritime Bureau (IMB), however, piracy may be abating. From 1 January through 12 July 2012, the IMB received reports of 69 hijacking incidents by Somali pirates, a reduction of 32 per cent compared with the same period in 2011. Pirate activity may have morphed into other areas; there have been several reports of kidnapping of humanitarian workers and civilians by networks involved in piracy.¹³

B. Overview of private military and security companies operating in Somalia, including types of services

1. Armed protection

19. Armed protection is largely provided by local PMSCs to international organizations and NGOs in Mogadishu. For example, the United Nations Development Fund (UNDP) has contracted Duguf Enterprise Security Services Inc. (Duguf). This company is officially licensed and, according to the head of Duguf, its staff are trained in international humanitarian law. Duguf provides a wide range of security services, including armed security escorts and guarding services, threat and risk assessments, communications, logistics and dispatch services. They have been engaged by UNDP as a technical adviser and provide pick-up trucks with armed personnel in order to facilitate UNDP personnel movements between Mogadishu International Airport, the UNCC compound, Villa Somalia and other areas in Mogadishu.¹⁴ Personnel from other United Nations entities, such as the United Nations Political Office for Somalia (UNPOS), are escorted by AMISOM when they travel outside Mogadishu or in sensitive neighbourhoods.

¹⁰ James Brown, "Pirates and Privateers: Managing the Indian Ocean's Private Security Boom", An analysis, Lowy Institute for International Policy (Sydney, Australia, September 2012).

¹¹ Michelle Wiese Bockmann and Alan Katz, "Shooting to kill pirates risks Blackwater moment", *Bloomberg News*, 9 May 2012; also House of Commons, Foreign Affairs Committee, *Piracy off the coast of Somalia*, Tenth report of session 2010-12 (London, 5 January 2012) (HC 1318), p. 16, para. 17.

¹² Geneva Academy of International Humanitarian Law and Human Rights, *Counterpiracy under international law* (August 2012), p. 8, available at: <http://www.geneva-academy.ch/docs/academyLecture/Counterpiracy.pdf>.

¹³ S/2012/643, para. 50.

¹⁴ Report of the United Nations Monitoring Group on Somalia and Eritrea (Monitoring Group), 13 July 2012, S/2012/544, annex 5.5.

20. Peace Hotel Security Services, also located in Mogadishu, provides armed security services to visitors staying at its hotel as well as to NGOs.

21. TAC Force, an international consultancy firm established in 1997 with headquarters in the Middle East, also operates in Mogadishu. During its meeting with the Working Group in Mogadishu, TAC Force indicated that it specialized in crisis management, close personal protection and logistical support in high-risk environments. It was licensed by TFG in 2009 for a five-year period as the first private security company permitted to operate in Somalia, as indicated in the document that TAC provided to the Working Group.¹⁵ It owns a guest house and has a protection team providing security to clients. It employs 100 people, 50 of whom provide security. It has a license to import armoured vehicles. The company informed the Working Group that since 2012, it has also been licensed to operate in Puntland.

22. The Working Group was informed that several local security providers in Somalia are clan-based militia which operate behind a corporate façade in order to conceal the involvement of individual warlords. Although the Working Group was unable to verify this information, it notes that this pattern has been seen in other countries and is an issue that international organizations and NGOs should be cognizant of when they enter into agreements for the provision of private security.

23. In Puntland and Somaliland, special protection units (SPUs) of the police force provide armed protection to convoys, and guard the compounds of international organizations and NGOs. In addition to their salaries as members of the police force, SPUs also receive remuneration from the clients to whom they provide security.

24. The Exploration Security Unit (ESU) is a special branch of the Puntland security forces established to protect oil exploration and exploitation companies. Its primary client is the Africa Oil Corporation, a company registered in Canada (and licensed by the Puntland authorities)¹⁶ that leads a consortium of foreign oil companies. It acquired a licence and commenced exploration activities in the Dharoor Valley Exploration Area and the Nugaal Valley Exploration Area located in Puntland. The ESU provides convoy security and site protection, and their armed guards are seconded to oil companies. Like SPUs, the ESU, although part of the police force, provide security services to third parties for which they are remunerated. As such, these units may also be regarded as semi-private.

2. Other security services

25. As of August 2011, Africa Oil has contracted Pathfinder Corporation, a company based in Southern Africa. Both Africa Oil and Pathfinder informed the Working Group that the latter does not provide any training or security services to Africa Oil, but that its primary role is to conduct risk analyses and coordinate the protection provided by the ESU. Pathfinder took over Africa Oil's security contract from Salama Fakira, a private security contractor based in East Africa which previously provided risk assessment advice to Africa Oil.¹⁷ In addition, local security contractors provide logistics and transportation of equipment for oil companies.

