



General Assembly

Distr.: General
11 February 2013

English only

Human Rights Council

Twenty-second session

Agenda item 3

**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Written statement* submitted by the International Commission of Jurists, 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.

[1 February 2013]

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

Report of the open-ended intergovernmental working group to consider the possibility of an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies on its second session (A/HRC/22/41)

The International Commission of Jurists (ICJ) welcomes the report of the open-ended intergovernmental working group (IGWG) to consider the possibility of an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies (PMSCs)¹ on its second session (A/HRC/22/41). The report provides an account of the discussions held during the second session of the IGWG from 13-17 August 2012 and reflects the vigorous and constructive debate that took place during the session. The session was characterized by consensus-seeking interventions by the various governmental and non-governmental delegations and constitutes a step in the right direction.

The ICJ supports the conclusions and recommendations contained in the report and in particular welcomes the fact that they are based on a broad consensus reached by the IGWG. The session identified a number of existing gaps and areas of concern relating to the protection of human rights in the context of the activities of private security companies. Despite the willingness of most delegations to engage in the debates and the strong political will to move forward in the process, much more needs to be done. The consensual conclusion that there is need for further discussion at the intergovernmental level should be complemented by renewed efforts to carry out in depth and targeted discussions on key aspects of international regulation and accountability. Also important is the emphasis made on multi-stakeholder participation in future discussions as part of the open-ended nature of the IGWG.

The activities and operations of PMSCs, especially including those in association with or at the service of the extractive industry, have given rise to a number of alleged human rights abuses in many countries. These are frequently aggravated by the fact that national legal systems seem unable to provide an effective remedy to victims of such abuses. Such problems are not limited to situations of armed conflict, but extend to situations where the rule of law is weak or simply the regulatory and enforcement system is insufficient. PMSCs also provide security services to mining and oil companies' operations in complex environments as well as for governmental bodies such as ministries, administrative departments, embassies and other delegations. Allegations of human rights abuses have also arisen in these contexts.

The recommendations contained in the report rightly list accountability and the provision of remedies for the victims as a subject that deserves special attention in the future work of the IGWG. Careful analysis of concrete situations and cases involving human rights abuses by security companies, and systemic and individual failures to provide effective remedies and reparation, will be needed. This will be essential for the identification of the protection gaps that exist across jurisdictions and that need to be filled through an international legally binding instrument. The ICJ encourages the IGWG to place special emphasis on ensuring

¹ Including their accountability, taking into consideration the principles, main elements and draft text as proposed by 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, UN Doc A/HRC/22/41 (2012), para 1.

that victims and/or their immediate representatives are consulted in this process and are able to present their situations to the IGWG.

It is important to underline that particularly when gross violations of human rights occur, such as violations of the rights to life or physical integrity, the remedy that must be afforded, in accordance with international standards, is one of a judicial nature. Since the nature of PMSCs' activities normally entail inherent, and often high, risks to human life and physical integrity, States should have in place appropriate mechanisms for effective investigation, prosecution and sanction of the perpetrators of gross human rights violations (both natural persons and the legal entities for which they work). Stringent national systems of licensing, monitoring and authorization of exports should also be in place. Given the highly uneven practice of States in this regard there is an especially important need for an international legal framework to provide common standards.

Call for action

The ICJ urges the Human Rights Council and all States participating in the IGWG to:

- Extend the mandate of the IGWG for a further two-year period, as recommended by the Working Group;
- Adopt all other recommendations of the IGWG in its report and, in particular, consider the possibility of elaborating a legally binding instrument on the regulation, monitoring and oversight and accountability of the activities of PMSCs, as well as complementary approaches and strategies, including international standards, and the way in which they might interact to protect human rights; and
- Approach the issue of the regulation of PMSCs from a human rights perspective, particularly on the questions of accountability and access to justice, including through careful analysis of concrete situations and cases involving human rights abuses by security companies, and systemic and individual failures to provide effective remedies, ensuring that victims and/or their representatives are consulted in this process.