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### **PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL, POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS, INCLUDING THE RIGHT TO DEVELOPMENT**

**Written statement\* submitted by Human Rights Advocates (HRA),  
a non-governmental organization in special consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[18 February 2008]

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\* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

## **Corporate Accountability for Human Rights Violations by Mercenaries And Private Military and Security Companies**

1. Human Rights Advocates submits this statement to address the need for effective mechanisms for holding private military and private security companies (“PMSCs”) accountable for human rights violations committed in the course of their activities.
2. On 19 December 2006, the General Assembly adopted Resolution 61/151 which, inter alia, called on all States to exercise the utmost vigilance against any kind of recruitment, training, hiring, or financing of mercenaries by private companies offering international military consultancy and security services, as well as to impose a specific ban on such companies intervening in armed conflicts or actions to destabilize constitutional regimes.<sup>1</sup>

### PMSCs Are Increasingly Performing Core Military Functions

3. Traditionally, the use of force was regarded as the exclusive province of State-run police and military establishments. Today, many States are outsourcing functions typically performed by militaries—intelligence, security training, armed security, and defensive as well as offensive military activities—to PMSCs.<sup>2</sup> This trend is truly international. Common scenarios involve one country contracting a PMSC, who then recruits employees from a second country, who then perform the services under the contract in a third country.<sup>3</sup>
4. Unlike state-run military and police forces, which are subject to fairly strict regulation by their governments and international laws, PMSCs act with relative impunity in the current international and domestic legal landscape. The result is an increased incidence of human rights abuses and decreased accountability for the actors committing those abuses.
5. International law firmly establishes that States have a duty to protect against non-State human rights abuses within their jurisdiction, and that this duty extends to protection against abuses by business entities.<sup>4</sup> *Thus, even if the State no longer is the principal actor in using force, it must still assume responsibility for the use of force by or against its citizens, human and juridical.*

### Human Rights Violations by PMSCs

6. The broad sphere of activity in which PMSCs engage creates the potential for an equally broad range of human rights abuses, including violations of the right to self-determination, the right to security of persons, the rights of workers, and human trafficking. The victims of these abuses are not only citizens and residents of the conflicted areas, but also the employees and contractors hired by PMSCs.

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<sup>1</sup> General Assembly Resolution 61/151, “Use of mercenaries as means of violating human rights and impeding the exercise of the right of peoples to self-determination,” UN Doc. No. A/Res/61/151. 14 Feb. 2007.

<sup>2</sup> Peter W. Singer, “Outsourcing War,” *Foreign Affairs*, March/April 2005. Also available at [http://www.brookings.edu/articles/2005/0301usdepartmentofdefense\\_singer.aspx](http://www.brookings.edu/articles/2005/0301usdepartmentofdefense_singer.aspx)

<sup>3</sup> C.f., Daniel Bergner, “The Other Army,” *NY Times*, 14 Aug 2005. U.S.-based PMSC Triple Canopy “now has about 1,000 men in Iraq, about 200 of them American and almost all the rest from Chile and Fiji. Its rivals include British firms that draw from the elite units of the U.K. military and outfits that draw from South African veterans of the wars to save apartheid.” Also available at 2005 WLNR 12785746.

<sup>4</sup> Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, Par. 10. UN Doc A/HRC/4/35. 19 Feb 2007.

7. The *right to self-determination* provides all peoples the right to freely determine their political status and to pursue their economic, social and cultural development,<sup>5</sup> and that every State has the duty to respect this right in accordance with the UN Charter. The use of force by PMSCs threatens territorial integrity, and national sovereignty.

8. The *right to security* includes the right to life, and protects persons from being the victims of war crimes, genocide, torture, forced disappearance, forced labor, and other deplorable acts. The highly publicized shootings involving employees of U.S.-based PMSC Blackwater Worldwide in Nisoor Square in Baghdad on September 16, 2007 exemplify the violation of this right. The shootings killed 17 civilians and wounded 24.<sup>6</sup> Following that incident, one UN official remarked that "[w]hen you kill 17 people like that, it's a crime against humanity if it is proven that it was done in cold blood."<sup>7</sup>

9. With regard to the *rights of workers*, the Working Group on Mercenaries has received numerous reports of PMSCs breaching employment contracts by preventing individuals from returning to their native countries after performing their contracts and refusing employees medical treatment for injuries.<sup>8</sup> This conduct violates internationally accepted labor standards, including protection from forced or compulsory labor and dangerous or unhealthy working environments.

