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**PROMOTION ET PROTECTION DE TOUS LES DROITS DE L'HOMME,
CIVILS, POLITIQUES, ÉCONOMIQUES, SOCIAUX ET CULTURELS,
Y COMPRIS LE DROIT AU DÉVELOPPEMENT**

**Note verbale datée du 26 octobre 2007, adressée au Haut-Commissariat
des Nations Unies aux droits de l'homme
par la Mission permanente du Pérou**

La Mission permanente du Pérou auprès de l'Office des Nations Unies et des autres organisations internationales à Genève présente ses compliments au Haut-Commissariat des Nations Unies aux droits de l'homme – et en particulier au Secrétariat du Conseil des droits de l'homme – et a l'honneur de lui faire tenir ci-joint la réponse* du Gouvernement péruvien au sujet du rapport établi par le Groupe de travail sur l'utilisation de mercenaires comme moyen de violer les droits de l'homme et d'empêcher l'exercice du droit des peuples à disposer d'eux-mêmes à la suite de son séjour au Pérou en janvier et février derniers, en le priant de bien vouloir la faire distribuer en tant que document du Conseil.

* Reproduite en annexe telle qu'elle a été reçue et en anglais.

Annex

RESPONSE OF THE GOVERNMENT OF PERU TO THE REPORT OF THE WORKING GROUP ON THE QUESTION OF THE USE OF MERCENARIES AS A MEANS OF VIOLATING HUMAN RIGHTS AND IMPEDING THE EXERCISE OF THE RIGHT OF PEOPLES TO SELF-DETERMINATION

First, the Government of Peru wishes to express its appreciation for the initial report presented by the Working Group on the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination (hereinafter referred to as the Working Group) on 25 June 2007, and particularly the conclusions and recommendations prepared pursuant to the visit that took place between 30 January and 2 February 2007, which the Government of Peru welcomes with interest.

The visit, which took place in the framework of an open invitation extended by the Government of Peru to the special procedures in 2002, provided the opportunity for the Government to reiterate its commitment to the universal system of promotion and protection of human rights, and for the relevant authorities and the representatives of the Working Group¹ to engage in a fruitful dialogue, particularly on those issues that may contribute to improving the observance of human rights, since one component of the Working Group's mandate is "to study and identify emerging issues, manifestations and trends regarding mercenaries or mercenary-related activities and their impact on human rights, particularly on the right of peoples to self-determination".²

The content of the report represents a valuable contribution to the understanding of new challenges that may arise in relation to this issue. In this context, the Government of Peru wishes to make the following comments, offered in a constructive spirit, in respect of the report:

¹ At the national level, the workshops were attended by the Deputy Minister for Foreign Affairs, Gonzalo Gutiérrez Reinell; the Deputy Minister of Defense, Fabián Novak; the then Minister of the Interior, Pilar Mazzetti; the Minister of Labour, Susana Pinilla; the Minister of Justice, Maria Zavala Valladares; the President of the Supreme Court of Justice, Francisco Távara Cordova; the Senior Procurator of the First Senior Criminal Prosecutor's Office, Juan Coraje Carranza; the President of the Justice and Human Rights Committee of the Congress of the Republic, Raúl Castro Stagnaro; the President of the Congress Labour Committee, Aldo Estrada Choque; the then Secretary for Peruvian Communities Abroad within the Ministry of Foreign Affairs, Jorge Lázaro; the deputy Ombudsman responsible for human rights and persons with disabilities, Eduardo Vega Luna; and the Executive Secretary of the National Human Rights Council, Luis Alberto Salgado Tantte. In addition, there were meetings with the dean of the Lima bar association, with the former United Nations rapporteur of the International Convention against the Use of Mercenaries, Enrique Bernales Ballasteros, and with representatives of various non-governmental organizations (Human Rights Coordinating Body, the Human Rights Association (APRODEH) and the Legal Defence Institute) as well as representatives of victims and the companies DEFION Internacional and Wackenhut Peru.

² Resolution 2005/2 of the Commission on Human Rights "The use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination".

1. With regard to the chapter on military recruitment and training of Peruvian citizens by private security companies to provide services in Iraq and other conflict zones, the Government of Peru shares the Working Group's concerns with regard to the activities that these people undertake in Iraq and Afghanistan in circumstances that put their lives at risk and do not fully respect their human rights. The Government of Peru regrets that this is occurring, despite the efforts it has made to avoid this type of situation.

In this regard, we wish to outline some of the measures undertaken by the Government, as a direct result of the Working Group's visit, with a view to addressing this type of situation. One of the first steps was Peru's accession to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, through Supreme Decree No. 008-2007-RE. The instrument of ratification was deposited at United Nations headquarters on 23 March 2007. This is a clear sign of the continued commitment of the Government of Peru not only to combat such activities, but also to safeguard and maintain public security and law and order, in accordance with domestic and international law. In so doing, Peru became the fifth country from Latin America and the Caribbean and the twenty-ninth State worldwide to ratify that instrument.

