



General Assembly

Distr.: General
2 September 2010

English/French/Spanish only

Human Rights Council

Fifteenth session

Agenda item 3

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

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

Addendum

Communications to and from Governments*

* The present report is circulated as received.

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I. Introduction

1. This report contains a comprehensive account of communications sent to Governments between 16 December 2008 and 25 July 2010, along with replies received between 1 February 2009 and 25 August 2010. It also contains responses received to communications that were sent in earlier years.
2. A total of 19 communications were sent to 15 different countries. However, a number of these communications addresses one single event involving several countries. For example, regarding an alleged plot against the democratically elected President of Bolivia and involving mercenaries, the Working Group sent letters to the Governments of Bolivia, Croatia, Hungary, Romania and Ireland, whose nationals were allegedly involved in the incident. Regarding the participation of mercenaries in the operations of the security forces of Guinea in September 2009 against peaceful demonstrators, the Working Group addressed letters to Israel and South Africa regarding the alleged involvement of their nationals in these operations.
3. The Working Group received 9 replies in response to its 19 communications. The Working Group thanks all the governments that have provided a reply for their cooperation with its mandate given by the General Assembly and the Human Rights Council and invite all others to do so without further delay.
4. The present document is submitted as an addendum to the Working Group report to the tenth session of the Human Rights Council.

II. Communications to and from Governments

Afghanistan

5. On **17 July 2009**, the Working Group, together with the Special Rapporteur on extrajudicial, summary and or arbitrary executions sent a communication to the government of Afghanistan concerning reports of a shooting incident that occurred on 29 June 2009 between armed Afghan Special Guards (also referred to by the local population as “Afghan Special Forces”) and Afghan National Police (ANP) inside the Attorney General’s office in Kandahar, Afghanistan. It is alleged that the Afghan Special Guards went to the Attorney's General office to forcefully and unconditionally demand the release of a suspect, who had been arrested by the ANP in connection with a criminal offence for theft of a motor vehicle. An argument reportedly erupted inside the Attorney General's office and that the Afghan Special Guards opened fire and killed the Chief of Police, the Chief of Crime and four other ANP officers. There are unconfirmed reports of civilian casualties.

Observations of the Working Group

6. The Working Group regrets that the Government of Afghanistan did not respond to this communication. In light of the recent mission carried out by the Working Group in Afghanistan and the cooperation demonstrated by the Government of Afghanistan during this visit, the Working Group would like to encourage the Government to ensure follow-up cooperation with its mandate given by the General Assembly and the Human Rights Council.

Australia

7. On **11 February 2010**, the Working Group sent a communication to the Government of Australia concerning an Australian-based company operating in Papua New Guinea.

8. According to the information received, fourteen Fijian private security personnel have allegedly been hired by Allied Gold Limited, an Australian-based security company operating in Papua New Guinea, to provide security at the Simberi gold mine in Port Moresby, Papua New Guinea's northern island province of New Ireland. The security guards have reportedly been recruited since early January 2010 at the mine site following disputes with local landowners. They are reportedly in possession of firearms.

9. Similar letters have been sent to Fiji and Papua New Guinea (see below).

Observations of the Working Group

10. The Working Group did not receive a reply to its communication. The Working Group regrets that the Government of Australia failed to cooperate with its mandate given by the General Assembly and the Human Rights Council invites the Government to reply without further delay.

Bolivia

11. El **27 de abril de 2009**, el Grupo de Trabajo envió una carta al Gobierno de Bolivia tras haber recibido alegaciones sobre un grupo que presuntamente planeaba un atentado contra el presidente democráticamente elegido y otros altos funcionarios del Gobierno de Bolivia. El 16 de abril de 2009, la policía Boliviana lanzó una operación en la ciudad de Santa Cruz contra este grupo. Durante una confrontación armada con la policía, tres individuos fueron muertos, y dos están actualmente detenidos.

