



PRIVATE SECURITY GOVERNANCE AND NATIONAL ACTION PLANS (NAPS) ON BUSINESS AND HUMAN RIGHTS

A thematic supplement to 'National Action Plans on Business and Human Rights:
A Toolkit for the Development, Implementation, and Review of State Commitments to Business and
Human Rights Frameworks'

THE DANISH
INSTITUTE FOR
HUMAN RIGHTS

DCAF Geneva Centre
for Security Sector
Governance

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The Danish Institute for Human Rights (DIHR) is Denmark's national human rights institution. Its mandate is to promote and protect human rights and equal treatment in Denmark and abroad. The Human Rights and Business Department is a specialised unit within the DIHR focusing on the role of the private sector in respecting human rights.



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Governance is a foundation whose mission is to assist the international community in pursuing good governance and reform of the security sector. DCAF's Business and Security Division works with business, governments and communities to improve security, sustainable development and respect for human rights.

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HOW TO USE THIS GUIDANCE

This Private Security Supplement provides in-depth information on the private security sector for those involved in the process of developing a National Action Plan (NAP) on business and human rights. It serves as a thematic supplement and should be read in conjunction with the “[National Action Plans on Business and Human Rights Toolkit: 2017 Edition](#)” (hereafter: the Toolkit) of the International Corporate Accountability Roundtable (ICAR) and Danish Institute for Human Rights (DIHR).

It is a tool for States and other human rights stakeholders, such as national human rights institutions (NHRIs) and civil society organisations (CSOs) as well as private security providers (PSPs) themselves,¹ to evaluate the human rights risks and impacts of ongoing and potential private security operations and services.

Given the elevated risks of human rights impacts related to private security, States should give special consideration to this sector within the framework of their NAP on business and human rights. This Supplement highlights specific human rights risks and impacts related to private security. The Supplement also provides insight and guidance on the analysis of existing legal frameworks and policy responses, with a view to initiation of new laws, policies, and practices that respond specifically to the human rights risks presented by the private security industry.

Following an overview on human rights and the private security industry, the Supplement’s guidance consists of two main elements:

- The “NAP process” section in 3.1. supplements Section 2.1 of the Toolkit. It assists in mapping the specific parts of government that play a role in private security governance and oversight, and which therefore should contribute to the drafting of the NAP. Additionally, it provides suggestions for identifying and consulting with external stakeholder groups and communities when addressing private security in NAPs.

- The “National Baseline Assessment” (NBA) template in Section 3.2 supplements the wider National Baseline Assessment Template in Annex A of the Toolkit and should be used together with the full NBA template. A National Baseline Assessment is a tool to determine the status of implementation of the UN Guiding Principles on Business and Human Rights (UNGPs). Concretely, it allows the user to analyse legal and policy gaps in the protection of human rights by the State. In this way, it serves to inform the formulation and prioritisation of actions in a NAP.

The topics and suggestions in this Supplement are not exhaustive. The private security governance focus of each NAP should be based on the respective NBA and the pertinent issues identified therein.

1. INTRODUCTION

The private security industry has grown significantly over the past several decades. Private security personnel outnumber police personnel in many countries across the globe.²

According to recent numbers, there are 5 million employees of private security companies registered in Africa³, 2.5 million in Latin America and the Caribbean,⁴ and 2 million in Europe.⁵ It is difficult to determine the full size of the private security market due to a large number of providers working within grey and black markets. Due to a real or perceived increase in insecurity, security functions that were traditionally considered a State prerogative are increasingly undertaken by a range of private actors, especially where the demand cannot be met by public forces.

New security needs, such as maritime security in the face of piracy and electronic surveillance for private business, have additionally driven the industry to offer services that were not previously provided by the State. This has occurred against the backdrop of a general trend towards privatization of public service, which includes

decreased budget and personnel for armed forces and public security in many States. The factors contributing to the growth of private security vary by region and State. Key drivers are high levels of foreign investment, in particular the presence of extractive industries; situations of recent or current armed conflict; or weak public governance, leading to a lack of trust in public security institutions. Other factors may include: a larger and richer middle class interested in protecting personal and business assets; terrorist threats; and high levels of crime.⁶

The UN Guiding Principles on Business and Human Rights (UNGPs) articulate the obligations of States to protect human rights and the responsibilities of businesses to respect human rights.⁸ This duty to protect applies with regard to all business entities, including private security providers (PSPs). States thus have an obligation to implement regulatory and legislative measures to ensure PSPs respect human rights. However, States face many complications in doing so. The landscape of the industry is varied: for example, domestic private security industries provide guarding services for malls, banks and private property;

Definition

The private security industry is made up of entities of various forms, ranging from multinational companies to individual contractors. In regulating the industry, the State will have to define private security providers and set out what type of entities and services are covered for the purpose of its legislation. This definition will depend on the national context and the services performed within the boundaries of a respective State.⁷

In this Supplement, the terms “private security industry” will be used when referring to the sector, and “private security providers” (PSPs) when referring to the individual entities. These terms encompass all entities that provide private security services for commercial gain, regardless of their structure, legal status, the exact type of services they provide or the designation they give themselves. These terms also allow for the inclusion of personnel who are contracted directly by client companies, but who work as private security providers (“in-house security”). The definition should be understood to include both parent companies and subsidiary entities, as well as subcontractors.



governments engage private security services to manage detention and migration centres; and international private security companies execute contracts with multinational corporations to protect operational sites on a global scale. This means the State is tasked to regulate an industry that is not homogenous. Additionally, the type of human rights risks that need to be addressed may differ heavily depending on operating context and services provided.⁹

State obligations vary based on the exact nature of the PSP's operations in relation to the State. Broadly, the State may fall into three roles:¹⁰

Home State

If the State is home to the headquarters of the private security provider, its laws and regulations should address the registration, authorization and oversight of PSPs.

Territorial State

States on which territory PSPs operate (be they a national or an international company) should dispose of laws and regulations that address the registration, authorization and oversight of PSPs.

Contracting State

When the State contracts private security services, it should use its economic influence to ensure respect for human rights.¹¹ This may be done through contractual provisions, procurement laws or other mechanisms for exerting leverage over PSPs.

These different roles may overlap. In cases where the State or State-owned companies owns or controls PSPs, increased diligence is expected.¹²

Extraterritoriality

The State obligation to protect against the abuse of human rights by business actors applies to the actions of companies domiciled and operating within its jurisdiction. The UNGPs set forth that while there is no general requirement on States to regulate the extraterritorial activities of businesses domiciled in their territory or jurisdiction, States are not prohibited to do so if there is a recognized jurisdictional basis. There are strong policy reasons for home States to set out clearly the expectation that businesses respect human rights abroad, especially where the State itself is involved in or supports those businesses, which includes ensuring predictability for companies by providing coherent and consistent messages, and preserving the State's own reputation. In addition, Guiding Principle 7 articulates the need for the State to take further measures including of extra-territorial reach in relation to business operations in conflict zones.¹³

Furthermore, States may engage their own responsibility with regard to wholly or partially State-owned or -controlled entities. On a related note, the Montreux Document stipulates that home States should provide for criminal jurisdiction over serious crimes committed by private military and security companies (PMSC) personnel abroad and that States should cooperate with investigating or regulatory authorities. States should therefore clarify their national legislation when PMSCs are based in one state but operating abroad. In this respect, national legal frameworks still carry significant gaps in regulation pertaining to jurisdiction.¹⁴

The inclusion of the private security sector within NAPs on business and human rights is essential, considering the sector's heightened human rights risks due to its complex structures and high-risk operating environments and activities. While the private security sector in many cases plays a positive role in fulfilling security needs in a professional manner and providing employment, the heightened risks in such operations mean that careful oversight and governance by States is crucial.

This Supplement was created with these factors in mind, with the goal of providing additional considerations for NAPs in relation to the private security sector. The Supplement first gives an in-depth analysis of private security and the potential human rights challenges

posed by this sector, emphasizing the importance of strong human rights protection and regulation. This section also outlines the initiatives that have been developed so far to clarify and further the protection of human rights.

