

Side event on Parliamentary perspectives on the growing trend of privatisation of security, held during the United Nation Third Biannual meeting of States on the Program of Action on SALW on Monday 15<sup>th</sup> of July

## Report

The Parliamentary Forum on Small Arms and Light Weapons held a side event on Privatisation of the security sector, Tuesday the 15<sup>th</sup> of July during the Third Biennial Meeting of States to Consider the Implementation of the Programme of Action to Prevent, Combat, and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects

The growing demand and supply of privatised security services worldwide has fuelled several concerns with accountability and legitimacy impacting human rights, good security governance and the rule of law. Policy makers are invited to respond to the challenges of regulation and accountability that are emerging from this worrisome trend.

Speakers during the event were Hon. Gen. (Rtd.) Joseph Nkaissery, Assistant Minister of Defence, Kenya, Ana Yancy Espinosa Quiros, Arias Foundation, Costa Rica and Peter Weiderud, Secretary General of the Parliamentary Forum.

Peter Weiderud opened the session by welcoming the speakers and the participants and gave a short introduction to the Parliamentary Forum. He explained that the Parliamentary is the only international organization for parliamentarians with the specific objective of preventing armed violence and small arms proliferation and gave a short summary of the development of the work of the Forum over the last few years. Members of the Forum come from national as well as regional parliaments and also from sub-national parliaments. Any parliamentarian interested in SALW issues can become a member of the Forum. The strongest regional representation is in Latin America, Sub-Saharan Africa and Western Europe.

Mrs Espinosa held a short presentation from a Latin American perspective.

Since the 1990's the private security sector has grown quickly. There are around 150 000 security companies and their personnel often double that of the public sector. Some of the aspects she brought up in were how legal arms that are used by private security personnel often end up on the illicit market. There is of course also the issue that contrary to the notion of security of public good to which all citizens should be entitled, in Latin America for example, security is in many cases conditioned by wealth. Only the rich are able to afford security. There is a lack of control from the state and this has led to a lack in confidence in state provided security services.

A question was raised asking whether there were any positive aspects of the privatisation of security. Mrs Espinosa stated that from her point of view she could not see any as the legal framework is too weak. She once again highlighted the issue that the once who cannot afford the security will be left without.

Espinosa continued by highlighting the issue of the number of illegal immigrant employed by security companies. They are often not very well paid, work under weak conditions and the companies often don't provide the same warranty as the state. Some employees have long commuting hours to get to work which they endure since they are afraid to lose their jobs. It also happens that private security guards sell or rent out their weapons. There are also incidents where employees have been given uniforms and have later not turned up for work.

Weiderud pointed out that a lot of the answers to the questions raised were to be found in the Forum adopted Policy Statement on Privatisation of Security (enclosed).

A final question for Espinosa referred to the capacities of the state. Espinosa answered that there is often no capacity and no political will. Many states have left the issue of security as a private good. There is a lack of involvement and strong political connections. What is needed is better legislation and an increased political will.

The floor was then given to General Nkaisserry from Kenya who underscored the sense of urgency felt by parliamentarians to attend the private security issue, not least since the trend is growing. Private security companies challenge the nation state and nation-hood in some instances. Sierra Leone and the coup by RUF was a case in point. Often, human rights abusers themselves as agents of private security companies.

Security should be distributed equally, Nkaisserry emphasized. Providing human security is, ultimately, the business of the state and public institutions. The growing trend of outsourcing those services is therefore discomfiting. Of principal concern are the issues of legitimacy and accountability. There are various examples of how these key features of democratic security governance can be sidestepped through private security companies, such as US interventions in Iraq and Colombia. In Chile and South Africa, such companies register many human rights abusers from earlier oppressive regimes. Instead of security providers, private security companies often turn out as consumers of security, fostering a culture of violence.

Nkaisserry concluded on the measures to adopt. Legislation is fundamental for installing a control regime. A basic element in that regime should be an authorization system, with licenses. IOs and ROs should facilitate international co-operation, amongst other to arrive at common standards.

