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

Visita a Armenia

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*

Resumen

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 Armenia del 20 al 27 de febrero de 2023. En cumplimiento de su mandato, el Grupo de Trabajo se centró en obtener información directa sobre la repercusión de los mercenarios, las actividades relacionadas con ellos y las empresas militares y de seguridad privadas en los derechos humanos en Armenia, y en identificar los problemas y las buenas prácticas. En su informe, el Grupo de Trabajo se centra en el marco legislativo que regula las actividades de los mercenarios y las operaciones de las empresas militares y de seguridad privadas, y expone las principales conclusiones de su visita. El Grupo de Trabajo celebra la adhesión de Armenia a la Convención Internacional contra el Reclutamiento, la Utilización, la Financiación y el Entrenamiento de Mercenarios de 1989, y su voluntad de investigar y enjuiciar las violaciones y vulneraciones de los derechos humanos y del derecho internacional humanitario cometidas por mercenarios y contratistas de empresas militares y de seguridad privadas. El Grupo de Trabajo observa que el marco nacional que regula el mercenarismo y las actividades mercenarias parece ser conforme al derecho internacional. En el ámbito de las empresas militares y de seguridad privadas, el Grupo de Trabajo considera que Armenia ha demostrado su compromiso de regular las actividades de las empresas militares y de seguridad privadas que operan en el país.

Tras exponer sus conclusiones, el Grupo de Trabajo formula recomendaciones con respecto a los mercenarios, las actividades relacionadas con ellos y las empresas militares y de seguridad privadas.

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



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 on its visit to Armenia

I. Introduction

1. 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 visited Armenia from 20 to 27 February 2023, at the invitation of the Government. The delegation comprised two members of the Working Group, Ravindran Daniel (Chair-Rapporteur) and Jelena Aparac, accompanied by human rights officers of the Office of the United Nations High Commissioner for Human Rights.

2. In accordance with Commission on Human Rights resolution 2005/2 and Human Rights Council resolution 51/13, the Working Group is mandated to study and identify sources, causes, manifestations and trends with regard to mercenaries and mercenary-related activities, and their impact on human rights, particularly on the right to self-determination. The Working Group is also mandated to monitor the activities of private military and security companies and their effects on human rights.

3. The Working Group is grateful to the Government of Armenia for the invitation to visit the country. During its visit, the Working Group had fruitful exchanges in Yerevan with numerous senior officials representing various ministries and agencies, including the Ministry of Foreign Affairs, the Ministry of Internal Affairs, the Ministry of Defence, the Ministry of High-Tech Industry, the Ministry of Justice, the Security Council of Armenia, the National Security Service, the Central Bank, the Investigative Committee, the Prosecutor General's Office, the Office of the Human Rights Defender of Armenia and the Office of the Representative of Armenia on International Legal Matters. The Working Group thanks them all for their openness.

4. The Working Group also had the opportunity to travel to Syunik Province, where it met with officials of the Syunik provincial administration and representatives of the Office of the Human Rights Defender in the city of Kapan, and with representatives of civil society organizations, including some working on women's rights, in the city of Goris.

5. On 1 May 2006, Armenia extended a standing invitation to United Nations special procedure mandate holders to conduct visits to Armenia. The Working Group thanks the Government of Armenia for its cooperation in facilitating its visit. The Working Group was able to hold open and frank discussions with all the State representatives that it met. The Working Group also warmly thanks all the representatives of civil society who gave of their time to meet and hold discussions with the delegation. The cooperation of civil society organizations with the Working Group before and during the visit provided invaluable information and is a testament to their vital role in monitoring the human rights obligations of Armenia.

II. Background

A. Regional and international human rights framework

6. Armenia is a member State of the Council of Europe and has human rights obligations at the regional and international levels.

7. As a member State of the Council of Europe, Armenia ratified the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) in 2002, and is thus subject to the jurisdiction of the European Court of Human

Rights. Its human rights policies and practices are also monitored by the Commissioner for Human Rights of the Council of Europe. Armenia ratified the European Social Charter (Revised) in 2004, but has not accepted the procedure whereby the European Committee of Social Rights decides on collective complaints lodged against it.

8. Armenia has ratified or acceded to many international human rights conventions, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention for the Protection of All Persons from Enforced Disappearance, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of Persons with Disabilities, the Convention on the Rights of the Child and the International Convention on the Elimination of All Forms of Racial Discrimination. Armenia has acceded to the Optional Protocol to the International Covenant on Civil and Political Rights and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, recognizing the competence of the Human Rights Committee and the Committee on the Elimination of Discrimination against Women to receive and consider complaints from individuals alleging violations by the State party of the respective instruments. Furthermore, Armenia has accepted the inquiry procedures under the Convention against Torture, the International Convention for the Protection of All Persons from Enforced Disappearance and the Convention on the Elimination of All Forms of Discrimination against Women. Armenia has also ratified the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict and Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

9. The obligations of Armenia under international human rights treaties are reflected in its national legal framework. Under article 5 of the Constitution, in cases where national legislation contradicts international treaties, the latter prevail, and no legislation may be adopted that contradicts the Constitution.

