



International
Code of Conduct
Association

May 4th, 2022

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

Submission by the International Code of Conduct Association on the Humanitarian Impacts and Victims of PMSCs

Distinguished Members of the Working Group,

Introduction

The International Code of Conduct Association (“ICoCA” or “the Association”) is a non-profit multi-stakeholder initiative established in 2013 to ensure that providers of private security services respect human rights and international humanitarian law through implementation and oversight of the International Code of Conduct for Private Security Service Providers (“the Code”). ICoCA ensures that Member and Affiliate companies act in accordance with the Code by conducting due diligence through monitoring and certification, as well as the provision of guidance and the handling of complaints to raise the standards of the private security industry.

The Association aims to assist the preparation of the Working Group’s annual thematic report on victims of PMSCs, including the context of human rights violations, documentation of human rights abuses, and accountability and remedies for victims. ICoCA has developed manuals and guidance for providers of private security which are relevant to the Working Group’s inquiry and will be highlighted in this submission, including our Guidance and Manual on Company Grievance Mechanisms (CGMs), our Guidance on Human Rights Impact Assessments (HRIAs), and our Guidelines and Training on Preventing Sexual Exploitation and Abuse (PSEA). ICoCA aims to focus on steps that PSCs and contractors of PSCs can take to avoid human rights violations through adherence to the Code, and the implementation of mechanisms to facilitate the respect and insurance of human rights and humanitarian law.

The Association notes that in its discussion of the avoidance of human rights violations by private security companies, clarification is required on the distinct identities of private military companies (PMCs) and private security companies (PSCs). PMCs offer offensive military support, whereas PSCs are defensive, providing security rather than supporting offensive operations. The term “private military and security companies” (“PMSCs”) can blur the roles and responsibilities of these separate entities and create a definitional grey zone for these two distinct categories. ICoCA focuses on the responsibilities of private security providers and has targeted its guidance and manuals to best practices for the private security sector.

This submission focuses primarily on the steps which private security companies and their contractors can take to be more accountable to human rights abuses and create environments which ensure respect for human rights and humanitarian law, minimizing negative humanitarian impacts.

International Code of Conduct for Private Security Service Providers’ Association (ICoCA)
Nations Business Center, 3rd
Floor, Rue du Pré-de-la-Bichette 1
1201 Geneva, Switzerland
www.icoca.ch

Context of Violations

Types of human rights abuses identified

The Code is a relevant tool for assessing the types of violations which may be prevalent among private security providers which ICoCA seeks to mitigate. This includes regulation and best practices for PSCs on the use of force, detention, apprehending persons, the prohibition of torture, sexual exploitation, gender-based violence, human trafficking, the prohibition of slavery, forced labor, and the worst forms of child labor, and discrimination. However, the Code does not provide an exhaustive set of human rights principles. With this in mind, ICoCA seeks to review a number of issue areas where abuses may occur, especially in terms of the treatment of vulnerable groups in complex environments. This includes issues such as the use of private security by humanitarian actors operating in conflict zones and the reliance on private security in border control and management, among other key issue areas explored below.

Context in which human rights abuses take place

Traditionally, the impact of potential human rights abuses by private security providers has been focused on the extractive, mining and oil and petroleum industries. Yet, the risks of abuses exist across all sectors which source private security, including agriculture, retail, corporate and humanitarian organizations.

There is a heightened risk of human rights abuses occurring when PSCs fail to exercise due diligence, for instance by not incorporating the Code into internal control and compliance systems. Similarly, an increase in human rights abuses occurs when the clients of PSCs do not exercise due diligence in ensuring that the companies they contract respect international standards and principles contained in the Code.

Opacity and lack of transparency in the sector, as well as weak national regulation, can increase the likelihood of human rights violations. For example, a 2016 DCAF report on "The Privatization of Security in Africa" noted that even in nations where regulatory frameworks are in place, private security providers across sectors are often unaware of, or do not follow these best practices.¹ The report urged the clarification, updating, implementation, and oversight of frameworks for the operation of private security companies, and pointed to the Montreux Document and the International Code of Conduct as possible solutions.

ICoCA has recently begun a project mapping the work and impact of PSCs in vulnerable settings, especially the use of private security for migration management and border control. As the Working Group's 2020 report on the impact of the use of private military and security services in immigration and border management noted, the existing frameworks provided by the Montreux Document and the Code do not cover the immigration and border control sector. This leaves gaps in the regulation of PSCs which creates vulnerabilities for potential abuses, the victims of which have limited recourse to seek accountability. Through research and consultation, ICoCA is currently investigating the potential to strengthen, codify, and clarify the international legal frameworks which are applicable to PSCs operating in border management and immigration through the Code in order to increase oversight and accountability in the sector.

