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Promoción y protección de todos los derechos humanos, civiles, políticos, económicos, sociales y culturales, incluido el derecho al desarrollo

Informe del Grupo de Trabajo sobre la utilización de mercenarios como medio de violar los derechos humanos y obstaculizar el ejercicio del derecho de los pueblos a la libre determinación

Presidente-Relator: Sr. José Luis GÓMEZ DEL PRADO

Adición

MISIÓN A FIJI*(14-18 de mayo de 2007)

Resumen

Por invitación del Gobierno provisional de Fiji, el Grupo de Trabajo sobre la utilización de mercenarios como medio de violar los derechos humanos y obstaculizar el ejercicio del derecho de los pueblos a la libre determinación visitó Fiji del 14 al 18 de mayo de 2007. El Grupo acogió satisfecho esta oportunidad de entablar un diálogo constructivo con el Gobierno provisional y otras partes interesadas en los asuntos de su competencia.

El Grupo de Trabajo observa que Fiji tiene por tradición un personal militar y de seguridad con buena formación, disciplinado y muy competente, que desempeña distintas funciones de seguridad en todo el mundo. Sin embargo, el Grupo de Trabajo observa con preocupación que en varios casos las funciones de seguridad que desempeñan los nacionales de Fiji integrados en empresas militares y de seguridad privadas en otros países pueden considerarse como actividades de mercenarios. Las condiciones de desempleo o subempleo, la presencia de una población migratoria dispuesta a asumir tareas de seguridad en otros países y el hecho de que las actividades de las empresas de seguridad privadas de Fiji estén poco vigiladas son factores que han facilitado estas contrataciones en Fiji, incluso para trabajar en el Iraq. El Grupo de Trabajo ha recibido información que indica la existencia de irregularidades contractuales, condiciones de trabajo muy severas, un número excesivo de horas de trabajo, el pago incompleto o no pago de los salarios, malos tratos y carencias en la atención de necesidades básicas como el tratamiento médico y el saneamiento.

El Grupo de Trabajo observa que no hay legislación ni medidas nacionales en Fiji para afrontar eficazmente estos problemas y alienta a las autoridades de Fiji a tomar medidas positivas para garantizar que las empresas militares y de seguridad privadas de su país operen en el marco de una estructura jurídica plenamente conforme a las normas internacionales de derechos humanos. El Grupo de Trabajo recomienda la adhesión a la Convención Internacional contra el reclutamiento, la utilización, la financiación y el entrenamiento de mercenarios de 1989. Recomendando además que se elabore una legislación nacional sobre los mercenarios, las actividades relacionadas con ellos y las actividades de empresas privadas que ofrecen asistencia militar y servicios de consultores y de seguridad en el mercado internacional. Una posibilidad es introducir estos elementos en la legislación penal, pero también se puede elaborar un marco jurídico específico. El Grupo de Trabajo también recomienda la creación de un sistema de reglamentación, autorización, control y vigilancia de las actividades de las empresas de seguridad privadas para establecer una supervisión eficaz que permita a las autoridades llevar registros transparentes sobre todos los aspectos de las empresas de seguridad privadas, por ejemplo la identificación de los propietarios, los estatutos, la finalidad y las funciones, así como un sistema de inspecciones periódicas que garantice la rendición de cuentas. Recomendando igualmente que se adopten medidas específicas para la reinserción y el tratamiento del trastorno de estrés postraumático de las personas que han efectuado trabajos de seguridad en otros países, con un sistema completo de informes de fin de misión y asesoramiento profesional. El Grupo de Trabajo insta además a las autoridades competentes a adoptar medidas que les permitan actuar con celeridad y diligencia respecto de las denuncias presentadas por particulares que han vuelto del Iraq, y a investigar la posible complicidad y responsabilidad de las empresas privadas de seguridad y de los particulares involucrados.

Annex

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

MISSION TO FIJI (14-18 May 2007)

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Introduction

- At the invitation of the interim Government of Fiji, the Working Group visited Fiji from 14 to 18 May 2007. The Working Group delegation was composed of its Chairperson/Rapporteur, Mr. José Luis Gómez del Prado, and one of its members, Mr. Alexander Nikitin. The Working Group is grateful to the interim Government of Fiji for its invitation. The Working Group enjoyed excellent cooperation with the Fijian authorities throughout the planning and conduct of its visit.
- The visit to Fiji forms part of an assessment by the Working Group of a phenomenon in recent years whereby nationals of countries have been recruited by private military and private security companies (hereinafter referred to as PMSCs[1]), often subsidiaries of foreign-based companies, to work in conflict situations in other regions, including Iraq and Afghanistan. Four areas were of particular interest to the Working Group in Fiji: (i) contracting and training of Fijians for security work in the Middle East; (ii) status and regulation of PMSCs in Fiji; national legislation and protection measures, including permits and licensing; citizen security and safety; (iii) status of the accession of Fiji to the 1989 Convention and implementation; and (iv) the situation of Fijians allegedly recruited as mercenaries in Bougainville, Papua New Guinea.
- During its visit, the Working Group delegation held meetings with the interim Prime Minister, the interim Minister for Foreign Affairs, the interim Attorney General, the interim Minister for Labour, the Deputy Commander of the Royal Fiji Military Forces, the Acting Police Commissioner, the Acting Chief Justice, as well as a former Prime Minister and a former Minister of Labour. The Working Group also held consultations with the Acting Chair, Commissioner and Director of the Fiji Human Rights Commission, representatives of Fiji Law Society, the Fiji Trade Unions Congress and several non-governmental organizations, academics at the University of the South Pacific, as well as employment agents and current and former employees of private security companies, and other individuals. In addition, the Working Group met with United Nations agencies, the Pacific Islands Forum Secretariat and a number of representatives of the diplomatic community.