The NAP Process section and National Baseline Assessment template give an overview of laws, policies and government measures that must be considered in order to appropriately include the private security industry in a NAP on business and human rights. Each role that the State may fulfil vis-à-vis the private security industry – i.e., home, territorial, or contracting State – requires different laws and policy initiatives to comply with human rights obligations; correspondingly, these varied roles involve a varying set of government

departments. Since a diverse array of business entities needs to fit under the same legal framework, the laws need to be inclusive enough to cover all potential services that PSPs provide.

In parallel, specialised tasks may fall under other sorts of laws and regulatory authorities, such as use of certain weapons or data collection and surveillance. In order to capture these particularities in each context, the development of an NBA ahead of the initiation of a NAP is crucial.

Since NAP development is a largely State-led process, the information in this Supplement is primarily relevant to governmental actors such as: the offices and agencies responsible for private security regulation; the bodies responsible for overseeing the NAP; and other ministries or government bodies. However, the information in the Toolbox and this Supplement can also provide valuable information to other actors, including but not limited to:

- National human rights institutions (NHRIS): NHRIs have unique insight into the overall rights situation in the given country context and can help guide the NAP process. They can also assist with monitoring of NAPs. In the context of private security, NHRIs often have knowledge about the particular human rights issues related to security and PSPs. This Supplement can provide NHRIs with the information necessary to coordinate with the relevant government bodies in the NAP process.

- Civil society organisations (CSOs): CSOs can assist in the NAP process in myriad ways. For instance, CSOs may organise grassroots campaigns around rights issues, represent vulnerable and marginalised groups in the country context, raise issues to the attention of the government and NHRIs and monitor ongoing crises. CSOs may contribute input to the NAP development process, as well as participate in ongoing monitoring of NAP implementation. In the context of private security, CSOs representing human rights defenders, women and other marginalised groups may give voice to concerns that otherwise may not be captured in the NAP. This Supplement can provide CSOs with useful information for engaging in this process.

- Private security providers (PSPs): PSPs may take an interest in the NAP development process, since such policies have direct impact on these providers. PSPs have industry insight which can prove useful when developing mitigation and prevention strategies. Additionally, such participation can give PSPs more ownership over the NAP process. In conjunction with the Toolkit, this Supplement provides PSPs with an overview of key actors in the NAP development process, issues of particular relevance and information on the National Baseline Assessment. PSPs can also find information on relevant industry standards and voluntary initiatives for promoting and protecting human rights in the private security sector.

2. HUMAN RIGHTS AND THE PRIVATE SECURITY INDUSTRY

Security is an essential prerequisite for safe and prosperous societies where people can exercise their right to development and fully enjoy the spectrum of human rights. Therefore, security has long been the prerogative of the State and is an essential public service. When privatizing essential public services, the State needs to take specific care that such privatization does not diminish human rights protections. Though privatization in and of itself is neither encouraged nor prohibited by international human rights law,¹⁵ privatization of essential services does raise concerns about changes in their accessibility and affordability.

Thus, privatization of public services needs to be done in a manner that does not preclude access to these services, which could increase inequality or diminish service quality.¹⁶ Where public services have been partially or fully privatized, States should monitor and regulate the conduct of private actors to ensure that they do not abuse or prevent the fulfilment of human rights.¹⁷ Thus, where PSPs deliver such essential services, States have a clear obligation to ensure they are subject to strict regulations that impose relevant standards for equitable service delivery.

Additionally, privatization is not a way for the State to discharge its human rights obligations.

The UNGPs firmly establish the responsibility of business enterprises, including PSPs, to comply with and respect applicable legislation and internationally recognised human rights standards, applying the higher standard where differences between local laws and international standards exist. Businesses must address human rights impacts that they cause or contribute to; additionally, enterprises should seek to prevent or mitigate adverse impacts that are directly linked to their operations, products or services through business relationships.¹⁸ Effective regulation, oversight and accountability mechanisms need to account for these different situations. Though in practice the exact type of involvement may be difficult to distinguish, NAPs should consider the myriad ways PSPs may relate to rights abuses and formulate corresponding regulation, oversight and accountability strategies.

The private security industry generates a number of particular risks associated with causing, contributing or being linked to actual and potential adverse human rights impacts. Firstly, the various services provided by PSPs carry inherent risks due to their nature. Security and protection services include the potential to use force and in some cases the need to carry arms. Security providers may also exercise control over freedom of movement and, by extension, access to livelihoods; this may be the case, for example,

when securing hospitals and public infrastructure or managing detention centres and checkpoints. When PSPs handle private data, they also carry risks associated with citizens' right to privacy.

Secondly, the nature of security services may, even more so than other commercial activities, require a level of confidentiality, often for commercial reasons or operational efficiency. This complicates oversight and control.

Thirdly, the industry frequently operates in complex and volatile environments with high risk levels. In some cases, PSPs work within complex security arrangements (e.g., presence of multiple actors, such as public, private and in-house security forces). The UNGPs recognise that there is an increased risk of being complicit in gross human rights abuses in conflict-affected situations and urge business enterprises to address this risk by treating it as a legal compliance issue.¹⁹ Since due diligence requirements stemming from the UNGPs should be determined by context, States may require companies to conduct

heightened due diligence in conflict areas.²⁰

Against this backdrop, it is crucial that States ensure strong regulation of the private security industry and address this industry in their legislation and policies, including in NAPs on business and human rights.

Fourthly, the importance of ensuring human rights compliance of private security providers is amplified by their potential involvement in contentious situations involving other business. For example, private security providers have been involved in situations where communities clash with an extractive company which has contracted the PSP.

This has resulted in accusations of private security providers intimidating, threatening and harming human rights defenders engaged in conflict with multinational companies. This shows that through their services, PSPs may not only directly cause negative human rights risks and impacts, but may also contribute to abuses by others.

Examples and case studies of human rights impacts of the private security industry

- In **Peru**, human rights defenders who stood up against an extractive company were allegedly subject of surveillance and intimidation by a private security company.²¹
- In the **United States**, female staff of a private security provider working at an airport were subjected to structural harassment, bullying and deprivation of basic hygienic facilities such as a toilet.²²
- **Israeli** checkpoints which are manned by contracted private security have caused disruption to enjoyment of rights by impeding access to work, hospitals and markets and generally infringing on freedom of movement.²³
- In **Papua New Guinea**, an Australian offshore detention centre managed by a private security provider has been accused of multiple abuses of detainees' human rights, including failure to prevent sexual assault between detainees and failure to provide adequate healthcare.²⁴
- A private security guard at a university campus in Durban, **South Africa** shot and killed a student in an altercation that is suspected to be based on political convictions.²⁵

2.1. INTERNATIONAL STANDARDS RELEVANT TO HUMAN RIGHTS AND PRIVATE SECURITY

At present, aside from the application of the main international human rights treaties and humanitarian law (where relevant), there is no internationally binding treaty or convention specifically regulating the use of private security or private military and security companies (PMSC) operations.²⁶ However, the obligation of the State to ensure that the private security industry respects human rights has prompted a number of international initiatives. Such initiatives aim to set standards to regulate and oversee the private security industry, as well as clarify States' obligations and companies' responsibilities with respect to human rights.

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](#)” (hereafter: the Montreux Document) reaffirms existing legal obligations of States, articulating how international law applies to the activities of private military and security companies (PMSCs) during armed conflict. Part II of the Document sets out good practices for PMSC regulation, which are also applicable outside of armed conflict.²⁷ These good practices aim to assist states with the implementation of human rights law and international humanitarian law related to PMSCs in national laws and regulations,

including with regard to licensing, registration and monitoring of companies.²⁸

The [International Code of Conduct for Private Security Providers \(ICoC\)](#) sets out human rights standards for PSPs when they operate in complex environments. The ICoC references the UN Protect, Respect and Remedy framework,²⁹ and, being negotiated at the same time as the development of the UNGPs, aligns with some of its principles. In order to ensure effective governance and oversight of implementation of this voluntary code of conduct, an external independent mechanism was set up in February 2013, in the shape of the multi-stakeholder International Code of Conduct Association (ICoCA). The purpose of ICoCA is “...to promote, govern and oversee implementation of the International Code of Conduct and to promote the responsible provision of security services and respect for human rights and national and international law in accordance with the Code.”³⁰

In further efforts to facilitate integration of human rights standards into industry operations, industry management systems were developed for the private security industry, based on the ICoC, the Montreux Document and UNGPs.³¹ These efforts culminated in a global ISO standard, [ISO 18788](#).³² The development of these standards was industry-driven, with a certain amount of involvement of governments and other stakeholders. They are the first third-party auditable management system standards with human rights at their core, which makes their development and utility of wider interest.