10. Additionally, PMSCs are increasingly recruiting "third-party nationals" from countries with particularly high poverty and unemployment to work in conflicted areas.<sup>9</sup> The South African Foreign Affairs Ministry estimates that 10,000 South African nationals, mostly former police officers and soldiers from South Africa have been recruited to work in Iraq.<sup>10</sup> According to the Chilean government, a foreign PMSC has allegedly recruited more than 600 ex-military personnel from Chile to serve as security guards in Iraq since March 2003.<sup>11</sup> This alarming trend, combined with the alleged violations of international labor standards, raises the concern that the recruitment of third-party nationals by PMSCs may comprise human trafficking.<sup>12</sup>

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<sup>5</sup> International Covenant on Economic, Social, and Cultural Rights, Art. 1; International Covenant on Civil and Political Rights, Art. 1.

<sup>6</sup> Human Rights First, "Private Security Contractors at War—Ending the Culture of Impunity," 22. Available at <http://www.humanrightsfirst.info/pdf/08115-usls-psc-final.pdf>

<sup>7</sup> Katarina Kratovac, "U.N.: Shootings by guards might well be war crimes," 10/12/07 Star-Ledger (Newark N.J.) 5, 12 Oct 2007, quoting UN Mission spokesperson Said Arikat. Also available at 2007 WLNR 20096642.

<sup>8</sup> 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, Par. 49 UN Doc. A/HRC/4/42, 7 Feb 2007.

<sup>9</sup> Working Group Report specifically mentions the recruitment of nationals from Chile, Honduras, Peru, Spain, Portugal, Russia, South Africa, and the Philippines. Also see Stephanie Hanes, "Private Security Contractors look to Africa for Recruits," Christian Sci. Monitor 6, 8 Jan 08. ("Over the past few years, in Namibia and Uganda, Mozambique, and Burundi, and scores of other impoverished, war-torn countries, American private security companies have increased efforts to hire former fighters for work in Iraq, Afghanistan, and other global hot spots, according to researchers, human rights activists, and those in the private security industry.") Also available at 2008 WLNR 358499.

<sup>10</sup> Paul Salopek "Casualties of S. Africa's silent war in Iraq—Desperation drives kin of four abducted mercenaries to speak out. An exodus of highly paid guns alarms, embarrasses Pretoria," L.A. Times 10/14/07. Also available at 2007 WLNR 20186213.

<sup>11</sup> 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, UN Doc. No. A/HRC/4/42, 7 Feb 2007.

<sup>12</sup> Article 3, U.N. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime.

### Accountability Mechanisms for Human Rights Violations

11. Given the inherently multi- and transnational nature of mercenary activity, international law may provide a basis for addressing human rights abuses committed by individual employees of PMSCs providing services in territories of armed conflict. For example, Article 47 of Additional Protocol I to the Geneva Conventions (“Additional Protocol”) denies mercenaries the right to combatant or prisoner of war status in armed conflict.<sup>13</sup> Additionally, the International Convention Against the Recruitment, Use, Financing and Training of Mercenaries (“UN Mercenary Convention”) prohibits certain forms of mercenary activity.<sup>14</sup>

12. However, the narrow definitions of “mercenary” in these instruments do not adequately encompass the current scope of PMSC activity.<sup>15</sup> Most notably, both the Additional Protocol and UN Mercenary Convention limit the definition of mercenary to a person participating in armed conflict,<sup>16</sup> thereby excluding those human rights abuses committed by PMSCs providing logistical, intelligence and transport services.

13. The Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights (“the Norms”) provide a good starting point for stronger, rights-based framework for ensuring accountability of corporation with respect to human rights, economic development, and protection of the environment. The Norms, however, fail to recognize the UN Mercenary Convention among the international legal obligations applicable to transnational companies.

14. As the principal actors in the human rights violations, the PMSC themselves can have greatest immediate impact in curbing the violations. The manufacturing and extractive industries provide a relevant, although imperfect, model for achieving accountability through self-regulation by the private sector, increasingly acknowledging international norms with regard to labor, health, and safety standards. Humans Rights Advocates applauds the efforts of industry organizations such as the International Peace Operations Association to promulgate international human rights standards among PMSCs.<sup>17</sup>

15. However, understanding the difficulty of enforcing of international law and the inherent limitations of industry self-regulation, domestic legislation is the most effective method of holding PMSCs accountable for international human rights abuses. Effective domestic legislation includes licensing requirements for PMSCs performing government contracts, human rights monitoring and reporting, and sanctions for human rights violations. Nonetheless, an international procedure should be available should domestic enforcement be ineffective.