10. The Working Group noted the fact that Armenia had instituted proceedings before the International Court of Justice regarding alleged violations in the application of the International Convention on the Elimination of All Forms of Racial Discrimination by Azerbaijan. Armenia had also instituted proceedings against Azerbaijan and Türkiye before the European Court of Human Rights. The Working Group further noted that the Constitutional Court of Armenia had ruled on 24 March 2023 that the Rome Statute of the International Criminal Court complied with the Constitution, thus paving the way for Armenia to ratify the Rome Statute. The Working Group strongly encourages Armenia to become a State party to the Rome Statute, which would further demonstrate its commitment to upholding its obligations under international law.

B. Context of the visit

11. The Working Group undertook its visit to Armenia as part of its mandate to study the situation regarding mercenaries, mercenary-related activities and private military and security companies.

12. The Working Group decided to visit Armenia after its accession, on 23 November 2020, to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries (1989), when it became the thirty-seventh State party to that Convention. The visit was an opportunity for the Working Group to examine the extent to which the efforts of Armenia to implement the Convention within its borders and internationally could be considered good practice, and to look at potential challenges to effective implementation.

13. The visit to Armenia provided an opportunity for the Working Group to gain an understanding of the heavy toll borne by civilians in a country beset by armed conflict over territorial disputes with Azerbaijan since its independence in 1991. In this regard, the Working Group wishes to thank the conflict-affected communities that it met in Syunik Province for sharing their stories of grief, loss and hope with its delegation. Hearing directly from men and women whose daily lives are affected by acts of violence across the line of

contact with Nagorno-Karabakh, most recently in September 2022, provided some elements to inform the Working Group's visit.

14. The Working Group also focused on the increasing use of private security companies, particularly in the extractive industry; the regulations governing such companies; and the human rights impacts of their activities. The Working Group took the opportunity presented by the visit to examine the newly introduced legislation on cybersecurity.

15. Throughout the visit, the Working Group aimed to gain a better understanding of the human rights issues with respect to mercenaries, mercenary-related activities and private military and security companies in the country, and of how the Armenian authorities could better address them.

III. Mercenaries and mercenary-related activities

16. In 2020, the Working Group expressed itself publicly about the reported use of Syrian fighters recruited by Türkiye to take part in military operations against Armenian combatants, in support of the armed forces of Azerbaijan, during the 2020 hostilities.¹

17. The Working Group notes that these allegations about the reported use of mercenaries in the context of the 2020 hostilities appear to have prompted Armenia to accede to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries.

A. Legal framework regulating mercenarism and mercenary-related activities

1. Domestic legal framework against the recruitment, use, financing and training of mercenaries

18. The Working Group welcomes the accession by Armenia to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, in 2020. The Working Group also notes that Armenia is a State party to the Protocol Additional to the Geneva Conventions of August 12 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), under which mercenaries are defined in article 47.

19. The new Criminal Code of Armenia, adopted on 5 May 2021 and in force since 1 July 2022, contains provisions dealing directly with mercenaries, reflecting the International Convention against the Recruitment, Use, Financing and Training of Mercenaries.

20. Under article 147 of the Criminal Code, a mercenary is considered to be any person who:

(a) Is specifically recruited within or outside the territory of Armenia for the purposes of fighting in an armed conflict, or participates in hostilities driven by a desire for personal gain, having been promised a material remuneration by or on behalf of one of the parties to the conflict, which exceeds the remuneration promised or paid to the fighters of the same class of the armed forces of that party;

(b) Is neither a citizen of either party to the conflict, nor a permanent resident of the territory under the control of either party;

(c) Is not a member of the armed forces of either party to the conflict, and has not been sent by a State not party to the conflict as a member of its armed forces to undertake official assignments.

¹ See <https://www.ohchr.org/en/press-releases/2020/11/mercenaries-and-around-nagorno-karabakh-conflict-zone-must-be-withdrawn-un>.

21. The article further defines a mercenary as any person who:

(a) In any other situation, within or outside the territory of Armenia, is specifically recruited for the purposes of participating in a concerted act of violence aimed at overthrowing a Government, otherwise undermining the constitutional order of a State or undermining the territorial integrity of the State, or participates driven by a desire for personal gain, and is prompted by the promise or payment of material remuneration;

(b) Is neither a citizen nor a resident of the State against which the action is directed;

(c) Is not a member of the armed forces of the State on whose territory the act is initiated, and has not been sent by a State to undertake official assignments.

22. The Criminal Code thus prohibits the unlawful entry or exit of a foreign national or a stateless person into Armenia, or their transit through Armenia, for mercenary purposes. The law also clearly prohibits the involvement of Armenian nationals as mercenaries abroad.

