## Summary of contributions from OHCHR-Guatemala for the United Nations 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 gender and PMSCs**

**2 and 3 of April 2019**

OHCHR- Guatemala, within its mandate of observation, technical advice and assistance on human rights international standards to the State of Guatemala, has monitored human rights violations that involve private security companies.

Since 2006, OHCHR-Guatemala has followed the adoption of a legal framework on regulation of private security companies that ensures the respect of human rights in the country as well as the fulfillment of the 1996 Peace Accords[[1]](#footnote-1), which affirmed that the police should exercise control over private security actors. OHCHR-Guatemala has conducted more than 30 interviews with public officials, private security owners, persons from indigenous communities affected by private security agents or by private security activities and analyzed written information provided by Attorney General’s Office, the Ministry of Interior and the Ministry of Labour, as well as by civil society.

OHCHR-Guatemala provides the following brief findings on this issue:

**Weak legal framework for the control of private security companies**

Before 2010, the regulation framework for private security companies was weak and dispersed among several laws. Among the main regulations that applied to private security services were the legislative Decree 73-70, Law on Private Police[[2]](#footnote-2) that established the control by police of companies that provided “investigation, protection and custody services over persons or goods” (art. 5) and established the obligation for police to authorize and control the personnel (art.10).

Also, Decree 19-79, Law on the Security Companies of Public and Private Banking Entities established the obligation of necessary training on the use of arms as well as the presentation a registry of the arms used by the company. In 1989 a specific regulation for weapons possessed by private security companies was adopted- Law on Arms and Munitions (Decree 39-89)-, which was repealed by Decree 15-2009. The latter decree was an important law that increased control on arms by adopting a mechanism of granting a special license to carry weapons for private security companies.

None of these laws included accountability requirements in relation to the respect and protection of the rights of citizens when implementing private security services. Information was received that the police itself, with reduced resources, limited its intervention to keeping a statistical record of private security companies and an occasional inspection.

The adequate legal framework was not adopted until 23 November 2010. With the support of advocacy from civil society, the Congress adopted the “Law that Regulates Private Security Services”, through Decree 52-2010 and came into force on 2 May 2011. This law established the regulation of the services provided by “[...] individual or legal persons in the area of ​​security, protection, transportation of values, surveillance, technology and security and research consultancy in the private sector, as well as the creation of mechanisms of control and inspection”[[3]](#footnote-3). The General Directorate for Private Security Services (DIGESSP), within the Ministry of the Interior, was created as the main institution in charge of the regulation, authorization and control of the functioning of private companies, in line with international human rights standards.

The weak legislative framework that existed before 2010 contributed to the expansion of private security companies without the necessary control by the State. Also the high levels of violence and insecurity that characterized the period after the signing of the Peace Accords[[4]](#footnote-4) since 1996 played an important role in increasing the demand on private security services, and the exponential creation of these companies: 10 companies were authorized in the 1980s, 50 companies were authorized in the 1990s, 68 between 2000 to 2008[[5]](#footnote-5) and in 2011 in the moment of the adoption of the law, 140 companies on private security were declared as authorized, and 182 in 2017[[6]](#footnote-6).

**Institutional challenges to control private security companies**

Since it started its functions, DIGESSP has faced three major challenges: a) the adaptation of the security companies to the requirements of the new legal framework; b) the certification of private security agents; and c) the control, supervision, monitoring and verification of individuals and legal entities that provide private security services.

Since the adoption of the law, the number of private companies that have registered under the law has increased slowly. However, there are still around between 50 and 70 private security companies that have resist to comply with this law. According to OHCHR Guatemala interviews to owners of private security companies, the main reasons are:

1. The process to adequate to the new law requires a big investment and time to meet the legal requirements. They often criticize the DIGESSP of being bureaucratic in examining the companies’ files and slow to give an answer. Also many owners accuse DIGESSP and Government of Interior of being corrupt and accepting money from companies to register them faster.
2. Disagreement with the legal requirements that obliges them to hire people with some qualifications and age (25 years old), to give them social benefits such as medical insurance, overtime pay, training etc. For them, the investment of human resources reduces benefits in a very changing market.
3. Discomfort when DIGESSP, accompanied with Police officials, perform supervision visits in their companies, as “they feel treated as criminals”. Many have refused to let authorities to do the inspection[[7]](#footnote-7).