12. Los informes indicaron que dos miembros del grupo eran veteranos de las guerras de los Balcanes durante los años 90, mientras que los tres restantes serían un irlandés, un rumano y un húngaro. Las fuentes divulgaron que el Sr. Magyarosi Arpak de Rumania, el Sr. Michael Martin Dwyer de Irlanda y el Sr. Eduardo Rosa Flores, un ciudadano húngaro con orígenes bolivianos, fueron muertos durante la operación. Se alega que este último era el líder del grupo y había luchado en la guerra para la independencia croata en los años 90, donde él lideró una organización paramilitar. Se identificaron los dos hombres arrestados como Elot Toazo, un especialista en computadoras húngaro y veterano de la guerra croata, y Mario Francisco Tasik Astorga.

Respuesta del Gobierno de Bolivia de fecha 29 de abril 2009

13. El Ministerio de Relaciones Exteriores saluda muy atentamente a la Honorable Oficina del Alto Comisionado de Naciones Unidas para los Derechos Humanos - Grupo de Trabajo de las Naciones Unidas sobre la utilización de mercenarios como instrumento para la violación de los derechos humanos y para impedir el ejercicio del derecho de los pueblos a su autodeterminación y tiene el honor de expresar su complacencia por la preocupación recientemente manifestada acerca de que un grupo de cinco personas incluidos extranjeros, estuviera involucrado en un complot contra el Gobierno boliviano.

14. Al respecto, cumple informar que el Gobierno del Presidente Evo Morales Ayma realizará todas las acciones necesarias para que el Ministerio Público y las instancias pertinentes realicen una investigación exhaustiva y lleven a cabo el debido proceso relativo a los hechos mencionados y a la presencia de mercenarios en Bolivia. Asimismo, que

proporcionará todas las facilidades a la Oficina del Alto Comisionado de Derechos Humanos de las Naciones Unidas y al Grupo de Trabajo sobre utilización de mercenarios para que, en cumplimiento de su mandato, monitoree y acompañe la investigación de este incidente y así se garantice el esclarecimiento pleno de estos hechos.

Comentarios

15 El Grupo de Trabajo quisiera agradecer al Gobierno de Bolivia por la información que ha proporcionado relativa a esto hecho. El Grupo de Trabajo solicita que se le mantenga informando del progreso de las investigaciones y procesos que adelanta el Gobierno con relación a esto hecho.

Colombia

16. El 17 de noviembre de 2009, el Grupo de Trabajo envió una carta al Gobierno de Colombia tras haber recibido alegaciones en relación con el “Acuerdo complementario para la Cooperación y Asistencia Técnica en Defensa y Seguridad entre los Gobiernos de la República de Colombia y de los Estados Unidos de América” firmado el pasado 30 de octubre, en particular, los temas que se refieren a los alcances del mandato, referidos a los contratistas y empleados de contratistas definidos en el artículo I, literales d y e, del citado Acuerdo.

17. Según las informaciones recibidas, el acuerdo otorga permiso a los EE.UU. de emplazar efectivos militares y contratistas, quienes operarán en siete bases militares colombianas. Al parecer, el Acuerdo establece una limitación al ejercicio efectivo de la jurisdicción judicial de Colombia sobre los contratistas militares y de seguridad privados de EE.UU mediante la concesión de la inmunidad diplomática, conforme al artículo VIII del Acuerdo.

18. De la misma forma, el Acuerdo no especifica ninguna línea de supervisión y control por las autoridades colombianas sobre las empresas militares y de seguridad privadas contratadas por los EE.UU. para operar en territorio colombiano.

Comentarios

19. El Grupo de Trabajo no ha recibido ninguna respuesta del Gobierno de Colombia en referencia a esta alegación. El Grupo de Trabajo envió un recordatorio en relación con esta denuncia el 30 de abril 2010 y se lamenta que el Gobierno de Colombia no haya cooperado con el mandato otorgado al Grupo de Trabajo por la Asamblea General y el Consejo de Derechos Humanos.