Undertaken by auditing bodies accredited by national certification bodies, certification attests that the given PSP has incorporated human rights standards into its systems and processes.

Of further relevance for PSPs are the [Voluntary Principles on Security and Human Rights \(VPs\)](#). This multi-stakeholder initiative sets out principles for the extractive industry, a major client pool of PSPs, to ensure human rights-compliant security arrangements. Established in 2000, the VPs facilitate cooperation of governments, extractive companies and civil society in maintaining the safety and security of extractive operations. These principles require an operating framework that ensures respect for human rights and fundamental freedoms.³³ As such, they aim to integrate human rights standards into the contracting relationship between the extractive company and the PSP.

The above-mentioned instruments have, to a large extent, translated human rights obligations of States (within the Montreux Document) and human rights responsibilities of companies (within the ICoC, ISO standard, and VPs) into industry-specific standards. By adhering to or joining these initiatives, States can make strides towards human rights implementation. In addition, these initiatives provide useful guidance to help States develop their NAP and align their policies and laws with the UNGPs, especially with regards to PSPs.



2.2. CHALLENGES TO APPLYING HUMAN RIGHTS STANDARDS TO THE PRIVATE SECURITY INDUSTRY

Regulation and oversight of the private security industry is often insufficient at the national level.³⁴ Where national legal frameworks do exist, implementation is often thwarted by several challenges, such as the absence of a dedicated government body with sufficient resources that has responsibility for the monitoring of compliance with the law.³⁵ Different characteristics of the private security industry that are particular to the sector should be considered when addressing human rights compliance.

Domestic and extraterritorial markets

Most countries host a sizeable domestic private security industry which delivers security to private property, businesses and persons. Services primarily include guarding and surveillance, whether electronically or through physical presence. Often, private security personnel are not allowed to carry firearms.³⁶ For example, in Africa, the majority of PSPs are domestic companies without any role in addressing international security issues or providing military services.³⁷ In Latin American and the Caribbean, the private security industry consists predominantly of companies which

focus on tasks that are not of a military nature.³⁸ Several international PSPs which conduct international operations are headquartered in Europe; however, markets in European countries mostly focus on domestic services.³⁹

Though it is self-evident that the guard in a local shopping mall in a stable State is not the same as the employee of a PSP operating in a conflict zone, the distinction between a domestic and internationally operating PSP is not always clear. In legislation, very few States distinguish these actors or address extraterritorial activities of private security providers at all.⁴⁰

In policy discussions on this topic (and in current NAPs, as will be further addressed in section 2.3), the focus is usually on large multinationals operating abroad in complex environments. Indeed, the UNGPs acknowledge the increased risk of complicity in gross human rights abuses in conflict-affected situations and urge business enterprises to address this risk by treating it as a legal compliance issue.⁴¹

States should be mindful of ensuring respect for human rights by domestic PSP companies; even in the absence of conflict and fragility, States must take care to protect the rights of individuals, communities, PSP personnel and clients. Setting standards and requirements for the sector should be done in a holistic manner to cover the entire industry and create a level playing field where human rights-compliant

PSPs are not undercut by unfair price competition. Additionally, PSPs operate in many contexts which do not experience armed conflict, but which nevertheless merit close attention due to their complexity. PSPs adapt depending on their clients' needs and the local operating environment. Thus, legislation and policy must take into account the human rights risks and impacts associated with different security-related activities and operating contexts. In doing so, laws and policies should be suitable to apply to all PSPs registered or operating in the State, regardless of the nature of their operations or the location of their operations. Equally, States should consider the extraterritorial application of laws to PSPs domiciled in their jurisdiction when they are operating abroad, in line with the UNGPs (see Box 2: Extraterritoriality, in section 1).⁴²

Other barriers to accountability and justice

The corporate structures of PSPs, the particularities of their activities and their theatres of operation may form barriers to accountability and access to remedy. States should consider specific measures in relation to these characteristics in order to ensure appropriate and effective remedies for abuses of human rights involving private security providers within their territory or jurisdiction.

To begin, the State of jurisdiction may not be clear due to the transnational nature of PSPs. For instance, a PSP operating outside of its home State may be involved in an incident that

requires legal action. The territorial State may be unable or unwilling to take the case if, for example, the rule of law is severely diminished or regular court systems are not accessible. In such instances, victims may look to the State where the PSP is domiciled in order to access justice. Allowing victims in other countries to access courts in the domicile State, including through extraterritorial application of laws, is crucial for ensuring accountability and access to remedy.

Additionally, opaque corporate structures may limit or fully prevent liability. Parent companies, especially multinational corporations, often avoid facing consequences for the actions of subsidiaries or sub-contractors. States should ensure that a duty of care between parent and contracting companies exists, as well as enact laws which require transparency of companies with regard to their parent-subsidiary and liability structures. This would align with mandatory due diligence obligations that have started to appear in regulations and laws.⁴³

The complexity and plurality of security arrangements can also make it difficult for victims to establish the identity of the person or company that may have abused their rights, as well as the hierarchical structure which can either hold the abuser accountable or be held accountable in the abuser's place. Companies may have multi-layered security arrangements. For example, an extractive company may have: agreements in place with the host State to ensure the presence of public security forces (e.g., police) in the operating area; direct employment



of security personnel to guard the operational premises; and contracts with private security contractors for perimeter protection. This is complicated further when PSPs sub-contract local or informal security actors. In such complex situations, there may be the perception that public forces are part of company' security arrangements.

Additionally, security personnel working directly for the extractive company may, in the eyes of local actors, be confused with private security contractors or vice versa. In the case of an incident, victims may have a difficult time identifying the exact nature of the security forces and who such forces work for (e.g., the company, the State, the PSP).

In situations with such plurality, the person or company responsible, their State of origin and the appropriate remedial mechanisms may be hard to identify. States should remove these barriers to justice by stipulating rules on uniforms and badges, requiring strict reporting that specifies persons involved in incidents (including incidents with subcontractors) and applying a broad concept of liability in accepting jurisdiction when a link with one of the involved security providers can be established.

2.3. STATE OF PLAY: PRIVATE SECURITY GOVERNANCE IN EXISTING NAPS

As of October 2019, only 4 States specifically address the private security industry in their business and human rights NAPs, namely Norway, Switzerland, the United Kingdom and the United States).⁴⁴

Two key observations can be made in this respect:

1: The range and diversity of services, operating areas and spectrum of human rights risks that may be posed are not reflected in any of the NAPs; rather, the focus is on the operations of PSPs abroad and/or in conflict areas (for more details, see the box below). This means the NAPs focus on extraterritorial situations and do not address thriving domestic private security industries.

Additionally, there are a variety of situations in which PSPs operate which do not amount to armed conflict but nevertheless merit close monitoring due to a high risk of human rights abuses and/or absence of the rule of law. Such environments should not fall outside the scope of the NAP if they do not fall into the States' definition of 'conflict' or 'complex' environment. Thus, in order for NAPs to encompass all actual and potential human rights impacts associated with the private security industry, the scope should be broadened.

2: States should be especially mindful to propose innovative and practical steps forward.⁴⁵ None of the 4 NAPs include steps to improve policy measures or accountability by taking actions that are specific, measurable, achievable, relevant and time-bound (SMART), nor do they identify a budget to strengthen private security regulation and oversight.⁴⁶

Coverage of private security governance by NAPs

The Norwegian NAP states that "there is an increasing demand from the business sector for dialogue and cooperation with the public authorities on security, risk assessment and corruption in conflict areas and demanding markets in these areas... Security personnel hired to protect Norwegian interests, whether private or public, pose a potential problem. States that hire private security guards must ensure that these comply with the state's obligation to protect against human rights violations. The Voluntary Principles on Security and Human Rights and the International Code of Conduct for Private Security Service Providers are useful guidelines for private business enterprises on how best to ensure their security." Switzerland includes in its NAP the provisions of the Federal Act on Private Security Service Abroad, which requires ICoCA membership for PSPs operating abroad in complex environments. The United States requires conformance with ICoC in its DoD contracts and ICoCA membership in good standing for DoS WWP II contracts. With the ICoC applying in complex environments, this effectively only regards operations abroad. The United Kingdom mentioned certification of PSCs in its 2013 NAP, though it should be noted that certification standards are written to apply in complex environments.

