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**EXAMINATION OF THE UNITED STATES**

**ALTERNATIVE (SHADOW) REPORT ANSWERING THE PRIVATE  
SECURITY AND INDIGENOUS PEOPLES THEME OF REVIEW FOR THE  
UNITED STATES**

*Submitted by the Water Protector Legal Collective in collaboration with the  
International Organization for Self-Determination and Equality*

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**Contact:**

**Michelle Cook, International Director  
Water Protector Legal Collective  
P.O. Box 37065  
Albuquerque, New Mexico, United States, 87176  
Email: [mcook@waterprotectorlegal.org](mailto:mcook@waterprotectorlegal.org)  
Website: [www.waterprotectorlegal.org](http://www.waterprotectorlegal.org)**

**India Reed Bowers, Founder & Director  
International Organization for Self- Determination and Equality  
Email: [india.bowers@iosde.org](mailto:india.bowers@iosde.org)  
Website: [www.iosde.org](http://www.iosde.org)**

## **Executive Summary**

1. Private military and security companies (PMSCs) have a deep effect in Indigenous lands in the United States. There is a harmful distinction in international fora and domestic governments between State and Private Actors, leaving PMSCs to often conduct themselves without oversight or accountability for the human rights abuses they commit.
2. In the United States, PMSCs are used by States and large-project operators to “protect” property and ensure large extractive industry projects continue from the construction stage to the operational stage. As a result, PMSCs have a widescale presence in the United States and Indigenous lands in particular when and where there are protests against or concerning a project.
3. Many large extractive industry projects occur on Indigenous lands in the form of pipelines acting as an ongoing severe threat of pollution and contamination of waters and lands. Pipelines also severely jeopardize original hunting and gathering methods that provide needed sustenance and ensure the cultural integrity and survival of Indigenous peoples.
4. This Shadow Report discusses the use of PMSCs by permitted government contractors and operators in the United States on Indigenous lands and the human rights abuses that Indigenous Peoples face with little to no redress due the Private Actor status PMSCs hold even when they hold contracts with government entities.
5. Recommendations include, among other key points, that the United States takes a more active role in the oversight and accountability for the actions of PMSCs, especially when and where PMSCs are recipients of government contracts and requires PMSCs to issue periodic reports on their human rights records.

## **State of Private Security Use in the United States on Indigenous Lands**

6. Private military and security companies (PMSCs) achieved acceptance to exist in conflict zones by companies and States through the praise of the Green Paper in 2002 and the U.N.’s use of PMSCs to supplement its operations.<sup>1</sup> Art. 47 of Protocol 1 to the Geneva Conventions left the

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<sup>1</sup> Ulrich Petersohn, Reframing the anti-mercenary norm: Private military and security companies and mercenarism, 69 Int’l J. 475, 487 (2014) (citing discussion in the U.K. Foreign Affairs Committee), <https://www.jstor.org/stable/24709418>.

mercenary definition vague contributed to “operational independence [] de-emphasi[s]e[s] and the role of the state under-scored.”<sup>2</sup> PMSCs like TigerSwan should be considered State Actors and be held accountable as such, as they have tight State control and group cause,<sup>3</sup> especially when protecting critical State infrastructure. For example, TigerSwan was founded by U.S. special forces veterans who benefited from U.S. training,<sup>4</sup> funded by U.S. military contracts,<sup>5</sup> and acts under protection of the U.S. flag in foreign countries.<sup>6</sup> There should be recourse in international fora against the United States for the actions of PMSCs like TigerSwan who frequently act as agents of the government and would not exist but for government support while those actions violate established international human rights and criminal justice norms.

7. In the 20<sup>th</sup> century, private militaries have experienced a resurgence on the world stage in the wake of globalization and military downsizing at the end of the Cold War.<sup>7</sup> The growth of private military force in international conflict has been matched by the resurgence of private security in domestic spaces.<sup>8</sup> A 2017 international survey showed that in 44 of 81 countries private security outnumbered police.<sup>9</sup>

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<sup>2</sup> *Id.* See also Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol 1), <https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-additional-geneva-conventions-12-august-1949-and>.

<sup>3</sup> Sarah Percy, MERCENARIES: THE HISTORY OF A NORM IN INTERNATIONAL RELATIONS, 90-91, 55-58, 65, 235 (2007).

<sup>4</sup> TigerSwan, Website Homepage (last visited Jan. 27, 2022), <https://www.tigerswan.com/who-we-are/>.

<sup>5</sup> FEDMINE Company Profile TigerSwan Inc., FedMine (last visited Mar. 20, 2022) (detailing substantial contracts with the Army, Navy, and Defense Department generally in the early years of the corporation), [http://cloud.fedmine.us.s3-website-us-east-1.amazonaws.com/userDownloadedfiles/Contractor\\_DUNS\\_607735292-TIGERSWANINC-copyright\\_FEDMINE\\_212463.html](http://cloud.fedmine.us.s3-website-us-east-1.amazonaws.com/userDownloadedfiles/Contractor_DUNS_607735292-TIGERSWANINC-copyright_FEDMINE_212463.html).

<sup>6</sup> See TigerSwan Awarded US Dept of Defense Iraq Security Contract (Mar 2, 2010), <https://www.prnewswire.com/news-releases/tigerswan-awarded-us-dept-of-defense-iraq-security-contract-86007902.html>; See also Special Inspector General for Afghanistan Reconstruction, Department of State’s Afghanistan Flexible Implementation and Assessment Team Program: Audit of Costs Incurred by TS LLC, Sigar 20-48 Financial Audit (2020) (A federal audit of one of TigerSwan’s Department of State contracts), <https://apps.dtic.mil/sti/pdfs/AD1137549.pdf>.

<sup>7</sup> P.W. Singer, CORPORATE WARRIORS: THE RISE OF THE PRIVATIZED MILITARY INDUSTRY, 40 (2008).

<sup>8</sup> Wendy Fitzgibbon and John Lea, PRIVATISING JUSTICE: THE SECURITY INDUSTRY, WAR, AND CRIME CONTROL, 79 (2020).

<sup>9</sup> *Id.* citing Provost 2017; See also Button and Stiernstedt 2018.

