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تنفيذ قرار الجمعية العامة ٢٥١/٦٠ المؤرخ ١٥ آذار/مارس ٢٠٠٦
المعنون "مجلس حقوق الإنسان"

مذكرة شفوية مؤرخة ٧ آذار/مارس ٢٠٠٧ موجّهة من البعثة الدائمة لإكوادور
لدى مكتب الأمم المتحدة في جنيف إلى أمانة مجلس حقوق الإنسان*

تُهدي البعثة الدائمة لإكوادور لدى مكتب الأمم المتحدة والمنظمات الدولية الأخرى في سويسرا أطيب
تحياتها إلى أمانة مجلس حقوق الإنسان، وتتشرف بأن تشير إلى تقرير الفريق العامل المعني بمسألة استخدام المرتقة
وسيلة لانتهاك حقوق الإنسان وإعاقة ممارسة حق الشعوب في تقرير المصير.

ووفقاً للتوجيهات التي قدمها الفريق العامل اليوم، تحيل البعثة الدائمة لإكوادور إلى أمانة مجلس حقوق
الإنسان النص الذي بعثته في الوقت المناسب بتاريخ ٩ شباط/فبراير ٢٠٠٧، عبر البلاغ رقم 4-7-19/07، لكي
ينظر فيه الفريق العامل، والذي يتضمن ملاحظات وتعليقات حكومة إكوادور على مشروع التقرير المذكور
أعلاه، ملتزمة ترجمة هذا النص وتعميمه بصفته وثيقة رسمية، بالارتباط مع تقرير الفريق العامل الذي سيقدم إلى
المجلس في دورته الرابعة.

* ينشر النص في المرفق كما ورد، باللغة التي قدم بها وباللغة الإنكليزية فقط.

Annex

NOTES AND COMMENTS OF THE GOVERNMENT OF ECUADOR ON THE DRAFT REPORT SUBMITTED BY THE WORKING GROUP ON THE USE OF MERCENARIES AS A MEANS OF VIOLATING HUMAN RIGHTS

Comments on the introduction

1. The Ecuadorian Government points out that it issued its invitation to all United Nations mechanisms in 2003, not in 2002 as stated in the introduction to the report.

Comments on the body of the report

Chapter II of the report (“Political and legal strategy and institutional framework”)

2. With regard to the statement in paragraph 7 of the report that Ecuador is not a State party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, it should be pointed out that Ecuador has been a party to this instrument since 1988 and that consultations are now under way with a view to ratifying the Optional Protocol thereto.

3. With regard to the statement in paragraph 8 regarding the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, which matches the recommendation in section A, the Government reports that, as a result of the visit by the Working Group and in accordance with State policy and respect for human rights, the Congressional Committee on International Affairs and Defence formed recently under the new Government has restarted the process for Ecuador’s accession to the Convention. It should be stressed that this process is governed by article 130, paragraph 7, of the Constitution. Accordingly, the President, having received a favourable report from the Congressional Committee on International Affairs and Defence, has referred the proposal to the Constitutional Court, and accession will go ahead once the Court has issued a favourable opinion.¹

4. Paragraph 11 also needs to be corrected, as the Criminal Code Reform Bill No. 26804 prohibiting the recruitment, use, financing and training of mercenaries is in the process of being adopted by the National Congress. The Ecuadorian Government points out that there is no law bearing the number 24804 awaiting adoption, as mentioned in this paragraph. The bill to reform the current Criminal Code bears another number.²

5. With regard to the point raised in paragraph 13 of the draft report, the Ministry of Labour and Human Resources has already issued the Implementing Regulations of the Labour Code Amendment Act, regulating the subcontracting of ancillary services. The Working Group is

¹ Information supplied by Paco Ferro, a parliamentarian and president of the Congressional National Human Rights Commission, in a communication dated 1 February 2007.

