

Submission responding to the Mandate of the OHCHR 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 (14/03/19).

Security contractors and the killing of environmental and land defenders

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The repressive role of private military and security companies (PMSCs) in community-level conflicts over extractive projects is frequently reported.² Here, we look at patterns of involvement of PMSCs, and security contractors more generally, in the reported killing of environmental and land defenders³ or environmental human rights defenders (EHRDs).⁴ There is so far no systematic account of involvement of PMSCs in such killings. This brief submission provides a first estimate for the period 2015-2016 and finds that PMSCs seem rarely directly identified as perpetrators of EHRD killings. This, in turn, points to two, potentially inter-related, hypotheses.

The first hypothesis is that PMSCs are indeed not directly involved in these killings, notably because their identification would risk threatening the interests of their employers - large mining corporations that could lose out as a result of such association, whether in terms of a local social licence to operate, international reputation, funding, and/or mineral tenure rights. This implies that there is a need for further investigation into the links that PMSCs can entertain with more prominent categories of perpetrators, including hitmen, paramilitaries, army forces and police officials. As discussed below, these links can be complex, and often clandestine, with some PMSCs, in effect, sub-contracting illegal forms of repression, including killings, while others may seek to prevent such killings from happening, notably for the sake of protecting their employer from allegations of complicity in the killing of EHRDs.

The second hypothesis is that the attention on PMSCs may be misplaced with regard to killings, although it may be justified for other forms of repression. In recent decades scholars have observed a trend among states and governments of all stripes to respond to social and environmental mobilizations by ‘securitizing dissent’.⁵ In countries wherein extractive projects are considered integral to the national growth and development model, this implies that land

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² <https://chraj.gov.gh/wp-content/uploads/2018/04/Impact-of-Mining-on-Human-Rights-Experiences-from-Ghana.pdf>; <https://mswg.ca>; <https://foreignpolicy.com/2019/01/25/from-blackwater-to-batteries-erik-prince-congo-drc-minerals-cobalt-afghanistan-mercenaries/>; <https://www.researchgate.net/publication/228211936> *From Compliance to Practice Mining Companies and the Voluntary Principles on Security and Human Rights in the Democratic Republic of Congo*

³ Environmental and land defenders are defined as “people taking peaceful action to protect land or environmental rights, whether in their own personal capacity or professionally”. See <https://www.globalwitness.org/en/campaigns/environmental-activists/defenders-annual-report/>

⁴ EHRD are defined as “individuals and groups who ‘strive to protect and promote human rights relating to the environment’”; see <https://www.ohchr.org/Documents/Issues/Environment/SREnvironment/FrameworkPrinciplesUserFriendlyVersion.pdf>; see also <https://www.universal-rights.org/urg-policy-reports/environmental-human-rights-defenders-ehrd-risking-today-tomorrow/>.

⁵ Dauvergne, P., & LeBaron, G. (2014). *Protest Inc.: The corporatization of activism*. John Wiley & Sons.

defenders and EHRDs are more likely to be treated as threats to national security. This appears to be true in authoritarian and (nominally) democratic regimes, where central authorities have utilized anti-terrorism legislation to legitimize sweeping powers of arrest, declare national states of emergency, and regularly utilized militarized crowd control tactics.⁶ By legitimizing more direct and repressive forms of state intervention in community-level conflicts over mining projects, the broader securitization and criminalization of dissent, may, by default, make it less likely that PMSCs will be the primary perpetrators of related killings and rights abuses, as state security agents and parastatal actors feel they can operate more freely/repressively, while the justice system fails to bring to account the perpetrators of EHRD killings and those who ordered or allowed for these killings to happen. This implies that the Working Group may seek to extend its definition of ‘private security actors’ to categories of killers protecting extractive project interests. This, however, may fall beyond the scope of the WG’s mandate.

Assessment of reported PMSC involvement in EHRD killings

Based on Global Witness’s database, 135 ‘environmental and land defenders’ (or EHRDs) were killed in relation to conflicts involving mining issues, out of a total of 695 EHRDs killed between 2014 and 2017, or 19%.⁷ Out of these 135 EHRD killed, 49 were indigenous, or 36%.

For the period 2015-2016, 79 killings were identified and reported, including 38 committed by ‘unknown’ hitmen, 18 by police, 9 by armed forces, 7 by paramilitary forces, 2 by local government officials, and 1 by private security guards. The only case identified with private security guards occurred in the Philippines and is considered a ‘disappearance’ although witnesses recount seeing guards carrying a large ‘package’ wrapped in canvas out of the guards’ compound.⁸ In addition four people were killed in relation to protests against a coal power plant by police and/or private security guards.⁹

The low number of reported killings associated with PMSCs raise several issues with regard to the objectives and practices of PMSC in relation to killings. For this we turn to brief study of Peru.