8. PMSCs emerged from post-Cold War military downsizing as States sought to reduce the size of standing armies without withdrawing from war zones.<sup>10</sup> The Special Rapporteur on the use of mercenaries, Shaista Shameem, noted in 2005 that “many of these companies can be classified as mercenaries or employing mercenaries, although they themselves do not define their activities in that way.”<sup>11</sup>
9. The International Consortium of Investigative Journalists (ICIJ) characterizes these PMSCs as a “euphemism[s] for mercenaries.”<sup>12</sup> In 2007, the Chairperson-Rapporteur of the Working Group on the use of mercenaries, Jose Luis Gomez del Prado of Spain, followed the ICIJ in calling private security providers “new modalities of mercenarism.”<sup>13</sup>
10. Despite characterizations by the international community, the Geneva Conventions Additional Protocols (the “Protocols”) definition of mercenaries is narrower. According to the Protocols, a mercenary is any person who:
  - (a) is specially recruited locally or abroad in order to fight in an armed conflict;
  - (b) does, in fact, take a direct part in the hostilities;
  - (c) is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a Party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that Party;
  - (d) is neither a national of a Party to the conflict nor a resident of territory controlled by a Party to the conflict;
  - (e) is not a member of the armed forces of a Party to the conflict; and

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<sup>10</sup> International Consortium of Investigative Journalists, *Making a Killing: The Business of War: Summary of Findings* (2002), <https://www.icij.org/investigations/makingkilling/about-project/>.

<sup>11</sup> Shaista Shameem, Use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, A/60/263, ¶45 (2005).

<sup>12</sup> *Supra* note 10.

<sup>13</sup> Jose Luis Gomez del Prado, Working Group on the use of mercenaries, Use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, U.N. Doc. A/62/301 (2007), [https://digitallibrary.un.org/record/608578/files/A\\_62\\_301-EN.pdf](https://digitallibrary.un.org/record/608578/files/A_62_301-EN.pdf).

(f) has not been sent by a State which is not a Party to the conflict on official duty as a member of its armed forces.<sup>14</sup>

11. Because PMSCs do not clearly fall within internationally accepted definition of a mercenary above, PMSCs are generally self-regulated by approaches like those described in the Montreux Document and International Code of Conduct for Private Security Providers.<sup>15</sup> The Montreux Document establishes a theory of State liability for violations of international law by PMSCs:

7. Although entering into contractual relations does not in itself engage the responsibility of Contracting States, the latter are responsible for violations of international humanitarian law, human rights law, or other rules of international law committed by PMSCs or their personnel where such violations are attributable to the Contracting State, consistent with customary international law, in particular if they are:

- a) incorporated by the State into their regular armed forces in accordance with its domestic legislation;
- b) members of organized armed forces, groups or units under a command responsible to the State;
- c) empowered to exercise elements of governmental authority if they are acting in that capacity (i.e. are formally authorized by law or regulation to carry out functions normally conducted by organs of the State); or
- d) in fact acting on the instructions of the State (i.e. the State has specifically instructed the private actor's

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<sup>14</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), art. 47 (1977), <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/1595a804df7efd6bc125641400640d89/f6c8b9fee14a77fdc125641e0052b079?OpenDocument>; *See also* G.A. Res. 44/34, art. 1 (1989), <https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Arms%20A%20RES%2044%2034.pdf>.

<sup>15</sup> UN 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, Mercenarism and Private Military and Security Companies: An overview of the work carried out by 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, HRC/NONE/2018/40, 17 (2018), <https://www.ohchr.org/Documents/Issues/Mercenaries/WG/MercenarismandPrivateMilitarySecurityCompanies.pdf>.

conduct) or under its direction or control (i.e. actual exercise of effective control by the State over a private actor's conduct).

8. Contracting States have an obligation to provide reparations for violations of international humanitarian law and human rights law caused by wrongful conduct of the personnel of PMSCs when conduct is attributable to the Contracting States in accordance with the customary international law of State responsibility.<sup>16</sup>

12. Even if PMSCs are not regulated in accordance with the legal obligations described in the Montreux Document, PMSCs are organized as corporations. The U.N.'s Guiding Principles on Business and Human Rights (Guiding Principles) notes as a foundational principle:

States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.<sup>17</sup>

13. The Guiding Principles further note that particular care should be taken when business and State interests intersect: States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence.<sup>18</sup>

14. The Voluntary Principles on Security and Human Rights, of which the United States is a voluntary member, describe a similar obligation Government

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<sup>16</sup> 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, International Comm. Of the Red Cross, ¶7-8 (2008), [https://www.icrc.org/en/download/file/135841/montreux\\_document\\_en.pdf](https://www.icrc.org/en/download/file/135841/montreux_document_en.pdf).

<sup>17</sup> Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, U.N. Doc. HR/PUB/11/04, ¶1 (2011), [https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf).

<sup>18</sup> *Id.* at ¶4.

Participants should take appropriate steps to prevent, investigate, punish and redress human rights abuses within their territories and/or jurisdiction by third parties, including extractive companies and public and private security service providers, through policies, legislation, regulations, and adjudication, as well as take appropriate action to prevent recurrence.”<sup>19</sup>

15. The Montreux Document, U.N. Guiding Principles, and Voluntary Principles on Security and Human Rights clearly show how international law has evolved since the 16<sup>th</sup> century and that private military and security companies are the responsibility of States to police and regulate. Considering PMSCs as State actors when contracted by the State or when working to facilitate critical State infrastructure and extraction more accurately reflects their posture on the global stage and opens up potential avenues of remedy and accountability under international human rights law as it applies to State as opposed to private actors.

### **TigerSwan**

16. In the case of the PMSCs used by fossil fuel extractors like Energy Transfer Partners (“ETP”, now full owner of Sunoco LP, the Dakota Access Pipeline operator, and a controlling interest in Dakota Access, LLC, the Dakota Access Pipeline developer)<sup>20</sup>, the connection between international private military operation, domestic private security, and State interests is less than tangential. TigerSwan, hired by Energy Transfer Partners to police the construction of the Dakota Access Pipeline, is a Department of Defense and Department of State contractor with offices in Afghanistan, India, Iraq, Japan, Jordan, Latin America, Saudi Arabia, and the United States.<sup>21</sup>

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<sup>19</sup> Voluntary Principles Initiative – Guidance on Certain Roles and Responsibilities of Governments, Voluntary Principles Initiative (July 15, 2014), [https://docs.wixstatic.com/ugd/f623ce\\_64253cb1f65740b7940068d7702157c8.pdf](https://docs.wixstatic.com/ugd/f623ce_64253cb1f65740b7940068d7702157c8.pdf).