² Information supplied by Yoconda Saltos, adviser to the Congressional Committee on International Affairs and Defence, by telephone.

therefore requested to present this as a fact and not merely a prospect. The aforementioned regulations were adopted by Executive Decree No. 1882 and published in the *Registro Oficial*, supplement 375 of 12 October 2006.

6. The Ministry of Labour and Employment has also introduced “citizens’ action mailboxes”, where workers in Ecuador can deposit their complaints and concerns when their rights have been violated or infringed by companies to which ancillary services have been subcontracted. The mailboxes are located at the main entrance to the Ministry of Labour and in the regional labour offices. Complaints are forwarded in complete confidentiality to the relevant authority, where they are processed in accordance with the law.

7. Moreover, the reference in this paragraph to high suicide rates among personnel in the security sector is not substantiated by any studies or statistics. The Ecuadorian Government does not agree that such sweeping claims should be made without proper verification.

Chapter III of the report

A. Situation of private military and security companies and licensing the use of force

8. As far as paragraph 16 is concerned, with regard to the possibility of training employees of private security companies at the Technological Institute, it is pointed out that, under article 6 of the Surveillance and Private Security Act, companies that set up training centres for security guards must be prepared for periodic assessments and inspections to be carried out by the National Police. However, the reference to the Higher Technological Institute is misleading, as its main function is to offer specialized police training, as indicated in article 51 of the Organizational Operating Regulations of the National Police Training Department. The National Police also reported that there is a trade association of security companies in Ecuador, the National Association of General and Investigative Security Companies (ANESI), whose president submitted a proposal to establish the office of under-secretary for surveillance and private security.

9. With regard to paragraph 18, the National Police considers that what non-governmental organizations describe as the “outsourcing of the use of force” refers to comprehensive services that are supplementary to police work and that are carried out without detriment to the mission of the police as set out in the Constitution.

10. There is no need to mention in paragraph 19 that the Ministry of Foreign Affairs emphasized that neither army nor police functions had been privatized. At the initial meeting in the foreign office with members of the Working Group, the Under-Secretary for Multilateral Relations reported that the armed forces had not privatized security services and that, moreover, the oil companies had at no time in recent years sought the help of the Ecuadorian army in guarding oil installations.

11. There is no justification for the claim in paragraph 20 that there are more private security guards in Guayaquil than army and police personnel taken together. With regard to the reference in paragraph 21 to private security firms in Guayaquil, the National Police reports that it signed a framework cooperation agreement with the municipality of Guayaquil which included provisions to

allow some public security tasks to be carried out by private security guard companies in the belief that the agreement would help improve the security situation. There were certain limits to such cooperation, particularly with regard to the tasks of the security guards, who would be the “eyes and ears” of the police, required to report actual or potential criminal incidents or acts and to intervene solely in cases of flagrante delicto. The latter requirement was included in recognition of the possibility that their intervention might cause harm to third parties, and for this reason the municipality of Guayaquil undertook to take out insurance to cover third parties.³

12. The municipality of Guayaquil points out that the temporary recruitment of private security companies on the basis of an agreement between various State institutions is only one of a number of steps taken during a public security emergency. Although the recruitment costs are covered by the municipality of Guayaquil, each private company must be authorized by the defence and interior ministries and registered with, and under the command of, the National Police Commander.⁴

13. As regards paragraph 22, the National Police does not accept the claim taken from an opinion piece by Carlos Jijón (*Hoy*, 6 April 2006) that “private guards can guarantee their work in a professional manner, whereas the national police is unarmed, not well paid and infiltrated by corruption”. This journalistic assertion is an inaccurate generalization promoting one view of the National Police. The Government of Ecuador disagrees with its inclusion in the report.