26. AMISOM provides security for the heavily fortified compound which serves as a major base for African Union forces, and within which the Adan Abulle International Airport is situated. The surrounding area is considered one of the safest parts of Mogadishu and includes the United Nations compound, as well as facilities used by other international

¹⁵ License signed by the Minister of Interior and National Security of the TFG, dated 14 October 2009.

¹⁶ Report of the Monitoring Group, 11 July 2011, S/2011/433, annex 6.1, para. 20.

¹⁷ S/2011/433, annex 6.1, para. 21.

organizations and NGOs. In addition, in December 2010, SKA, a Middle East-based provider of aviation services and logistics, entered into a ten-year contract with TFG to manage Mogadishu international airport.¹⁸ It is reported that SKA invested over US\$6 million in airport equipment and support services in Mogadishu to raise the standards at the airport. It has undertaken large-scale rehabilitation of the airport infrastructure, including installing electronic check-in systems and improving security. SKA hires local private security companies to ensure protection of its accommodation facilities within the protected air field of the AMISOM-controlled base.

27. Physical Risk Solutions (PRS) operates in Somaliland and is registered and managed by a former South African military operative. According to the company's website, PRS provides "extensive services" to its clients, including "armed guarding". However, according to the Monitoring Group, the company manager has indicated that restrictions imposed by Somaliland authorities do not allow armed guarding activities and PRS is currently contracted by international organizations and NGOs to provide internal security services with reportedly trained but unarmed personnel, operating security screening and monitoring compound security with the relevant equipment, including x-ray machines, metal detectors and close-circuit television (CCTV) systems.¹⁹ The Working Group did not visit Somaliland and is therefore unable to reach any independent conclusion on the matter. PRS also operates in Puntland and provides unarmed guard services to the United Nations compounds.

3. Military services

Saracen

28. The best known example of an international company involved in military operations in Somalia is Saracen,²⁰ contracted to train and equip the Puntland Marine Police Force (PMPF). The PMPF was established by President Farole of Puntland, with the stated goal of providing a land-based response to piracy.

29. According to the Monitoring Group, between May 2010 and February 2011, Saracen International SAL, working with a number of other private companies in Africa and the Middle East, provided military training as well as equipment and vehicles to the PMPF. The Monitoring Group report presents evidence that the military equipment and vehicles procured for the PMPF included armoured vehicles with turrets for gun mounts and ammunition.²¹

30. In terms of training, the Monitoring Group reported that Saracen personnel, many of whom are South African, were engaged to recruit, train and mentor a PMPF battalion in all phases of war, including land, sea and airmobile operations. The job description for personnel recruited by Saracen indicated that the trainers would also lead forces on the ground, as mentors, in military campaigns that include kinetic operations. In other words, the trainers were expected to act not only as instructors, but as fighters participating in combat operations on Somali territory.²²

¹⁸ S/2011/433, annex 6.1, para. 41.

¹⁹ Ibid., para 10-11.

²⁰ Reports indicate that in late 2011, Saracen's assets, personnel and operations were transferred to Sterling Corporate Services, a company registered in the Middle East, which continued to provide large-scale military training, technical assistance and support to the PMPF.

²¹ S/2012/544, annex 5.3, para. 63.

²² Ibid., paras. 54-55.

31. These activities were found by the Monitoring Group to constitute violations of the arms embargo.²³ The Monitoring Group also considered that Saracen's activities represented a threat to peace and security in Somalia²⁴ because they were operating outside of all international and multilateral frameworks for support to the Somali security sector. Consequently, there was no way to ensure that forces trained and equipped by Saracen were in fact employed for the declared purpose of anti-piracy. Indeed, there have been allegations that the Puntland authorities may have used the PMPF for purposes other than combating piracy, as discussed in paragraph 33 below.²⁵

32. The Working Group visited the PMPF facility in Bossaso where it met with the Deputy Commander and the Coordinator of the force. They stated that Saracen had left Puntland and was no longer training or mentoring the PMPF. They informed the Working Group that 12 South African private contractors remained as pilots, logistics and communications contractors and to provide maintenance. The PMPF Coordinator indicated that although the training activities may have ceased, or at least diminished, the equipment acquired by the PMPF remains. The Working Group also observed the presence of four planes that were reportedly used for surveillance in the context of counter-piracy operations, as well as a number of rigid-inflatable boats (RIBs) on the PMPF site in Bossaso. The Working Group did not observe many soldiers at the PMPF compound. They were reportedly conducting a counter-piracy operation near Gara'ad village on the coast in Mudug region, which according to the Puntland authorities resulted in the release of 22 hostages.