3. HOW TO INCLUDE PRIVATE SECURITY GOVERNANCE IN NAPS

This section provides guidance for the inclusion of private security governance concerns in NAPS. This relates to the development processes of both a NAP in itself and a National Baseline Assessment (NBA). This section is informed by interviews with practitioners and experts currently or previously involved in NAP development processes.

3.1. PRIVATE SECURITY IN NAP: PROCESS

This part of the guidance points out specific stakeholders that can provide information on the private security sector. It also highlights certain topics that relate to particular human rights risks and that should be considered when prioritising the topics in the NAP related to private security.

3.1.1. MAPPING OF GOVERNMENT BODIES

Government bodies play a critical role in developing, monitoring and improving NAPS. Different government bodies and agencies may interact with the private security industry;

the various roles and responsibilities that the State may have as the home, territorial and/or contracting State each imply different policy and regulatory obligations. Additionally, the variety of services and types of PSPs may in turn require the expertise of different government bodies and agencies in order to adequately develop an effective strategy for overseeing such services and providers. Some of these government bodies and agencies may not have been previously engaged in a business and human rights NAP process.

States are advised to set up a coordinating mechanism between different government branches, such as an intra-governmental working group (also: cross-departmental advisory group or coordination committee) which meets periodically throughout the NAP development process. In this way, States can ensure the involvement of all relevant ministries.⁴⁷ The relevant departments, offices and authorities responsible for private security regulation should be key stakeholders in these groups. States usually have a regulatory authority which has primary responsibility for the private security industry; this authority is often situated in the Ministry of Interior, but may also be found within the police, in an autonomous body, within regional governments or elsewhere.

Other ministries or governmental bodies may play an important role by contracting PSP services or holding responsibility for certain areas that relate to private security operations,

such as labour rights or detention management. These may be different in each context, depending on the human rights issues identified by the NBA. Thus, careful mapping is critical for ensuring that all relevant bodies of government with a role towards PSPs have been included.

Key issue areas to consider when mapping government bodies

In considering relevant government bodies, those involved in developing the NAP should consider certain issue areas where gaps in legislation and regulation of private security providers can pose elevated human rights risks:

- **Inadequate procurement criteria** that favour the cheapest contract, including extremely low pay and exploitative working hours of PSP personnel,⁴⁸ have been identified as a crucial factor leading to human rights abuses by PSPs.⁴⁹ Procurement officers and contract managers, ideally with specific expertise on private security contracting, should be consulted to ensure the UNGPs are fully onboarded in procurement processes and that criteria to incentivise compliance with human rights are included in contracts. Those engaged in creating the NAP should consider which parts of government contract PSPs, such as the Ministry of Defence, local or federal authorities, hospitals, schools, public transportation companies or transportation hubs.

- Within a highly male-dominated and traditionally masculine industry, the risk

of **gender-related human rights risks and impacts** is potentially even higher than within other sectors,⁵⁰ including cases of sexual- and gender-based violence. For instance, PSP personnel may harass female community members near operations or abuse and discriminate against female staff. Gender policies issued by the regulatory authority may play an important role in raising awareness and promoting compliance, as was the case with the Colombian regulator in developing policy and proposing training regarding gender equality in the PSP sector.⁵¹

- Regulations and measures regarding **ownership and licensing of weapons** can have a strong influence on the protection of the rights of affected individuals by ensuring that weapons use by PSPs is restricted and safeguarded through training, control and reporting requirements. Training on the use of force should include a use of force continuum and clear standard operating procedures (requiring, among other things, information on specific weapons that can prevent escalation and the prohibition of others which cause unnecessary harm). Coordination with public security forces should be required for all operations potentially needing to use force. In several States, a specialised agency or committee is responsible for licensing and control of weapons. Such agencies, as well as branches of police that coordinate with PSPs, should be consulted and included in the NAP process.

- PSP services that include **surveillance and data collection** may have

implications for the right to privacy, and such data can be misused to abuse other human rights. PSPs are increasingly involved in data collection and storage, including biometric data, metadata and sensitive information.⁵² Access to or sharing of this data by companies raises concerns about the protection of privacy.⁵³ Although States are increasingly adopting data protection regulations and establishing data protection authorities, few effective legal frameworks exist. Moreover, their application to PSPs is unclear. Where in existence, data protection authorities or their equivalent should be consulted to ensure inclusion of PSPs in their regulatory efforts.

- In a number of countries, **detention and migration centres** are increasingly operated by PSPs,⁵⁴ which has raised a myriad of human rights concerns related to treatment of detainees and of migrants. Issues include access to healthcare and prevention of abuse between detainees or migrants under PSP control.⁵⁵ Contractors often do not have experience in delivering services to refugees or migrants.⁵⁶ Rules on whether or not detention can be outsourced and, if so, under what safeguards and regulations, are highly necessary.⁵⁷ In addition to laws on detention, operating procedures may be issued by agencies responsible for detention policy or immigration policy, often housed in the Ministry of Interior or equivalent.

- With regard to PSPs hired by extractive industries, the government body responsible for **land distributions or mining concessions** may have a role to play. These bodies are particularly

important to involve regarding the forced displacement of communities and evictions imposed as a result of land concessions for company operations, and in relation to the protection of human rights defenders.⁵⁸

States implementing human rights obligations with respect to the private security industry may need to develop or revise legislation related to the industry and the above mentioned subjects, since in many States such national laws and regulations are not yet in existence or incomplete.⁵⁹ In some cases, the drafting of proposed law or the drafting of regulation and policy on the topic have been delegated to a private security regulatory authority or specialised parliamentary committees. In these instances, the authority or committee should be included in the NAP development process.

Specialised public bodies

Further specialized bodies may, depending on each context, have an important role to play. NHRIs can provide significant support for the NAP process, including on issues related to private security. Though not yet common practice, in some countries NHRIs have started to play an important role in the governance of the private security industry.⁶⁰ The Latin American Federation of the Ombudsman (FIO) has launched a pilot project in which a number of member NHRIs are assessing how they could strengthen their work with regards to the protection of human rights around PSP operations. NHRIs can provide information, build expertise and awareness on the topic, or even receive complaints against PSPs,

strengthening the role of the NHRI.

There are 48 States which adhere to the OECD Guidelines for Multinational Enterprises and have set up a National Contact Point (NCP). NCPs have an informative as well as a mediatory and reconciliatory role.⁶¹ In the past, complaints have been brought to such NCPs regarding abuses by PSPs of the OECD Guidelines human rights chapter. Thus, NCPs should also be considered within the framework of the NAP process in countries where they exist.

3.1.2. MAPPING OF KEY EXTERNAL STAKEHOLDERS TO ENGAGE WITH AND INCLUDE IN THE PROCESS

A wide range of external stakeholders with knowledge of the private security industry should be involved during the NAP development process and within consultations conducted as part of the NBA. Guidance for such involvement is set out by the Toolkit.⁶² Consultations can help set priorities in terms of the most serious human rights concerns for inclusion in the NAP. Stakeholders affected by private security operations should also be included in the framework for monitoring and reporting on implementation of the NAP. Relevant external stakeholders may include the following.

Communities and civil society representatives

The involvement of stakeholders from communities and civil society has been linked to more legitimate and credible processes and NAP outcomes. This involvement can result in better insight into: how existing policies relating to

human rights and the private security industry affect local communities; how to address concerns relating to the private security industry; and how to build and strengthen the relationship between State officials and other stakeholders. Such input can facilitate future implementation, buy-in and feedback.⁶³ With operations in complex or conflict areas, where State oversight is limited, the State will need input from a wide variety of actors to be able to adequately map the activities and impacts of the sector.

Due to the variety of services provided by PSPs, the rights-holders that may be affected and the rights impacted can be very diverse. Operations are not always confined to one place. Additionally, States should consider that the industry impacts individuals and groups within its jurisdiction, but also people outside of its borders when operations take place abroad. This makes it hard to identify a clear group of stakeholders that would represent all potentially impacted rights-holders.