14. As regards paragraph 24, which matches conclusion (e), the National Police states that the Special Police Regulations do not violate the Surveillance and Private Security Act, as article 183 of the Ecuadorian Constitution stipulates that the police “may assist in the social and economic development of the country”. The regulations are based on the powers of the National Police Commander, under article 18 of the National Police Organization Act, to sign contracts for the provision of police services with individuals or legal entities under public or private law for social purposes or the public benefit. These contracts are the exception, and imply an extra effort by police personnel.⁵

15. The Ecuadorian State does not permit the Juntas de Defensa del Campesinado (peasants’ defence groups) to intervene in matters of security, land disputes or ordinary crime or to assume the functions of public authorities, as claimed by the Working Group in paragraph 25 and referred to again in recommendation (e). The practices referred to are not indigenous practices,

³ This is a requirement of the Surveillance and Private Security Act (third general provision).

⁴ Information supplied by Jaime Tejada, of the Legal Department of the municipality of Guayaquil, by telephone.

⁵ Comments by Alfredo López Mañay, National Director of the Legal Advice Office of the National Police, in official letter No. 2007-454-CG-PN, of 2 February 2007.

but isolated cases that are criticized by indigenous people themselves and reported by them. The culprits will be tried and punished by the appropriate authorities, as happened in the case of Raúl Bayas, who is currently facing criminal proceedings of various kinds.⁶

B. Status of the staff of PMSCs working in Ecuador

16. In section B, paragraph 27, of the report which deals with the Cooperation Agreement on the Manta air force base, there is an error in the text in quotes, taken from the *Registro Oficial* No. 326, Executive Decree No. 1505: there is no mention in the Agreement of the purpose alluded to by the Working Group as “to conduct activities to curb narcotics production and trafficking along Ecuador's border to Colombia”. The purpose of the Agreement is “the granting of access to and the use of the facilities at the Ecuadorian air force base at Manta to conduct detection and surveillance operations to curb illegal aerial drugs trafficking”.

17. The concern expressed by the Working Group in paragraph 28 is unwarranted, for the Manta base agreement grants no immunity whatsoever to contractors (“entities of central operations and foreign command”); immunity is granted solely to United States government civil and military personnel and, as the Working Group rightly states, only in connection with activities carried out in the course of their duties.⁷

18. Reference is made at the end of paragraph 28 to an alleged accident supposedly involving a DynCorp employee. It would be advisable for allegations of this kind to be supported by documentary evidence or reliable testimony.

C. Contracting of foreigners by PMSCs based in Manta

19. With regard to the inquiry into the illicit activities of the Epi Security and Investigations (paras. 35 and 36), the Government repeats that, in accordance with recommendation (c), a preliminary inquiry (No. 196-2005) was carried out, headed by the Manta public prosecutor, Sonia Barcia de Plúas, and steps were taken to obtain information on the supposed offence of trafficking in persons. The said public prosecutor initiated the investigation on the basis of reports by the media that an office operating in Manta was recruiting staff to work in security firms in Iraq.⁸

⁶ Ibid.

⁷ Decree No. 1505 of 25 November 1999, art. VII.

⁸ Report by the National Police of Ecuador, National Directorate of the Criminal Investigation Service, Manta Criminal Investigation Division, on the case of presumed trafficking in persons against Jeffrey Roberth Shippy and Martha Isabel Cañarte Delgad, August 2005.

D. PMSCs and protection of oil companies

20. With regard to paragraph 42, it is important to note that, under the Constitution, the armed forces have as their fundamental mission the preservation of national sovereignty, the defence of the integrity and independence of the State and the safeguarding of its legal system.⁹

21. With regard to paragraphs 43 to 45, the Ministry of Defence has indicated that there are no private “military” security companies - wrongly described as “private security companies” - in the armed forces, to provide services to private individuals or legal entities.

22. Furthermore, the decision of Oswaldo Jarrín, former Minister of Defence, to terminate all “framework agreements”, “contracts” and “agreements” of any other kind concluded between the Ministry of Defence and any private company, including oil companies, remains fully applicable.

23. In accordance with their mandate under the Constitution, the armed forces ensure the security of the State of Ecuador, its institutions and the population at large, based on the principle that the State has a monopoly on the use of arms and that such use is determined by State policy on the security and defence of the nation, including the defence of strategic areas of State territory such as the infrastructure of the oil industry, which is of vital national importance; but not including oil companies themselves.¹⁰

24. The Government also wishes to inform the Working Group of the position of the Ministry of Foreign Affairs that illegal acts constitute offences regardless of which community the perpetrators belong to. The Working Group is therefore requested to replace the word “sabotage” in paragraph 46 by the word “offences”.