On a question of whether legislation might function to legitimize private security companies, Nkaisserry retorted that no alternative exists. Weiderud added that the issue is something that MPs have to address, not ignore. Another remark from the audience concerned the cause and effect; if public security institutions are ineffective, then private security companies will flourish. Nkaisserry commented that effective public security institutions are the ideal, but since this is not achievable, legislation on private security companies is warranted. On a question regarding how MPs can exert control in states with weak institutions, Nkaisserry affirmed that MPs have to attend to their democratic functions; they are part of the answer for making states stronger. Exploring their oversight role, and holding governments accountable on security governance, is equally important to legislation.



PARLIAMENTARY FORUM  
ON SMALL ARMS AND LIGHT WEAPONS

## **Policy Statement on Privatisation of the Security Sector**

Extra Assembly of the Parliamentary Forum on Small Arms and Light Weapons, meeting in Panamá City, October 28-29, 2007

Since the end of the 1990's the global private security industry has experienced a substantial increase and many states are continuing to outsource functions, which were traditionally undertaken by military or police, to private contractors. While research on the private security industry is limited, there is no evidence to suggest that the growth of the private security sector is near decrease.

In South Africa, for example, private security guards exceed the police forces in numbers. This is also true for the US, the UK, Israel, Germany, Russia and the Philippines, where the number of private security company employees and the budget for the private security sector surpasses that of national law enforcement agencies. South Eastern Europe has experienced a development where the private security industry has moved from a total absence to the point where the industry represents a major employer and security provider. The conflict in Iraq has been referred to as the first privatised war, and has raised many concerns about human right abuses and business ethnics.

That is not to say that the privatisation of security cannot make a valuable contribution by increasing the state's and public institution's effectiveness in the realm of security. However, of central concern is the lack of legitimacy and accountability.

The role of the state is, in this respect, to provide security, as a public good, for its citizens. It should provide this right equally to all citizens and in a way that upholds human rights and democratic principles. Private security providers are responsible to their shareholders and company owners, and if not properly managed and regulated, they can present a risk to the development of a stable democratic state, or undermine established democratic and accountable security institutions.

The services provided by private companies in the security sector today cover a broad spectrum of activities; everything from combating troops to private guarding services at airports, banks or for private individuals. Although it is recognised that the private security industry includes a number of key actors and that it might be analytically beneficial to distinguish them, the reality is that the

private security industry comprises all actors that provide security under contract and for profit. Be it mercenaries, private military companies or private security companies.

Not only governments or wealthy individuals contract private companies to provide security. In various geographical contexts international organisations, and humanitarian aid agencies, international and national companies hire private security companies to ensure their safety in carrying out their work.

Accusations of misconduct and unprofessionalism, or inappropriate links between private security actors and political parties, ethnic groups or paramilitaries are all too frequent. A case in point is the incident at the Abu Ghraib prison, where the failure to hold contracted individuals or companies responsible for the atrocities made world news. Further, the private security sector often arms large groups of individuals - that might be untrained or with a dubious background- who are often left to their own devices unsupervised.

Particularly in Africa where armed conflict rages on in many places without clear political or ideological objectives, privately contracted individuals that are armed continue to be directly involved in warfare. In these cases an unregulated and poorly controlled private security sector can have atrocious effects on human life. The sector often exacerbates the grievances that lead to the conflict in the first place and have also been accused of forcing support through brutal acts of violence leading to gross violations of human rights including looting, rape and intimidation of women, men, boys and girls. In many cases this has resulted in mass exodus of populations and sometimes the outright collapse of affected states.

Contrary to the notion of security of public good to which all citizens should be entitled, in Latin America for example, security is in many cases conditioned by wealth. Corruption of the police force and the perception of ineffectiveness of existing security providers are reinforced by citizens turning to private security companies. People with money can afford security. This does not only give the security contractors unjustified leverage in the development of the security sector, but it also undermines the law enforcement work and the notion of universal access to justice.

