



LEGAL RIGHTS AND NATURAL RESOURCES CENTER, INC. -

Kasama sa Kalikasan/Friends of the Earth Philippines

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Submission to 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

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1. Context (international, regional and/or national as applicable)

- The number, nature, and location of operations of extractive companies that use private security services, whether these are international or national companies, and/or whether private security is embedded in the extractive company or is provided by an external company.

Extractive companies in the Philippines, both local and international, are secured by private security forces, but are also directly secured by the government through its State Security Forces. In 1989, the Special Civilian Armed Forces Geographical Unit (SCAA), which is privately funded but operates under the control of the Armed Forces of the Philippines (AFP) was established.¹ The SCAA can be described as a hybrid security program having both public and private characters. This special unit dedicated to protect companies naturally creates conflict with communities affected by their business operations. Under former President Gloria Macapagal-Arroyo, this special army unit was called “investment defence force” to protect mines, plantations and power transmission lines.² Her military chief, General Hermogenes Esperon, even proposed to train, equip and supervise private security guards to defend mines and plantations across the archipelago.³ This is a clear indication of the prioritization of businesses that create so much conflict with affected communities such as indigenous peoples (IPs).

The SCAA program continues on today and have on many occasions transgressed with indigenous communities. One example is the decades-long struggle of the T’boli-Manobo S’daf Claimants Organisations

¹ Institute of Bangsamoro Studies & Centre for Humanitarian Dialogue. (2011). *Armed violence in Mindanao: Militia and private armies*. Geneva: Centre for Humanitarian Dialogue.

² Reuters. (2008 February 8). *Manila's Arroyo sets up army unit to guard mines*. Retrieved from <https://www.reuters.com/article/idUSMAN119101>.

³ *Id.*



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(TAMASCO) in South Cotabato. Their case has been reported in the past to the UN Special Rapporteur on Indigenous Peoples (See attached report, 2013 with Special Rapporteur Anaya). A coffee plantation run by Silvicultural Industries Incorporated⁴ (SII) has encroached on their ancestral domain. SII is a company linked to one of the country's largest business conglomerates belonging to the Consunji family. SII operates with SCAA as their security. The SCAA have integrated themselves in the community by encroaching upon indigenous land, farming in their territories and threatening them with suits. Cases meant to harass and intimidate have been filed against the IPs.

Reports on the ground indicate that company guards also hire paramilitary or mercenaries that threaten the lives and security of the IPs.

Please see:

<https://www.theguardian.com/environment/2018/jul/21/philippines-lives-land-lost-coffee-empire-militarised-politics>

- The functions that PMSCs perform and the types of services they provide in extractive industries.

SCAA are primarily responsible for providing security to extractive companies, particularly mining and agro industrial businesses. The SCAA falls under the government's mechanism for ensuring the safety development projects.

- The main security challenges facing extractive companies that lead them to seek the services of PMSCs.

⁴ The operations of SII has recently been merged/integrated with M&S, which is a corporation owned by the same family.



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As explained above, it is State policy to secure extractive industries with State forces. Development plans necessarily target rural and indigenous communities where resource rich areas are found. As communities assert their rights, companies run into conflict with communities. But as businesses are given priority over indigenous communities, what real security challenges there are predominantly faced by the latter.

- The impact, if any, of the use of private security actors by the extractive industry on conflict dynamics in countries where they operate, and/or on the rule of law and public security services provided by the State.

The intrusion of extractive businesses upon indigenous and/or upland, rural, poor communities affects the way of life of the community, particularly their livelihood, and the put their lives at risk. The encroachment upon ancestral lands and domains (i.e. traditional and cultural use), coupled by environmental degradation, takes away traditional means of livelihood for IPs. Consequently, some IPs opt to work for extractive companies that have encroached upon their lands. This causes division among the community.

Having the support of the State through the SCAA, rule of law is tilted to favor companies.

The SCAA has peculiar character of being both public and private in the sense that they are organized by the government and supported by the private corporations. Very often too they recruit from the localities resulting in creating tensions in communities, cleaving community relations, and sometimes, even kin.

2. The relationship between PMSCs and the extractive industry

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- The extent and prevalence of the extractive industry utilizing private security services rather than State security, and factors that may lead extractive companies to do so.

More often than not, SCAAs are used as security forces by the extractive industry together with private security. As mentioned, the SCAA has peculiar character of being both public and private in the sense that they are organized by the government and supported by the private corporations. Extractive companies are directly supported by the State in their prioritization of development projects such as mining and agri-businesses.

- Relations and cooperation between extractive companies, private security personnel and State security services.

The State directly supports the security needs of extractive companies through the SCAA. Operating under the AFP, the SCAA still retains public character and is closely linked with the military, and culturally divides the community.

- The modalities of attribution of contracts and issues of transparency. Legislation and modes of verifications of attributions of contracts.

The SCAA was established in 1989 through a memorandum by the Armed Forces Chief of Staff which stated that the SCAA's mission was to "assist the Armed Force of the Philippines regular forces and the local government authorities in the protection of life and property within business companies' territorial jurisdiction."

- The extent to which State's licenses, concessions and other natural resource agreements reference security provisions, and what form the references take.