<sup>20</sup> Form 10K Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 For the Fiscal year ended December 31, 2020 (Energy Transfer LP) (2020), <https://www.sec.gov/ix?doc=/Archives/edgar/data/1276187/000127618721000034/et-20201231.htm>; Liz Hampton, Sunoco, behind protested Dakota pipeline, tops U.S. crude spill charts (Sept. 23, 2016), <https://www.reuters.com/article/us-usa-pipeline-nativeamericans-safety-i/sunoco-behind-protested-dakota-pipeline-tops-u-s-crude-spill-charts-idUSKCN11T1UW>; Alleen Brown, et al., *Leaked Documents Reveal Counterterrorism Tactics Used at Standing Rock to ‘Defeat Pipeline Insurgencies’*, INTERCEPT (May 27, 2017), <https://theintercept.com/2017/05/27/leaked-documents-reveal-security-firms-counterterrorism-tactics-at-standing-rock-to-defeat-pipeline-insurgencies/>.

<sup>21</sup> Alleen Brown, et al., *Leaked Documents Reveal Counterterrorism Tactics Used at Standing Rock to ‘Defeat Pipeline Insurgencies’*, INTERCEPT (May 27, 2017), <https://theintercept.com/2017/05/27/leaked->

TigerSwan was founded by members of the elite U.S. special operations and counterterrorism unit.<sup>22</sup>

17. One of TigerSwan's founders was a United States Troop Commander and Director of Operations for the Delta Force and was deployed to Afghanistan in the initial year of the U.S. "Operation Enduring Freedom."<sup>23</sup> During his military service, he took a two-year hiatus to command the 1<sup>st</sup> Cavalry Division,<sup>24</sup> a unit with a long and sordid history with the Indigenous Peoples of the U.S., which was founded by frontier settlers with congressional authorization to subdue the Sauk, Comanche, Pawnee, Apache, Modoc, Nez Perce, Mojave, Crow, and Sioux Indian Nations during the Indian Wars throughout the 1600s-1800s.<sup>25</sup> The same division spearheaded the U.S. entry into the First Gulf War in 1990.<sup>26</sup>
18. A TigerSwan employee list is not public, but the resumes and personal details of TigerSwan job applicants were leaked from a repository of applications in 2017. Analysis revealed that 1,671 applicants mentioned a "police department" on their resume, 20 individuals served at Guantanamo Bay Naval Base, 2,448 resumes mentioned "special forces," 3,669 mention "Iraq," 2,712 mentioned "Afghanistan," including U.S. soldiers and those of other Coalition and NATO member-states like the U.K. and Canada. The repository also contained applicants with experience as private military contractors like DynCorp, Blackwater, Aegis, Kellogg Brown Root, Lockheed Martin, Titan, and others. 295 resumes claimed "Top Secret/Sensitive Compartmented Information" clearance.
19. After being contracted by Energy Transfer Partners to police the construction of DAPL, TigerSwan squeezed out other PMSCs on the DAPL contract.

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[documents-reveal-security-firms-counterterrorism-tactics-at-standing-rock-to-defeat-pipeline-insurgencies/](#).

<sup>22</sup> *Supra* note 4.

<sup>23</sup> *Supra* note 21. Stephen Callahan, *TigerSwan's James Reese: From Special Ops to Entrepreneur*, BLOGWEBPEDIA (Aug. 26, 2019), <https://blogwebpedia.com/2019/08/26/TS-james-reese-from-special-ops-to-entrepreneur/>.

<sup>24</sup> Stephen Callahan, *TigerSwan's James Reese: From Special Ops to Entrepreneur*, BLOGWEBPEDIA (Aug. 26, 2019), <https://blogwebpedia.com/2019/08/26/TS-james-reese-from-special-ops-to-entrepreneur/>.

<sup>25</sup> See Patrick J. Jung, THE BLACK HAWK WAR OF 1832, 10 (2007); Indian War Campaigns, Full Text-Citations, U.S. Army Medal of Honor (last visited Feb. 28, 2022),

<https://www.army.mil/medalofhonor/citations3.html>; 5-1 Cavalry Squadron History, U.S. Army (last visited Feb. 28, 2022), [https://www.army.mil/article/166811/5\\_1\\_cavalry\\_squadron\\_history](https://www.army.mil/article/166811/5_1_cavalry_squadron_history).

<sup>26</sup> *Id.* in entirety.



TigerSwan retrained many of the former Army Rangers and military intelligence operatives employed by the other PMSCs and absorbed them into TigerSwan's ranks.

20. From September 2016 to February 2017, at least 76 city, county, and territorial state law enforcement agencies, as well as several federal agencies, the National Guard (the state-based federal military reserves), and private security firms hired by the oil company were deployed to the Standing Rock area.
21. TigerSwan is a private military and security contractor with the U.S. Department of State and Department of Justice and used U.S. military training and counterterrorism tactics to suppress Indigenous protests against the construction of the Dakota Access Pipeline<sup>27</sup> as it was being built.<sup>28</sup>
22. Similarly, to construct the Mariner East Pipeline 2X, a pipeline on the east coast of the United States, TigerSwan and Energy Transfer Partners allegedly engaged in “coercion, bribery, and/or other illicit means of forcing the state’s Department of Environmental Protection to approve the construction permits that were critical the development of ME2.”<sup>29</sup>
23. A whistle blower that was a sniper and team leader of a prominent military outfit stated, “While companies like Blackwater were private military companies operating abroad, TigerSwan brought the tactics that contractors and soldiers use in Baghdad to American soil for the first time.”<sup>30</sup>
24. After establishing a record as a private military and security contractor, TigerSwan was contracted by the Department of State in the United States’

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<sup>27</sup> *Supra* note 21. *See also supra* Special Inspector General, note 6; *See also* TigerSwan Awarded US Dept of Defense Iraq Security Contract, GovCon (Mar. 3, 2010) (TigerSwan announced a \$12m contract for Personal Security Detail Services in support of the Task Force for Business and Stability Operations in Iraq), <https://www.govcon.com/doc/tigerswan-awarded-us-dept-of-defense-iraq-0001>.

<sup>28</sup> Nick Estes, *Our History is the Future: Standing Rock Versus the Dakota Access Pipeline, and the Long Tradition of Indigenous Resistance* 1, 2 (2019).