16. The United States provides an example of domestic legislation to combat human rights abuses by PMSCs. The Military Extraterritorial Jurisdiction Act (“MEJA”) allows

<sup>13</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), Article 47.

<sup>14</sup> International Convention against the Recruitment, Use, Financing and Training of Mercenaries, A/RES/44/34, 72nd plenary meeting 4 December 1989 (UN Mercenary Convention). Entry into force: 20 October 2001.

<sup>15</sup> Heather Carney, “Prosecuting the Lawless: Human Rights Abuses and Private Military Firms,” 74 Geo. Wash. L. Rev. 317, 334. February 2006.

<sup>16</sup> Protocol Additional Art. 47(2)(a)-(b), Mercenary Convention Art. 1

<sup>17</sup> The International Peace Operations Associations encourages its “to follow all rules of international humanitarian law and human rights law that are applicable as well as all relevant international protocols and conventions, including but not limited to the Universal Declaration of Human Rights (1948), the Geneva Conventions (1949), the Convention Against Torture (1975), the Protocols Additional to the Geneva Conventions (1977), the Chemical Weapons Convention (1993), and the Voluntary Principles on Security and Human Rights (2000).

[http://ipoaonline.org/php/index.php?option=com\\_content&task=view&id=205&Itemid=172](http://ipoaonline.org/php/index.php?option=com_content&task=view&id=205&Itemid=172)

charges to be levied against U.S. contractors for criminal conduct while working for the Department of Defense or in support of a Department of Defense mission.<sup>18</sup> While the MEJA does not apply to PMSCs under contract with other government agencies such as the Central Intelligence Agency or the Department of State, the US Congress is currently considering expanding the statute to covers contractors working under any federal agency in, or in close proximity to, an area where the Armed Forces are conducting a contingency operation.<sup>19</sup>

17. While Human Rights Advocates is encouraged by this legislative development, it remains concerned about the US government's systematic failure to investigate or prosecute the numerous reported cases of violations by PMSCs under contract with Department of Defense, despite its clear authority to do so.<sup>20</sup>

18. South Africa provides another positive example of domestic regulation of PMSCs.<sup>21</sup> A recent law, "The Prohibition of Mercenary Activities and Regulation of Certain Activities in Areas of Armed Conflict," proscribes a broad range of mercenary activities, including consultative, financial, logistical, and personnel support, among other activities. Any person or company providing assistance, service, or security services in armed conflict or other regulated countries must seek government authorization and assumes an obligation to follow international law and human rights standards. The law also confers jurisdiction over extra-territorial violations committed by South African citizens and provides for criminal penalties.

19. Human Rights Advocates commends the South Africa on its efforts to implement and enforce international human rights standards on human and juridical entities engaging in mercenary activity.

### Recommendations

20. Human Rights Advocates urges the Human Rights Council to:

- Continue the mandate for the Working Group on Mercenaries, expanding the Working Group's mandate to allow for three sessions per year, as requested by the Working Group.
- Recognize the foundation established by the Norms and create an expert body to continue the efforts toward implementation of a body of international standards for transnational corporations and other business enterprises with regard to human rights.

21. Humans Rights Advocates calls upon all Member States:

- To ratify or accede to the 1989 International Convention against the recruitment, use, financing, and training of mercenaries.

<sup>18</sup> Military Extraterritorial Jurisdiction Act of 2000 (MEJA), 18 U.S.C.

<sup>19</sup> MEJA Expansion and Enforcement Act of 2007, H.R. 2740: 2007-2008 (110<sup>th</sup> Congress). This bill was been passed in the House on 4 Oct 2007. The bill now goes on to be voted on in the Senate.

<sup>20</sup> "Private Security Contractors at War, Ending the Culture of Impunity," Human Rights First. Available at <http://www.humanrightsfirst.info/pdf/08115-usls-psc-final.pdf>.

<sup>21</sup> The Prohibition of Mercenary Activities and Regulation of Certain Activities in Areas of Armed Conflict was adopted by the National Assembly in August of 2006. BBC News, "MPs approve new SA Mercenary Bill," 30 Aug 2006. Available at <http://news.bbc.co.uk/go/pr/fr/-/2/hi/africa/5297704.stm>

- To enact domestic regulatory legislation requiring oversight and accountability of PMSCs under contract with any government agency, including provisions for effective monitoring and reporting of human rights violations.
- To convene and discuss the role of the State as the primary user of force in light of the alarming expansion of mercenary activity.

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