In addition, measures undertaken at the domestic level to adapt Peruvian legislation to that Convention should be highlighted. The Justice and Human Rights Commission of the Congress of the Republic is considering a draft law against the recruitment, use, financing and training of mercenaries. This draft law prohibits employment contracts or civilian contracts aimed at providing security or specialized war services or any other type of collaboration in areas of armed conflict. It also adds a definition of the offence of mercenary activity and the recruitment of mercenaries to the Criminal Code.

These activities are in addition to the previous legislative initiatives introduced by the Government to regulate the activities of private security companies, in particular the adoption in 2006 of Act No. 28879 on private security services, whose enacting regulations are currently being drafted, the General Labour Act No. 28806 and Act No. 28950 on trafficking in persons and the illicit trafficking of migrants.

2. Below are a number of concerns that arise with regard to the activities, operations, functioning and control of private security companies in Peru.

Resolution 2005/2 of the then Commission on Human Rights very clearly sets out the mandate of the Working Group, whose activities will focus on five principal goals:

(a) To elaborate and present concrete proposals on possible new standards, general guidelines or basic principles encouraging the further protection of human rights, in particular the right of peoples to self-determination, while facing current and emergent threats posed by mercenaries or mercenary-related activities;

(b) To seek opinions and contributions from Governments and intergovernmental and non-governmental organizations on questions relating to its mandate;

(c) To monitor mercenaries and mercenary-related activities in all their forms and manifestations in different parts of the world;

(d) To study and identify emerging issues, manifestations and trends regarding mercenaries or mercenary-related activities and their impact on human rights, particularly on the right of peoples to self-determination;

(e) To monitor and study the effects of the activities of private companies offering military assistance, consultancy and security services on the international market on the enjoyment of human rights, particularly the right of peoples to self-determination, and to prepare draft international basic principles that encourage respect for human rights on the part of those companies in their activities.

The work carried out by the majority of private companies in Peru and municipal security services does not appear to be covered by the remit of the Working Group, especially in the light of the provisions of United Nations General Assembly resolution 61/151 entitled “Use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination”, paragraph 12 of which requests the Working Group to continue the work already done, taking into account the proposal for a new legal definition of a mercenary drafted by the Special Rapporteur in his report to the Commission on Human Rights at its sixtieth session.

In that report, Mr. Enrique Bernales raises the problem of the absence of a comprehensive and unambiguous legal definition of a mercenary. For the purposes of arriving at a definition, Mr. Bernales outlines a series of scenarios, which do not in any way concern the private and municipal security services referred to in the Working Group’s report since there is no mention of criminal activity or activities related to the self-determination of peoples, destabilization of constitutional governments, illicit trafficking, terrorism or human rights violations in general.

The Government of Peru wishes to note that while it appreciates the interest shown by the Working Group in considering the difficult employment conditions of persons providing those services, as well as some of the problems that may occasionally have arisen in respect of other citizens, as previously mentioned it considers that these situations are already adequately monitored by the relevant authorities. In addition, the plan for so-called community patrols has now gone ahead.

3. In the third part of the report concerning the involvement in social conflicts of private security companies that provide protection services to transnational mining or natural resource extraction companies, reference is made to various cases, including the GRUFIDES case, which has already been a source of concern for other human rights mechanisms in both the United Nations and the inter-American system. The Government of Peru has been closely following up these issues, as the Working Group was informed by the Senior Prosecutor of the First Senior Criminal Prosecutor’s Office and other national authorities. It should be noted that, despite not dealing specifically with the issue of mercenaries, the country’s competent authorities readily supplied the requested information as it is an issue that is related to human rights.

Finally, the Government of Peru wishes to stress the constructive nature of the observations being made in this response, which are centred on the philosophy underpinning the institution-building process of the Human Rights Council, one of whose objectives is to avoid the duplication of efforts or any interference in the work of mechanisms involved in the promotion and protection of human rights. On no account does the Government of Peru wish to

undermine the importance of the facts presented by the Working Group in its report; on the contrary, the Government welcomes with satisfaction the interest shown by the Working Group and shares its concern with regard to various incidents that have occurred in our country, which are being dealt with by the relevant authorities.

The comments we have made are intended to avoid misinterpretations, confusion or duplication of efforts, since, as mentioned above, some of the issues are already being addressed by other bodies of the United Nations system with direct competence in these matters.

The Government of Peru wishes to make it clear that cooperation with the various mechanisms of the United Nations system for the promotion and protection of human rights is a component of its foreign policy and, in that respect, it will continue to follow the same approach, which has allowed not only the exchange of experiences and perspectives with international experts, but also a better understanding of the problems in our country and an awareness of the measures that can be taken to prevent any future difficulties and to improve the human rights situation of all Peruvians.

Lastly, the Government of Peru wishes to reiterate its appreciation for the valuable efforts of the Working Group.