Though few CSOs focus exclusively on the private security sector, organisations working on a range of security and human rights topics may provide helpful information detailing the presence, operations, local challenges and human rights risks of the private security industry. In order to ensure that a useful cross-section of stakeholders is involved, the NAP process could include NGOs working on private security governance, business and human rights, women's rights, the extractive industry, human rights defenders, land rights, immigrant and refugee rights, digital rights and security

sector reform. Additionally, existing networks or initiatives that support private security regulation may indicate which organisations have knowledge and interest on the topic. For example, the Private Security Governance Observatory is a network of CSOs from all over sub-Saharan Africa which have knowledge on the topic.⁶⁴ Also, the CSO members of ICoCA are often a good resource.⁶⁵ In-country working groups on the Voluntary Principles on Security and Human Rights may be a starting point to gather key stakeholders and information related to security and human rights in the extractive sector. Additionally, community representatives may provide crucial information on challenges and rights abuses that may occur in different communities around company sites.

Engagement with CSOs, community representatives and experts should not just take place within the State developing the NAP; corporations domiciled within the State might also operate and have human rights risks and impacts in other countries and those should be covered as well. In doing so, the NAP process should engage external representatives such as embassies. It may be that a PSP operates in many different countries – in that case, the home State could prioritise contexts with a high level of human rights risks.

Gathering information on the security context and engagement with key stakeholders will allow the State to understand the landscape of the private security industry and the potential impacts on human rights. Such actors can provide input for the National Baseline Assessment, in particular for

identifying current gaps in protection. Most countries also have academics, think-tanks or research organisations that are experts on the theme of security governance, if not on private security specifically.

Special care should be taken to include marginalised groups in society whose rights might be affected by PSPs, especially those who due to historical discrimination and exclusion may not be appropriately represented in other organisations or institutions. Such examples include: women's rights organisations, indigenous people, minorities, disabled people, human rights defenders and representatives of populations in detention and immigration centres.⁶⁶

PSPs, industry associations, trade unions

Involving the private security industry in the NAP process will foster an inclusive process ensuring that the industry is aware of policy and regulatory developments. Such inclusion also allows the industry the opportunity to provide input on how the UNGPs can be implemented in their sector. This can get industry leaders 'on board' and help foster a 'race to the top', thus increasing the level of implementation by the industry while at the same time addressing potential human rights risks and impacts on PSP personnel.

Additionally, involving the sector may help to capitalise on the positive role of PSPs in supporting security delivery in a professional manner. In some States, this has been formalised into public-private partnerships where police and PSPs cooperate in certain areas.

From a company perspective, a proactive engagement within the NAP development process will be an opportunity to take ownership of UNGP implementation. Though the NAP is a State policy document, it could contain specific business-led action if businesses voluntarily propose or commit to these. PSPs could proactively propose actions, designed in conjunction with the State and relevant stakeholders, which contribute to realising compliance with their own responsibilities.

Within existing initiatives to set standards for the private security sector, the industry has participated actively through representatives of companies or industry associations. This has been the case in the drafting process of the Montreux Document, the International Code of Conduct and the applicable ISO standards. Companies have also engaged in setting their own internal codes of conduct or human rights policies.

States can draw on these examples to involve active and representative industry players. In some countries, involvement will be easier due to a high level of organisation within industry associations or trade unions. In others it may be more challenging to find representatives for the industry. In either case, States should reflect on the diversity of the industry by including representatives of multinationals and companies operating domestically; SMEs and larger entities; and PSPs with different types of services.

PSP employees and trade unions also have an interest in the NAP process. A number of human rights risks related to

the private security industry concern the rights of private security personnel.

Exploitative wages, long shifts, lack of training and equipment that endanger safety, and cultures of harassment (including sexual harassment) have been noted in the industry, with particular risks in sub-contracted businesses. Therefore, the inclusion of trade unions in the NAP development process is imperative. If unions do not exist, States should make an effort to identify staff representatives for specific companies.

Capacity building, awareness raising and training

Though some governments and private security actors have been involved in setting standards based on human rights, particularly the UNGPs, a strong awareness of the relevance of the UNGPs within the industry is not widespread. When mapping stakeholders to include in the NAP development process, it can therefore be helpful to consider which actors and organisations can assist with capacity building, awareness raising, training and monitoring.

CSOs are in a unique position to play a monitoring role and can provide invaluable support to wider dissemination of human rights standards and responsibilities (e.g., through human rights training for companies and communities). CSOs can also advocate for better compliance or put salient risks on the public policy agenda. Although CSOs can play a key role in oversight and accountability of the private security sector, relatively few currently do so. States and other actors may consider CSOs currently engaged in such efforts, as well as those with the capacity and interest in strengthening their role in this regard.

Actors involved in the NAP development process may also consider how to strengthen or create wider awareness-raising initiatives and guidance on companies' human rights responsibilities, as well as how to integrate these responsibilities into business operations. In doing so, they should consider which organisations, agencies, institutions, nonprofits and/or other groups would be helpful in such endeavours. Building and identifying networks and partnerships can prove especially helpful. For instance, actors involved in NAP development may consider activities such as: additional training for PSPs on human rights, led by CSOs or PSPs; networks of CSOs with expertise on the topic that can play a role in disseminating information, raising awareness and building capacities; or a central collection of publicly accessible registers with information on the industry and PSPs, set up by State authorities and supported by PSPs and CSOs.

3.2. PRIVATE SECURITY IN NAP: NATIONAL BASELINE ASSESSMENT

The following “National Baseline Assessment” (NBA) template supplements the wider National Baseline Assessment Template in Annex A of the Toolkit and should be used together with the full NBA template. A National Baseline Assessment is a tool to determine the status of implementation of the UN Guiding Principles on Business and Human Rights (UNGPs). Concretely, it allows the user to analyse legal and policy gaps in the protection of human rights by the State. In this way, it serves to inform the formulation and prioritisation of actions in a NAP.

1. Legal and Policy Framework

States and key external stakeholders should assess whether legal and policy frameworks that adequately protect against private security industry-related human rights abuses are in place. States should also assess the extent to which these laws and policies contribute to preventing such abuses.

1.1 International, Regional, and Other Standards

International Soft Law Instruments
UNGP 1

- Has the State declared support for 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”?
- Does the State participate actively and engage in the Montreux Document Forum?
- Has the State signed, engaged with, or otherwise endorsed:
 - The International Code of Conduct for Private Security Service Providers (ICOC) and its Association (ICoCA);
 - The Voluntary Principles on Security and Human Rights Initiative (VPI);
 - A national-level Voluntary Principles Working Group; and/or
 - ISO standards ISO 18788 and ISO 27008, or corresponding national standards?

Existence and implementation of recommendations by international bodies
UNGP 1

- Has the State received recommendations from country reports of the UN WG on Mercenaries, concerning the protection of human rights in respect to the activities of the private security sector?
- If yes, what progress has been made on their implementation?
- Has the State received recommendations within the UPR process regarding the private security industry?
- If yes, what progress has been made on their implementation?

International legal initiatives UNGP 1	<ul style="list-style-type: none"> • Has the State participated in international efforts to develop a binding instrument on private security regulation through the UN Working Groups?⁶⁷ If so, how?
Implementation of the UNGPs UNGP 1 and 2	<ul style="list-style-type: none"> • If the State has developed a NAP on BHR, does the NAP include policy commitments on the private security industry? If yes, what are those? • Has the State provided information on human rights to the PSPs through its regulatory authority? • Has the State encouraged accreditation of certification bodies and certification of private security providers by human rights-based industry standards? • Has the State set out clear statements on the expectation that all private security companies (including those based in or operating in its territory and/or jurisdiction, as well as those contracted by the State) respect human rights? If so, have such statements been fully disseminated to relevant government agencies (including foreign embassies and consulates)?