23. The Working Group is satisfied that article 147 provides for a definition that is in compliance with the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, including: being specially recruited to fight in an armed conflict, being motivated by private gain, not being a national of a party to the conflict, and not being a member of the armed forces of a party to the conflict.

24. The Working Group notes with satisfaction that article 147 of the Criminal Code criminalizes the recruitment, financing and training of mercenaries and their use in armed conflicts or military operations, and punishes such acts by imprisonment for five to ten years. Engaging a minor in mercenary activities could result in a 12-year prison term. Participating in an armed conflict as a mercenary is punishable by a prison term of seven to twelve years. The Working Group notes that the domestic framework regulating mercenarism and mercenary activities appears to be in line with international law, including with most of the provisions of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, and with article 47 of the Protocol Additional to the Geneva Conventions of 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I). Indeed, the new Criminal Code provides for both proscription and prevention of mercenarism and mercenary-related activities, by prohibiting and punishing the recruitment, use, financing and training of mercenaries, and by punishing the mere fact of being a mercenary.

25. The Working Group is of the view that the clear domestic legal framework regulating mercenarism and mercenary-related activities adopted by Armenia is an important first step to holding perpetrators accountable, which in turn signals to all potential perpetrators that they will face justice if they commit these crimes.

2. Domestic legal framework regulating related crimes

26. In addition to criminalizing mercenary activities themselves, the Criminal Code also prohibits acts that are often associated with mercenary activities, including through the potential involvement of foreign fighters.

27. The Working Group noted that article 152 of the new Criminal Code prohibits international terrorism, covering organizing or carrying out an explosion or arson or other actions in the territory of a foreign State in order to provoke international tension or war or to destabilize the internal situation of the foreign State, and targeted at causing death or bodily injuries, or the destruction of or damage to buildings, structures, roads, means of communication, communication facilities or other property. Under that article, international terrorism is punishable by 12 to 20 years' or life imprisonment.

28. The Working Group further welcomes section 8 of the new Criminal Code, which prohibits crimes against peace and human security, and grave breaches of the rules of international humanitarian law in times of armed conflict.

B. Application by Armenia of the legal framework against the recruitment, use, financing and training of mercenaries: recent judicial cases about the use of mercenaries

29. The most direct and effective way of addressing the mercenary phenomenon is to facilitate the prosecution of perpetrators at the national level.

Trial of two Syrian citizens accused of mercenarism

30. The Working Group received information that, in a trial held in Kapan in October 2020, a court convicted two Syrian citizens for participating as mercenaries in military operations during the hostilities of September to November 2020.²

31. According to information received by the Working Group,³ at the end of October 2020, Armenian forces took two Syrian nationals prisoner, who were reportedly fighting on the side of Azerbaijan in the territorial dispute over Nagorno-Karabakh. The Armenian prosecutors alleged that both men had undergone military training at a camp in the north of the Syrian Arab Republic in the summer of 2020 before having been transported to Azerbaijan. According to the prosecutors, in addition to a fixed wage of \$2,000, the recruiters also promised to pay \$100 for every Armenian killed by their recruits. The prosecutors brought charges of international terrorism (art. 389 of the former Criminal Code), gross violation of international humanitarian law (art. 390 of the former Criminal Code), terrorism (art. 217 of the former Criminal Code) and mercenarism against both defendants. On 4 May 2021, after a hearing, a court in Kapan convicted both defendants of all charges and sentenced them to life in prison. Both men reportedly admitted being mercenaries in testimonies shown on Armenian television in 2021, in the aftermath of the trial. The Working Group noted that the two alleged mercenaries appealed against the verdict. The Court of Appeal confirmed the first-instance ruling in September 2021.

32. While very much welcoming the commitment of Armenia to closing the accountability gap for victims of mercenaries, the Working Group is concerned at the apparent opacity of the case, specifically the absence of publicly available information about the trial and judgment. The Working Group is also concerned about the short duration of the hearing – one day only – particularly in the light of the seriousness of the charges brought against the two alleged mercenaries and the severity of the sentencing. The Working Group would like to remind Armenia of its obligations to respect international norms relating to the right to a fair trial and due process rights, spelled out in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights, particularly in articles 9 and 14 of the Covenant, in all circumstances.

33. The Working Group notes, on the basis of the information received from the Government, that the conditions of detention of both individuals were subject to regular independent monitoring, including by the International Committee of the Red Cross and civil society, and seemed to be in accordance with international standards.

34. The Working Group reiterates its call to Armenia to guarantee that individuals accused of participating in mercenary activities be treated with due respect for their fundamental rights to a fair trial.

² In 2020, the Working Group received allegations about the reported use of Syrian fighters to participate in military operations in the 2020 hostilities, in support of the armed forces of Azerbaijan. In accordance with its methods of work, the Working Group transmitted urgent appeals to the Governments of Azerbaijan and Türkiye respectively, on 6 November 2020, to request further clarification about these allegations. The Working Group notes the fact that the Government of Azerbaijan categorically rejected allegations that it had used mercenaries in the context of the hostilities. The Working Group also notes the response of the Government of Türkiye that the allegations about its reported involvement in the recruitment, payment and transfer of mercenaries were “unfounded and unfortunate”.