The State's policy to deploy SCAA for the promotion of development through extractive industries is written into licenses, concessions and

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natural resource agreements.

- The role of the State in regulating the relationship between private security actors and the extractive industry, including the regulation of supply chains.

The SCAA is deliberately state-created, state-supported and state-encouraged.

- Alleged involvement of private security actors in illegal exploitation of natural resources, including, if possible, case examples and corrective action taken.

According to reports on the ground, the SCAA have aggressively infiltrated to the community. They have encroached upon ancestral lands and domains by planting their own crops and employing intimidation tactics. See:

<https://www.theguardian.com/environment/2018/jul/21/philippines-lives-land-lost-coffee-empire-militarised-politics>

- The use and role of sub-contractors, joint ventures and other commercial arrangements for the provision of security to the extractive industry.

Extractive companies employ private security through security agencies that shield them from accountability. The direct employer of private security personnel are the security agencies that answer to all disputes faced by their employees. Private security supplements the security provided by the SCAA.

3. Alleged human rights abuses by private security actors in the extractive industry

- Details of alleged cases of human rights abuses perpetrated by private security actors in the extractive industry, and, if available, the handling of allegations, including in relation to investigations, prosecutions and remedies for victims.

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infiltrated to the community. They have encroached upon ancestral lands and domains by planting their own crops and employing intimidation tactics. In that sense, the SCAA have violated the ancestral domain rights of IPs and the rights to life and security of IPs by their continues harassment and intimidation.

See:

<https://www.theguardian.com/environment/2018/jul/21/philippines-lives-land-lost-coffee-empire-militarised-politics>

The possible impact of the use of private security actors by extractive industries on specific groups (e.g. indigenous peoples, persons with disabilities), as well as the differentiated impact of such human rights abuses on women, girls, men and boys.

There have been deaths alleged to have committed by the SCAA. They have also violated the IP's freedom of movement by hindering them from entering their lands, preventing them from practicing their livelihood and traditions.

Patterns or trends of human rights abuses in the context of the use of private security services in extractive industries.

Violence is employed and are usually unresolved. These serious human rights violations flow from the initial violation to the IP's rights to their ancestral domain.

4. International, national and company-level regulations, mechanisms and procedures

- Legal and/or administrative provisions in place to regulate the activities of private security actors in the extractive industry both domestically and abroad.

There are laws in place to regulate extractive industries, such as the 1995 Mining Act, which provide grievance mechanisms. There is also the Indigenous Peoples Rights Act which created the National

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Commission on Indigenous Peoples (NCIP), the agency tasked to safeguard the rights of IPs, including the facilitation of the Free Prior and Informed Consent process. Despite these mechanisms, the rate of approval of mining concessions are overwhelmingly higher compared to ancestral domain titles. The prioritization of business has led to human rights violations against IPs.

- Mechanisms to promote respect for human rights and prevent abuses within extractive and/or PMSCs, as well as to monitor human rights compliance, including throughout the supply chain of private security services.

Along with the NCIP, there is the Commission on Human Rights (CHR) that monitors and investigates human rights violations.

Procedures in place for the selection and training of private security personnel, including human rights considerations, and their application for security (sub) contractors, as well as examples of decisions and procedures that were applied.

Corporations are given much leeway in the selection of private security. As for the SCAA, they are deployed by the Military through their own internal processes.

- Mechanisms in place for dialogue and consultation with local communities, including indigenous peoples, and civil society about the role and functions of private security supporting extractive industries, including examples of such processes where available.

This is mostly done by the NCIP.

- The concrete application within companies of international, regional and national

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initiatives that promote compliance by private security actors involved in the extractive industry with international human rights standards and principles (e.g. UN Guiding Principles on Business and Human Rights, Voluntary Principles on Human Rights and Security, International Code of Conduct for Private Security Providers [ICoC]).

While the Philippines is signatory to these treaties, their translation in the local communities remains wanting, if not absent. Compliance is largely dependent on the political directives of regimes. In the case of the present administration, the Philippines has recently withdrawn from the ICC. This is seen as abrogation of the country's commitment to accountability.

- The availability and effectiveness of reporting mechanisms, institutions, company-level grievance mechanisms, and/or community level mechanisms and responses to enable victims, community members and/or civil society organisations to file complaints in case of alleged human rights abuses.

The Commission on Human Rights is mandated to monitor and investigate human rights violations. However, this institution is continuously berated by the current administration which has demonized the very concept of human rights. The Commission has therefore lost credibility and strength as an institution.

- National or international mechanisms to prosecute and/or facilitate and support claims by victims regarding alleged abuses committed by private security actors; and accessibility of associated remedial mechanisms.

Aside from the CHR and the NCIP, the Supreme Court has promulgated rules of the Writ of Amparo and Habeas Data, which is a protective writ to safeguard the rights to life, liberty, and security. Studies have shown that these remedies have been ineffective.

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Extraterritorial jurisdiction in national legal systems and its application, including specific cases if any.

There is none, hence the need for binding treaties like the legally binding instrument on transnational corporations.

5. Good practices, lessons learnt

- Existing initiatives and good practices in terms of preventing and addressing human rights abuses by private security actors mandated by the extractive industry.

In the Philippines, there is none. In fact, in most cases of abuse they are featured as main perpetrators.

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