1.2 National Laws and Policies

National law addressing the private security industry, requiring them to respect human rights UNGP 1, 2, 3, 9	<ul style="list-style-type: none"> • Is there a law in place addressing the private security industry (PSP law)? • If yes, does that law require PSPs to respect human rights? • Does this law include: <ul style="list-style-type: none"> • Definition of services that may be provided by security providers, as well as definition of what services are prohibited; • Jurisdictional scope of law, including extraterritorial application; and/or; • Mandate for a regulatory entity to oversee implementation of the law? • If the law established a regulatory entity, does its mandate include any of the following: <ul style="list-style-type: none"> • Keeping a registry of PSPs; • Granting licenses; • Monitor operational compliance; and/or • Addressing violations and abuses? • If the entity has a mandate to grant licenses, does it apply human rights criteria in the license process? • Does the entity have adequate human and financial resources to fulfil those tasks? <p>See also: DCAF Legislative Guidance Tool⁶⁸</p>
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National Law and Policy – The following issue areas can in most cases be addressed in national private security law, unless another law is mentioned, such as weapons or labour law. Alternatively, the issues can be addressed in separate regulatory or policy documents.

<p>Vetting and training</p>	<ul style="list-style-type: none"> • Does the law include vetting requirements for employees, most notably regarding serious human rights abuses, war crimes and dishonourable discharge? • Does a standardised training curriculum exist with a clear human rights component? • If yes, does it require the use of certified public and/or private training schools and instructors to provide the training?
<p>Human Rights Policies UNGP 2,3</p>	<ul style="list-style-type: none"> • Do laws and policies require PSPs to formulate a human rights policy? • Do the requirements for PSPs include a human rights risk and/or impact assessment? • Are PSPs encouraged or required by the State to disclose their human rights policies?
<p>Due diligence UNGP 2, 3</p>	<ul style="list-style-type: none"> • Does the State provide any guidance or required methodology for company due diligence processes specific to private security, taking into account their high-risk operating environment, sub-contracting practices and (possible) extraterritorial operations?
<p>Labour UNGP 2, 3</p>	<ul style="list-style-type: none"> • Does PSP law or other laws and policies address the risk of labour abuses of personnel, in particular regarding minimum wage, respect of legally mandated working hours, the right to unionise and protection of (sub-contracted) third-country nationals (TCNs)? • Are the regulatory authority and labour inspectorate mandated to verify compliance of PSPs with labour standards?
<p>Occupational health and safety UNGP 2, 3</p>	<ul style="list-style-type: none"> • Are PSPs required to have occupational health and safety policies in place? • Do such laws and policies cover use and provision of protective gear and less lethal weapons? • Do PSPs offer psychological care, and is such care required by law? • Do laws or policies prescribe safe and adequate facilities for women personnel?

<p>Weapons UNGP 2, 3</p>	<ul style="list-style-type: none"> • Does national weapons law, in conjunction with PSP law, outline limitations on the ownership, stockpiling, use and sale of weapons by PSPs and their personnel? • Does weapons law provide rules surrounding the use, storage and management of weapons by PSPs? • Does national weapons law explicitly seek to prevent illicit weapons transfers?
<p>Use of force UNGP 2, 3</p>	<ul style="list-style-type: none"> • Have rules on the use of force by private entities been clearly outlined in law, including specific and clear limitations? • Does the law outline situations in which use of force is allowed for self-defence and defence of others? • Does PSP law or by-laws indicate a use of force continuum for PSPs? Does PSD law or by-laws set corresponding training requirements for PSP personnel?
<p>Corporate ownership UNGP 2, 3, 4</p>	<ul style="list-style-type: none"> • Has the State outlined limitations on how and to what extent public security forces (e.g., military and police) can provide private security services? • Has the State clearly set requirements in relation to ownership of private security by public officials?
<p>Corporate disclosure and reporting UNGP 2, 3</p>	<ul style="list-style-type: none"> • Are laws and policies in place that require PSPs to disclose information on the size of the company, its ownership and the nature and place of its operations? • Is such information provided, at minimum, to the regulatory authority, if not to the public? • Are laws and policies in place that require PSPs to report on their human rights impacts?
<p>Procurement UNGP 5, 6, 9</p>	<ul style="list-style-type: none"> • Are laws and policies in place to ensure that the State only contracts PSPs which show their compliance with human rights and are fully licensed? • Are contracts with PSPs monitored by a responsible authority, such as the procurement office, to ensure compliance with contracting criteria? • Has the State cancelled contracts with PSPs in cases of non-compliance? • Are companies that have abused human rights provisions banned from obtaining licenses and public contracts in the future?

	<ul style="list-style-type: none"> • Does the State require a self-declaration form where PSPs must identify prior human rights-related incidents when bidding for public contracts? • Does the State require ICoCA membership within its procurement policies? <p>See also <i>DCAF Contract Guidance Tool</i> as well as <i>DCAF scoping study on procurement and contracting</i></p>
<p>Delivery of public services UNGP 5</p>	<ul style="list-style-type: none"> • Has the State adopted legislative or contractual protections for human rights when using privatised security providers for the delivery of essential public services⁶⁹, such as policing, managing detention or migration centres, maintaining checkpoints or protecting critical infrastructure? • Is there a rigorous screening process for private providers of essential public services, including exclusion from bidding of those who abused human rights? • Have any adverse human rights impacts associated with the delivery of public services by private security providers been the subject of public reports?
<p>Human rights defenders and whistle-blowers UNGP 1, 25, 26</p>	<ul style="list-style-type: none"> • Are laws and policies in place to protect human rights defenders and whistle-blowers, in particular from harassment or retaliation by private security providers? <p>See <i>Supplement on Human Rights Defenders</i>⁷⁰</p>
<p>Privacy and data protection</p>	<ul style="list-style-type: none"> • Are there legal limitations on the data collection practices of PSPs?
<p>Gender</p>	<ul style="list-style-type: none"> • Have policies been developed to address gender-related inequalities and sexual exploitation and abuse within the private security sector? • Are gender-related human rights safeguarded in PSP law and other applicable laws?
<p>Human Trafficking</p>	<ul style="list-style-type: none"> • Are laws addressing sex- and labour trafficking in place that apply to PSPs and their subcontractors?

Stakeholder consultations and engagement UNGP 18	<ul style="list-style-type: none"> • Are there legal and policy requirements for private security providers to engage with local communities and local public security before, during and after the commencement of operations to prevent and monitor impact on local communities?
Client responsibility	<ul style="list-style-type: none"> • Is it prohibited by law to contract private security that is not licensed in accordance with the law?
Conflict areas UNGP 7	<ul style="list-style-type: none"> • Are special rules for operating in conflict areas outlined in law, such as more stringent due diligence and IHL training?
NHRI	<ul style="list-style-type: none"> • Does the NHRI have a mandate to oversee actions of PSPs and/or a role in verifying if the regulatory authority is fulfilling its mandate?

2 Business Responsibilities and Commitments

According to Pillar II of the UNGPs, private security providers have the responsibility to respect human rights and conduct adequate due diligence. States and key external stakeholders should assess to what extent private security providers are fulfilling this responsibility and implementing human rights in their policies and operations.

Commitment to industry standards or multi-stakeholder initiatives UNGPs 11, 12, 13, 14 and 15	<ul style="list-style-type: none"> • Are PSPs becoming certified to industry standards that are based on human rights, such as ISO 18788 and ISO 28007, or corresponding national standards? • Are PSPs becoming certified by or becoming members of other human rights-based industry initiatives, such as the International Code of Conduct Association (ICoCA)? • Are PSPs participating in other multi-stakeholder initiatives such as Working Groups on the Voluntary Principles on Security and Human Rights?
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<p>Human Rights Policy Commitments of PSPs UNGP 15 and 16</p>	<ul style="list-style-type: none"> • Do PSPs have human rights policy commitments in place? • Do PSPs report on their compliance with said commitments? • Do PSPs disseminate their human rights policy commitments externally to relevant stakeholders and to their business relationships? • Do PSPs ensure dissemination and integration of their policy internally, for example by training staff and integration of the policy in all operations?
<p>Assessment of human rights impacts UNGP 15, 17, 18 and 19</p>	<ul style="list-style-type: none"> • Do PSPs perform human rights risk and/or impact assessments for all operations? • Do impact assessments involve consultations with key stakeholders, including potentially impacted rights-holders and in particular at-risk groups, including women, indigenous groups, children, elderly, the disabled and other minorities? • Do PSPs report findings and incidents to the regulatory authority? • Are PSPs' premises and documentation on human rights impacts, including incident reports and assessments, inspected by the regulating authority?
<p>Publicly reported adverse impacts</p>	<ul style="list-style-type: none"> • Have any adverse impacts or violations been publicly reported on, and if so, have there been responses from the PSP?