Croatia

20. On 4 May 2009, the Working Group sent a communication to the government of Croatia regarding the alleged involvement of two citizens of Croatia in the alleged plot against the democratically elected President and other senior officials from the government of Bolivia (see Bolivia). One of the individual killed in the Bolivian police operation was a Bolivian-Croatian national reportedly with Hungarian and Spanish origins and allegedly the leader of the plot. He reportedly moved to Croatia in 1992 where he fought and led the Croatian forces' First International Platoon (Prvi Internacionalni Vod, known as PIV). At the end of the war, he was reportedly given Croatian citizenship.

21. Among the two men arrested during the operation, one was reported to have been identified as a Bolivian army veteran of Croatian descent who is also believed to have fought along the Croatian forces in the war.

Reply from the Government of Croatia dated 6 July 2009

22. The Government replied that Mr. Eduardo Flores, son of Jorge, born on 31 March 1960, was granted Croatian citizenship and issued an identification card and passport valid until 3 August 2002; the validity of the aforementioned document has not been extended. Mr. Mario Tadić was granted Croatian citizenship on 20 August 2002 and is in possession of an identification card valid until 2010 and a passport valid until 7 August 2016.

23. According to the surveys carried out, no information of any kind has been obtained about their possible criminal activity or connection to any criminal groups or individuals. Likewise, no information as regard use, recruiting, financing and training of mercenaries in the republic of Croatia for the purposes of overthrowing governments of any country has been discovered.

Observations of the Working Group

24. The Working Group would like to thank the Government of Croatia for the information it provided concerning the alleged involvement of two citizens of Croatia in the reported plot against the Bolivian Government.

Fiji

25. On 5 February 2010, the Working Group sent a communication to the Government of Fiji concerning the alleged presence of Fijian private security guards in Papua New Guinea.

26. According to the information received, fourteen alleged Fijian private security personnel are providing security at the Simberi gold mine in Port Moresby, Papua New Guinea's northern island province of New Ireland since the first week of January 2010. They are reportedly in possession of firearms. The Fijian guards are alleged to have been hired by Allied Gold Limited, an Australian-based company operating in Papua New Guinea, to provide security at the mine site following disputes with local landowners.

Observations of the Working Group

27. The Working Group did not receive a reply to its communication. The Working Group regrets that the Government of Fiji failed to cooperate with its mandate given by the General Assembly and the Human Rights Council and invites the Government to reply without further delay.

Guinea

28. Le 6 octobre 2009, conjointement avec le Président Rapporteur du Groupe de Travail sur la détention arbitraire, le Président du Groupe de Travail sur les Disparitions Forcées ou Involontaires, le Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression, le Rapporteur spécial sur la torture et autres peines ou traitements cruels, inhumains ou dégradants, le Rapporteur spécial sur les exécutions extrajudiciaires, sommaires ou arbitraires, et la Rapporteuse spéciale chargée de la question de la violence contre les femmes, y compris ses causes et ses conséquences, le Groupe de Travail sur l'utilisation des mercenaires a envoyé une communication au gouvernement

guinéen concernant les opérations de forces de sécurité guinéennes au cours des journées du 28 et 29 septembre 2009 à Conakry.

29. Selon les informations reçues, le 28 septembre 2009, près de 50 000 personnes manifestant contre une éventuelle candidature du Capitaine Moussa Dadis Camara aux élections présidentielles de janvier 2010 auraient défilé dans les rues et se seraient ensuite regroupées dans un stade de Conakry à la mi-journée. Les forces de sécurité seraient alors intervenues afin d'évacuer le stade en utilisant des gaz lacrymogènes ainsi que leurs armes à feu. Des membres des forces de sécurité auraient tiré en l'air mais également ouvert le feu en direction de la foule. Certaines sources font état de la participation de mercenaires d'origine du Liberia parmi les forces de sécurité lors la répression de la manifestation. Plus de 150 personnes auraient été tuées et plus d'un millier blessées. Plusieurs corps de manifestants porteraient des traces de blessures multiples, causées par arme à feu et par des armes blanches, notamment des couteaux et baïonnettes.