³ Submission by the Geneva Academy of International Humanitarian Law and Human Rights in response to the Working Group’s call for input to inform its visit to Armenia.

Armenians operating abroad as mercenaries or as contractors of private military and security companies

35. The Working Group did not receive any information about any legal proceedings relating to the possible involvement of Armenian citizens in mercenary activities or with private military and security companies operating abroad.

Access to justice for victims of mercenaries

36. The Working Group has previously noted that although the profile of victims of mercenaries during armed conflict does not differ considerably from that of other victims of conflict, victims of mercenaries may be at increased risk of vulnerability and may experience a heightened sense of fear due to a perception that there is no course of action available against the perpetrators.⁴ Victims of mercenaries have the right to know the full and complete truth as to the events that transpired, their specific circumstances, and who participated in them, including knowing the circumstances in which the violations took place and the reasons for them.

37. For the commitment of Armenia to combating mercenarism and mercenary-related activities to retain its significance, the Working Group strongly encourages Armenia to adopt a victim-centred approach to ensure victims' effective access to justice and remedy, which includes ending the opacity and secrecy surrounding the trials of mercenary activities.

IV. Private military and security companies

38. The Working Group defines the term "private military and/or security company" as a corporate entity that provides, on a compensatory basis, military and/or security services by physical persons and/or legal entities.⁵ Focus on the types of services carried out by such private companies is essential, given the mutable nature of their operations, the complex corporate structures employed by the industry and the potential risks to human rights posed by their operations.

A. Regulatory framework governing the use of private military and security companies

1. International regulation of private military and security companies

(a) Montreux Document

39. The Montreux Document on pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict, adopted in 2008, clarifies the status of private security companies and the responsibility of the Governments that hire them under international law. This non-legally binding document comprises two parts, covering the obligations of States and private security companies under international law, and a wide range of good practices for contracting States regarding the hire, use and oversight of such companies. The second part also contains a proposed voluntary code of conduct for private security companies.

40. The Working Group notes that Armenia is not a participating State of the Montreux Document, which reaffirms the existing obligations of States under international law, particularly international humanitarian law and human rights law, relating to the activities of private military and security companies. The Working Group therefore encourages Armenia to consider becoming a participating State of the Montreux Document, which contains a series of best practices designed to help States take appropriate measures to comply with their obligations under international law in times of conflict.

⁴ A/HRC/51/25, para. 35.

⁵ A/HRC/15/25, annex, , art. 2 (a).

(b) International Code of Conduct for Private Security Service Providers

41. The International Code of Conduct for Private Security Service Providers' Association is a multi-stakeholder initiative established as a Swiss non-profit association. Its membership comprises States, private security companies and civil society organizations, referred to as the three pillars.

42. The Association is guided by the principles of the International Code of Conduct for Private Security Service Providers. These include a commitment to good governance, respect for human rights and international humanitarian law and a high standard of professional conduct. The Association strives to ensure protection and to provide remedies to victims of abuse by private security providers. It endeavours to prevent excessive use of force, torture and other degrading treatment or punishment, sexual exploitation and abuse, gender-based violence, trafficking in persons, slavery, forced labour and discrimination and to protect the rights of children.

43. Armenia is not currently a member of the Association, and nor are any private security companies based in Armenia.

44. The Working Group wishes to reiterate the usefulness of membership of the Association. In order to become members, companies are required to meet certain standards in order to be certified as being in good standing, meaning that they have been vetted and inspected and found to be compliant with the relevant human rights standards. Further, as a result of membership, these companies are required to provide a grievance mechanism to address situations in which human rights abuses or offences have been committed, – which is a positive practice that helps ensure accountability.

(c) Voluntary Principles on Security and Human Rights

45. Another relevant initiative is the Voluntary Principles on Security and Human Rights, prepared in 2000 as a set of principles designed to guide companies in the extractive sector in maintaining the safety and security of their operations within an operating framework that encourages respect for human rights. The Working Group's assessment of the Voluntary Principles can be found in its 2019 report on private military and security companies operating in the extractive industry ().⁶

46. The Working Group notes that Armenia is not a member of the Voluntary Principles Initiative. Member States of the Initiative are better able to align their corporate policies and procedures with internationally recognized human rights principles in the provision of security for their operations. In so doing, companies inform employees, contractors, shareholders and consumers of their commitment to the Voluntary Principles by sharing best practices and lessons learned with one another, and by collaborating on difficult issues. Member organizations engage with companies and Governments to promote adherence to and implementation of the Voluntary Principles through the development of strong corporate policies, practices and procedures.