33. Saracen's activities vis-à-vis the PMPF raise a number of concerns. Most fundamentally, they raise the question of how a PMSC could influence the balance of power in a region and undermine agreed security arrangements. The Working Group is of the view that Saracen assisted in building the best equipped and trained force in Puntland (after AMISOM in Somalia), but it falls outside the constitutional framework for security institutions. The fact that the PMPF reports directly and solely to the President of Puntland has created fears that it will be deployed in an internal security role and not just for anti-piracy operations.²⁶ Indeed, the Working Group was informed that the PMPF had taken part in activities that seemed aimed at political opponents of President Farole. One example, which was also reported in the Somali press,²⁷ was the deployment of the PMPF in October 2012 to prevent Abdiweli Ali Gaas, former Prime Minister of Somalia and considered as a potential rival to President Farole, from campaigning in Bossaso by surrounding his residence and blocking road access.

34. During the country visit, the Working Group repeatedly heard concerns in respect of the future of the PMPF. It has been widely reported that the training and equipping of the PMPF was financed by a Middle Eastern country, although this has not been acknowledged as being the case.²⁸ Regardless of the original source of financing for the endeavour, the Working Group learned that financing for the PMPF has now dried up and that the Government of Puntland is seeking ways of continuing to finance its operations. The existence of a well-trained and well-equipped force, which is not being paid, in the fragile security situation in Somalia raises obvious concerns. In particular, some sources expressed

²³ S/2011/433, annex 6.3, para. 2.

²⁴ Ibid.

²⁵ Ibid., para. 3.

²⁶ S/2012/544, annex 5.3, para. 56.

²⁷ See Horseed Media, 31 October 2012, available at <http://horseedmedia.net/2012/10/31/somalia-saracen-trained-forces-surround-the-home-of-former-somali-prime-minister-in-bosaso/>.

²⁸ S/2012/544, para. 63.

concern that the PMPF may join the Al-Shabaab insurgency or engage in piracy if the situation is not resolved.

35. There have been allegations of human rights violations during the time that Saracen was running the PMPF camp. The Monitoring Group discovered photographic evidence from an internal Saracen source that showed a Somali trainee “wearing the typical Saracen blue training uniform, laying down face on the ground, being bound hand and foot with a rope, in the presence of Saracen international staff.”²⁹ The Monitoring Group concluded “based on these images, and according to the testimony of a credible source with access to Saracen trainees, the trainee died of his injuries on 16 October 2010.”³⁰ The Monitoring Group also identified two cases of severe corporal punishment – one trainee who had his hands broken before being fired and another who died after being beaten with rocks while tied up³¹ – but as of the date of its report (July 2012) had not been able to substantiate these allegations.

36. During the visit, the Working Group was informed that a foreign Saracen trainer was killed in Iskushuban on 27 April 2012 by members of his own unit. This incident was also reported by the Monitoring Group and the Puntland authorities.³² According to several confidential security reports received by the Monitoring Group, the trainer was not killed during a “counter-piracy operation”, as stated by the Puntland authorities, but during an argument with members of his unit. The Working Group has no information as to what, if any, steps were taken against the alleged perpetrator by the Puntland authorities.

Bancroft Global Development

37. One of the most significant non-governmental players in the security sector in Somalia is Bancroft Global Development. Bancroft is registered as a charity in the United States and has emphasized to the Working Group that it is not a PMSC. Nonetheless, Bancroft is treated as a PMSC for purposes of this report because it provides the same, or at least similar, types of services as those provided by PMSCs, and it does so on the basis of compensatory contracts (as described below). Whether Bancroft provides these services out of humanitarian motives or to turn a profit does not bear on the issues of accountability and the potential for human rights violations that are of concern to the Working Group.

38. Bancroft started its activities in Mogadishu in 2007, at a time when very few private security providers were present in Somalia. According to information provided by the company to the Working Group, Bancroft’s current presence in Mogadishu does not exceed 50 staff. To Bancroft’s credit, the United Nations Monitoring Group identified it as the only private company providing assistance to Somali security sector institutions in conformity with the Security Council regime.³³

39. Bancroft informed the Working Group that it implements training and mentoring activities in the following areas: financial accountability systems development and management, engineering, construction, explosive detecting canine operations, explosive ordinance disposal, emergency medicine, public health, law and judicial systems. According to Bancroft, its past and present partners in Somalia include essentially all of the

²⁹ S/2012/544, annex 5.3, para. 64.

³⁰ Ibid.

³¹ Ibid. para. 65.

³² Ibid. para. 57 (f); and Puntland Government press release, “Somalia: Puntland Government Sends Condolences, Investigates Killing of PMPF Trainer”, 28 April 2012, available at http://pmpf.files.wordpress.com/2012/04/pr_28apr2012_en.pdf.