Observations of the Working Group

30. Le Gouvernement guinéen n'a pas transmis de réponse à cette communication jointe. Le Groupe de travail regrette que le gouvernement n'ait pas coopéré avec son mandat, tel qu'établi par le Conseil des Droits de l'Homme et l'Assemblée Générale et l'invite à répondre dans les plus brefs délais.

Hungary

31. On 30 April 2009, the Working Group sent a communication to Hungary regarding the alleged involvement of a Hungarian citizen in the alleged plot against the democratically elected President and other senior officials from the government of Bolivia (see Bolivia). One of the individual killed in the Bolivian police operation was a Hungarian citizen of Bolivian origins. It is alleged that the individual was the leader of the group and that he had fought in the war for Croatian independence in the 1990's where he commanded a paramilitary organization. Another Hungarian citizen alleged to be a veteran of the Croatian war was reportedly among the two individuals that were being detained by the Bolivian authorities following the police operation.

Reply from the Government of Hungary dated 15 May 2009

32. In its letter, the Government of Hungary recalled that in accordance with Section 145 of Article 4 of the Criminal Code (Act IV of 1978 on the Criminal Code – hereinafter: "Criminal Code") on the punishment of illicit recruitment, Paragraph 1 includes explicitly the sanction of recruitment while Paragraph 2 refers to the sanction of activities of mercenary. The letter also refers to the definition of mercenary as per paragraph 2 of Article 47 of the Optional Protocol I. to the Geneva Conventions and to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries. The letter emphasized that both Hungary and Bolivia are not party to the 'Mercenaries Convention'. However, the Government noted that according to the above mentioned Paragraph 2 of Section 1, those who are involved in conspiring against the state, are defined as mercenaries.

33. The Government underlined that it did not consider the actions committed by the two Hungarian citizens as acts under the effect of either the regulations of the 'Mercenary Convention' or of those of the 'Protocol', since several elements of the bearings of the case are lacking. Concerning the peaceful circumstances in Bolivia, the country is touched upon neither international armed conflict nor non-international armed conflict. It also referred to the notion of 'Private gain' as a motivation, which is included in the definition of mercenary and stated that according to the Government knowledge and the information

provided by Bolivia, the two Hungarian citizens did not seek for private gains in any Bolivian actions.

34. The Government stressed that Eduardo Rózsa Flores, who died in a police raid, had also Bolivian citizenship which excludes the possibility to consider him mercenary. Finally, the Government underlined that the trial procedure must be based on the Hungarian Criminal Code in Hungary and according to the Hungarian Criminal Code, the legal elements of the bearings of the case were not fulfilled in the cases concerning the Hungarian citizens due to the fact that armed conflicts do not exist in Bolivia. Moreover the Hungarian citizens, the one who died and the other who is in detention, were not members of any foreign armed force operating within organizational framework.

Observations of the Working Group

35. The Working Group would like to thank the Government of Hungary for the information it provided concerning the above-mentioned allegation.

Ireland

36. On 30 April 2009, the Working Group sent a communication to Ireland regarding the alleged involvement of an Irish citizen in the alleged plot against the democratically elected President and other senior officials from the government of Bolivia (see Bolivia). One of the individual killed in the Bolivian police operation was a citizen of Ireland.

Reply from the Government of Ireland dated 9 July 2009

37. The facts surrounding the incident in which Mr. Michael Dwyer, an Irish citizen, was killed in the course of a police raid in Santa Cruz on 16 April 2009 are the subject of an investigation by the Bolivian authorities. The Irish government has offered Irish police assistance in the investigation. The Bolivian authorities have undertaken to transmit the findings of their investigation once this is completed.