47. While the duty to protect human rights rests with the Government of Armenia, the businesses that it contracts also have a responsibility to avoid harming people and to address the adverse impact of activities in which they are involved. The Working Group strongly encourages Armenia to become a member and to use the Voluntary Principles to assist companies, particularly private security companies operating in the extractive sector, to understand the environment in which they are operating, identify security-related human rights risks and take meaningful steps to address such risks.

(d) Open-ended intergovernmental working group to elaborate the content of an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies

48. On 28 September 2017, the Human Rights Council, in its resolution 36/11, decided to establish an open-ended intergovernmental working group, for a period of three years, with a mandate to elaborate the content of an international regulatory framework, without

⁶ [A/HRC/42/42](#).

prejudging the nature thereof, to protect human rights and ensure accountability for violations and abuses relating to the activities of private military and security companies. The Working Group encourages Armenia to support the open-ended working group process and to advocate the relevance of an instrument to regulate the activities of private military and security companies.

2. Domestic regulation of private military and security companies

49. The Working Group noted that Armenia has prohibited private military companies by law and that its domestic legal framework regulates the activities of the security industry.

50. The operations of private security companies in Armenia are regulated by the Law on Private Security Activities (Law No. ZR-6) of 1 March 2012, which was subsequently amended on 20 December 2022.

51. This law establishes a legal basis, delineates the duties of private security activities, outlines the procedure for cooperation with the State and other bodies, and governs the relations arising during the implementation of these activities. It also establishes a regulatory framework for the licensing and authorization of the operations of security service providers. The Ministry of Internal Affairs is the competent national authority in charge of implementing and overseeing this law. The law contains provisions for the licensing of private security companies, monitoring of their operations, periodic training of their staff and temporary or permanent revocation of licences for violations of the provisions of the law or other relevant Armenian regulations.

52. The law also sets forth an administrative procedure for the licensing and authorization of individuals employed by the private security companies to be involved in security activities, including the circumstances in which they can carry and use arms. The Working Group notes with concern, however, that the requirements for the use of firearms appear to be broadly defined, the regulations on the type and the calibre of firearms that are allowed to be used appear unclear, and only a few rules were found to punish the firearms-related behaviour of private military and security company personnel more severely than that of ordinary citizens.

53. The Working Group recalls that international human rights standards require that firearms be used proportionately, only in self-defence or defence of third persons and in a manner likely to decrease the risk of unnecessary harm.⁷ The Working Group regrets that the Law on Private Security Activities does not appear to provide sufficiently detailed regulations, requirements and procedures for compliance with, and accountability and remedies for violations of, human rights norms in connection with private military and security companies' possession and use of firearms.

54. The Working Group notes, however, that the law does seem to provide a clear delineation of the respective competencies of the police and private security companies. The law refers to a comprehensive process of background verification conducted by the police with respect to all private security employees, which not only focuses on criminal record checks but also includes provisions on standardized training provided to security personnel and on the measures taken to distinguish such personnel from police officers.

55. The Working Group notes that the Government of Armenia has recently adopted a set of amendments to the Law on Private Security Activities, aimed at simplifying the licensing procedure for foreign companies in some activity areas, including private security. According to the information received from the police headquarters, of the Ministry of Internal Affairs, the procedure for granting permission to foreign legal entities to carry out private security activities in the territory of Armenia is defined in the provisions of annex N3 of Government Decision No. 79-N of 19 January 2023. The Working Group received information that the licensing and oversight of these foreign-based security companies is also covered in the Law on Private Security Activities, specifically in article 30.

56. The Working Group wishes to highlight that it is imperative that all foreign-based companies undergo the same level of scrutiny and oversight by the Ministry of Internal

⁷ [A/HRC/36/47](#), para. 42.

Affairs as those registered in Armenia, even if they are registered and hold licences in their respective countries. In addition, the Working Group strongly recommends that the requirements for foreign-based private security companies to recruit only Armenian citizens be made more explicit, to avoid creating space for an accountability gap and, eventually, impunity for those foreign-based companies in case of involvement in human rights abuses.

57. The Working Group suggests that foreign-based security companies be required, at the least, to be members of the International Code of Conduct for Private Security Service Providers' Association.

58. The Working Group observes that, although some progress had been made to assist in regulating the private security sector, there is still a serious need to establish an independent oversight body or mechanism to effectively monitor the industry and to ensure that its operations are conducted in accordance to law and that it is not engaged in criminal activities or human rights abuses. The Working Group therefore strongly recommends that, in addition to the existing monitoring of the private security sector by the Armenian police, a more significant and independent oversight function of private security activities be created, including through the establishment of an independent mechanism, fully inclusive of all segments of civil society. The Working Group further encourages the strengthening of the oversight of such companies by regularizing inspections of company activities, and by reinforcing the frameworks for remedies and accountability in cases in which private security company personnel commit criminal offences and human rights abuses.