³³ S/2012/544, para. 68

members of the United Nations Country Team in Somalia, the African Union, and a number of Western countries.

40. During its visit, the Working Group learned about Bancroft's activities under three main sets of contracts.

41. Firstly, Bancroft informed the Working Group that it provided training and mentoring to AMISOM, under a contract with the Ugandan Government, which in turn is reimbursed by the Government of the United States of America. According to information provided by Bancroft, their services to AMISOM include training canines to detect explosives, port security, education about mine risks, as well as training on how to safely remove IEDs. The company's experts include medical personnel, engineers, dog trainers, and IED experts. Bancroft reported that as mentors, its personnel accompany AMISOM troops to the field, but that they are unarmed and do not take part in kinetic operations.

42. Secondly, as reported by the Monitoring Group and confirmed by Bancroft, it provided technical expertise to AMISOM and, under its auspices, to the TFG military.³⁴ In 2010, Bancroft assisted AMISOM in modernizing its sight system for mortar fire, and took an active part in training TFG soldiers (on matters ranging from infantry tactics to administration and accountability), and the presidential guard in charge of the TFG President's personal security detail.³⁵ The Ministry of Interior and National Security informed the Working Group that Bancroft's agreement with the TFG was being reassessed in the context of the review of all previous contracts signed by the TFG with private security contractors. The review is being conducted by the National Security Commission established to regulate the activities of PMSCs, as described in paragraph 53 below.

43. Finally, the AMISOM Marine Commander and the Chief of Training, with whom the Working Group met in Mogadishu, indicated that Bancroft was contracted by UNMAS to work with AMISOM and the Somali National Forces under the auspices of AMISOM. Conversations and correspondence with UNMAS indicate that Bancroft was hired to provide training on explosive ordnance disposal (EOD) and counter-IED to the Somali National Army for the last two years.³⁶ UNMAS explained that Bancroft was contracted through the United Nations Office for Project Services (UNOPS). It confirmed that Bancroft is working with AMISOM as mentors for the Somali forces on IEDs.

44. Bancroft also operates (generally in partnership with other entities) a number of facilities in the Mogadishu area. Perhaps best-known among these are the two residential facilities that Bancroft operates within the Adan Abdulle International Airport. According to Bancroft, these premises were granted to AMISOM in accordance with the Status of Mission Agreement between the African Union and the Government of Somalia and "provide accommodation only to persons and organizations directly supporting the AMISOM mission or its mandate, per authorization from the Force Headquarters." Information from various sources indicated that, in addition, representatives of NGOs and the press, among others, have stayed at the facility at the invitation of Bancroft.

45. UNMAS informed the Working Group that security for its compound at the Adan Abdulle International Airport was provided by a company called African Skies, which is in turn contracted by Bancroft. Bancroft also informed the Working Group that it had entered into an agreement with the Government of Somalia to develop an international zone at Mogadishu's old seaport and had commenced construction. Apparently, one of the intended residents of the facility subsequently took over the facility.

³⁴ S/2011/433, annex 6.1, para. 26.

³⁵ Ibid.

³⁶ S/2012/544, annex 5.5, para. 45.

46. There has been considerable speculation that Bancroft would take over from Saracen to train the PMPF. Although President Farole of Puntland indicated that he had reached some type of agreement with Bancroft in this regard, the Working Group was informed by Bancroft that it has not signed any agreements in connection with the PMPF. In September 2012, Bancroft conducted a thorough audit and evaluation of the PMPF, including facilities assessments, equipment inventory, cantonment of significant military equipment, and personnel medical checks. During the course of that audit, Bancroft personnel noted ongoing violations of Security Council resolution 1425 (2002) regarding notifications pertaining to the arms embargo by certain non-Somali entities. On that basis, Bancroft requested, and received from AMISOM, concurrence to withdraw from any involvement with the PMPF. Bancroft informed the Working Group that its assessment report as well as multiple subsequent briefings, were delivered to the AMISOM Force Commander, Deputy Force Commander for Operations, and the Sector 1 Contingent Commander between September and the end of November 2012. Pending authorization from AMISOM Force Headquarters, Bancroft's assessment document has been offered, but not yet delivered, to the European Union EUCAP NESTOR project, the IMO, UNODC and UNDP. The Working Group did not seek, and Bancroft did not offer, access to the report.