<sup>29</sup> Allegheny Cty. Employees’ Retirement Sys v. Energy Transfer Partners, Case No. 2:20-cv-00200-GAM, Doc. 43, ¶14 (E.D. Penn. 2020), <https://static.blbglaw.com/docs/2020-06-15%20Dkt%2043%20Amended%20Complaint%20Amended%20Complaint%20%20against%20Allegheny%20County%20Employees%2339%3B%20Retirement%20System%20Combined.pdf>.

<sup>30</sup> Jack Murphy, *TigerSwan: Former Delta Operator sought to incite violence at Dakota Access Pipeline* (Feb. 26, 2018), <https://sofrep.com/news/tigerswan-former-delta-operator-sought-to-incite-violence-at-the-dakota-access-pipeline/>.

final efforts to control Afghanistan. TigerSwan accrued \$3,800,000 in “questionable costs” due to inadequate documentation supporting supply procurements and related party transactions. A federal inspector concluded that “the Government may have paid more in costs than is reasonable or appropriate for the goods received” during an audit of TigerSwan’s billing expenditures.<sup>31</sup>

25. In 2016, TigerSwan contracted with Energy Transfer Partners to serve as private police during construction of the Dakota Access Pipeline.<sup>32</sup> The new contract with Energy Transfer Partners occurred while TigerSwan was still under contract with the United States in Afghanistan.

26. The Dakota Access Pipeline (DAPL) is a \$3,800,000,000 pipeline which carries approximately 5% of the oil produced in the United States for 1,712 miles through unceded Lakota Sioux territory reserved for the Tribe in the 1868 Fort Laramie Treaty.<sup>33</sup> DAPL carries oil produced from shale oil fields in North Dakota. This pipeline was constructed despite the objections of the Standing Rock Sioux Tribe whose drinking water supply was put at risk by the development and denied the Standing Rock Sioux Tribe’s free, prior and informed consent.<sup>34</sup> The U.S. Army Corps of Engineers gave the final approval for the portion of the pipeline that crosses the Missouri River on July 25, 2016, and the pipeline was commercially operational by June 1, 2017.<sup>35</sup>

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<sup>31</sup> *Supra* Special Inspector General, note 6.

<sup>32</sup> *Supra* note 21. Professional Services Agreement Number: PSA-480-2016-25559 Between Dakota Access, LLC (Company) and TigerSwan, LLC (Contractor) (effective date Sept. 5, 2016) (filed in public record as Ex. A, North Dakota Case No. 08-2020-CV-02788).

<sup>33</sup> *Supra* note 28. Tribes retain sovereignty over any land they have not ceded and which Congress has not diminished, neither of which occurred here. *See McGirt v. Oklahoma*, 140 S. Ct. 2452, 2459 (2020); Mika Soraghan, Trail of spills haunts Dakota Access developer, E&E News (May 26, 2020), <https://www.eenews.net/stories/1063234239>; Treaty of Fort Laramie, art. XVI (1868) (Treaty made and concluded between Lt. Gen. William T. Sherman et al., duly appointed commissioners on part of the United States and the different bands of the Sioux Nation of Indians, stipulating the borders of unceded land.

<sup>34</sup> *Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers*, 255 F. Supp. 3d 101, 133 (D.D.C. 2017).

<sup>35</sup> Rebecca Hersher, Key Moments in the Dakota Access Pipeline Fight, NPR (Feb. 22, 2017), <https://www.npr.org/sections/thetwo-way/2017/02/22/514988040/key-moments-in-the-dakota-access-pipeline-fight>; Timothy Cama, Dakota Access pipeline now in service (June 1, 2017), <https://thehill.com/policy/energy-environment/335898-dakota-access-pipeline-now-in-service>.

27. Subsequently, the U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration issued notice to ETP of at least seven probable violations of U.S. safety code arising from the operation of DAPL from April 29 – August 30, 2019.<sup>36</sup> A federal court of appeals ruled that the U.S. Army Corps of Engineers failed to consider the entirety of the record, including environmental factors, when permitting the pipeline’s construction, and it affirmed the district court’s order to prepare a more lengthy Environmental Impact Study, but the court did not enforce an injunction against pipeline operation.<sup>37</sup> The Supreme Court denied certiorari in 2022.<sup>38</sup>

28. According to the NDN Collective, an Indigenous-led non-profit, the ensuing six-year Army Corps NEPA process has “ignored tribes’ requests for data and detailed methodology” and “utilizes a highly conflicted ‘independent third-party’ contractor who is a member in the American Petroleum Institute industrial lobby group.”<sup>39</sup>

29. Former UN Special Rapporteur on the Rights of Indigenous Peoples Victoria Tauli-Corpuz stated:

The [Standing Rock Tribe] was denied access to information and excluded from consultations at the planning stage of the project and environmental assessments failed to disclose the presence and proximity of the Standing Rock Reservation... US authorities should fully protect and facilitate the right to freedom of peaceful assembly of [I]ndigenous peoples... [and] undertake a thorough review of [US] compliance with international standards regarding the obligation to consult with

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<sup>36</sup> Gregory A. Ochs, Notice of Probable Violation Proposed Civil Penalty and Proposed Compliance Order (No. CPF 3-2021-049-NOPV), U.S. Department of Transportation (July 22, 2021) (including probable violations of 49 CFR §§ 195.264(a)(b)(1)(i), 195.401(a)(b)(1), 195.402(a), 195.406(a)(b), 195.428(a)(b), 195.440(a)(c), 195.452 (a)(f)(1)), [https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/2021-07/Energy%20Transfer-Dakota%20Access%2032021049NOPV\\_PCP%20PCO\\_07222021\\_%2821-211190%29.pdf](https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/2021-07/Energy%20Transfer-Dakota%20Access%2032021049NOPV_PCP%20PCO_07222021_%2821-211190%29.pdf).

<sup>37</sup> *Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers*, 985 F.3d 1032 (D.C. Cir. 2021), cert. denied sub nom. *Dakota Access, LLC v. Standing Rock Sioux Tribe*, 21-560, 2022 WL 516382 (U.S. Feb. 22, 2022).

<sup>38</sup> *Id.*

<sup>39</sup> Faulty Infrastructure and the Impacts of the Dakota Access Pipeline, NDN Collective 1, 19 (2022), <https://ndncollective.org/ndn-collective-releases-groundbreaking-report-on-dapl/>.