38. Mr. Michael Dwyer has been positively identified as an Irish citizen, born on 15 June 1984 in Galway. The Irish police have confirmed that Mr. Dwyer had no criminal record in Ireland. Mr. Dwyer was not a member of the Irish Defense Forces.

39. Ireland has indicated to the Bolivian authorities its willingness to assist with any investigation into the incident resulting in Mr. Dwyer's death including, if established, an international investigation.

40. Ireland is also willing to provide any further appropriate information or assistance to the Working Group related to this matter.

Observations of the Working Group

41. The Working Group would like to thank the Government of Ireland for the information it provided regarding this communication.

Israel

42. On 9 December 2009, the Working Group sent a communication to the Government of Israel concerning reports of presence of Israeli mercenaries in Guinea.

43. According to the information received, a group of two to three thousands mostly ethnic forestiers is being trained by foreign mercenaries in a training camp in southern Guinea. Several sources referred to the presence of Israeli nationals among the mercenaries.

The spokesperson of the ‘Conseil national pour la Démocratie et le Développement’ (CNDD) acknowledged in an interview that Israeli nationals were training the CNDD supporters.

44. On **14 May 2009**, the Working Group sent a Follow up to a communication sent by the Working Group on 17 October 2008, concerning allegations that Israeli private security companies are being used to maintain the Wall and its associated regime, and Israeli settlements inside the Palestinian territories. This letter follows a response from the Israeli authorities dated 29 October 2008 requesting clarification on the Working Group’s reference to the “Wall”. The Working group replied that in all occurrences, reference is made to the concrete/barbed-wire/electrified fence/dirt mounds/other materials structure in its entirety, as described by the International Court of Justice as the “Wall”, and by the United Nations Secretary-General as the “barrier”.

Reply from the Government of Israel dated 26 April 2010

45. The Government of Israel responded that checkpoints management personnel comprise of civil service employees and Private security Companies (PSCs). It stated that security personnel undergo training, including on security examination and culture of Islam, approved and supervised by authorities. In addition, Israeli authorities requested that any further communication refers to ‘barrier’ and not ‘wall’.

Observations of the Working Group

46. The Working Group thanks the Government of Israel for its response to its communication dated 14 May 2009. It regrets that it did not reply to its communication related to the alleged presence of Israeli mercenaries in Guinea and invites the Government to reply with no further delay.

Papua New Guinea

47. On 5 February 2010, the Working Group sent a communication to the Government of Papua New Guinea concerning the presence of Fijian private security guards in Papua New Guinea.

48. According to the information received, fourteen alleged Fijian private security personnel are providing security at the Simberi gold mine in Port Moresby, Papua New Guinea’s northern island province of New Ireland since the first week of January 2010. They are reportedly in possession of firearms. The Fijian guards are alleged to have been hired by Allied Gold Limited, an Australian-based company operating in Papua New Guinea, to provide security at the mine site following disputes with local landowners.

Observations of the Working Group

49. The Working Group did not receive a reply to its communication. The Working Group regrets that the Government of Papua New Guinea has failed to cooperate with its mandate given by the General Assembly and the Human Rights Council and invites the Government to reply without further delay.

Peru

50. El **15 de mayo de 2009**, el Grupo de Trabajo junto con la Relatora Especial sobre la situación de los defensores de los derechos humanos envió una carta al Gobierno de Perú tras haber recibido alegaciones sobre amenazas de muerte y amenazas contra la integridad física de personas de la organización GRUFIDES.

51. Por medio de carta enviada el 11 de abril de 2007 hemos señalado a la atención urgente del Gobierno de Su Excelencia que habíamos recibido alegaciones de amenazas de muerte y amenazas contra la integridad física dirigidas contra la Sra. Mirtha Vásquez Chuquilin, Directora de la organización no gubernamental Grupo de Formación e Intervención para el Desarrollo Sostenible 'GRUFIDES', y el Padre Marco Arana Zegarra, fundador de dicha institución. Ambos recibieron amenazas por separado en sus respectivos domicilios el 30 de agosto de 2006.