I. GENERAL OBSERVATIONS

Background

- The mandate of the Working Group was established in 2005 and builds on the work of the former mandate of the Special Rapporteur on the use of mercenaries as a means of violating human rights and impeding the exercise of the rights of peoples to self-determination.[2] With the creation of the Working Group, the mandate was widened to include monitoring of PMSCs and the

impact of their activities on all human rights.

5. The Working Group considers that State authorities have the primary responsibility in maintaining public security and law and order in the State, under international and domestic law. Noting the trends of privatization of security and the use of force, the Working Group is concerned that some PMSCs are committing human rights violations with impunity whilst operating in armed conflicts and other situations. This phenomenon is often associated with the creation by transnational companies of satellite subsidiaries which have a legal personality in one country, provide services in another and recruit personnel from third countries. As indicated in the Working Group's annual report, the international legal framework and regulatory schema remain to meet the needs for accountability and oversight of these companies.[3]

6. The visit of the Working Group took place following the military-led coup d'état of 5 December 2006. The United Nations Security Council and the then Secretary-General condemned the coup and action by the military in Fiji and called for the peaceful restoration of the democratically elected Government as soon as possible. The United Nations High Commissioner for Human Rights, Ms. Louise Arbour, expressed her concern through a public statement on 7 December 2006.[4] In January 2007, the new United Nations Secretary-General reiterated the previous calls for the "immediate reinstatement of the legitimate authority in Fiji and its return to constitutional rule and full democracy".[5]

II. POLITICAL AND LEGAL STRATEGY AND INSTITUTIONAL FRAMEWORK

A. International level

7. Fiji is a party to the Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Rights of the Child, and has signed the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

8. It has ratified the Rome Statute of the International Criminal Court. Fiji has acceded to the eight core Conventions of the International Labour Organization, including Convention 105 on the Abolition of Forced Labour (1957), but has not yet acceded to Convention 181 on Private Employment Agencies (1997).

9. Fiji is not a party to the 1989 International Convention against the Recruitment, Use, Financing and Training of Mercenaries, which has been ratified or acceded by 30 States. While noting the limitations of this instrument, the Working Group promotes accession as an important step towards addressing the concerns of mercenarism. The Working Group is encouraged by statements of support for this measure from the executive, legislative and judicial branches of the Fijian interim Government, and extends its support and assistance for a speedy treaty action. The Working Group was informed of pending treaty action by Fiji on some 12 United Nations instruments on counter-terrorism, and urges the authorities to consider adding treaty action on the 1989 Convention as a priority.[6]

10. One of the limitations of the 1989 Convention is that PMSCs and their employees fall into a grey area not specifically addressed. This demonstrates the need for appropriate national regulation and monitoring of the activities of these security companies with a view to ensuring the responsibilities of the State and the effective enjoyment of human rights. To this end, such national-level registration and licensing systems for PMSCs and employees should include the definition of minimum requirements for transparency and accountability of firms; the screening and vetting of personnel; and the establishment of a monitoring system, including parliamentary oversight.

B. National level

11. The Fiji Constitution of 1997 provides that the conduct of government shall be based on a number of principles, including full respect for the rights of all individuals, communities and groups.[7]

12. Section 12 of the Royal Fiji Military Forces Act (FMF Act) states that the President, acting on the advice of the Minister, must appoint a Commander of the Republic of Fiji Military Forces to exercise military executive command of the Forces, subject to the control of the Minister. The FMF Act includes provisions under which soldiers, regardless of whether they are retired or in the reserves, in the territorial or regular forces, can be released for duty overseas. The Minister for Home Affairs must first define by legal notice published in *The Gazette*, after approval by the Cabinet and the President, as Commander in Chief, a purpose or duty that authorizes defence force involvement overseas (sects. 3 (3) and 3 (4)). This also means that the financing of such a venture must be lawfully approved (sect. 3 (4)). No officer or soldier of the FMF, whatever their status, can be allowed to proceed on duty overseas without the Minister's approval (sect. 3 (4)). Only the President, upon the advice of the Minister of Home Affairs, can disband a section of the FMF or discharge from service any individual soldier to enable such soldier to serve overseas under someone else's employment and control. This procedure has not been followed yet by either the FMF or the Minister of Home Affairs and his Cabinet.[8]

13. The Working Group notes the existence of an Employment Ordinance, which states, in article 47 (1) of chapter 92, section on "Foreign contracts of service and contracts made abroad", that when a contract made within Fiji relates to employment in another territory, the attestation of the contract must take place before an attesting officer before the employee leaves Fiji. It also stipulates that a medical examination must take place at the latest by the time the employee leaves Fiji, and enables the labour officer to require security by bond, and penalties including fines and imprisonment for inducing persons to proceed abroad under informal contract.