[I]ndigenous peoples and obtain their free and informed consent.<sup>40</sup>

30. The North Dakota Investigative and Security Board, a state administrative agency, sued TigerSwan for operating without a license and illegally providing services to Energy Transfer Partners in 2019.<sup>41</sup>
31. Contrary to popular belief, Dakota Access Pipeline litigation is still ongoing. Energy Transfer Partners sued TigerSwan regarding the release of thousands of internal documents showing violence against Indigenous water protectors.<sup>42</sup> Energy Transfer attempted to prevent the release of TigerSwan's documents due to the contract between the two entities even though the documents were subject to investigation by the North Dakota Private Investigative and Security Board and would be a matter of public record. In April 2022, the North Dakota Supreme Court ruled that 60,000 documents showing internal workings of TigerSwan's activities at Standing Rock will be made public after the North Dakota Private Investigative and Security Board "remove[s] those [documents] associated with trade secrets and litigation."<sup>43</sup> Water Protector Legal Collective is following the release of these documents.

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<sup>40</sup> Victoria Tauli-Corpuz, North Dakota: "Indigenous peoples must be consulted prior to oil pipeline construction" – UN expert, UN OHCHR (Sept. 23, 2016), <https://www.ohchr.org/en/2016/09/north-dakota-indigenous-peoples-must-be-consulted-prior-oil-pipeline-construction-un-expert?LangID=E&NewsID=20570>.

<sup>41</sup> John Hageman, North Dakota Supreme Court hears arguments in pipeline security license case, *Prarie Business* (May 14, 2019), <https://www.inforum.com/news/north-dakota-supreme-court-hears-arguments-in-pipeline-security-license-case>; John Hageman, North Dakota Supreme Court affirms ruling pipeline security dispute, *Grand Forks Herald* (Aug. 22, 2019), <https://www.inforum.com/news/north-dakota-supreme-court-affirms-ruling-in-pipeline-security-dispute>; *Verified Compl. & Req. for Inj., North Dakota Investigative and Security Board v. Tiger Swan*, 08-2017-CV-01873 (D.N.D. 2017), [https://ccrjustice.org/sites/default/files/attach/2017/11/Ex.%20A%20N.D.%20Complaint\\_0.pdf](https://ccrjustice.org/sites/default/files/attach/2017/11/Ex.%20A%20N.D.%20Complaint_0.pdf).

<sup>42</sup> *Supra* note 21

<sup>43</sup> Blacke Nicholson, *State Supreme Court Weighs Release of Disputed DAPL Documents; 2 Related Cases Before High Court*, *BISMARCK TRIBUNE* (Feb. 12, 2022), [https://bismarcktribune.com/news/state-and-regional/state-supreme-court-weighs-release-of-disputed-dapl-documents-2-related-cases-before-high-court/article\\_8f15703a-b308-55d1-ad8e-87f8199a4e30.html](https://bismarcktribune.com/news/state-and-regional/state-supreme-court-weighs-release-of-disputed-dapl-documents-2-related-cases-before-high-court/article_8f15703a-b308-55d1-ad8e-87f8199a4e30.html); *See also* Brenda Norrell, *North Dakota Supreme Court says Tiger Swan's Standing Rock documents are public records*, *CENSORED NEWS* (May 5, 2022), <https://bsnorrell.blogspot.com/2022/04/north-dakota-supreme-court-says-tiger.html>.

32. In addition, in March 2022 the 8<sup>th</sup> Circuit court resolved an appeal, *Mitchell v. Kirchmeier*, reversing dismissal of a water protector’s claim against officers for excessive force for allegedly shooting him in the eye with a bean bucket riot control round and for failure to intervene, as well as the water protector’s *Monell* claim against individual officers and remanded it to the district court for further deliberation.<sup>44</sup> Another police violence and freedom of religion case, *Thunderhawk v. County of Morton*, alleges that TigerSwan fed “intentionally misleading evidence regarding Water Protector conduct [which] then served as a pretext for state and local officials to publicly misrepresent the effect of and to prosecute the practice of [I]ndigenous religious beliefs in the area,” and the plaintiffs prevailed over TigerSwan’s motion for summary judgement.<sup>45</sup> That case is also being appealed up to the 8<sup>th</sup> Circuit.<sup>46</sup> The Water Protector Legal Collective and its partners have already submitted several reports detailing abuses at Standing Rock.<sup>47</sup>

33. According to leaked documents compiled by the Intercept, TigerSwan briefings routinely described water protectors with counterterrorism jargon, such as the “stockpiling [of] signs,” the “caliber” of paintball pellets, and calling protestors “terrorists,” and direct action protests “attacks,” while referring to resistance camps as “battlefields” and “battlespaces.”<sup>48</sup> Internal TigerSwan communications described the movement as “an ideologically driven insurgency with a strong religious component” and compared water protectors to jihadis.<sup>49</sup>

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<sup>44</sup> *Mitchell v. Kirchmeier*, 28 F.4th 888, 903 (8th Cir. 2022).

<sup>45</sup> *Thunderhawk v. County of Morton*, 483 F. Supp. 3d 684,731 and 757 (D.N.D. 2020)

<sup>46</sup> *Thunderhawk v. Gov. Doug Burgum*, Docket # 20-3052 (8<sup>th</sup> Cir., docketed 2020) (decision forthcoming).

<sup>47</sup> Seánna Howard et al., Stakeholder Report to the UN Human Rights Council, Universal Periodic Review Working Group, University of Arizona Indigenous Peoples Law and Policy Program on behalf of the Water Protector Legal Collective (Oct. 2019),

<https://law.arizona.edu/sites/default/files/IPLP%20and%20WPLC%20UPR%20Report%20on%20USA%20-%202019.pdf>; Report to the United Nations Special Rapporteur on the rights of indigenous peoples, Victoria Tauli-Corpuz, International Human Rights Advocacy Workshop at the University of Arizona Rogers College of Law on behalf of the Water Protector Legal Collective (2018); Report to the Inter-American Commission on Human Rights [re] Criminalization of Human Rights Defenders of Indigenous Peoples Resisting Extractive Industries in the United States, University of Arizona Rogers College of Law Indigenous Peoples Law and Policy Program on behalf of the Water Protector Legal Collective (2019).

<sup>48</sup> *Supra* note 21.