52. Queremos reiterar nuestra profunda preocupación por la seguridad del personal del GRUFIDES, porque se teme que las alegaciones de amenazas directas o disfrazadas de agentes de empresas de seguridad privadas pueden estar relacionadas con el trabajo en defensa de derechos humanos y de protección del medio ambiente que llevan a cabo en la Región peruana de Cajamarca.

Comentarios

53. El Grupo de Trabajo no ha recibido ninguna respuesta del Gobierno de Perú en referencia a esta alegación. El Grupo de Trabajo lamenta que el Gobierno de Perú no haya cooperado con el mandato otorgado al Grupo de Trabajo por la Asamblea General y el Consejo de Derechos Humanos.

Romania

54. On **30 April 2009**, the Working Group sent a communication to the Government of Romania regarding the alleged involvement of a Romanian citizen in the alleged plot against the democratically elected President and other senior officials from the government of Bolivia (see Bolivia). One of the individual killed in the Bolivian police operation was a citizen of Romania.

Reply from the Government of Romania dated 9 July 2009

55. The Government of Romania confirmed that Mr. Magyarosi Arpak, a citizen of Romania, was killed in Bolivia on 16 April 2009. The Government was however not in a position to confirm the accuracy of the facts regarding the operation launched by the Bolivian police.

56. The Romanian authorities stated that they had not carried out investigation in relation to this event, because a) No official complaint has been registered in connection to it; and b) An ex-officio referral did not seem appropriate, since on the one hand, the fact that the citizen deceased excludes the possibility to apply the Romanian criminal law, based on the criminal law principle of personality, and on the other hand, the authorities did not consider timely initiating a criminal procedure, based on the criminal law principle of reality, as a juridical commission of the Bolivian Congress is currently investigating the case. The Romanian authorities are looking forward to learning the conclusions of the commission, which will be made public after the ends of the investigations.

57. The Romanian authorities confirmed that Mr. Magyarosi Arpak, a citizen of Romania, was killed in Bolivia on 16 April this year but that the authorities had no elements to confirm the accuracy of the facts as presented by the Bolivian authorities.

Observations of the Working Group

58. The Working Group thanks the Government of Romania for its response to its communication.

South Africa

59. On 9 December 2009, the Working Group sent a communication to the Government of South Africa concerning reports of presence of South African mercenaries in Guinea.

60. According to the information received, a group of two to three thousands Guinean from the Guerze and the related forestier tribes is being trained by foreign mercenaries in a training camp in southern Guinea. Several sources stated that among those mercenaries were South African nationals that were recruited to provide protection and security and military training to the Guinean Government led by Captain Moussa Dadis Camara. The South African mercenaries appear to be former employees of the private military company Executive Outcomes and are allegedly operating under the leadership of Mr. Daniel Oosthuizen, a South African police veteran. They are reportedly employed by the Dubai-based company Omega Strategic Services.

Reply from the Government of Romania dated 11 March 2010

61. The Government of South Africa informed that the provision of training to soldiers, police or any formation in Guinea or elsewhere would require prior authorization from the South African National Conventional Arms Control Committee (NCACC), which is overseen by the Department of Defence and Military Veterans. In this instance the NCACC did not receive any such request nor did it grant authorization under the Regulation of the Foreign Military Assistance Act, No. 15 of 1998 or the Prohibition of Mercenary Activities and Regulation of Certain Activities in Country of Armed Conflict Act, no.27 of 2006 for any South African person to provide any training service to soldiers, police, or any other formation in Guinea.

62. The Government conveyed that its position was that all bandits involved in unlawful acts of undermining the rule of law and disregarding the laws within a certain country's jurisdiction should be apprehended and be prosecuted consistent with the laws of that country.

Observations of the Working Group

63. The Working Group thanks the Government of South Africa for its response to its communication and invites the authorities to share any further relevant information in this regard.