E. PMSCs and Plan Colombia

25. With regard to paragraph 51 of the report, the Ministry of Defence points out that the Joint Command of the Armed Forces, pursuant to the Act governing the manufacture, import and export, sale and possession of weapons, munitions, explosives and accessories, carries out legally specified measures through the Weapons Control Department of its Logistics Directorate, including the public registration of private security firms and their representatives.¹¹

⁹ Constitution, art. 184, para. 2.

¹⁰ Information provided by Jaime Narváez Piedra, Under-Secretary of Defence, in official letter No. MJ-3-2007-84 of 6 February 2007.

¹¹ Information provided by Jaime Narváez Piedra, Under-Secretary of Defence, in official letter No. MJ-3-2007-84 of 6 February 2007.

Comments on the recommendations

26. With regard to recommendation (d) urging the competent authorities to accept the resolutions of the Ombudsman and Congress regarding the consequences of the spraying on the northern border of Ecuador, the Government wishes to state that this issue has been a priority item on Colombia and Ecuador's bilateral agenda since Colombia first began aerial spraying. Ecuador first asked Colombia to refrain from spraying within 10 kilometres of its border in 2001. The issue was also raised in a number of high-level meetings in September and November 2002 between Ecuador's ministries of foreign affairs, defence, the interior and foreign trade, and Colombia, at which Ecuador stressed the need to prevent any damage to the environment or the health of people living on Ecuador's northern border.

27. In 2003, Ecuador presented the Colombian Government with several claims by border communities, including demands for compensation for environmental damage. Also in 2003, under Ministry of Foreign Affairs Decision No. 591, an ad hoc scientific commission was set up comprising experts representing various ministries, public health institutions, universities and non-governmental organizations, to make a scientific and technical assessment of the impact and consequences of Colombia's spraying with glyphosate and other chemical additives on its border with Ecuador on the Ecuadorian population and the biodiversity, flora, fauna and rivers along Ecuador's northern border. The Ecuadorian Scientific-Technical Commission was made up of the Fundación Natura, the Leopoldo Inquieta Pérez Institute, the Ministry of Agriculture and Livestock, the Central University, the University of San Francisco and the National Institute of Agricultural Research (INIAP), and the Pan-American Health Organization (PAHO) and the World Health Organization (WHO) were also invited to take part.

28. The first meeting of the scientific-technical commissions of Ecuador and Colombia took place on 14 October 2003 in Bogotá. Following its policy of addressing sectoral concerns over spraying, the Ecuadorian Scientific-Technical Commission invited the Inter-Agency Committee to Combat Spraying to present the results of a study entitled "Daños genéticos en la frontera de Ecuador por las fumigaciones del Plan Colombia" ("Genetic damage on the Ecuadorian border from spraying under Plan Colombia").

29. At the fourth meeting of the scientific-technical commissions of Ecuador and Colombia, held in Quito on 3 August 2004, an agreement was signed whereby, as a preventive measure, the Government of Colombia would take effective steps to prevent residue from any future glyphosate spraying from falling on Ecuadorian territory.

30. The Scientific-Technical Commission set itself the clear aim of solving this problem, and by this and many other means it obtained a suspension of the spraying until December 2006, when the Government of Colombia decided to resume aerial spraying with glyphosate. The Ministry of Foreign Affairs summoned the Colombian ambassador in Quito, Mr. Carlos Luís Holguín Molina, and handed him an official note in which the Government of Ecuador protested the Colombian Government's decision in the strongest terms and demanded the immediate suspension of aerial spraying with glyphosate and its adjuvants.