14. The Ministry of Labour informed the Working Group of the need for labour contracts to be attested and for the two parties thus to agree, and that the Ministry considers that it requires minimal conditions of a “Schedule 3” system to cover accommodation, pay, repatriation and compensation. However, the Ministry of Labour acknowledges that it uses outdated legislation from 1970 which is not sufficient. The Ministry of Labour specifically noted that it has a mandate to “attest” but not to “supervise” whether an individual is leaving for nursing or security work abroad. The system for the supervision of PSCs is to be created by the Ministry of Labour. The Ministry of Labour informed the Working Group of the envisioned enactment of an Employment Act as of October 2007, to include a “licensing” system, not only in enlisting but also in recruitment.[9]

15. In this regard, the Working Group notes the uncertainties surrounding the ability of the interim administration’s ability to adopt law, in light of the in effect disbanded bicameral parliament, the Senate and House of Representatives, since the December 2006 coup d’état.[10] In consulting with the interim authorities, it noted the position of the Acting Chief Justice that in the current context, formative legislation should still be passed to address pressing needs and that such legislation by decree could later be reviewed and ratified once a democratically elected Parliament was in session.

16. If such legislative action would be considered in advance, the Working Group discussed with representatives of the interim Government the different options to transpose the obligations from the 1989 Convention into national legislation to include the amendment of the Penal Code and/or the Employment Act or the enactment of a special law to address the issues.

III. PRIVATE MILITARY AND SECURITY COMPANIES IN FIJI

A. Situation of private military and security companies in Fiji and recruitment of individuals by private companies for work abroad

17. From its consultations with the interim Government, the Working Group noted that the interim Prime Minister registered concern as to whether former Fijian soldiers now working for PMSCs in Iraq would be considered “mercenaries”. The interim Minister of Foreign Affairs noted that the individuals who had left had not been contracted by States but had left in their individual and private capacity on the basis of casual agreements between parties. A representative of the Royal Fiji Military Forces noted that body’s concerns in terms of image, namely, that this unregulated activity could tarnish the reputation of the Fijian military, built inter alia on its contributions to peacekeeping operations worldwide.

18. The Working Group delegation was provided by the Ministry of Labour with a copy of a letter dated 1 February 2005, which the Ministry had addressed to the Secretary-General of the Parliament and which annexed “a list of the recruitment agencies and their offshore counterparts with their addresses. The list also gives relevant information such as occupations with rates of pay and the current number of Fiji nationals in Kuwait and Iraq”.

19. The document states that, as of early 2005, 838 Fijians were employed in Iraq and Kuwait, by four private military and security companies: (i) 358 employed by Public Warehousing Co. (Kuwait), through its local agent the Meridian Services (Fiji); (ii) 220 employed by Global Risks Strategies, through its local agent Global Risks Strategies (Fiji) Ltd; (iii) 160 employed by Armor Group Services Ltd (U.K.), with local agent Homeland Security Services Ltd (Fiji); and (iv) 100 employed by Triple Canopy Inc. (USA), with local agent Triple Canopy (Fiji). According to this document, all employees were provided with insurance and allowances and were guaranteed repatriation, while the Meridian recruits would have to cover 50 per cent of their own costs.

20. The Ministry of Labour also provided the Working Group delegation with updated documentation listing the employment status of Fijians and other details of five private military and security companies as of January 2006: (i) 250 were employed by Public Warehousing Co. (Kuwait); (ii) 250 were employed by Global Risks Strategies (Iraq); (iii) 181 were employed by Armor Group Services Ltd (Iraq); (iv) 62 were employed by Control Risks Group (Iraq); and (v) 73 were employed by Triple Canopy Inc. (Iraq). One particular item on this document was “Issues of Concern from Recruitment Process”, which states that 200 were recruited but unemployed in Kuwait and that 14,550 had been recruited in Fiji without available contracts in Kuwait. It also noted that Global Risk Strategies (Iraq) has experienced a total of four fatalities; two in action and two by natural causes.

21. The Working Group also obtained in the course of its visit to Fiji copies of a number of employment contracts between private military and security companies and individuals. Notably, these contracts consistently included a governmental stamp by the Divisional Labour Officer Central in Suva. This was the case, for example, with contracts of PWC Logistics in Kuwait, which were also stamped by the Meridian Services Agency Suva in Fiji. These particular job offer letters listed a basic salary of KD 400 per month as a “squad leader”, as compared with KD 175 per month as a “trailer driver”.