47. Bancroft's training and mentoring activities mean that it operates in or in close proximity to conflict zones and there have been reports of its employees' involvement in kinetic operations. The Working Group did not find substantiated evidence of such allegations. Nonetheless, the question arises as to what procedures Bancroft – and the entities with which it works – have in place to ensure that Bancroft personnel do not become part of combat operations. In response to queries from the Working Group, Bancroft indicated its personnel were “as a matter of policy unarmed and by contractual commitment prohibited from taking any action that could compromise their status as non-combatants.” With regard to Bancroft personnel who serve in proximity to, or engagement with, active members of AMISOM or Somali Defense Forces, Bancroft indicated “that they serve only in an advisory capacity” and that the only circumstance in which they could use force “is when invoking their inherent right of self-defense using a weapon furnished on a temporary basis, *in extremis*, by AMISOM.”

48. The Working Group welcomes Bancroft's policy, but notes that it received reports of their personnel carrying weapons during at least some operations. Indeed, Bancroft's Code of Conduct itself provides for the eventuality that its employees will be issued weapons “for training or self-defense purposes.” The Working Group also notes that Bancroft's advisory role, particularly when it involves “mentoring” trainees in the field, can easily bleed into active participation in hostilities. In this regard, attention should be paid by both Bancroft and those who engage its services to develop rules to prevent such situations and to institute procedures to ensure that they are complied with. The Working Group was informed by UNMAS that to avoid this problem, their agreement with Bancroft requires that when conducting EOD and counter-IED operations, Bancroft employees must remain a minimum of 500 metres behind any front line. This type of rule might serve as an appropriate safeguard in other contracts as well.

49. Given the sensitivity of Bancroft's operations, it is critical that it ensures that its employees are properly vetted and trained. Bancroft told the Working Group that their recruitment process includes a rigorous vetting process, but the Working Group has not been able to verify that claim.

50. The Working Group notes that at least one employee of Bancroft pleaded, and was found, guilty in a South African court of, *inter alia*, recruiting persons for mercenary

activities in Côte d'Ivoire³⁷ and providing logistical support for the venture. Although this is only one individual, the nature of his activities naturally raises questions with regard to the adequacy of Bancroft's vetting process.

51. Bancroft's Code of Conduct requires its employees to comply with international human rights and humanitarian law, as well as national laws. The Working Group has no information, however, on what training, if any, is provided to Bancroft employees operating in Somalia on these matters.

52. In sum, Bancroft's proximity to combat and the military nature of the training and mentoring that it provides requires that both Bancroft and those who engage its services exercise the utmost care in ensuring that these matters are clarified and memorialized. Transparency would of course be enhanced if these types of arrangements were made public.

C. Legal framework

53. The Somali Parliament adopted a new Constitution in August 2012 that foresees the establishment by federal law of an independent National Security Commission composed of security experts from all sectors. Under article 111.H of the Constitution, the National Security Commission will be tasked with presenting proposals to ensure that human security is prioritized and incorporated into the national security framework; provide redress for abuses by security personnel; demobilize militias and reintegrate them into society; and ensure civilian control of the armed forces. In accordance with article 130, Parliament is required to enact a law governing the structure, functions and levels of the security agencies in Somalia, as well as their purpose, and to enact amendments to the Constitution regulating PMSCs, which are yet to be adopted.

D. Registration and licensing process

54. In Somaliland, the Ministry of Interior conducted an analysis of the operations of PMSCs in Somaliland and released a Ministerial Decree on 20 October 2012. The decree announced a national policy on the registration and operation of Private Security Companies pending completion of the Somaliland Private Security Act (which is still being drafted). The decree states that the Somaliland administration is solely responsible for the safety and security of the United Nations, other international organizations and NGOs, and bans armed private security companies in Somaliland. It also provides that foreign security companies may not own more than 30 per cent of a Somaliland security company, and institutes a registration procedure with a set of criteria that must be met before security companies can be issued with a temporary license to operate in Somaliland.

55. This Ministerial decree was promulgated soon after international criticism over Saracen's operations in Puntland. The Working Group was informed that according to an official of the Somaliland Ministry of Interior, this decree is aimed at preventing Somaliland from becoming a playground for foreign security companies, especially in anticipation of the possible start-up of oil-exploration operations.

56. The Working Group was informed that Puntland has no formal regulations or policies governing the registration and licensing of PMSCs. Foreign PMSCs are registered in their home countries and operate in Puntland with permission from Puntland Authorities.

³⁷ See High Court of South Africa (Transvaal Provincial Division), case number A2850/03 of 2 and 20 May 2005 (ZAGPHC 248).

57. In Mogadishu, the Minister of Interior and National Security informed the Working Group that in accordance with the Constitution, the Federal Government of Somalia has established a National Commission tasked with setting up rules and regulations for PMSCs. The current Government has requested the Commission to undertake an assessment of how licenses were granted to international PMSCs by the TFG, as well as a review of the agreements that the TFG had entered into with these companies. The Working Group was informed of the strong commitment of the Federal Government to ensure that regulations are in place to oversee PMSC activities in Somalia. The Minister expressed concern that the activities of companies may constitute a security threat for the country in light of the fragile security situation.

