

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

Expert consultation on

“Private military and security companies in extractive industries – impact on human rights”

20 July 2017, New York

Concept Note

Background

The Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the rights of peoples to self-determination is mandated by the United Nations Human Rights Council to monitor mercenaries and mercenary related activities and their impact on human rights, as well as to monitor and study the effects of the activities of private military and security companies (PMSCs)¹ on human rights, particularly the right to self-determination.

Over the past years, the Working Group has focused extensively on the need for robust regulation of PMSCs with particular emphasis on ensuring accountability for human rights violations committed by their personnel. A global study conducted by the Working Group on national legislation for PMSCs covered over 50 countries. The study shows that the majority of national regulation focuses on private security companies (PSCs) and is patchy and inconsistent. Further, robust safeguards against potential human rights violations by personnel of the PSCs are lacking. The worrying trends show significant gaps in penal accountability and civil liability of individuals and corporate actors engaged in the PSC business. Given the likelihood of the company’s personnel engaging in the use of force and involvement in hostilities, these gaps underscore a real risk to human rights.

In fulfilling its mandate, the Working Group is assessing the role of PMSCs in extractive industries and their impact on human rights including the right to self-determination. Some of the impacts include a wider group of issues, including matters of environmental protection. Transnational extractive industries make wide use of PMSCs. Numerous reports document a range of human rights abuses against individuals belonging to local communities committed by personnel of private security companies associated with extractive industries. In some circumstances, the PMSC also operates transnationally. Extractive companies often operate in resource-rich countries and tend to resort to PMSCs for services. This is the case both in situations of peace and in conflict.

The use of PMSCs in extractive industries and human rights concerns

In the context of development, globalization and transnational business, extractive industries pose particular challenges in countries where they operate. Very often, transnational companies extract

¹ The Working Group has defined a private military and security company as “a corporate entity which provides, on a compensatory basis, military and/or security services by physical persons and/or legal entities.” Security services refer to “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.” Military services refer to “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.”

natural resources in less developed countries or areas where State power is weak. The exploitation of non-renewable natural resources, including oil, gas and minerals by transnational companies has frequently been cited as a major factor in triggering, escalating or sustaining conflicts, including violent conflicts in many regions in the world. Furthermore, the use of private military or security services by extractive industries has an impact on the conflict dynamics in countries where they operate. In some cases, involvement of PMSCs and their personnel lead to further insecurity in communities, thus interfering with the right to self-determination of local peoples.

In times of peace, the presence of private security forces alongside the extractive companies can exacerbate the imbalance in the power relationship between local peoples and the extractive corporations whose projects are often supported by the local government. In the course of the negotiation of an extractive project, the involvement of security personnel from private companies often imposes undue pressure on local communities, including indigenous ones, that are pressured or compelled to accept extractive projects. The denial of free agency impedes the rights of people to determine priorities and strategies for the use of their lands, territories and resources, as part of their right to self-determination.

The Working Group is concerned about the repeated human rights abuses committed by PMSC personnel working in extractive industries. Unjustifiable or excessive use of force, pretextual deprivation of liberty and threats are used as forms of reprisal against local peoples exercising rights of free speech and association to oppose extractive projects and defend their land, resources and environmental rights. In extreme cases, personnel from PMSCs are involved in beating, torture, rape, extrajudicial eviction, arbitrary arrest and killing. These abuses and harassments have a severe negative impact on the enjoyment of fundamental rights and freedoms of individuals belonging to local communities. Private military or security forces contracted to protect the development infrastructure become sources of tension between local communities and the extractive industries. Sometimes, private military or security forces may antagonize the relationship between the extractive company and the local peoples.

Furthermore, the impunity enjoyed by personnel of PMSCs working in extractive industries intensifies the experience of fear and anxiety by local peoples and communities. Due to the nature of the industries, transnational extractive companies and their private military or security forces are generally from more developed countries, whereas the abuses and harassments often occur abroad, in countries with institutions lacking the capacity to address these abuses. Despite various efforts made by different stakeholders in developing voluntary principles and identifying good practices, the existing international institutional and legal framework does not seem to be efficient in addressing corporate-involved human rights abuses in a manner consistent with international standards and principles on access to effective remedy for victims. National laws and practices indicate an absence of regulatory measures with extraterritorial reach, necessary to effectively address human rights and environmental concerns of peoples in resource rich countries. The Working Group reiterates its serious concern about the existing gaps in national legislation for PMSCs and call for robust regulation with particular emphasis on ensuring accountability.

Issues in focus for the event

First segment:

Extractive industries and PMSCs in conflict settings

Questions:

1. What are the functions of PMSCs involved in extractive industries? What types of services are provided by PMSCs in the extractive industry context? Has the demand for these services increased? What are the current trends?

2. What are the causes of extractive industries-induced conflicts and who are the actors involved? (For example: poor engagement with local communities; absence of free, prior and informed consent from the local communities; unfair distribution of the benefits associated with corruption; lack of institutional and legal framework and guidance to govern the operation of the extractive company; lack of control of the extractive companies over the PMSCs they contract; operation in conflict zone or post-conflict zone.)
3. What types of human rights abuses are prevalent to the use of PMSCs in extractive industries? (For example, assault, rape, torture, killing, excessive use of force, arbitrary arrests, extrajudicial evictions, environmental degradation, etc.).

Second segment:

Good practices, existing regulatory framework, and accountability/remedies for human rights abuses

Questions:

1. What are existing initiatives and good practices to address human rights abuses committed by extractive companies and the concerned PMSCs;
2. What is the current regulatory framework for the operation of PMSCs in extractive industries (the type of functions that can be performed by PMSCs; type of weapons and materials they are authorized to use; monitoring mechanisms; whether performance assessment reports accessible to the public; selection and training of personnel; investigation and punishment for perpetrators, remedy for victims)? What are the limitations, particularly with regard to accountability?
3. What options exist for robust regulation of PMSCs within the extractive industry context: Can non-binding, voluntary initiatives provide a sufficient response to human rights abuses committed by PMSC personnel? Please provide examples in times of peace as well as in conflict and post-conflict situations.