22. Having also consulted with senior members of the former Government in Fiji, the Working Group noted both the position of the former Prime Minister - that the Government had nothing to do with these recruitments - and the emphasis placed on the private nature of the arrangements between the PMSCs and individual Fijians. The Working Group was informed that as a policy, the Government did not stop anyone from going abroad for work and imposed no restrictions. At the same time, the Government was concerned to ensure proper contracts and insurance and adequately executed travel arrangements, with the Ministry of Labour in charge of oversight.

23. The former Minister of Labour provided some information on a “particularly disappointing case” concerning the company Meridian Services in Fiji which had received much media coverage. The director of this company allegedly promised to give work to some 15,000 to 20,000 people in the Middle East, notably in Kuwait. The company requested 150 Fiji dollars in advance to secure employment and is estimated to have collected some 5 million Fiji dollars. The Acting Chief Justice informed the Working Group that many persons in Fiji borrowed money from their villages and obtained passport and adequate clothing only to realize that the offer

was a fraud. However, while some 400 recruited Fijians were sent in a first batch, allegedly only some 200 actually obtained work.

24. The Working Group is concerned by the fact that this company was not registered with the authorities and by the lack of oversight by the Ministry of Labour or any other State organ. The Acting Police Commissioner informed the Working Group that investigations were conducted when some of those enlisted gave evidence. The Ministry of Labour was concerned that it was neither involved nor informed, and requested the judicial police to investigate despite the fact that it had not received complaints at the time. However, the Acting Police Commissioner observed that as the case featured no criminal element, merely elements of fraud, and was considered as “private dealing”, it was filed.

25. The Working Group is also concerned by the initial statements and positions of the Government in 2005, when the Minister of Labour stated:

“The Government knows that more men are leaving for Kuwait and Iraq and it is a good thing, because it is providing employment for the unemployed. This is one solution to the increasing unemployment rate in the country today.”[11]

26. The Working Group learned that the then Minister of Labour visited Kuwait in 2005, stating that his Ministry supported workers travelling to Iraq and Kuwait, urging “coverage of insurance for work-related injuries and deaths, to be arranged by the employing companies and that is a mandatory part for the contracts which are attested by my ministry”. [12] The former Minister informed the Working Group that it was the number of complaints that prompted him to go to Kuwait, where he held a large meeting with some 150 to 200 Fijians, at which he learned that only half of them had jobs. He informed the Working Group that a number of Fijians had complained about not finding a job (and that some had resorted to criminal activities). He also referred to their experiences of non-fulfilment of payment and lack of insurance and reported that representatives of PMSCs allegedly confiscated their passports so they would not change over to another company.

27. The former Minister of Labour also informed the Working Group that he had visited the headquarters of PMSCs in the United States of America and in the United Kingdom, and that he “went to ensure that employment could continue, increase numbers, respect insurance and conditions”. While noting his support for enhanced regulation in Fiji, he also referred to the unemployment rates in Fiji, noting that if overly strict conditions were imposed, PMSCs would recruit from countries such as Nepal and Tonga.

28. The Working Group takes note of a later, adjusted position of a subsequent Minister for Labour, who in 2006 called for people intending to work in Iraq to check with his ministry before signing any contract, stating the following: “We want to ensure that the recruitment operation is within the law. And if it is so, then we cannot stop people from seeking employment. But the Ministry should be able to study the contract of employment first.”[13]

29. The Working Group also noted the information from representatives of the Royal Fiji Military Forces (RFMF) on the significant role that RFMF soldiers played in United Nations peacekeeping operations and in the Army of the United Kingdom [14] It also recognized that some serving members of the armed forces had resigned in order to work with private companies, including senior military personnel discharged for that purpose. The Working Group also received information from an RFMF representative that three former Ministers were currently running PMSCs, which could indicate a symbiotic relationship and a troubling “revolving-door” syndrome between political leaders and PMSCs, a situation observed by the Working Group in other contexts as well.

30. The Working Group takes note of statements by several non-governmental organizations (NGOs) to the effect that the Government may not wish to discourage persons from working in the field of security abroad, due to unemployment conditions in Fiji and the amount of remittances which these individuals can send to their families, who often live in rural areas of the country. The Citizens Constitutional Forum (CCF) has opposed the recruitment of former soldiers by PMSCs for profit-making security business in Iraq. CCF has called on the representatives of PMSCs to seriously reconsider whether this work is worthwhile in view of the death and serious injuries that have occurred and is likely to recur in future. CCF also noted the responsibility of the Fijian Government because it had encouraged the recruitment activities from the start.[15]

31. Prior to its visit to Fiji, the Working Group had noted media reports that Global Risks Strategies, registered in the United Kingdom, had come to Fiji in 2003 to recruit personnel for security-related work in Iraq.[16] Homeland Security Limited had allegedly sent a recruiting team

to Fiji seeking 70 men from the police, army or prison service to work as security guards in Iraq, and was reported to have recruited 181 Fijians by mid-2005.[17] Another 70 Fijians were allegedly working in Iraq with Triple Canopy, a United States corporation.[18]