58. The Working Group was informed that currently, the Ministry of Interior is responsible for issuing licenses to PMSCs after a review of the company's profile, internal regulations, its equipment and past experience. Companies' profiles and employees are reportedly checked by the Somali Police for verification of their criminal records. Licenses are subsequently issued for a specific activity. According to the Ministry of Interior, preference is given to local PMSCs. If a particular activity cannot be performed by domestic security companies, then foreign companies may be licensed to perform a particular task. The Working Group also met with the Somali Police Commissioner who indicated that once an application is received, he meets with the concerned PMSC and scrutinizes the employees. He then advises the Ministry of Interior on whether or not a license can be issued. The Working Group was informed that many applications had been submitted and were under review at the Ministry of Interior.

59. The Ministry of Interior shared with the Working Group a draft set of regulations governing the licensing process. The draft states that in order to be eligible for a license to operate in Somalia, a company must be Somali-owned. It must have a clear structure and bylaws, and be composed of Somali personnel who have not committed any crime against the public or the State. The structure of the company must be free from tribalism and 40 per cent of the security staff are required to have wide experience and expertise in security issues. The files of the staff hired by the company must be submitted to the Ministry for approval after verification by the police of whether they have a criminal record. They must also have adequate security training equivalent to the one given to the national security forces by institutions recognized by the State. The draft guidelines also state that the staff must wear a special uniform with a clear identification and badge. Their weapons and communications equipment must be licensed and registered by the Ministry. Only light weapons will be allowed and they can only be used for authorized purposes. A registration fee of US\$2,000 is required.

IV. Use of armed security aboard vessels

60. As governments have struggled to contain the spread of piracy in the Indian Ocean, shipping companies have turned to private military security companies to guarantee the safety of their crews and cargo. Maritime PMSCs have greatly expanded their operations protecting commercial shipping. Over 140 firms now operate in the region. No less than 26 per cent of civilian ships transiting the Gulf of Aden officially declare the use of armed PMSCs on board. Meanwhile, some governments are hiring out their own national militaries as security guards on board ships.³⁸

³⁸ James Brown, "Pirates and Privateers", (see footnote 10).

61. Financial considerations play an important role in the use of private security companies.³⁹ Many insurance companies require shipowners to pay exorbitant surcharges on premiums if their vessels pass through pirate territory, or they refuse to insure the ships unless they have armed security personnel on board. Given the vast expanses of ocean involved, not to mention fiscal constraints, national navies are not well positioned to provide effective protection against pirates. But the use of armed guards aboard vessels raises difficult human rights issues as well, not least among which are the need to ensure that those performing these tasks are properly vetted and trained, clarity about the rules for the use of armed force and the reporting of incidents at sea, and how to achieve accountability in the event of human rights violations. Concerns have been expressed that deliberate and accidental violence could escalate as a result of allowing armed guards on ships and some have argued that the use of armed operatives could encourage pirates to use more violence when hijacking a ship.⁴⁰ The recent high-profile incident in which Italian marines allegedly shot and killed Indian fishermen in the belief that they were pirates illustrates some of the issues raised by the use of armed security (whether provided by PMSCs or governments) aboard ships.

62. In the absence of clear and specific rules, the International Maritime Organization (IMO) has taken the lead in developing guidance. IMO's Interim guidance to private maritime security companies providing privately contracted armed security personnel on board ships in the high risk area (MSC.1/Circ.1443), issued May 2012, calls on PMSCs to have verifiable, written internal policies and procedures for determining the suitability of persons to be deployed as such personnel (PCASP), including checking their criminal records and employment history. Further to the guidance, PMSCs should ensure that personnel working for them have a complete understanding of, and fully comply with, the applicable laws governing the use of force. In particular, they should take all reasonable steps to avoid the use of force and, if force is used, it should be used as part of a graduated response plan, and not exceed what is strictly necessary and reasonable in the circumstances. Care should be taken to minimize damage and injury and to respect and preserve human life; and PMSC personnel should only use firearms against persons in self-defence or in defence of others.