PMSC and grave forms of human rights abuses against EHRDs

According to the Global Witness database, Peru is one of the most-deadly countries in the world for land defenders and EHRDs involved in community-level conflicts over mining projects. For example, of the 48 EHRD victims identified in the Global Witness database between 2009-2013, 35 were killed during conflicts over mineral extraction. Yet, even with the global commodity boom ramping-down, during the 2014-2017 period, 16 more EHRDs were killed in the country. Still, these figures belie the daily risks and security threats many locals aggrieved by mining

⁶ Middeldorp, N., & Le Billon, P. (2019). Deadly Environmental Governance: Authoritarianism, Eco-populism, and the Repression of Environmental and Land Defenders. *Annals of the American Association of Geographers*, 1-14; Dunlap, A. (2019). ‘Agro sí, mina NO!’ the Tía Maria copper mine, state terrorism and social war by every means in the Tambo Valley, Peru. *Political Geography*, 71, 10-25; Birss, M. (2017). Criminalizing environmental activism: As threats to the environment increase across Latin America, new laws and police practices take aim against the front line activists defending their land and resources. *NACLA Report on the Americas*, 49(3), 315-322.

⁷ The number of EHRD killed in relation to mining thus excludes workers killed as a result of labour conflicts, as well as park wardens killed in National Parks where mining is taking place (esp. eastern DRC).

⁸ <http://www.karapatan.org/Manobo+activist+victim+of+enforced+disappearance%3AJohn+Calaba+missing,+last+seen+at+Consunji+Inc.compound>; <http://davaotoday.com/main/human-rights/manobo-activist-in-sultan-kudarat-feared-dead/>; <http://www.rappler.com/move-ph/ispeak/95110-dmci-deforestation-mining-coal-injustice>

⁹ <http://odhikar.org/joint-statement-bangladesh-impunity-and-corporate-interests-end-lives-and-livelihoods/>; <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-056-2016/>

projects confront when they exercise their right to mobilize politically. While a few high-profile cases of killings and human rights abuses at the hands of PSMCs contracted within Peru's extractive industries sector have garnered international attention and condemnation – e.g., Forza Security Company's alleged involvement in the early-mid 2000s in the surveillance, torture, and murder of EHRDs at the Rio Blanco copper mine and the Yanacocha gold mine¹⁰ – the state itself is regarded by many land defenders and EHRDs as posing the greatest threat to life and the realization of their political and human rights.¹¹

For one, this is because Peru's economic development model has been heavily reliant on its extractive industries sector. According to Peru's Ministry of Energy and Mining, in 2017 mining activities accounted for approximately 10% of total GDP and 62% of export earnings.¹² The strategic importance of this sector to the national economy underpins central authorities' (both elected and technocratic) efforts to protect production at all costs, even if it involves criminalizing and militarizing state responses to social and environmental mobilizations. This has been evidenced most starkly when the executive branch of government declares states of emergency, authorizing the Peruvian Armed Forces and Police special operations units to intervene to establish order. However, such actions risk escalating conflicts, as the influx of security forces into communities makes it more likely that direct confrontations will occur in the streets as protestors attempt to exercise their democratic rights. For example, in 2012 former President Ollanta Humala declared three states of emergency in response to conflicts at the Conga gold mine in the region of Cajamarca, and the Tintaya copper mine in the region Cusco. At the former, five protestors were shot and killed as protestors marched on police and military forces who had been deployed to the region, while at the latter, three were killed after police utilized live rounds to disperse protestors as they marched towards the gate of the Tintaya compound.¹³ One witness to the Tintaya killings attributed the deaths directly to government policy when they stated, "On that day, [the police] were given the order to kill. The government gave them the order with the consent of the company."¹⁴ In sum, the broader securitization and militarization of community-level conflicts underpins the rising levels of violence, human rights abuse, and killings of land defenders and EHRDs during community-level conflicts involving Peru's mining industry.