32. In the course of its visit, the Working Group had an opportunity to meet with a number of representatives of PMSCs which have recruited Fijians for security work abroad. The head of one company’s operations in Fiji considered that the search for employment and better pay were the main reasons why thousands of Fijians were braving the dangers of Iraq. One representative informed the Working Group of his function as a “service provider”, for which he receives a salary/fee which usually amount to 7,500 Fiji dollars per month or less and an additional 100 dollars per individual recruited to cover office rent and other expenses. To prepare a person for the work, a fee of 300 dollars is received, followed by 100 dollars per month for each month worked in Iraq. The companies have seen a decline since 2003 in the numbers of recruitments. In 2003, one company sent 560 persons for work in Iraq and has sent around 1,000 since then, while in 2007 only 10 persons were recruited for work in Iraq. Another PMSC employer said that his company had previously sent some 150 persons but that currently only 10 of those recruited through the company were working in Iraq. It was noted that many had left the companies and worked for other companies and that some applied through the Internet and went directly to Iraq through their own contacts.

33. One PMSC employer reported that the company had set some baseline criteria for recruitment: (i) ex-military or ex-policeman with at least three years of experience; (ii) birth certificate and other papers, over 23 and under 55; (iii) police clearance (criminal record checker), which the company pays for as well as the medical check-up. The representative stated that no training was

dispensed in Fiji but that five days of training were provided upon arrival in Baghdad and that the AK-47 was the main weapon used in Iraq. While this PMSC employer representative stated that none of those recruited by his company had been killed, he noted that five persons who had left to work for another company had been killed, which had led to the imprisonment in Kuwait of the people who had hired them.

34. Employer representatives of PMSCs informed the Working Group generally of similar but also some differing procedures. One representative noted that he conducts physical and medical tests and assists recruits with their visa application, while another representative spoke of his good relations with the Australian Embassy in Fiji (recruits often travel by air through Sydney and Dubai). The representatives reported differing practices as to whether the employment contracts were signed abroad or in Fiji, signed by representatives of the mother company or signed on their behalf, and there were differing accounts as to the attestation by and contacts with the Ministry of Labour. As for working conditions, the range of remuneration varied from 1,500 to 3,000 dollars, with three to six months of work prior to leave and different levels

of insurance policies and compensation. The representatives said that payments usually go through offices or banks in Dubai or London, and rarely directly to the families. One representative noted that a letter of release is required if the recruitment concerns military personnel, who may remain in the reserves with a corresponding impact on their pension and other rights; such release is not requested if it concerns a person currently in the reserves. The company can apparently write to the Army and provide the list of those wishing to be hired and the Army issues permissions.

35. As for the accounts by recruited PMSC employees received by the Working Group during the visit, the practices described above concerning the recruitment phase of their work were largely confirmed. It was confirmed that the employment agreements were routinely witnessed by official representatives of the Ministry of Labour in Fiji. Former employees described their travels to the Middle East on chartered planes, including via Korea and Dubai, and observed security personnel from the United States, United Kingdom, New Zealand, Kenya, Uganda, Fiji, Pakistan, South Africa and Mexico. The type of security-related work once in Iraq included manning checkpoints, guarding electricity plants, static security, convoy security and personal security detail.

B. Effects of the activities of Fijians working for private military and security companies on the enjoyment of human rights

36. The Working Group considers its mandate twofold as to its consideration of rights holders: (i) persons working for PMSCs may commit abuses and human rights violations while performing their security work in situations of violent or low-intensity conflict; and (ii) the persons employed by PMSCs often find themselves in vulnerable situations, with contractual irregularities, exploitation, arbitrary detention and other restrictions on their human rights and labour rights.

37. Consistent with the first set of issues, the Working Group is concerned at information collected about some aspects of the activities of Fijians recruited to work for private companies offering military assistance, consultancy and security services in situations of violence and armed conflict such as in Iraq. To exemplify the situation, the Working Group notes the experience recounted to it by a former Fijian soldier who served as a private security guard for a PMSC in Baghdad in 2006 and claimed to have witnessed shooting incidents while working in Iraq.[19] The person in question figures as a witness in a criminal court case taking place in the United States of America, over what he reported to the media and company executives as a series of incidents in Iraq during July 2006. The allegations concern random shootings and deliberate targeting of civilians and involve private contractor guards and former United States military personnel. The case reached the United States courts after an investigation was carried out by the United States Army and the company in question. A team of lawyers representing the PMSC and representing the officers implicated in the incidents met with the person in question,

Mr. Naucukidi, in Fiji in May 2007 to take his statement.[20] Other accounts from this and other individuals provide insights as to how companies operate in Iraq without vehicle plates and no uniform (making it impossible to distinguish between PMSCs); use heavy weaponry and pose a challenge in terms of accountability and oversight.

38. Relevant to the other aspect of the Working Group mandate's concern, it also addresses issues concerning the rights of individuals recruited for work with PMSCs. At the time of the visit, 21 Fijians had reportedly been killed while working for PMSCs in Iraq, with several others injured.[21] One much publicized incident took place in mid-April 2006, when four Fijian nationals working as security personnel in Iraq were killed in an ambush during a convoy-protection mission northbound towards Kirkuk in northern Iraq.