B. Private security companies operating in the context of the extractive industry

59. With 27 metal mines, Armenia is a country rich in natural resources, particularly copper, molybdenum, gold and dimension stones. These mines employ 9,000 people in rural areas, and metals and gems represent more than 60 per cent of total exports.⁸ During its visit, the Working Group received information about the extractive industry sites in different regions of Armenia and the operation of private security companies hired by such companies.

60. The Working Group has observed through its work that extractive companies operating globally have a vital interest in securing their operations by relying on different types of security providers.⁹ In countries where extractive projects are considered integral to the national growth and development model, groups opposing these projects are more likely to be treated as a threat to national security and as an impediment to development. For example, private security companies operating in the extractive sector worldwide have at times been accused of surveillance and intimidation against human rights and environmental defenders, including women human rights defenders, but also of extrajudicial killings, enforced disappearance, torture and ill-treatment, and sexual and gender-based violence.¹⁰

61. The Working Group wishes to emphasize that private military and security companies and other security actors often provide the conditions that allow extractive companies to operate. Therefore, in situations where extractive companies fail to respect the right of peoples to self-determination, such companies may be considered to be complicit in those abuses. This includes cases in which Indigenous peoples have been denied free, prior and informed consent in the awarding of concession contracts on their territorial lands, or when the extraction of natural resources prevents them from having access to their land, thus depriving them of their traditional means of livelihood.¹¹

62. Although the information received by the Working Group during its visit indicated that the police was in charge of controlling conflicts between local communities and extractive companies in the vast majority of cases, the Working Group is aware of a case in Armenia in which personnel of private security companies, acting alone or in some cases

⁸ See <https://www.worldbank.org/en/news/feature/2019/06/19/armenias-historic-vision-for-responsible-mining>.

⁹ A/HRC/42/42, para. 21.

¹⁰ See A/HRC/42/42.

¹¹ *Ibid.*, para. 55.

alongside State security forces, have subjected individuals opposing extractive projects to intimidation, harassment and threats.

63. In particular, the Working Group received information about the operation of private security contractors hired by the mining company Lydian Armenia in the Amulsar mine,¹² and the reported use of force by the staff of the security company in the context of protests by civilians opposing the exploitation of the mine in 2019.

64. The Working Group received information according to which, since 2011, environmental human rights defenders and international and local experts have raised objections to the Amulsar mining project, outlining the serious risks that it allegedly poses to biodiversity and the precious water resources of Armenia. While civil society organizations have actively opposed the project, many local people have reportedly been discouraged from speaking up, including through a series of lawsuits involving strategic litigation against public participation and retaliation from Lydian International or other actors.¹³ In 2019, it was reported that Lydian International used private security forces to quash peaceful demonstrations by individuals and environmental human rights defenders opposing the project. During its meetings with representatives of the Ministry of Internal Affairs, the Working Group learned that the Armenian police used the regulations under the Law on Private Security Activities in this particular case, which resulted in the revocation of the private security company's licence to conduct its security-related activities. The Working Group welcomes the implementation of the Law on Private Security Activities and encourages the Government to continue ensuring its full application with due respect to human rights.

65. The Working Group takes note of the memorandum of understanding signed by the Government of Armenia on 22 February 2023 with Lydian Armenia and the Eurasian Development Bank to revive the Amulsar project. The Working Group wishes to echo the findings of the Special Rapporteur on the rights to freedom of peaceful assembly and of association in his report on his visit to Armenia in November 2018, particularly his call for the Government to ensure that communities are genuinely consulted on the social and environmental impact of the project, as well as on its benefits.¹⁴ Indeed, following its meetings with environmental human rights defenders in Yerevan and Kapan, the Working Group is concerned at the apparent lack of transparency in the processes carried out in the context of environmental impact assessments and at the perceived corruption surrounding the granting of licences, which were highlighted as the main causes of the previous protests about the Amulsar mining project. It is of vital importance that environmental defenders and the local population affected by the project be able to voice their concerns without any fear of reprisal. The Amulsar mining project is a test for the Government of Armenia to demonstrate its ability to successfully balance democratic and participatory decision-making with its economic needs.

66. The Working Group wishes to highlight the lack of information and overall opacity in relation to the private security companies operating in the extractive sites located in the territory of Armenia. The Working Group is therefore concerned about the apparent insufficient oversight of these actors and their operations in this context. The Working Group calls for more transparency in security arrangements for extractive operations, particularly given that the current opacity around them might obstruct the identification of possible perpetrators and thus undermine efforts to achieve accountability and effective remedies for victims.

¹² The Amulsar project, mining for gold-bearing quartzite deposits, is located on the border between Vayots Dzor and Syunik Provinces, within the ridge area of the north-north-western branch of the Zangezur mountain range, at an elevation of 2,500 to 2,988 metres. Reserves of Amulsar gold-bearing quartzite deposit were explored, estimated and given a commercial value through large-scale geological exploration activities undertaken by Lydian Armenia at Mount Amulsar. See <https://www.lydianarmenia.am/eng/pages/amulsar-mine/70/>.

