

**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**

Panel on

**“Private security companies in places of deprivation of liberty, and their impact on
human rights”**

27 April 2017, Room XXVII, Palais des Nations

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) on human rights, particularly the right to self-determination.

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.*”

Over the past years, the Working Group has focused extensively on the need for robust regulation of PMSCs with particular focus on ensuring accountability for human rights violations committed by PMSC personnel. A global study undertaken by the Working Group on national legislation for PMSCs covered over 50 countries and showed that national regulation in this industry is inconsistent and that robust safeguards against potential human rights violations by PMSC personnel are lacking. The worrying trends show significant gaps in penal accountability and civil liability of individuals and corporate actors engaged in the PMSC business. Given the likelihood of PMSC personnel engaging in the use of force and involvement in hostilities, these gaps underscore a real risk to human rights.

Nonetheless, the PMSC industry continues to grow and most recently the trends have indicated a growing use of private security contractors in multiple business sectors including places of deprivation of liberty such as prisons and detention facilities for undocumented migrants. States are increasingly resorting to outsourcing prison and detention operations, functions which were traditionally carried out by state institutions. Serious concerns about business and profit

motives overshadowing human rights considerations for those who are deprived of their liberty thus require the international community's attention and more importantly, action.

The most recent Human Rights Council resolution for the Working Group on mercenaries in 2016¹ echoed these human rights concerns by emphasizing its “*utmost concern* about the impact of the activities of private military and security companies on the enjoyment of human rights, in particular, when operating in armed conflicts, in privatised prisons and immigration related detention facilities (...).” The Council noted that these companies and their personnel were rarely held accountable for human rights violations. For this reason, the Working Group is focusing on this issue as the subject of its report to the General Assembly this year.

The use of private military/security companies in places of deprivation of liberty

The Working Group's focus on prison or detention privatisation requires a distinction to be made between, on the one hand, private companies that provide services such as medical, food, educational and vocational training to those held in places of deprivation of liberty, and on the other hand, those responsible for operation of the facility, itself. However, quite often, a company can be contracted to fully operate a prison or detention facility thus providing all the services required including guarding and policing of facility to all other services required for maintenance and daily operation.

The Working Group is concerned that where prisons and detention facilities for undocumented migrants are operated for profit, human rights are at risk. Human rights experts have thus expressed concern that “*the profit motive of privately operated prisons...has fostered a situation in which the rights and needs of prisoners and the direct responsibility of States for those they deprive of their freedom are diminished, in the name of greater efficiency.*”² Furthermore, reports of frequent and serious human rights violations committed by private security companies and their personnel, suggest the absence of necessary and effective grievance mechanisms, accountability and remedies for human rights abuses.

A worrying political discourse and anti-immigrant policies in various countries, include an increase in the criminalisation of undocumented migrants by States, and the imposition of mandatory and indefinite immigration detention. This has led to many private military and/or security companies bidding and winning contracts to operate detention facilities. Similarly, in the privatised prison sphere, policies resulting in greater use of incarceration will increase support for the use of private security companies. As more and more prisons and detention facilities are constructed, there will also be pressures to fill and occupy these facilities, thereby requiring further use of deprivation of liberty, be it through the criminal justice system or otherwise. Some private security companies have been known to incorporate occupancy rate guarantee requirements into their contracts with governments. To go below a certain quota of occupancy may result in the government paying a penalty to the company. These external corporate pressures ensure that private security companies running prisons and detention facilities are kept in operation and more importantly, that there is a consistent, and even increasing, demand for their existence. Certain multinational private security companies earn hundreds of millions of dollars annually for contracts with governments to operate private prisons and detention facilities. This begs an important question for serious consideration – “if

¹ A/HRC/33/4, paragraph 7

² Sir Nigel Rodley, (2003), *Capitalist Punishment: Prison Privatization and Human Rights*, page 7.

profit is the main objective for these corporate actors, how are the human rights of prisoners and detainees respected and protected by the State as well as by the private company?”

Human rights concerns

The rights of persons deprived of liberty are a special concern of international human rights law. The International Covenant on Civil and Political Rights States that “*all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.*” Furthermore, international human rights standards provide that the State has a duty to protect, promote and progressively realise human rights. These duties apply to all persons within the State’s jurisdiction, and especially where non-State actors are involved in the delivery of government services. Thus, States are required to ensure that their human rights obligations are fulfilled including through contractual obligations with companies that they select to provide government services.

Human rights violations by private security contractors that operate in prisons and detention facilities have been repeatedly reported around the world. The use of force by private security personnel against prisoners and detainees resulting in grave injuries; medical neglect that has led to deaths; inhuman and ill-treatment; sexual violence and abuse; failure to enable or permit contact with the family members of detainees; insufficient care services; the arbitrary use of solitary confinement; imposition of quasi-judicial decisions that affect the legal status and well-being of prisoners or detainees – these are only some of the human rights abuses that have been reported against private security companies in places of deprivation of liberty.

Exacerbating these concerns are reports suggesting a lack of accountability, effective grievance mechanism and oversight by the private security company, and by extension, the concerned government when human rights violations occur. In these situations, many persons deprived of their liberty suffer intolerable abuses without appropriate recourse for remedy. It has been suggested that persons deprived of their liberty in State operated facilities have fared better and have a greater chance of their human rights being respected than those are who are imprisoned or detained by private contractors. In certain crises around the world, the use of private security contractors to limit and prohibit people’s right to liberty and free movement through deprivation of liberty, is a means to deliberately undermine a peoples’ right to self-determination. In the race for the maximum profit, private security companies have left many of their detainees in situations where they have even been stripped of the will to live and in some cases, have resorted to taking their own lives. These situations have rendered the most basic yet fundamental right to human dignity non-existent.

Issues for the panel

The outsourcing of prisons and detention facilities by States to private contractors will not likely cease in the near future. The current trends in various countries indicate that States may increase the practice of contracting private companies to operate places of deprivation of liberty, thus posing grave risks to human rights.

The panel will discuss the following key issues of concern:

- *International human rights law obligations of States with respect to the protection of persons deprived of liberty*
- *Outsourcing the operation of places of deprivation of liberty to private contractors: challenges and risks to human rights*
- *Gaps in accountability and remedy mechanisms for victims of human rights violations*
- *Measures for robust regulations of privatised places of deprivation of liberty to ensure respect for human rights.*