63. IMO's Revised interim guidance to shipowners, ship operators and shipmasters on the use of privately contracted armed security personnel on board ships in the high risk area (MSC.1/Circ.1405/Rev.2), dated May 2012, requires the shipmaster to maintain a log of every circumstance in which firearms are discharged, whether accidental or deliberate. Such actions should be fully documented in sufficient detail in order to produce a formal written report of the incident, for the shipowner/operator to forward to the flag State. The guidance indicates that a formal written report should include the time and location of the incident; details of events leading up to the incident; and written statements by all witnesses and those involved from the ship's crew and security team in the incident; the identity and details of personnel involved in the incident; details of the incident; injuries and/or material damage sustained during the incident; and lessons learned from the incident and, where applicable, recommended procedures to prevent the recurrence of the incident. In the event that an armed guard uses force, his or her team leader should be advised to photograph (if appropriate), log, report and collate contemporaneous written statements from PCASP present at the incident in anticipation of legal proceedings. In addition to incident reporting, the guidance suggests that following a tour of duty, the PCASP team should submit a full report to the shipowner/ship operator via their employers, if required, giving full details of

³⁹ Ibid.

⁴⁰ House of Commons, *Piracy off the coast of Somalia*, (see footnote 11), p. 23, para. 28.

the deployment, operational matters, any training and/or ship hardening conducted, and offering advice as to any further enhancements to security that may be considered.

64. In search of operational guidance, 238 maritime PMSCs have signed the International Code of Conduct for private security service providers⁴¹ even though the Code does not include specific rules for this context.

65. The Working Group is of the view that the maritime security industry requires a binding regulatory regime that is consistent with the rules for PMSC activities on land, but takes into account the specific context in which these companies operate.

V. Human rights impact

66. There are a number of ways in which the human rights impact of the activities of PMSCs operating in Somalia can be measured. To begin with, the activities of PMSCs could be regarded as broadly deleterious to the security situation in the country. The activities of Saracen vis-à-vis the PMPF discussed in detail above are an example of such activity, both in terms of being outside the approved Somali security structure and with regard to the human rights violations that have been reported.

67. Several stakeholders expressed concern that the improving security situation in Somalia could lead to an influx of international PMSCs, particularly if the Security Council arms embargo on Somalia (which acts as a deterrent) were lifted. Concerns were expressed that much-needed reforms of Government security forces would receive less attention and resources because the security of international actors would be assured through the use of private guards.

68. The Working Group notes the ongoing efforts of the Federal Government of Somalia to regulate the activities of PMSCs operating in Somalia. At the moment, however, the regulatory structure is minimal and requires significant improvements.

69. With regard to maritime security companies, the Working Group was provided with information about circumstances suggestive of unreported human rights violations, including instances where skiffs had been found drifting at sea carrying dead bodies, with their engines showing traces of gun shots. In other instances, the bodies found had been shot and left at sea. It was pointed out that the combination of cost incurred when ships are required to bring imprisoned pirates to shore and the lack of binding and enforceable reporting obligations for PMSCs may incentivize armed guards to kill rather than capture. While the IMO guidance discussed above suggests stringent reporting requirements, these may not be implemented which leaves a potentially large accountability gap.

VI. Conclusions and recommendations

70. As Somalia rebuilds its security institutions after more than two decades of internal conflict, PMSCs often fulfil a demand for protection from a wide variety of clients, including multinational companies, governmental and non-governmental organizations. The majority of these actors told the Working Group that they would not be able to operate in Somalia without the assistance of PMSCs.

⁴¹ See Global Policy Forum, "The challenges of Maritime Private Security Oversight" (December 2012), available from <http://www.globalpolicy.org/pmscs/52135-the-challenges-of-maritime-private-security-oversight.html>.

71. One of the principal human rights concerns articulated to the Working Group was that as rebuilding efforts in Somalia get underway, there will be an influx of foreign PMSCs without sufficient regulation and control by the Government. This result would be hastened if the Security Council lifts the arms embargo that has thus far made it difficult for international PMSCs to operate in Somalia. This could increase instability in an already fragile security environment and, as PMSC employees interact with the civilian population, raise the spectre of human rights violations of the type documented by the Working Group in Iraq and Afghanistan.

72. In this regard, the Working Group notes with approval the ongoing efforts of the Federal Government to set rules governing the registration and regulation of PMSCs in Somalia through the National Security Commission. In addition to adopting regulations, the Working Group recommends that the Government ensure that any licensing regime it establishes is not limited to one-time vetting, but includes ongoing monitoring, and that sufficient resources are allocated to allow the system to function. The National Security Commission should also ensure that there are mechanisms to ensure the accountability of PMSCs in the event of human rights violations. The Working Group would welcome the opportunity to provide the Federal Government of Somalia with information on other national licensing regimes to assist it in designing an effective system. The Working Group also recommends that the Somali Government provide for the collection and dissemination of information about the activities of PMSCs operating in the country. The Working Group urges the Federal Government to ensure that initiatives taken to develop legal regimes or establish institutions include the involvement and participation of regional administrations.

73. The Working Group further notes that the principal responsibility for the security of the Somali people lies with the Government and cautions that the outsourcing of security functions to private actors should not distract from the essential work of building the official Somali security sector.