<sup>49</sup> *Id.*

34. On September 12, 2016, a TigerSwan situation report noted that construction workers were “over-watched by a predator [drone] on loan to the JEJOC [may be a typo and mean “Law Enforcement Joint Operation Center”] from Oklahoma,” although an anonymous TigerSwan contractor suggested that this may have been a Phantom 4 drone rather than the Predator model.<sup>50</sup> These drones are for military reconnaissance. Another TigerSwan report describes an effort to “find, fix, and eliminate” threats to the pipeline, echoing the “find, fix, finish” terminology used in the U.S. military’s targeted drone assassination campaign.<sup>51</sup>
35. TigerSwan attempted to mount a counter-information campaign on social media against Indigenous protestors and sent personnel to infiltrate NoDAPL camps.<sup>52</sup> On October 3, 2016, an internal TigerSwan report describes the “[e]xploitation of ongoing native versus non-native rifts, and tribal rifts between peaceful and violent element... critical in our effort to delegitimize the NoDAPL movement.”<sup>53</sup>
36. A Former Delta Force operative and TigerSwan’s program manager acted as an agent provocateur in NoDAPL protest camps. The individual tuned into radio frequencies used by water protectors pretending to be a protestor calling for other protestors to mobilize, shouting “Everyone to the bridge, all warriors to the bridge!”<sup>54</sup>
37. The same program manager instructed ex-Army Rangers working for the firm to perform penetration tests of protestor camps by driving pickup trucks through perimeter lines.<sup>55</sup> TigerSwan employees sped through camps to incite the water protectors in residence at the camps to chase them. This was documented at multiple camps.<sup>56</sup>
38. On October 27, 2016, a Leighton Security Services officer drove their unmarked white pickup truck behind the lines of the protest camp and tried

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<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Supra* note 30.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

to speed through the water protectors' barricade from behind.<sup>57</sup> The PMSC officer drove their truck towards the Oceti Sakowin camp, where elders and children had stayed back from the frontlines of the protests.<sup>58</sup> He had no visible identification and an assault rifle in the passenger seat.<sup>59</sup> He was later apprehended by the Bureau of Indian Affairs and transferred to Federal Bureau of Investigation custody.<sup>60</sup> That night militarized law enforcement mounted a large-scale raid of one of the protest camps.<sup>61</sup> The PMSC officer expressed his regret for the incident in 2017. When describing the command hierarchy of the daily security briefings attended by law enforcement and private security he alleged, "TigerSwan controlled the way the meetings went, it was common knowledge that they were running the show."<sup>62</sup>

39. Chat records, invoices, plans, and organizational charts made public by the Private Investigation and Security Board of the State of North Dakota show that TigerSwan and its CEO were making, in the words of the board, "willfully false and misleading" claims that the firm was not engaging in private investigation, security work, or infiltration operations within the North Dakota state borders without being licensed in the state.<sup>63</sup> TigerSwan and its CEO admitted no wrongdoing and settled with the State Board for less than \$200,000.<sup>64</sup> TigerSwan billed Energy Transfer Partners at least \$17,000,000 for services rendered over the course of their contract.<sup>65</sup>

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<sup>57</sup> Alleen Brown, et al., *The Battle of Treaty Camp*, INTERCEPT (Oct. 27, 2017, 5:30 PM), <https://theintercept.com/2017/10/27/law-enforcement-descended-on-standing-rock-a-year-ago-and-changed-the-dapl-fight-forever/>; *Supra* note 30.; Second DAPL Whistleblower to Testify (July 19, 2017), <https://hpr1.com/index.php/feature/news/second-dapl-whistleblower-to-testify>.

<sup>58</sup> *Supra* The Battle note 57.

<sup>59</sup> *Id.*

<sup>60</sup> Bureau of Indian Affairs apprehended Dakota Access security guard with rifle (Oct. 13, 2016), <https://www.indianz.com/News/2016/10/31/bureau-of-indian-affairs-apprehended-dak.asp>.

<sup>61</sup> The so called "Battle of Treaty Camp" followed the law enforcement assault on the 1851 Treaty Camp, so named for the 1851 treaty with the United States that guaranteed the land to the tribe; *Supra* The Battle note 57; *Supra* note 28 at 53; *Supra* note 30.

<sup>62</sup> Second DAPL Whistleblower to Testify (July 19, 2017), <https://hpr1.com/index.php/feature/news/second-dapl-whistleblower-to-testify>.

<sup>63</sup> Alleen Brown, *In the Mercenaries' Own Words: Documents Detail TigerSwan Infiltration of Standing Rock*, THE INTERCEPT (Nov. 15, 2020), <https://theintercept.com/2020/11/15/standing-rock-tigerswan-infiltrator-documents/?fbclid=IwAR1Safsief2-fgY1NYppUEZPh5K1FawsFgsVMAzjbcRME97-NwQtiYtZKU>.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

40. While operating without state license or regulation, TigerSwan operators posing as activists are alleged to have infiltrated the DAPL water protector movement to gather information and sow discord and dissent in the protest camps. TigerSwan allegedly targeted Indigenous women and used internal communications to discuss infiltration strategies including bedding Indigenous women in the water protector movement to gain intelligence.
41. Documents tendered during discovery in an administrative action initiated by the North Dakota Private Investigation and Security Board against TigerSwan for operating without a license contain chat logs alleged to be internal communications between the PMSC's employees.<sup>66</sup> These alleged PMSC internal communications detail sexual manipulation and coercion used as counterintelligence tactics against Indigenous women seeking to exercise internationally recognized human rights at Standing Rock.<sup>67</sup>
42. Allegedly leaked documents detail a sophisticated, systemic, and widespread infiltration effort to target civilian protestors, especially Indigenous women, to gather intelligence and sow dissent and division.<sup>68</sup> The alleged internal TigerSwan communications show TigerSwan operatives exchanging crude banter about women and making racist jokes about "drunk Indians."<sup>69</sup> The chat was titled "Operating Maca Root 3," a supplement that increases libido and fertility in men.<sup>70</sup> In the chat, TigerSwan operatives admit to "naturally dehumaniz[ing] the enemy."<sup>71</sup>
43. The most active participant in the chat, which the Intercept alleges is an internal TigerSwan communication, is a Marine Corps veteran, who attempted to infiltrate protest camps to identify weapons, report on interpersonal disputes between members of protest camp security groups,

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<sup>66</sup> Alleen Brown, Will Parrish, & Alice Speri, *TigerSwan Faces Lawsuit Over Unlicensed Security Operations in North Dakota*, The Intercept (June 28, 2017), <https://theintercept.com/2017/06/28/tigerswan-faces-lawsuit-over-unlicensed-security-operations-in-north-dakota/>.

