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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 Inc., 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.

[30 August 2010]

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

Ensuring accountability through supporting the draft Convention on PMSCs

1. Human Rights Advocates submits this report to highlight issues arising from the increased use of private military and security companies (PMSCs) by both state and intergovernmental actors. At the outset, HRA would like to communicate its support and encouragement of the industry-driven Code of Conduct being developed by the Swiss Department of Foreign Affairs and the Geneva Center for the Democratic Control of Armed Forces (DCAF). The CoC seeks to develop operational guidelines, and to establish international industry norms and standards for the provision of private security services. However, given the inherent complexities of operating in war-torn States or in States with ill-functioning governments, more than a voluntary code is necessary to protect human rights from abuse.

2. Therefore, HRA advocates for States to recognize and enact national laws and regulatory bodies to oversee the activities of PMSCs. Further, HRA urges member states to support the draft convention on PMSCs developed by the Working Group on Mercenaries and work toward enacting such an international convention. Lastly, HRA recommends that member states ensure that the intergovernmental bodies to which they are a part similarly support the development of an international convention to this end.

Dependency of State and Inter-Governmental Actors on PMSCs

3. The use of PMSCs has blossomed in recent years. In addition to the heavy reliance upon PMSCs in current war zones, many other States are dependant on PMSCs in order to deploy and operate their armed forces. According to the Commission on Wartime Contracting, the United States Department of Defense had roughly 14,000 private security personnel under contract in Iraq during the first quarter of 2010.¹ “That number is nearly equal to the personnel strength of a World War II American infantry division,” the commission said.²

4. However, the use of PMSCs is not limited to state actors. Despite internal criticism, the United Nations (UN) has been one of the latest organization to patronize PMSCs. Foreign Policy Magazine reports that the UN has been in consultations with a British security firm to send additional security forces to protect them in Afghanistan and the UN’s top security official, Gregory Starr, has also been advocating an increase in the use of private security firms in Pakistan, where UN relief workers have been the target of kidnappings and killings, according to UN officials.³

5. Nick Horne, a former UN political officer, stated with regard to the increase of private forces in Afghanistan, “As a former beneficiary of this policy, I welcomed it. The gurkhas are professional, polite and discrete. It also frees up Afghan police for policing duties. Obviously it costs money — I don’t know how much — but it does enable the U.N. to continue operating in an increasingly hostile environment.”⁴ While security concerns are completely legitimate for the UN, as well as other intergovernmental organizations, it is

¹ Commission on Wartime Contracting, <http://www.wartimecontracting.gov/index.php/reports>

² Ibid.

³ Colum Lynch “UN Embraces Private Military and Security Companies” http://turtlebay.foreignpolicy.com/posts/2010/01/17/un_embraces_private_military_contractors

⁴ Ibid.

difficult to condone the proliferation of PMSCs if they continue to function with no or limited accountability.

Lacking Accountability for Human Rights Violations

6. Under international human rights law, PMSCs have managed to escape many of the terms of governance. While presumably PMSCs fall under the mandate of the working group, the term “mercenary” refers to a combatant who illegally takes part in a conflict – a term inapplicable to modern day PMSCs and their actors that legally operate as businesses.⁵ Uniform human rights governance norms and accountability mechanisms have also failed to be codified into any internationally recognizable licensing or contract terms, despite the global operation of virtually every private security organization. Finally, PMSCs have managed to elude liability for human rights abuses in wartime and humanitarian operations as international conventions have targeted state actors alone and many of these companies have been indemnified or immunized by their state contracting parties.

7. Governments in states of operations of PMSCs often, because of political pressures, are unable to object to the use of PMSCs in their own countries. Recently, Afghan President Hamid Karzai ordered a four-month phase out of all private security companies in his embattled country.⁶ Reports state that Karzai's hostility toward military contractors is fueled by their impact on domestic Afghan politics.⁷ Attacks by US drones and other forces have resulted in the killing of many Afghanistan civilians, which directly affect the legitimacy of a government and are human rights violations. These killings are human rights violations, including violations of ICCPR Article 6 guaranteeing the inherent right to life and ICCPR Article 9 guaranteeing the right to life and liberty of the person.

8. Karzai added, “One of the reasons that I want them disbanded and removed by four months from now is exactly because their presence is preventing the growth and development of the Afghan security forces - especially the police force - because if 40,000 to 50,000 people are given more salaries than the Afghan police, why would an Afghan ... man come to the police if he can get a job in a security firm, have a lot of leeway without any discipline? So naturally our security forces will find it difficult to grow. In order for our security forces to grow these groups must be disbanded.”⁸

9. The Iraqi government has evidenced frustration with PMSCs as well, saying that it plans to seize weapons from foreign security firms and expel ex-Blackwater contractors still in the country, according to Interior Minister Jawad al-Bolani.⁹ The continued presence of PMSCs in countries where they are not welcome violates international human rights, including the right to self-determination enshrined in Article 1 of the ICCPR.

10. The decision was triggered by the Iraqi government's outrage over the dismissal by a US court of charges against Blackwater guards who were accused of killing 14 Iraqi civilians in Baghdad in 2007. The guards said they shot in self-defense. The Iraqi government, which has prohibited Blackwater from operating in Iraq, has hired US lawyers to prepare a lawsuit against the company.¹⁰

⁵ See eg., “Bridging Accountability Gaps – The Proliferation of Private Military and Security Companies and Ensuring Accountability for Human Rights Violations”,

⁶ William Fisher, “Karzai Faces Struggle to Oust Contractors”, Asia Times Online, August 26, 2010.

⁷ Ibid.

⁸ Ibid.

⁹ Ibid.

¹⁰ Ibid.

11. The aforementioned concerns, coupled with the weak governance in the country contexts where PMSCs tend to operate, indicate the advantages of an international legal framework. The Working Group has noted as much in the preamble of the draft convention:

“Expressing concern at the increasing and alarming violations of international human rights law and international humanitarian law committed by PMSCs and their personnel and Aware of the pressing need to establish effective measures to ensure that the activities of PMSCs are carried out in accordance with international law.”

Need for Consensus

12. It would seem that the growing activities of PMSCs, now employed by both State and intergovernmental actors, require increased accountability and oversight. From violations of the right to self-determination to the right to life and security of the person; human rights are subject to abuse. Further, calls to action from the states of operations and the PMSC industry itself are growing, seeking legally binding rules over this group of actors.

13. The draft convention articulated by the Working Group achieves this end. By requiring each state party to adopt national legislation to regulate the activities of PMSCs, including licensing, registration, and monitoring of domestic PMSCs, the draft convention properly recognizes sovereignty concerns while ensuring human rights protections are in place. Further, the creation of an international oversight mechanism created through the Committee on the Regulation, Oversight and Monitoring of PMSCs (Committee) acknowledges the need for ensuring that State parties are engaged in the process and provides citizens with a mechanism of redress from harm.

14. The glaring omissions in holding to account PMSC actors for violating human rights has tarnished the industry, and lead to the association of these actors with the term “mercenaries”. Now, with calls for standardization from industry actors, for increased accountability of governments from states of operation and from the growing presence of PMSCs as contract agents for both States and intergovernmental organizations, the time has come to build an international agreement for these actors. The draft convention on PMSCs does just this.

Recommendations

15. Human Rights Advocates thus calls on member states:

- To recognize and enact national laws and regulatory bodies to oversee the activities of PMSCs;
- To support the draft convention on PMSCs developed by the Working Group on Mercenaries and work toward enacting such an international convention;
- To urge the intergovernmental organizations to which they are a part to support the development of an international convention to this end.