At the same time, the rising levels of state violence against land defenders and EHRDs can also be attributed to the increasingly blurred line between public and private security within the context of Peru's neoliberal extractive industries sector. In 2006 Peruvian legislators signed the Private Security Services Act which not only made it easier for police and military officers to gain employment in the private security industry, but also authorized the Peruvian National Police (PNP) to seek assistance from PMSCs when conducting operations, including espionage and crowd control activities.¹⁵ This piece of legislation has also legitimated the signing of cooperation agreements between mining companies and the PNP. While virtually all mining

¹⁰ Kamphuis, C. (2012). Foreign investment and the privatization of coercion: a case study of the Forza security company in Peru. *Brook. J. Int'l L.*, 37 (2); <http://shockmonitor.org>.

¹¹ J. Gamu interviews with EHRDs, Peru 2014-2015; Dunlap, A. (2019). 'Agro sí, mina NO!' the Tía Maria copper mine, state terrorism and social war by every means in the Tambo Valley, Peru. *Political Geography*, 71, 10-25.

¹² Ministerio de Energía y Minas. *Anuario Minero 2017*. Gobierno de la Republica del Peru.

¹³ De la Cruz, M. "Protesta en Espinar degeneró en muertos." *La Republica*, May 29, 2012; Loayza, J. "El día en que Celendín perdió cuatro pobladores por oponerse a Conga." *La Republica*, July 12.

¹⁴ Author interview with local land defender, Espinar, Peru, June 13th, 2014.

¹⁵ Kamphuis, Charis. 2012. "Foreign Investment and the Privatization of Coercion: A Case Study of the Forza Security Company in Peru." *Brookings Journal of International Law*, 37(2): 529-578.

corporations in Peru sub-contract daily gate-guarding responsibilities to PMSCs, many have also allowed the PNP units to establish semi-permanent bases on their property. This has usually been achieved through service provision contracts known as, “Cooperation Agreements for the Provision of Services that are Exception and Complementary to Police Duties.” While exact numbers are difficult to come by, one estimate is that between 2008-2012 38 such contracts had been signed by the PNP and mining companies.¹⁶ In 2013, at least 13 contracts were known to have been signed in that year alone.¹⁷ In these contracts the PNP agree to protect company assets and mission in exchange for pay, housing, food, and health care services. One such agreement obtained by the authors states as its objective the goal of “strengthen[ing] the strategic alliance between the National Police and [company name omitted] through concrete undertakings in security, surveillance and protection of company equipment and facilities”. It also chillingly allows the PNP to “prevent, detect, and neutralize risks that threaten personnel, facilities, machinery and equipment of [company name omitted]”.¹⁸ EHRDs have argued that these contracts not only undermine the PNP’s constitutionally mandated function of maintaining public order/security, but place EHRDs at greater risk when attempting to exercise their political and human rights. As one EHRD lamented, Peruvian mining companies “contract the police as if they were mercenaries.”¹⁹ What is more, human rights abuses appear to have been committed by the PNP in the fulfillment of their contractual obligations with mining companies. For example, one individual who participated in the May 29th 2012 protests against the Tintaya copper mine in Espinar, recounted being detained by the PNP and then transported on to the mine property whereupon they were brutally beaten by officers installed there.²⁰ While the original service provision contract for the Tintaya mine was signed by BHP-Billiton and the PNP on February 17th 2000, it was extended when Xstrata (now Glencore) took over in 2006. Correspondence between the Ministry of Interior and the company on October 17th 2011 – only 6 months prior to the aforementioned abuses taking place – suggested the contract remained in force.

Conclusion

PMSCs are regularly involved in abuses within the context of conflicts over extractive activities. Yet, their roles, either or indirect, in the killings of environmental and land defenders require further investigation by the Working Group. On one hand, we suggest that PMSCs could play a much larger role than current reported, notably because they would subcontract killings or participate in these without uniforms and registered weapons. On the other, we point out that police and other security forces are frequently hired as private security providers for extractive companies, thus blending these two categories and requiring both additional research into the frequency and legality of such contracting, as well as on their negative impacts on affected communities and state legitimacy more generally.

¹⁶ Ibid.

¹⁷ “Policía Mercenaria al servicio de las Empresas Mineras.” December 2013. Report prepared jointly by La Coordinadora Nacional de Derechos Humanos (CNDDHH), Derechos Humanos Sin Fronteras (DHSF), El Grupo de Formación e Intervención para el Desarrollo Sostenible (GRUFIDES), and La Asociación para los Pueblos Amenazados Suiza (APA).

¹⁸ Document translated from Spanish, on file with author.

¹⁹ Author Interview with EHRD, Celendín, Peru September 12th, 2014.

²⁰ Interview with local land defender, Espinar, Peru, June 29th, 2014.