According to reported data of DIGESSP for the month of September 2017, out of the 45,258 security agents reported by private security companies, only 18,361 agents[[8]](#footnote-8) were certified as it is requested by the law[[9]](#footnote-9).

Under the law, companies not registered with the law within one year after its adoption should be cancelled and unable to continue their services (art. 68). The Directorate extended this timeframe many times. As of May 2015, out of 155 existing companies, 121 did not comply with the legal framework[[10]](#footnote-10). At that time, the Director of DIGESSP decided to suspend 40 companies that were not complying with the law. However, two weeks after this announcement, she was dismissed by Ministry of Interior[[11]](#footnote-11). These 40 companies continue until now to function and some of them have contracts with State institutions. Since then, the Directorate has not publicly determined another timeframe for companies to comply the law, allowing these companies to continue with their activities without the necessary control and supervision from the State.

Another important challenge is the high number of public contracts that are destined to private security companies. According to public information on services contracted by State institutions, at least 95 out of 182 private security companies have received public contracts from 2004 to 2017. Many of these companies were not certified by the DIGESSP at the time they were contracted by the State.

The lack of implementation of the law has had a **direct impact on respect for human rights**. First internally within private security companies, there is a lack of respect of labour rights such as medical and other benefits, long hours of work, lack of holidays. Also troubling is their lack of specific training. Externally, human rights abuses from security guards occur within a broader context of human rights violations of mining companies and other extractive companies. OHCHR Guatemala has received information of abuse of power of private security guards as well as harassment, intimidation, sexual violence and even murder of indigenous leaders who organize protests against mining projects.

It is positive that the Constitutional Court has ruled in favor in favor of restitution of the rights when they have been violated by private security services. For instance, the Constitutional Court ruled in favor of the liberty of movement against the restriction by private security agents, or for the limitations of use of arbitrary power committed by agents or private security companies.

1. Within Peace Accords, the Agreement on the Strengthening of Civilian Power and on the role of the Armed Forces in a Democratic Society included the commitment to promote "[...] a law that regulates the operation and scope of companies, aiming to supervising their performance and the professionalism of their personnel" [↑](#footnote-ref-1)
2. In its article 1 this law recognizes private police as an armed group parallel to public action, but of similar training to that of the National Police, establishing a hierarchical relationship with the General Directorate of the National Police. [↑](#footnote-ref-2)
3. http://digessp.gob.gt/wp-content/uploads/2016/04/DECRETO\_NUMERO\_52-2010.pdf [↑](#footnote-ref-3)
4. Consejo de Derechos Humanos, «Informe de la Alta Comisionada de las Naciones Unidas para los Derechos Humanos sobre las actividades de su Oficina en Guatemala», 7 de enero de 2013, http://www.oacnudh.org.gt/images/CONTENIDOS/ARTICULOS/INFORMESANTERIORES/2012.pdf; Comisión Interamericana de Derechos Humanos -CIDH-, «Situación de los Derechos Humanos en Guatemala: Diversidad, Desigualdad y Exclusión», 31 de diciembre de 2015, http://www.oas.org/es/cidh/informes/pdfs/Guatemala2016.pdf. Párrafo 49 [↑](#footnote-ref-4)
5. Escobar Noriega, Lorena, *La Regulación de los Servicios de Seguridad Privada en Guatemala*. Página 11 y ss. [↑](#footnote-ref-5)
6. DIGESSP, «Oficio DIGESSP-DEPLAN-162-2017/AEF/vlch». Cf. Documentación estadística adjunta [↑](#footnote-ref-6)
7. A/HRC/37/3/Add.1 par. 27 [↑](#footnote-ref-7)
8. DIGESSP. Cf. Documentación estadística adjunta 2017 [↑](#footnote-ref-8)
9. Article 70 of the law that regulates private security companies. [↑](#footnote-ref-9)
10. Castañón, Mariela, «Digessp: 121 empresas de seguridad sin adecuarse a la ley», *La Hora* (blog), 18 de abril de 2015, http://lahora.gt/digessp-121-empresas-de-seguridad-sin-adecuarse-la-ley/. [↑](#footnote-ref-10)
11. A/HRC/34/3/Add.1 Párrafo 32; DIGESSP, «Empresas de Seguridad que no Podrán Seguir con sus Servicios», 16 de julio de 2015, http://www.s21.com.gt/digital/aldia/centro/seguridad.pdf. [↑](#footnote-ref-11)