31. Under the new Presidency, the current Minister for Foreign Affairs, María Fernanda Espinosa, met her Colombian counterpart, María Consuelo Araujo, in Rio de Janeiro, Brazil, and agreed to establish forthwith a tripartite commission of Ecuador, Colombia and international organizations to determine without delay the health and environmental effects of glyphosate spraying by Colombia in the border areas with Ecuador.
32. Ecuador has taken steps to assist people living in towns near the northern border, particularly those directly exposed to aerial spraying with glyphosate. Clinics have been set up in the towns, for example, and improvements made to care provision at the Lago Agrio hospital, which had been a major demand of the region's residents. In addition, the National Development Bank has restructured the debts of farmers in the border area whose crops were affected by aerial glyphosate spraying to grant them more favourable terms.
33. The Ministry of Foreign Affairs has made available to the special congressional committees on international affairs and defence and on human rights all the information on the work of the Ecuadorian Scientific-Technical Commission.¹²
34. The Government of Ecuador requests the Working Group to bear in mind that the spraying issue is not Ecuador's responsibility alone but is chiefly a matter for Colombia.
35. As to recommendation (f), on the promotion of human rights education campaigns for various sectors of society, Ecuador applies the provisions of the Constitution, and in particular the National Human Rights Programme issued under Executive Decree No. 1527 of 24 June 1998, which establishes in article 6 the objective of "introducing into the national education system, formal and non-formal and at all levels, courses of study on human rights, their principles and foundations [and] the need to protect, disseminate and develop them".
36. The Ministry of Education, for its part, in an effort to ensure comprehensive human rights training for all, has amended or introduced important legal standards and also updated the curriculum at the preschool, primary and secondary levels.
37. Examples of new legislation are the new Children and Adolescents Code; the Violence against Women Act; the Sex and Love Education Act; the Special Regulations on Procedures and Mechanisms for Recognizing and Dealing with Sexual Offences in the Education System; Ministerial Decision No. 347 of 14 July 2006, issuing the Revised Regulations on Student Participation; Ministerial Decision No. 403 of 10 August 2006, instituting sex education in State, private, Church-State and municipal schools throughout the country at primary and secondary levels; and Ministerial Decision No. 455 of 21 September 2006, issuing the Regulations on Refugees' Access to the Ecuadorian Education System.

¹² Information provided by memorandum of the Sovereignty Department of the Ministry of Foreign Affairs, sent by e-mail on 5 February 2007.

38. As to the curriculum, at the preschool level the curriculum has been designed to strengthen values formation in the area of human rights. For primary education the curriculum reform emphasizes the exercise of rights and duties as members of a democratic society and thus the development of basic skills, including training in values and attitudes and peaceful and supportive coexistence. Cross-cutting themes in primary education include environmental education, interculturality, the application of values, gender equity, preventive education and others that strengthen values in a human rights context.

39. For the secondary curriculum, education for democracy has been introduced, in which the basic starting point is the exercise of human rights.

40. There are also adult education programmes and human rights training projects, including: orientation, a national school for parents programme, special education, a national programme for sex and love education, prevention of drug abuse, health education, environmental education and a civic education programme - the latter mainly teaches complaints procedures in the event of human rights violations and seeks to produce citizens who respect human rights and expect others to respect them.¹³

Closing remarks

41. The report includes a good deal of information from non-governmental organizations but fails to indicate clearly the specific sources it may be quoting. Thus the facts referred to in the report are described as though they are perfectly objective when in many cases they may be biased or partial.

42. The purpose of the Working Group's visit to Ecuador was to look into possible infringements of the human rights of people supposedly engaged by foreign companies to work in another country. As the Working Group itself has indicated, it has not been possible to confirm such reports beyond doubt. The Working Group has nevertheless addressed other areas of importance to Ecuador, such as the rights of workers in subcontracting companies, the exploitation of security guards and the contracting of private security companies for local tasks in the municipality of Guayaquil.

¹³ Information provided by Dr. Teodoro Barros Astudillo, Director of Education, in official letter No. 129, sent by e-mail on 5 February 2007.