¹³ See <https://bankwatch.org/publication/amulsar-human-rights-violations-and-environmental-negligence-in-the-search-for-gold>.

¹⁴ A/HRC/41/41/Add.4, para. 77.

67. The Working Group urges the Government to take the necessary measures to strengthen the monitoring and oversight of private security companies – whether domestic or foreign – operating in the extractive sector. Furthermore, the Working Group recommends that the Government take measures to reflect human rights guarantees in its concession agreements, memorandums of understanding and other similar documents with extractive companies and to increase the capacity to monitor the activities of private security companies, including foreign companies. The Government should adopt laws on access to information and transparency for such contracts. Lastly, the Working Group wishes to reiterate its view that the Government should consider becoming a member of the Voluntary Principles Initiative.

C. Private security in the context of cybersecurity

68. The Working Group has previously noted the increasingly asymmetric nature of modern armed conflict and the rise in the involvement of private actors.¹⁵ While traditional warfare continues to play a major role in contemporary conflict, the use of cyberattacks and other cyberactivity is becoming increasingly prevalent as new technologies are developed and continue to evolve, even outside of traditional armed conflict. As a corollary to these developments, contemporary mercenaries and other actors have adapted to and become active in cyberspace, and in some instances they have become a necessary component of cyberoperations.¹⁶

69. The Working Group has been informed that the Government has initiated a reform on cybersecurity and is considering adopting a law, which would provide a legal and institutional framework on cybersecurity. The Working Group is pleased to learn that cybersecurity will be regulated rather than functioning in a legal vacuum. From its discussion with representatives of the Ministry of High-Tech Industry, the Working Group understands that the future law will most likely create a possibility for the Government to work with private security providers in this context.

70. The Working Group wishes to recall that the Group of Governmental Experts on Advancing Responsible State Behaviour in Cyberspace in the Context of International Security, in its 2021 consensus report, reaffirmed that States must not use proxies to commit internationally wrongful acts using information and communications technology, and should seek to ensure that their territory is not used by non-State actors to commit such acts.¹⁷ While this statement does not establish a legal standard for States, it does condemn State orchestration and sanctioning of proxies. The Group of Governmental Experts noted that efforts by States to promote respect for and observance of human rights and ensure the responsible and secure use of information and communications technology should be complementary, mutually reinforcing and interdependent endeavours, and that mass surveillance may have negative impacts on human rights, including the right to privacy.¹⁸

71. The Working Group recommends that the Government consider a human rights-based and victim-centred approach when drafting the new law and regulating the role of the private security industry in the context of cyberoperations. Furthermore, the oversight mechanism for these actors should be adapted to incorporate this new legislation.

72. The Working Group further calls on Armenia to commit to and operationalize transparency with regard to the contracting of private security support services for cyberoperations, and make public information on the nature of services, procurement procedures, terms of contracts and names of services providers in a sufficiently detailed and timely manner. The Working Group would like to reiterate that national security concerns should not be invoked as a general reason to restrict access to such information; rather, limitations on access to information must meet the test of legality, necessity and proportionality, in accordance with the right to freedom of expression.

¹⁵ See [A/75/259](#).

¹⁶ See [A/76/151](#).

¹⁷ [A/76/135](#), para. 71 (g).

¹⁸ *Ibid.*, paras. 37 and 39.

V. Conclusions and recommendations

73. The Working Group commends Armenia for its commitment to human rights. It has ratified most of the core human rights treaties and adopted many laws conducive to the promotion and protection of human rights.

74. As the Working Group has persistently reported, the recruitment, use, financing and transfer of mercenaries, mercenary-related activities and private security companies in any context prolongs conflicts, amplifies levels of violence, substantially increases the risk of violations of human rights and international humanitarian law and undermines peace efforts. During its visit, the Working Group witnessed the readiness of Armenia to address issues related to mercenaries, mercenary-related activities and private security actors in times of both peace and conflict.

75. The Working Group welcomes the willingness of Armenia to investigate and prosecute the violations and abuses of human rights and international humanitarian law and related crimes committed by such actors. The adoption of a strong national legislation to regulate their activities, punish perpetrators and provide redress for victims is a key step towards ending the rampant impunity for these violations and crimes.

76. It is also the view of this Working Group that Armenia stands out in its efforts to integrate the International Convention against the Recruitment, Use, Financing and Training of Mercenaries into its domestic legal framework, providing sufficient safeguards for the investigation and prosecution of such crimes. However, for the commitment of Armenia to combating mercenarism and mercenary-related activities to retain its significance, the Working Group strongly encourages Armenia to adopt a victim-centred approach to ensure victims' effective access to justice and remedy, which includes ending the opacity and secrecy surrounding the trials of mercenary activities.