39. The Working Group has also received information on situations where Fijians recruited for these private security companies have been exploited. As mentioned above, thousands of Fijians have in recent years been lured into paying fees for prospective security work abroad which did not materialize. In other instances, the contracts were signed under fraudulent conditions, either immediately upon departure or upon arrival in the country of destination. After performing security work in countries abroad, many Fijians have experienced contractual irregularities and poor working conditions, including excessive working hours, partial or non-payment of salaries, ill-treatment and the neglect of basic needs such as access to medical services. A representative from the Trade Union considered that there is no proper legislation and oversight of the contractual arrangements, a lack which has led to unpleasant surprises. One Fijian contractor reportedly stated that the contract viewed in Fiji was different to the one signed in Iraq, where he earned approximately \$1,200 monthly.[22]

40. The interim Attorney General of Fiji informed the Working Group that the wife of a person who had suffered a heart attack in Iraq had visited him. The insurance policy did not cover "natural death", and since Hong Kong had been specified as the jurisdiction, there was limited opportunity for recourse. As far as abuses by PMSCs were concerned, if Fijians were mistreated or detained, international law and conventions should apply. NGO representatives told of experiences where a PMSC agent had gone to a family and attended the funeral. The family had accepted the explanation and had not wished to ruin the relations, as it was considered "traditional courtesy" to accept apologies without criticizing.

41. The Working Group was informed of the limited reintegration measures available to Fijians who had performed security work abroad upon the return to their communities in Fiji. Such measures are necessary to prevent domestic violence and the spread of sexually transmittable diseases.[23] There appears to be no decent debriefing or process to deal with returnees, in particular sexual and other violence against women and children by those returning to Fiji. Among the repercussions when people return from security work abroad, there is violence against women in homes. NGO representatives informed the Working Group that no counselling is available and that there are no debriefings with trained psychologists.

42. One PMSC representative informed the Working Group of its insurance policy, which included medical treatment in London or Dubai, coverage of medical and emergency expenses, and a list of 60 detailed descriptions of injuries. The representative noted that claims had been paid out in full. However, that version contrasted with a number of accounts provided by PMSC employees. As to proceeding with claims, one individual referred to an exchange with a PMSC, when he had warned the PMSC that in 30 days he would institute action for some 20 to 30 individuals. The company had sent him a threatening reply, was aware that the lawyer had spoken publicly about it and considered itself defamed. Another individual informed the Working Group of a claim submitted to the High Court of Fiji at Suva, Civil Jurisdiction, in 2006, against Armor Group Services Ltd on charges of termination of the plaintiffs' contract on unfounded allegations and unlawful detention for general damages of US\$ 200,000. The plaintiff had also written to the British High Commission in Suva, which had responded by letter of 9 January 2006 "regarding your complaint against a British Company, the Armor Group Security Company that operates in Iraq". The representative of the High Commissioner "advised to engage the services of a lawyer if you are looking to obtain redress from the above-mentioned company".

IV. SITUATION OF FIJIAN ALLEGEDLY RECRUITED AS MERCENARIES IN BOUGAINVILLE IN PAPUA NEW GUINEA

43. Traditional forms of mercenarism persist in the region, as demonstrated in cases where former Fijian soldiers were recruited in 2005 to undertake mercenary activities in Papua New Guinea on the autonomous island province of Bougainville. In November 2005, it was reported that five to nine former Fijian soldiers had entered PNG illegally and were arming and training a private militia in a rebel-held area on the island of Bougainville. The Fijians were reportedly training a group of at least 30 men, led by rebel leader Noah Musingku, in a camp at Tonu in Siwai district, South Bougainville. The rebel leader claims that the Fijians were security guards for his bank.[24] Three Fijians left PNG sometime in January 2007 and a month later four Fijians surrendered to the Bougainville Police, while one Fijian reportedly remains in Tonu. Since their surrender, the four Fijians have been held in custody at Buka police station and could face charges of belonging to an illegal army and drilling and training with an illegal army.[25]

44. The Working Group was informed by a representative of the Royal Fiji Military Forces that the Army had taken special steps to distance itself from the situation. The acting Police Commissioner informed the Working Group of details of the events and of his experience of having been in the Solomon Islands at a time when 10 persons were recruited from Fiji and left via Honiara to the Solomon Islands towards Bougainville. In Honiara, the men were taken to a motel belonging to a Fijian businessman. Someone from the Ministry of Foreign Affairs in Fiji recognized the men and alerted the High Commissioner to the Solomon Islands in Papua New Guinea. The police in the Solomon Islands were duly informed and placed the Fijians under house arrest for three days before immigration officers sent them back to Fiji, while one member of the group escaped. The persons recruited had been told that transfer would be facilitated by an agent in Honiara and that all of their expenses would be reimbursed.