3 Redress and Remedy

States and key external stakeholders should assess what judicial and non-judicial remedies are available to individuals affected by private security operations, as well as their effectiveness. The UNGPs also encourage businesses to establish operational-level grievance mechanisms for impacted individuals and communities to submit complaints, raise concerns and pursue remedy.

<p>Redress in laws and policies UNGP 25</p>	<ul style="list-style-type: none"> • Are the laws, policies, and regulations that introduce civil liability, criminal liability and administrative sanctions for business-related adverse human rights risks and impacts applicable to PSP operations, including those performed abroad?
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<p>State-based judicial remedy UNGP 26, 31</p>	<ul style="list-style-type: none"> • Does the private security regulatory authority have a clear mandate to impose administrative sanctions on PSPs, laid down in law or regulation? • Do complaints against PSPs have standing in labour tribunals?
<p>State-based non-judicial mechanisms UNGP 27, 31</p>	<ul style="list-style-type: none"> • Have there been any complaints lodged with the OECD NCP against PSPs? • Have there been complaints or concerns raised with the National Human Rights Institution (NHRI) regarding PSPs?
<p>Non-state mechanisms UNGP 28, 31</p>	<ul style="list-style-type: none"> • Has the State supported access of potential victims to: • PSP-based grievance mechanisms (such as whistle-blower mechanisms or project-level grievance mechanisms); and/or • international, regional or multi-stakeholder grievance mechanisms such as ICoCA.
<p>Accessibility UNGPs 26, 27, 28, 31</p>	<p>In cases of allegations of human rights abuses by PSPs, have any of the obstacles listed below prevented victims from accessing justice:</p> <ul style="list-style-type: none"> • The use of waivers by company grievance mechanisms • The granting of immunities for PSPs contracted by the State? • Has the State taken measures to ensure that there are no practical barriers for access to justice for victims of private security industry-related human rights abuses, including the difficulty in identifying the responsible entity in complex security arrangements?
<p>Access to information UNGP 25</p>	<ul style="list-style-type: none"> • Has the State taken action to disseminate information about all available remedy mechanisms accessible to victims of violations of human rights by PSPs, also when committed abroad? • Does the State monitor if victims find access to remedy?

<p>Extraterritorial jurisdiction UNGP 25</p>	<ul style="list-style-type: none"> • Does the State exercise extraterritorial jurisdiction over the actions of businesses headquartered or registered therein, or their subsidiaries, for human rights abuses committed abroad, particularly in relation to private security operations? • Is there a legally enforceable 'duty of care' for parent companies in terms of the human rights risks and impacts of their operations and the operations of their subsidiaries, regardless of where the subsidiaries operate?
<p>Reports on allegations, judicial and non-judicial decisions</p>	<ul style="list-style-type: none"> • Are there any public reports of allegations or abuses by PSPs? • Have there been international cases against PSPs for human rights abuses committed on the State's territory? • Have there been cases in regional human rights courts on failure to protect against abuses by PSPs?
<p>Company Remediation UNGP 22, 29, 30 and 31</p>	<ul style="list-style-type: none"> • Do PSPs have remediation processes and mechanisms in place, which ensure any adverse impacts on human rights can be adequately addressed and remedied, and which comply with the UNGP 31 and the effectiveness criteria stemming from it? • Do PSP cooperate with remedial processes such as the ICoCA?
<p>Sanctions</p>	<ul style="list-style-type: none"> • Does the State keep a record of companies and individuals that have been condemned for human rights abuses in their private security work and effectively uses it to bar them from obtaining licenses and public contracts?

4. ADDITIONAL RESOURCES

ON LEGISLATION, REGULATION AND POLICY:

For States

- DCAF “Guidance Tool for Contracting Private Military and Security Services (PMSCs)”, 2017
- DCAF, “The Montreux Document: A Mapping Study on Outreach and Implementation” 2017
- ICAR ECCJ, Dejusticia, “Assessments of Existing National Action Plans (NAPs) on Business and Human Rights”, August 2017 Update
- DCAF, “Legislative Guidance Tool for States to Regulate Private Military and Security Companies” 2016
- DCAF “Putting Private Security Regulation into Practice: Sharing Good Practices on Procurement and Contracting 2015-2016”, Boddi, E., Burdzy, A., van Amstel, N., Public Private Partnerships Series No. 2, 2016
- DCAF, “Progress and Opportunities: Challenges and Recommendations for Montreux Document Participants”, Second Edition, 2015

For Civil Society

- DCAF, “The role of civil society organizations in promoting good governance of the private security sector”. 2018

For Companies

- ICoCA Guidelines for Private Security Providers on Preventing and Addressing Sexual Exploitation and Abuse, 2019
- ICoCA Guidance on Company Grievance Mechanisms, 2018
- IPIECA/ICRC/DCAF Host Country Security Assessment Guide, 2017
- DCAF – ICRC Toolkit “Addressing Security and Human Rights Challenges in Complex Environments”, 3rd Edition, 2016

ON PRIVATE SECURITY CHALLENGES IN DIFFERENT CONTEXTS AND REGIONS:

- The gendered human rights impacts of private military and security companies - Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of people to self-determination (A/74/244)
<https://www.ohchr.org/EN/Issues/Mercenaries/WGMercenariesPages/AnnualReports.aspx>
- UN Working Group on the Use of Mercenaries, National Legislation Studies
<https://www.ohchr.org/EN/Issues/Mercenaries/WGMercenaries/Pages/NationalLegislationStudies.aspx>

- Private Security Governance Observatory <https://www.observatoire-securite-privee.org/en> including: “The role of civil society organizations in promoting good governance of the private security sector” 2018.
- University of Denver “Private Security Monitor” <http://psm.du.edu/>
- Novact “Shock Monitor - Observing Private War Impact on Human Rights” <http://shockmonitor.org/>
- Business and Human Rights Resource Centre (thematic resources on Private Security, specific company information, and country search) <https://www.business-humanrights.org/en>
- “Private Security in Africa; From the Global Assemblage to the Everyday”, Paul Higate, Mats Utas, 2017
- DCAF – UNLIREC “Armed Private Security in Latin America and the Caribbean: Oversight and Accountability in an Evolving Context”, 2016
- Bryden, A (Ed) “The Privatisation of Security in Africa: Challenges and Lessons from Côte d’Ivoire, Mali and Senegal” DCAF 2016
- “Supporting Implementation and Networking among Practitioners”, 2018 Montreux Document Forum regional meeting report (available on mdforum.ch)
- Peruvian private security national baseline study, SUCAMEC, 2016, available at www.sucamec.gob.pe
- <https://globalnaps.org/issue/security>

ENDNOTES

- 1 For a more complete overview of actors for whom the Toolkit may be of value and how, see: DIHR – ICAR, “National Action Plans on business and human rights Toolkit - 2017 edition”, p.10, available at https://www.humanrights.dk/sites/humanrights.dk/files/media/dokumenter/udgivelser/hrd_2017/dihr_icar_nap_toolkit_2017_edition.pdf
- 2 For an overview of main human rights challenges in different regions and for further numbers on the industry, see the sources in footnotes 1-3. Also see the UN Working Group on the use of mercenaries National Legislation Studies on PMSCS, available at: <https://www.ohchr.org/EN/Issues/Mercenaries/WGMercenaries/Pages/NationalLegislationStudies.aspx> and DCAF Private Security Governance Database, available at: <https://businessandsecurity.dcaf.ch/en/private-security-governance-database>
- 3 The Montreux Document. A Mapping Study on Outreach and Implementation, DCAF, 2017, available at: <https://www.mdforum.ch/pdf/mapping-study.pdf>
- 4 Armed Private Security in Latin America and the Caribbean: Oversight and Accountability in an Evolving Context. DCAF and UNLIREC, 2016
- 5 Confederation of European Security Services (CoESS), “Anticipating Change”. 2016.
- 6 The Montreux Document. A Mapping Study on Outreach and Implementation, DCAF 2017, available at: <https://www.mdforum.ch/pdf/mapping-study.pdf>
- 7 Examples of elements of such definitions and services can be found in the Montreux Document, definitions section 9a, and the United Nations Draft of a possible Convention on Private Military and Security Companies (PMSCs), articles 2(b) and 2(c).
- 8 UN OHCHR Guiding Principles on Business and Human Rights (UNGPs), UN doc A/HRC/17/31, 21 March 2011, available at https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf (hereafter: UNGPs)
- 9 Ibid
- 10 A useful elaboration of these roles can be found in the preface of 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” (section 9).
- 11 UNGPs, Principle 5 and 6
- 12 UNGPs, Principle 4
- 13 UNGPs, Principle 7
- 14 Buckland, B.S., Burdzy, A., “Progress And Opportunities: Challenges And Recommendations For Montreux Document Participants”, Second Edition, DCAF, 2015, p. 24
- 15 See for further analysis of positive and negative considerations in relation to human rights impacts of privatization in general: <https://undocs.org/A/73/396>
- 16 UN Committee on Economic, Social and Cultural Rights, General Comment No. 24 on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities, E/C.12/GC/24, 2017, para. 22: <https://undocs.org/E/C.12/>
- 17 UN Committee on Economic, Social and Cultural Rights, General Comment No. 16