77. Indeed, the opacity of mercenary-related activities, particularly in the context of armed conflict, often prevents access to justice for the victims and creates a silo of impunity for serious human rights abuses. Ensuring the transparency of any judicial process related to crimes committed by mercenaries and related actors would contribute significantly to providing effective remedy for victims.

78. Armenia can play a pioneering role in the Caucasus in advocating accountability, access to justice, and remedies for victims of violations and abuses perpetrated by mercenaries and related actors, as well as by private security companies. The Working Group stands ready to continue cooperating with Armenia on this path towards ensuring accountability for all victims of mercenaries and mercenary-related activities.

79. Armenia has shown commitment to regulating the activities of private military and security companies operating domestically. The Working Group notes that Armenia provides a positive example in that it has not followed the trend of contracting private military and security companies – whether domestically or from abroad – for core government functions such as military services and the operation of prisons. Nevertheless, considering the sensitive nature of some of the tasks performed by private security service providers, the Working Group is concerned about the lack of an independent oversight of their operations, especially in relation to licensing, vetting and training.

80. In the light of the findings above, the Working Group provides the following recommendations to Armenia. With regard to mercenaries and mercenary-related activities, the Working Group recommends that the Government:

(a) Continue to ensure complementarity in the implementation of the domestic legal instruments regulating mercenarism and mercenary-related activities, and continue to make the best use of the international normative framework on mercenaries, including the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, to this effect;

(b) Ensure that any person against whom proceedings are brought in connection with any of the offences set forth in the International Convention against the Recruitment, Use, Financing and Training of Mercenaries are guaranteed due process rights at all stages of the proceedings;

(c) Ensure that all records on the judicial adjudication of cases pertaining to mercenarism and mercenary-related activities are made public;

(d) Hold the perpetrators of human rights violations to account and support genuine reconciliation and peace efforts;

(e) Increase efforts with neighbouring States to tighten border control and oversight of cross-border activities to provide safeguards against mercenaries, foreign fighters and foreign armed elements;

(f) Develop a strategy to combat and prevent mercenarism, and prevent foreign fighters, armed threats and non-Armenian nationals from transiting through the territory of Armenia to fight abroad;

(g) Strengthen its cooperation with international and regional mechanisms to combat mercenarism and mercenary-related activities;

81. With regard to private military and security companies, the Working Group recommends that the Government:

(a) Establish an independent and robust oversight mechanism to vet and monitor the activities of private military and security companies, including the use of new technologies in the security context, and keep a consistent record of related data;¹⁹

(b) Take more effective action to counter the illegal activities of private security companies and their personnel;

(c) Ensure that international human rights standards, including a gender perspective, are incorporated into the training manuals of private security companies, and that such incorporation becomes a requirement for licensing;

(d) Continue to improve and develop the vocational training provided by public and private institutions to private security personnel, including on human rights, respect for cultural diversity, and prevention of sexual exploitation and abuse;

(e) Continue to ensure that private security personnel do not perform functions that come under the responsibility of the State security apparatus;

(f) Become a member of the International Code of Conduct for Private Security Service Providers' Association and a participating State of the Montreux Document in support of good practices and the effective regulation of private military and security companies;

(g) Implement the Voluntary Principles on Security and Human Rights;

(h) Implement the Guiding Principles on Business and Human Rights as a minimum benchmark for ensuring corporate responsibility and strengthening safeguards against human rights violations, particularly in the context of the activities of private security companies;

(i) Request foreign companies operating in Armenia, when contracting foreign private security companies, to contract only companies that are members of the International Code of Conduct for Private Security Service Providers' Association;

(j) Provide training in relevant international human rights standards, including the Voluntary Principles on Security and Human Rights, for public security personnel deployed to work in the extractive industries;

(k) Provide support for the ongoing negotiation and adoption of an international instrument for the regulation of private military and security companies.

¹⁹ This recommendation is made notwithstanding the existing police oversight mechanism.

81. The Working Group wishes to provide the following recommendations to the international community:

(a) The Working Group urges all the Governments involved in finding a peaceful solution to the conflict between Armenia and Azerbaijan, in particular the Minsk Group, and all parties to the conflict to fulfil their obligations under international human rights law and ensure respect for all civil, political, economic, social and cultural rights related to the activities of mercenaries;

(b) In moving forward towards full accountability for human rights violations by all parties to the conflict, the Working Group urges all parties to advance beyond recognition of the role of foreign combatants in the armed conflict, and address their impact; specific measures for monitoring, reporting, legislation and legal action will lead to incremental achievement of justice for victims of violations, and erosion of the harmful culture of impunity for acts committed during the armed conflict;

(c) The Working Group urges all parties to reach a peaceful resolution to the conflict and to ensure a credible transitional process, and recommends that all actors involved in finding a sustainable solution to the conflict address the roles of mercenaries and of private military and security companies;

(d) States should also cooperate in investigating and prosecuting mercenaries and contractors of private military and security companies operating extraterritorially, particularly in the context of cyberoperations.