<sup>67</sup> *Supra* note 63. See also Exec. Order 13818 (22 USC §2304(d)(1)) and the Global Magnitsky Act as it pertains to foreign corruption *contra* the alleged actions by PMSCs; See also United Nations Declaration on the Rights of Indigenous Peoples, art. 19 (2007) (*re* free, prior, and informed consent); International Covenant on Civil and Political Rights, art. 21 (1976) (*re* peaceful assembly).

<sup>68</sup> *Supra* note 66.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*



and drug and alcohol use by protestors.<sup>72</sup> He claimed in the chat that he pretended to be a journalist to get information from protestors.<sup>73</sup> In the purported chat logs, TigerSwan operator showed a special interest in identifying victims of misogynistic violence, and asked water protectors for the names of women who had been assaulted while posing as a journalist.<sup>74</sup>

44. Those purported logs show that the same operator claimed to have slept with a key victim of police violence, later becoming a plaintiff in a lawsuit against law enforcement abuse, while posing as a journalist to infiltrate the camp and gather intelligence.<sup>75</sup> That suit was filed in November of 2016, and the operator's role in the TigerSwan infiltration operation occurred in December of 2016 after the filing of the police violence lawsuit.<sup>76</sup> According to the same alleged leaked TigerSwan communications, TigerSwan was coordinating intelligence with the U.S. law enforcement joint operations command throughout this period of time.<sup>77</sup>

45. In the alleged chat logs, PMSC operators discussed sexual tactics during infiltration of the protest camps.<sup>78</sup> These logs suggest a planned tactic of sexual violence through deception to repress Indigenous human rights defenders who opposed the pipeline project.<sup>79</sup> The actions, if true, would be in violation of international laws against sexual violence by coercion, including by deception or misrepresentation.<sup>80</sup>

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<sup>72</sup> *Supra* note 63.

<sup>73</sup> *Id.*

<sup>74</sup> Another TigerSwan operator, U.S. Marine Corps veteran Joel McCollough, attempted to infiltrate protest camps to identify weapons, report on interpersonal disputes between members of protest camp security groups, and drug and alcohol use by protestors. He claimed in chat logs made public in a state board filing that he pretended to be a journalist to get information from protestors.

<sup>75</sup> *Supra* note 63.

<sup>76</sup> *Id.*

<sup>77</sup> *Supra* note 21.

<sup>78</sup> One member of the TigerSwan human intelligence team remarked that he hoped the operator and the water protector would “make little martyrs.” *Supra* note 63. Yet another TigerSwan team member is purported to have said that he hoped the two would make “cyclops babies” in reference to the water protector, who lost her eye to police violence during the protests. [*Id.*] According to alleged chat logs, TigerSwan's CEO offered to give each infiltrator \$1,000 in petty cash for expenses. [*Id.*]

<sup>79</sup> *Supra* note 63.

<sup>80</sup> See Elements of Crimes, in Official Records of the Assembly of State Parties to the Rome Statute of the International Criminal Court, UN Doc. ICC-ASP/1/3 , at fn. 20 (1st Sess. 2002, with amended 2010), <https://www.icc-cpi.int/sites/default/files/Publications/Elements-of-Crimes.pdf>; see also Rape and Sexual Violence Human Rights Law and Standards in the International Criminal Court, Amnesty International IOR 53/001/2011 1, 15-16 (2011) (genuine consent footnote should be read as applying to all references of genuine consent in the ICC Elements of Crimes), <https://www.amnesty.org/ar/wp-content/uploads/2021/07/ior530012011en.pdf>; see also Case of M.C. v.

## Other Instances of Private Security

46. Subsequent pipeline construction efforts through and near Indigenous land and territories have also resulted in human rights impacts. A private military contractor working for Energy Transfer Partners hired at least 50 off-duty law enforcement officers to secure the Bayou Bridge Pipeline.<sup>81</sup> The Louisiana Department of Public Safety and Corrections Communications Director told the investigative media outlet, *The Intercept*, that the off-duty officers were authorized to work for the pipeline and “have the ability to enforce the law in Louisiana even when off-duty and working extra-duty security details.”<sup>82</sup> Off-duty law enforcement officers violently arrested and detained protestors and charged them with felonies under a newly passed “critical infrastructure” statute that deemed oil pipelines part of the Louisiana’s critical infrastructure and criminalized trespass on oil infrastructure facilities punishable by up to five years in prison and or \$1,000.<sup>83</sup>
47. During the development of another pipeline in the territorial State of Pennsylvania by Energy Transfer Partners, the Mariner East Pipeline 2X (ME2), ETP again hired TigerSwan.<sup>84</sup> Construction of the ME2 began in February of 2017 before DAPL was complete.<sup>85</sup> The DEP issued more than

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Bulgaria, App. No. 39272/98, Judgement (FINAL), at ¶ 177 (European Court of Human Rights, 2004), [https://www.coe.int/t/dg2/equality/domesticviolencecampaign/resources/M.C.v.BULGARIA\\_en.asp](https://www.coe.int/t/dg2/equality/domesticviolencecampaign/resources/M.C.v.BULGARIA_en.asp); see also Rape and Sexual Violence: Human Rights Law and Standards in the International Criminal Court, Amnesty International 1, 28 (2011) (footnote 78) (glossing the Case of M.C. v. Bulgaria)., <https://www.amnesty.org/ar/wp-content/uploads/2021/07/ior530012011en.pdf>; see also Prosecutor v. Kunarac, Case No. IT-96-23-T & IT-96-23/1-T, Judgment, ¶ 457-458 (Int’l Crim. Trib. for the Former Yugoslavia, Feb. 22, 2001).

<sup>81</sup> Alleen Brown & Will Parrish, Recent Arrests Under New Anti-protest Law Spotlight Risks that Off-duty Cops Pose to Pipeline Opponents, *The Intercept* (Aug. 22 2018) <https://theintercept.com/2018/08/22/recent-arrests-under-new-anti-protest-law-spotlight-risks-that-off-duty-cops-pose-to-pipeline-opponents/>.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.* See Louisiana Act No. 692 (Reg, Sess., 2018).