The private security industry has also contributed to the status quo of inequitable security distribution in places like Colombia, Chechnya (Russia) and Tajikistan where economic interest in insecure contexts has fuelled the growth of the private security sector thus creating 'secure' enclaves within a highly insecure environment. While governments might be tempted by the quick fix of private security intervention, in essence this jeopardises the democratic accountability and transparency in the security sector. Further, it enhances the perception of the State's capacity to provide security for its population. There are also suggestions that companies active in territories emerging from conflict may have deep links to organised crime or act as an unauthorised political force exploiting human rights for profit.

In some cases it has proven difficult to recruit competent people to national security institutions in transition as private companies are often able to offer attractive salaries and benefits, which national authorities are unable able to match. This has been a problem for example in Iraq and Afghanistan and has obstructed local ownership of the much-needed institution building of the security sector.

Although the private provisions of security sector functions strikes at the core of the discussion about Security Sector Reform (SSR) little attention has been given to the private security industry in this regard. Many donors have outsourced the implementation of SSR programmes to contractors. Companies that have been contracted to train and educate the security sector often have no requirement to include human rights, humanitarian law, gender- related issues, or arms proliferation issues in military, security or police force training.

There is a growing acceptance that security is an essential public good, like education, health and clean water. To ensure the proper use of privatised security it is essential that states develop comprehensive legislation regulating and controlling the work of the private security industry. Although many states do have a legal framework regulating the private security sector, many lack adequate laws, or have laws and regulations with many loopholes. States must ensure that the private security sector is a subject for democratic civilian control to ensure good security governance and the protection of human rights.

The international community has yet to develop an agreed response to the emergence of the privatisation of security, making it difficult to regulate the provision of security by non-state actors operating trans-nationally. In 1998 the UN General Assembly adopted the *International Convention against the Recruitment, Use, Financing and Training of Mercenaries* which makes mercenary activities illegal. However, due to the unclear legal definition of Private Military Companies and Private Security Companies, these are not covered by the UN Convention. This leaves the international legal parameters for the private security sector notably unclear.

In 1977 the Organisation of African Unity (now the African Union) adopted the Convention for the Elimination of Mercenaries in Africa. Equally to the UN Convention, Private Military and Private Security Companies do not fall under this convention. Although discussions are underway to agree on an international code of conduct for the private security sector, the EU, NATO and OSCE should strongly push for a process to ensure common standards for the regulation of the private security companies. It would be a first useful step to address the regional and international vacuum on these issues, and would be a sound process in order to inform a future international response on how to regulate the privatisation of security.

**The Extra Assembly of the Parliamentary Forum of Small Arms and Light Weapons, meeting in Panama City, October 28-29 2007:**

Recognizes that the role of the state is to ensure that all citizens have equal right to security and access to the rule of law; guaranteeing an effective system of democratic regulation and oversight of the private security sector;

Acknowledges the negative impact that the private security sector can have, if unregulated, on security governance, fundamental human rights and the rule of law;

Encourages the implementation and the enforcement of existing national laws governing the private security companies, and to close the legal loopholes in the control of private security sector activities;

Supports the members of the Forum and their parliamentarian colleagues to formulate legislative and regulatory framework for the private security sector and develop effective mechanisms for

control and oversight in order to better address the growth and expansion of the private security industry;

Takes note of the fact that as yet there are no international convention or coordination mechanisms that in a comprehensive way captures and regulates all elements of the private security industry;

Supports efforts on the regional level to pursue common standards on the regulation of the privatisation of security, which in turn can inform a international response to the issue;

Urges donors that outsource SSR implementation to introduce mechanisms that ensure that private contractors are committed to professional methods and that they carry out their work in line with human rights, gender consideration, minority rights and humanitarian law;

Recommends, as complimentary to legislation and regulation mechanisms, operational oversight structures are established or strengthened, such as developing the capacity of an Ombudsperson or Parliamentary Committees, to improve control of the private security industry.

Mandates the Board and the Secretariat to follow the development of the privatisation of security and take action in line with the adopted policy.