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19 UNGPs, Principle 7

20 UNGPs, Principle 17

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<https://www.thisamericanlife.org/647/ladonna>

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https://complaints.oecdwatch.org/cases/Case_342.

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26 For a thorough reflection on international law applicable to the private security industry: F. Francioni and N. Ronzitti (eds). “War by Contract: Human Rights, Humanitarian Law and Private Contractors”, Oxford: Oxford University Press, 2011. Ongoing discussions regarding a binding convention for PMSCs have resulted in a “Draft of a possible Convention on Private Military and Security Companies (PMSCs) for consideration and action by the Human Rights Council”, prepared 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 in 2010; available at <https://www2.ohchr.org/english/issues/mercenaries/docs/A.HRC.15.25.pdf>.

27 Montreux Document Preface (5) p. 9

28 Montreux Document Part II, introduction, p. 16

29 International Code of Conduct for Private Security Service Providers, A. Preamble, para. 2

30 Details on <https://icoca.ch/>

31 Prior to ISO 18788, American National Standards under the name PSC.1-4 were developed, on which ISO 18788 was based, see:
https://www.acq.osd.mil/log/PS/.psc.html/7_Management_System_for_Quality.pdf

32 Also of note are the United States national standard ANSI-ASIS PSC-1 which functioned as a predecessor for ISO 18788, available at https://www.acq.osd.mil/log/PS/.psc.html/7_Management_System_for_Quality.pdf; and ISO 28007, which provides guidelines for private maritime security. <https://www.iso.org/standard/63166.html>

33 Further reading: <https://www.voluntaryprinciples.org/what-are-the-voluntary-principles>

- 34 See i.a. UN Working Group on Mercenaries National Legislation Studies on PMSCS, available at: <https://www.ohchr.org/EN/Issues/Mercenaries/WGMercenaries/Pages/NationalLegislationStudies.aspx> and DCAF Private Security Governance Database, available at: <https://businessandsecurity.dcaf.ch/en/private-security-governance-database> and Database Private Security Governance Observatories: <http://observatoire-securite-privee.org/en/content/national-regulations-and-overview>
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- 38 DCAF – UNLIREC “Armed Private Security in Latin America and the Caribbean: Oversight and Accountability in an Evolving Context”, 2016, p.10
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- 41 UNGPs, Principle 7
- 42 UNGPs, Principles 1 and 2
- 43 See for example LOI n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d’ordre, JORF n°0074 du 28 mars 2017, available at <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000034290626&categorieLien=id>, and comparative examples at <http://corporatejustice.org/news/16783-eccj-publishes-comparative-legal-analysis-of-hrdd-and-corporate-liability-laws-in-europe> and http://corporatejustice.org/documents/publications/eccj/eccj_hrdd_pcl-comparative-table-2019-final.pdf
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- 45 See ICAR, ECCJ, Dejusticia, “Assessments of Existing National Action Plans (NAPs) on Business and Human Rights”, August 2017 Update
- 46 DIHR “National Actions Plans on Business and Human Rights – an Analysis of Plans from 2013 -2018”, 2018, available at <https://mk0globalnapshvllfq4.kinstacdn.com/wp-content/uploads/2018/11/nap-analysis-full-report.pdf>
- 47 See Toolkit p. 20
- 48 For background on procurement contracts see: “Contract Guidance Tool for Private Military and Security Services” DCAF, 2017 <https://www.mdforum.ch/pdf/contract-guidance-tool.pdf>
- 49 DCAF “Putting Private Security Regulation into Practice: Sharing Good Practices on Procurement and Contracting 2015-2016”, 2016; International Learning Lab on

- Public Procurement and Human Rights, <https://www.hrprocurementlab.org/>
- 50 The gendered human rights impacts of private military and security companies - Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of people to self-determination, A/74/244, 29 July 2019
- 51 Superintendencia de Vigilancia y Seguridad Privada Colombia, Cartilla Equidad de Género, 8 March 2018: <https://www.supervigilancia.gov.co/documentos/2095/cartilla-equidad-de-genero/>
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- 55 A global overview of impact of privatisation on migrants and refugees: https://www.world-psi.org/sites/default/files/documents/research/final_psi_epsu_psiu_privatisation_of_migration_and_refugee_services.pdf ; a recent call for action: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24709&LangID=E> ; HRLC, RAID UK, Complaint Concerning G4S Australia Pty Ltd, Submitted to the Australian and United Kingdom National Contact Points for the OECD Guidelines for Multinational Enterprises, 23 September 2014, available at: https://complaints.oecdwatch.org/cases/Case_342;
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- 57 See for further discussion and recommendations for States: UN General Assembly A/72/286, Report of 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 - Privatized Prisons, 4 August 2017
- 58 See also; ISHR and ICAR “Human Rights Defenders in National Action Plans (NAPs) on Business and Human Rights: A Thematic Supplement to ‘National Action Plans on Business and Human Rights: A Toolkit for the Development, Implementation, and Review of State Commitments to Business and Human Rights Frameworks’” June 2016
- 59 See for overviews of national legal frameworks and regional analysis: UN Working Group on Mercenaries National Legislation Studies on PMSCS, available at: <https://www.ohchr.org/EN/Issues/Mercenaries/WGMercenaries/Pages/NationalLegislationStudies.aspx> and for an analysis of national laws see: DCAF Private Security Governance Database, available at: <https://businessandsecurity.dcaf.ch/en/private-security-governance-database> and Database Private Security Governance Observatories: <http://observatoire-securite-privee.org/en/content/national-regulations-and-overview>
- 60 The NHRIs of i.a. Mali and Cameroon have engaged actively with the Private Security Governance Observatory
- 61 There are 48 NCPs in 36 OECD countries and 12 non-OECD countries. <https://mneguidelines.oecd.org/ncps/>

- 62 Toolkit Section 2.1.5. p. 22 and 2.2.6 p. 29
- 63 The process and modalities of the way in which stakeholders should be engaged is discussed in the Toolkit
- 64 The Private Security Governance Observatory is a network of African civil society organizations (CSOs) that seek to share knowledge and reinforce their organizational capacity to promote good governance of the private sector by supporting: 1) research, awareness raising and building a network; 2) support to CSO engagement with national authorities, companies and other stakeholders at national, regional, and international levels; and 3) experience sharing within and across regions.
<http://observatoire-securite-privee.org/en>
- 65 CSO members can be found at: <https://icoca.ch/en/membership>
- 66 The Toolkit mentions further marginalised groups to consider on p. 50
- 67 “Open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights” or the U.N. Draft International Convention on the Regulation, Oversight and Monitoring Of Private Military and Security Companies or the “open-ended intergovernmental working group to consider the possibility of elaborating an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies”
- 68 DCAF, Legislative Guidance Tool to Regulate Private Military and Security Companies. 2016
- 69 Though no uniform definition for the term essential public goods has been formulated, the UN Working Group on mercenaries has defined this for the purpose of private security provision in the Draft Convention, art. 2(i) as including functions related to detention, intelligence gathering, and policing.
- 70 International Corporate Accountability Roundtable (ICAR) and International Service for Human Rights (ISHR), Human Rights Defenders in National Action Plans (NAPs) on Business and Human Rights. Thematic Supplement, 2016.

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