United States of America

64. On **17 July 2009**, the Working Group, together with the Special Rapporteur on extrajudicial, summary and or arbitrary executions sent a communication to the government of the United States of America (U.S.) concerning reports of a shooting incident that occurred on 29 June 2009, between armed Afghan Special Guards (also referred to by the local population as "Afghan Special Forces") and Afghan National Police (ANP) inside the Attorney General's office in Kandahar, Afghanistan (see above).

65. While the precise identity and chain of command of the Afghan Special Guards is unclear, according to information received, it is an Afghan private entity operating as a security company. Information received indicates that it may be working with, or led by, American Special Forces in Afghanistan, or armed international intelligence services.

Reply from the Government of the United States dated 23 April 2010

66. By letter dated **23 April 2010**, the Government of the United States replied that all questions relating to this incident should be referred to the Government of Afghanistan

67. On **12 July 2010**, the Working Group, together with the Special Rapporteur on extrajudicial, summary and or arbitrary executions, sent a follow-up letter in response to the reply dated 23 April 2010 of its communication of 17 July 2009. The Rapporteurs noted that the reply failed to address the crux of the communication, which seeks information about the connection, if any, between the Afghan Special Guards involved in the shooting of the six Afghan National Police officers and any U.S. force, agency or organization. They added that while the primary responsibility to investigate the incident and prosecute those responsible rests with the Government of Afghanistan, and while they were waiting for a response from the Afghan Government on this issue, they requested the Government to clarify the precise identity and chain of command regarding the Afghan Special Guards. The letter recalled that the information received indicated that Afghan Special Guards are an Afghan private entity operating as a security company working under the authority of the American Special Forces in Afghanistan.

68. On **7 January 2010**, the Working Group sent a communication to the government of the United States of America (U.S.) following Judge Ricardo M. Urbina of Federal District Court for the District of Columbia's decision on 31 December 2009 to dismiss an indictment against five security guards of Blackwater, the private security firm charged with voluntary manslaughter and firearms violations in connection with a shooting during which 17 people were killed and a further 20 injured on 16 September 2007 in Baghdad.

69. The Working Group had sent an allegation letter on 25 September 2007 regarding this incident to which the US Government responded on 21 July 2008. In its response, the United States Government said that the incident was subject of a thorough investigation by the Federal Bureau of Investigation. It also described the numerous steps the U.S. Government had taken since the incident to strengthen oversight and accountability of private security companies working on its behalf in Iraq.

70. While stressing its respect for the independence of the judiciary and the requirements for due process, the Working Group highlighted its concerns that this decision may lead to a situation where no one would be held accountable for what could be unlawful killings.

Reply from the Government of the United States dated 23 April 2010

71. The U.S. Government stated in its reply that it deeply regrets the suffering and loss of life caused by the Nissour square shooting on 16 September 2007 and informed that it had taken steps to hold legally accountable the individuals allegedly responsible. It added that the U.S. Department of Justice has filed charges against five Blackwater Worldwide security contractors. On 31 December 2009, a federal judge dismissed the indictment against the defendants arguing the mishandling of certain evidence by prosecutors. The Department of Justice filed its notice of appeal with the court on 29 January 2010 and the appeal is pending. The Government added that the prosecution of these five individuals was one of the many steps taken by the U.S. Government to ensure effective oversight and accountability for private security companies working in Iraq.

Observations of the Working Group

72. The Working Group thanks the Government of the United States for its response to its communications and invites the authorities to provide a comprehensive reply to its follow-up letter dated 12 July 2010 regarding the link, if any, between the Afghan Special Guards involved in the shooting of the six Afghan National Police officers and any U.S.

force, agency or organization. It also recalls its pending allegation letter dated 11 May 2007 regarding the case of Mr. Posada Carilles and notes that in the U.S. Government's reply dated 14 May 2010 to the Working Group's mission report, the Government said that it regretted the delay in responding to this communication and informed that the Government was working on a response. The Working Group reiterates its interest in receiving this response.