<sup>84</sup> Claire Sasko, Chesco DA Announces More Charges in Mariner East Investigation, *PhillyMag City Life* (published Dec. 3, 2019), <https://www.phillymag.com/news/2019/12/03/mariner-east-charges-energy-transfer/>.

<sup>85</sup> Susan Phillips, Mariner East pipeline project is finished, after years of environmental damage, construction delays, NPR (Feb. 18, 2022), <https://stateimpact.npr.org/pennsylvania/2022/02/18/mariner-east-pipeline-project-is-finished-after->

120 notices of violation to ETP since the beginning of construction, and the firm paid more than \$20,000,000 in fines and assessments before completion of the pipeline in February of 2022.<sup>86</sup>

## Conclusion

48. As DAPL and other pipeline and extractive projects are well underway and becoming operational, one thing is clear: the use of PMSCs is ongoing and if left unchecked and unregulated, or underregulated, the United States' complacency towards the dependence on PMSCs, on behalf of government contractors and private companies will only increase in such a way that there will no longer be any illusion of a private and State actor distinction. Serious human rights violations will continue to occur with alarming impunity as a result.

49. In a key situation to note, the climate change epidemic is increasing States' and others' interests to mine and facilitate further extractive projects for precious metals currently needed for electric vehicles and other "renewable" or "green" energies. Neither the United States nor companies based in the United States are immune to this phenomenon. Unless PMSCs and practices of utilizing or employing PMSCs at all, are taken more seriously, by both international for a and State actors alike, then egregious human rights abuses will continue to occur. Indigenous Peoples and their supporters will continue to be specifically targeted.

## Recommendations

50. The United States and its extractive sectors must fulfill existing obligations under human rights law, and PMSCs should adopt policies and measures to avoid operating with human risk and address human rights abuses as prescribed in the U.N. Guiding Principles on Business and Human Rights.<sup>87</sup> The United States should support international legally binding instruments covering the activities of PMSCs and enact legislative reform to codify

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[years-of-environmental-damage-construction-delays/#:~:text=The%20DEP%20has%20issued%20more.in%202018%20over%20safety%20concerns.](#)

<sup>86</sup> *Id.*

<sup>87</sup> Working group on the use of mercenaries, Relationship between private military and security companies and the extractive industry from a human rights perspective, A/HRC/42/42 at ¶64 (2019).

mandatory human rights due diligence and corporate liability into its domestic laws and policies.<sup>88</sup>

51. Although the Water Protector Legal Collective calls for the abolishment of PMSCs, at a minimum, the United States should ensure PMSCs have public codes of conduct and are transparent about their activities for extractive companies.<sup>89</sup> For example, PMSC contractors should be required to wear uniforms and/or visible insignia that distinguishes them from all other security providers in the area and laypersons or others.<sup>90</sup> The United States should ensure PMSC employees respect all applicable human rights and international law, and provide adequate and continuous training, funded internally, to this end. PMSCs should be regulated to hold responsibility to conduct extensive background checks, and consider how their activities might be used by other actors to commit human rights violations so as to avoid complicity.<sup>91</sup>

52. The United States should ensure extractive companies include human rights clauses and conditions in calls for tenders and contacts with PMSCs, including expectations of professional and human rights compliant conduct, detailed rules on use of force, frequency and content of human rights training, personnel vetting, reporting, coordination with the State, provincial, local, and Tribal governments, required standards and certifications for PMSCs, and restrictions, regulations and requirements for PMSC activities, as well as activity oversight by the relevant authorities.<sup>92</sup> If permitted to support extractive industries at all, PMSCs should only be permitted to reply to public calls for tender (not secretive, confidential, hidden, covert, or otherwise invisible for check and balances) issued by extractive companies.<sup>93</sup>

53. The United States should ensure extractive companies issue periodic reports that include the number and nature of complaints against the companies themselves, how the complaints were addressed, and additionally, the involvement of security providers in the companies' activities or otherwise utilized and/or contracted or employed by the companies or their supporting

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<sup>88</sup> *Id.* at ¶66.

<sup>89</sup> *Id.* at ¶72.

<sup>90</sup> *Id.*

<sup>91</sup> *Id.* at ¶73 (2019).

<sup>92</sup> *Id.* at ¶71.

<sup>93</sup> *Id.* at ¶74.

entities. This includes government agencies and actors and any related complaints therein and the handling of said complaints.<sup>94</sup> Investigation policies and procedures should be publicly available and overseen by a government agency.<sup>95</sup> The United States should require that PMSCs publicly and periodically report on any incidents involving PMSC personnel and take steps to address any potential human rights abuses in accordance with human rights standards and victim-centered methodologies and practices.<sup>96</sup>

54. The United States should make public all agreements it has with extractive services including those with bearing on the provision of security services.<sup>97</sup> The United States should build human rights guarantees into concession agreements, memoranda of understanding, and similar documents.<sup>98</sup> The United States should require that extractive companies make public all contracts with PMSCs, memoranda of understanding with State security forces, rules and procedures by and for contracted security, and agreements and rules on uses of force by PMSCs specifically.<sup>99</sup>

55. The United States should ensure greater transparency and access to information, as well as stronger monitoring and oversight of PMSCs employed by extractive industries, as well as PMSCs employed and/or contracted by governments, and on designated “critical infrastructure.”<sup>100</sup> Expanded oversight should include “strict processes of licensing and vetting provisions on mutual legal assistance.”<sup>101</sup> The United States should also increase its own capacity to monitor PMSCs while building the capacity as such of the general public, including: all potentially or already affected/concerned parties, other relevant governing and leadership entities, peoples and persons, and with respect to the Rights of Indigenous Peoples and international laws and standards.<sup>102</sup>

56. The United States should ensure that all PMSCs and personnel who have committed human rights abuses or otherwise violated international law and

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<sup>94</sup> *Id.* at ¶70.

<sup>95</sup> *Id.*

<sup>96</sup> *Supra* note 93.

<sup>97</sup> *Id.* at ¶68.

<sup>98</sup> *Id.* at ¶67.

<sup>99</sup> *Supra* note 94.

<sup>100</sup> *Id.* at ¶63.

<sup>101</sup> *Id.* at ¶65.

<sup>102</sup> *Id.* at ¶67.

standards are brought to justice, and that all victims are dually afforded access to justice and effective remedies.<sup>103</sup>

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<sup>103</sup> *Id.* at ¶69.