74. With regard to companies providing military training, the Working Group notes that the particularly sensitive nature of these assignments underscores the need for strict regulation. These types of operations should be brought within the ambit of any regulatory scheme developed by the National Commission. At the very least, the contractual arrangements for such training should include strict vetting and training requirements (e.g. to maintain a certain distance from the front line or area of hostilities), as well as rules to ensure that trainers and mentors do not participate in kinetic operations.

75. As detailed by the Monitoring Group, the PMSC Saracen provided military training and equipment to the Puntland Maritime Police Force (PMPF) in violation of Security Council regulations. There are allegations of human rights abuses of trainees by Saracen, some of which have been substantiated by the Monitoring Group. While the bulk of Saracen's training activities appear to have been concluded, foreign contractors continue to support the PMPF in various capacities, without any clear accountability structure. Moreover, since the PMPF operates outside the legal framework for security forces, there is a risk – which has been borne out by several incidents reported to the Working Group – that it will be used for purposes other than its anti-piracy mission. The Working Group urges the authorities to integrate the force into the agreed Somali national security structure and ensure that it is used strictly for the purposes for which it is intended. Any PMSC employees providing training to the PMPF should be subject to regulation and oversight by the appropriate authorities.

76. The Working Group welcomes the United Nations' efforts to ensure that private security providers have a clean human rights record and encourages all elements of the United Nations to take a proactive approach to this issue. The Working Group takes note of the Human Rights Due Diligence Policy (HRDDP) endorsed by the Secretary-General in July 2011 which constitutes a landmark measure to ensure that the United Nations lives up to its own normative standards by guaranteeing that its support to national and regional security forces is consistent with the organization's purposes and principles in the Charter and its obligations under international law to respect, promote and encourage respect for international humanitarian, human rights and refugee law. The Working Group recommends that the United Nations also consider applying the principles contained in the HRDDP when hiring private security contractors.

77. With regard to maritime security companies, the Working Group was provided with information about circumstances suggestive of unreported human rights violations. The Working Group is of the view that binding international regulations should be developed to regulate the use of armed guards on board ships.

78. In the light of the above observations, the Working Group recommends that the Federal Government of Somalia:

(a) Require PMSCs to obtain an operating license, valid for a limited and renewable period or for specific services, or individuals to register or obtain a license in order to carry out military or security services for PMSCs;

(b) Allocate adequate resources and trained personnel to handle authorizations properly and timely;

(c) Take into account, within available means, the past conduct of all PMSCs and their personnel, which includes ensuring that all PMSCs have no reliably attested record of involvement in serious crime (including organized crime, violent crime, sexual offences, violations of international humanitarian law, bribery and corruption);

(d) Obtain assurance that all PMSC personnel are sufficiently trained, both prior to any deployment and on an ongoing basis, to respect relevant national law, international humanitarian law and human rights law;

(e) Ensure that the contractual arrangements with PMSCs providing military training include strict vetting and training requirements, as well as rules to ensure that trainers and mentors do not participate in kinetic operations;

(f) Provide for the collection and dissemination of information about the activities of PMSCs operating in the country;

(g) Have in place appropriate rules on the use of force and firearms by PMSCs and their personnel, such as:

- using force and firearms only when necessary in self-defence or defence of third persons,
- immediately reporting to and cooperation with competent authorities in the case of use of force and firearms;

(h) Monitor compliance with the terms of the authorization, in particular:

- (i) establish or designate an adequately resourced monitoring authority;

- (ii) ensure that the civilian population is informed about the rules of conduct by which PMSCs have to abide and available complaint mechanisms;
- (iii) requesting local authorities to report on misconduct by PMSCs or their personnel;
- (iv) investigate reports of wrongdoing;
- (i) Impose administrative measures, if it is determined that a PMSC has operated without or in violation of an authorization;
- (j) Consider establishing corporate criminal responsibility for crimes committed by a PMSC, consistent with the Somalia national legal system;
- (k) Strengthen its control over the security sector and ensure that the PMPF is integrated into the national Somali forces;
- (l) Consider ratifying the International Convention against the Recruitment, Use, Financing and Training of Mercenaries and the Organization of African Unity Convention for the Elimination of Mercenaries in Africa.

79. The Working Group recommends that the international community ensure adequate oversight of all PMSCs contracted, in particular by making regular background checks of PMSCs hired, by screening PMSCs' records, and regarding any human rights violations, by practising transparent bidding processes and ensuring transparency by publicly releasing the operative clauses of contracts with PMSCs.

80. The Working Group further recommends that binding international regulations should be developed to regulate the use of armed guards on board ships.