45. A representative of the High Commissioner of Papua New Guinea to Fiji informed the Working Group of its understanding of the events. The representative noted that in October 2005, some Fijians had left for Port Moresby for Bougainville pretending to be missionaries but in reality to perform security work for Noah Musingku. Mr. Musingku has run false pyramid schemes in Papua New Guinea and in the Solomon Islands, and styles himself as a "King of the Kingdom of South PNG/Bougainville". However, the representative emphasized the position that Mr. Musingku is a con man, not a leader. Eight Fijians went to Bougainville, while three left voluntarily following action taken by the Government of Australia. A special envoy from the Government of Fiji travelled to Papua New Guinea, but the action was not successful and the individuals refused to leave. Three of them are now detained in Buka in Bougainville and have been charged with (i) illegal taking-up of arms; (ii) illegal possession of arms; and (iii) illegal immigration. One Fijian reportedly remains in Bougainville. The 10 Fijians in the Solomon Islands were intercepted by the PNG High Commissioner in the Solomon Islands and returned to Fiji, and should face charges. The representative noted that the reason why the police in Papua New Guinea have not taken action to intervene is due to the peace process and prior experiences.

V. CONCLUSIONS

46. The Working Group notes that Fiji has an established tradition of well-trained, disciplined and highly skilled military and security personnel who perform security functions in various capacities worldwide. Several interlocutors confirmed their experiences that Fijians are reliable in hot spots and are very professional, stress-resistant and appreciated colleagues. The Working Group notes that security work is a major source of income for the country and for individuals and local communities; third only to a US\$ 6 billion sugar industry and a US\$ 2 billion tourism industry. Remittances of overseas work are crucial for many rural areas in Fiji. It appears to be this mixture of supply and incentives, coupled with a limited to non-existent legal framework, which has created a breeding ground for the recruitment of Fijians to work for PMSCs.

47. The Working Group is concerned by information it has received indicating that Fijians recruited by private security companies have been exploited. As indicated above, thousands of Fijians have in recent years been lured into paying fees for prospective security work abroad which did not materialize. The information received also indicates that in a number of cases, contracts were

signed under fraudulent conditions, either immediately upon departure or upon arrival in the country of destination. Many Fijians have also experienced contractual irregularities and poor working conditions, including excessive working hours, partial or nonpayment of salaries, ill-treatment and the neglect of basic needs such as access to medical services.

48. The Working Group is concerned by the absence or limited reintegration measures available to Fijians who have performed security work abroad upon the return to their communities in Fiji.

49. The Working Group is concerned at the absence of national legislation and measures in Fiji to effectively address these issues. It encourages the Fiji authorities to take positive action in order to ensure that private military and security companies in Fiji operate within a legal framework in full accordance with international human rights standards.

50. The Working Group is also concerned by persistent forms of traditional mercenarism in the region, in particular by the situation in the autonomous island province of Bougainville in Papua New Guinea, where former Fijian soldiers were recruited in 2005 to undertake mercenary activities.

VI. RECOMMENDATIONS

51. **The Working Group wishes to submit the following recommendations:**

(a) Accession of Fiji to the 1989 International Convention against the Recruitment, Use, Financing and Training of Mercenaries;

(b) Development of national legislation to address mercenaries, mercenary-related activities and the activities of private companies offering military assistance, consultancy and security services on the international market. This can take place through the introduction of such elements into the Penal Code and/or Employment Act, or through the elaboration of a separate comprehensive law;

(c) Establishment of a system for regulating, licensing, controlling and monitoring the activities of private security companies in order to provide effective oversight, whereby the authorities would maintain transparent registers of private security companies on all matters such as ownership, statutes, purposes and functions as well as a system of regular inspections to ensure accountability;

(d) Certification of the services provided by private security companies and of their personnel training; and oversight by the Ministry of Security of entrance tests and recruit training and preparation in accordance with approved standards. Personnel training should cover United Nations rules on the use of firearms and on the protection of human rights, such as the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;

(e) Status checks on private security company directors, shareholders and executives, as well as all personnel, to ensure that they have not previously been implicated in human rights violations and that there are no conflicts of interest between posts held by members or former members of the military or police and their involvement in private security companies;

(f) Establishment of a “Commissioner for Private Military and Security Companies”, who could be a part, institutionally speaking, of the Ministry of Public Security, with a mandate to register and monitor private military and security companies operating in Fiji and receive complaints. The Working Group suggests that such a mechanism could undertake joint inspections with the Ministry of Labour, with a mandate to make announced and unannounced visits in this oversight role;

(g) Adoption of measures to address issues of reintegration and post-traumatic stress disorder in individuals returning from security work abroad through the establishment of a comprehensive system of debriefing and professional counselling;

(h) Adoption of measures by the competent authorities allowing them to act with speed and vigour on complaints submitted by individuals who have returned from Iraq, and to consider the complicity and responsibility of private security companies and individuals involved;

(i) Accession to the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, as these instruments would also strengthen the protection of Fijians contracted for security work abroad.

* El resumen del presente informe se distribuye en todos los idiomas oficiales. El informe propiamente dicho, que figura en el anexo del resumen, se distribuye únicamente en inglés.

- [1] For the purposes of the present report and while recognizing the definitional challenges, the Working Group refers to private military and security companies as including private companies which perform all types of security assistance, training, provision and consulting services, including unarmed logistical support, armed security guards, and those involved in defensive or offensive military and/or security-type activities, particularly in armed conflict areas.
- [2] 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 was established by the Commission on Human Rights in paragraph 11 of resolution 2005/2. The Working Group is composed of five independent experts serving in their personal capacities and headed by its Chairperson-Rapporteur, Mr. José Luis Gómez del Prado (Spain). The other Working Group experts are Ms. Najat al-Hajjaji (Libyan Arab Jamahiriya), Ms. Amada Benavides de Pérez (Colombia), Mr. Alexander Nikitin (Russian Federation) and Ms. Shaista Shameem (Fiji). As agreed by Working Group members, Ms. Shameem was not part of the delegation visiting Fiji, although she was consulted and interviewed by the delegation during its visit in her capacity as Director of the Fiji Human Rights Commission.
- [3] See A/61/341, paragraphs 65-76. Working Group annual reports to the General Assembly and Human Rights Council are also accessible at <http://www.ohchr.org/english/issues/mercenaries/index.htm>.
- [4] See <http://www.un.org/news/dh/pdf/english/2006/06122006.pdf>.
- [5] See <http://www.un.org/apps/news/story.asp?NewsID=21164>.
- [6] The Permanent Secretary of the Ministry of Labour informed the Working Group of a submission from the Ministry to the former Cabinet in 2004 concerning accession to the 1989 Convention that did not make it past the subcommittee level.
- [7] Fiji Constitution (1997), chap. 2, sect. 6.
- [8] See http://www.ccf.org.fj/artman/publish/printer_108.shtml.
- [9] See clause 2.6.4.1 (i), which covers “regulation enlisting ... for foreign contracts”. Clause 24 (t) concerns private employment. The Ministry of Labour also noted its cooperation with ILO and the commitment to review the Bill and incorporate some 22 ILO Conventions ratified, including the eight core Conventions.
- [10] It also noted that on 1 April 2007, at the 116th Assembly of the Inter-Parliamentary Union (IPU), held in Bali, Indonesia from 29 April to 4 May, the IPU Governing Council decided to suspend the membership of the Parliament of Fiji. See www.ipu.org/press-e/bali5.htm.
- [11] *Fiji Times* (2005b). “Worker exodus a drain on Fiji manpower”, 19 January 2005.
- [12] Fiji Government (2005b). “Kuwait and Iraq workers are insured - Zinck”, Press Release, 19 April 2005.
- [13] Nic Maclellan, “From Fiji to Fallujah: The war in Iraq and the privatisation of Pacific security”, *Pacific Journalism Review*, vol. 12, No. 2, September 2006, as taken up in News Briefs, Fiji Government Online.
- [14] BBC reports that the United Kingdom employs approximately 2,000 Fijians in their regular armed forces, based on an earlier version of the article by Nic Maclellan, “From Fiji to Fallujah: The war in Iraq and the privatisation of Pacific security”, <http://nautilus.rmit.edu.au/forum1reports/0611a-maclellan.html>; and “Fijians take on dangerous Iraq roles”, BBC News, 15 March 2007.
- [15] See the article mentioned in note 13 above, which provided the basis for a press release entitled “Death of two Fiji soldiers in Iraq”, released on 3 May 2004 by Reverend Akuila Yabaki, director of the Citizen’s Constitutional Forum (CCF).
- [16] See note 13.
- [17] Homeland Security is an agency for Armor Group, which runs offices in Mosul, Baghdad, and Basra “Fijian Deaths in Iraq Revive Mercenaries’ Issue”, InterPress Services News, Sydney, 12 June 2006.
- [18] Frank Gaglioti, “Fiji’s economic conscripts: Tragic victims of the war in Iraq”, 23 June 2006, <http://www.wsws.org/articles/2006/jun2006/fiji-j23.shtml>.
- [19] For a graphic diagram illustrating the incidents, and differing accounts of those involved, see Dita Smith and Todd Lindeman, *The Washington Post*, 15 April 2007.
- [20] “Hired guns are wild cards in Iraq”, *Fiji Daily Post*, 19 April 2007; “Former Fiji Soldier Exposes Inhumane Acts by Former US Soldiers”, fijivillage.com, 17 April 2007.
- [21] Publicly available and unverified information accessed at www.iraqcasualties.org and Nic Maclellan, “From Fiji to Fallujah: The war in Iraq and the privatisation of Pacific security”, *Pacific Journalism Review*, vol. 12, No. 2, September 2006.
- [22] “Fijians take on dangerous Iraq roles”, BBC News, 15 March 2007.
- [23] See UNAIDS Country Situation Analysis - Fiji, http://www.unaids.org/en/Regions_Countries/Countries/fiji.asp.
- [24] “At least 30 rebels being trained by Fijians in PNG’s Bougainville”, Radio New Zealand International, 17 January 2006.
- [25] “Former Fiji soldiers face trial”, [FijiLive](http://fijilive.com), 14 March 2007; and “Musingku wants safety for four”, *Fiji Times*, 28 March 2007;

and “Former Fiji soldiers in Bougainville to go to trial next week”, Radio New Zealand International, 13 March 2007.