¹ Alan Bryden (ed.), *The Privatization of Security in Africa*, DCAF and Organisation de la Francophonie, 2016, p. 4-7, <https://www.dcaf.ch/sites/default/files/publications/documents/161121-OIF-EN-PDF-final.pdf>

Documentation of Human Rights Abuses

Challenges faced in documenting, reporting, and denouncing human rights violations

Despite efforts to strengthen accountability in the private security sector at the national level, ICoCA notes that implementation of regulatory frameworks is uneven, and the number of unregulated private security companies across regions means that opacity, lack of transparency, and lack of oversight remain key issues in protecting human rights and documenting, reporting, and denouncing violations. Lack of regulation combined with a lack of tradition of independent oversight can lead to the risk of obscuring abuses in the private security industry, an issue exacerbated by the Covid-19 pandemic which curtailed the ability to conduct in-person and onsite monitoring.

Existing initiatives working in private security oversight

ICoCA and its Civil Society Organization (CSO) Members work to promote and monitor respect for human rights in the private security sector. A list of ICoCA's current 45 CSO Members is available on the website.² ICoCA seeks to empower the work of CSOs at the local level with their own missions, building their knowledge of the private security industry in order to increase their capacity for oversight of these actors in complex environments with few available resources.

ICoCA supports the work of CSOs across a broad range of countries as they help raise private security standards by conducting research into areas such as private security trends, key actors in the industry, and potential gaps in respect for human rights. The goal of this research is to form a knowledge basis to understand risks and problems local to each operational environment. This would allow ICoCA and Member CSOs to identify problems through data gathered on the ground in order to tailor solutions to the unique sets of private security concerns in each specific context of operation.

To further the work of CSOs collecting, documenting, and reporting on PSCs, ICoCA and DCAF have recently collaborated to produce a practical guide to private security for CSOs to build their capacity in private security oversight.³ This guidance provides information on identifying private security actors and applicable standards as well as tools for documenting and reporting human rights abuses.

This guidance has come out of ICoCA's ongoing work in the Democratic Republic of the Congo in collaboration with DCAF. In addition, ICoCA, DCAF and collaborating CSOs have worked to adopt multilateral stakeholder recommendations on the regulation of the private security industry in the DRC and create a National Roadmap of security regulations which seek to hold the industry accountable to best practices. The goal of this project is to facilitate the adoption of a private security law in the DRC which would bring together these recommendations and patchwork regulations, raising standards and ensuring better oversight at the government level.

ICoCA's work with CSOs raises awareness across countries on human rights accountability in the often overlooked and opaque arena of private security. In Nigeria, Iraq, and Kenya, ICoCA has taken part in events organized by its CSO Members to introduce the work of ICoCA and the Code to interested stakeholders to facilitate discussion on best practices surrounding private security. This outreach raises awareness on responsible best practices in the industry, among governments, and for other interested stakeholders.

² <https://icoca.ch/membership/>

³ Collecting, Documenting and Reporting on Private Security: A Practical Guide for Civil Society, ICoCA and DCAF, 2021, https://icoca.ch/wp-content/uploads/2021/04/CSO-Tool-EN_Lines.pdf

CSOs with the skills to help victims of human rights abuses require the resources and capacity to expand this work into the sector of victims of private security. This expansion would not only improve standards among PSCs, but across industries and organizations which contract private security, from the extractive industry to humanitarian organizations. ICoCA can aid in building the capacity of these organizations in the private security arena but cannot support this work on its own. CSOs require increased access to resources to expand their reach; work which directly impacts human rights and access to remedy for victims of abuses.

The Role of Humanitarian Actors

Challenges faced by human rights actors in protecting human rights in the context of private security

ICoCA wishes to highlight its 2021 report “Private Security Contracting in the Humanitarian Sector: Time to Take Responsibility,” made in collaboration with the Global Interagency Security Forum (GISF) relevant to the Working Group’s inquiry on the role of humanitarian actors related to abuses in the private security sector.⁴ The report finds that humanitarian organizations are relying extensively on armed and unarmed guards for the provision of static and mobile security in high risk environments, yet very few organizations use third-party verification mechanisms, like ICoCA, in contracting PSCs. Survey respondents noted a poor level of regulation in the field, frequently relying on internal contracting policies without clear sanctions or contract termination and using low cost as the main driver in choosing PSCs. This can lead to the use of poorly vetted companies which may not treat their personnel humanely, increasing the risk of human rights abuses; an issue noted by companies who identified security and reputational risks in their contracting practices. ICoCA recommends that humanitarian organizations conduct due diligence when contracting private security and rely on internationally recognized standards like the Code.

In light of the ongoing humanitarian crisis in Ukraine, ICoCA has highlighted the responsibilities of humanitarian actors operating in this complex environment in their use of private security services. As humanitarian agencies begin operations in Ukraine, there is a risk that their use of private security services contracted without proper due diligence may exacerbate dangers rather than mitigating risks. ICoCA reminds humanitarian organizations that they have heightened due diligence responsibilities in contracting private security reflecting the heightened risks in the environment in which they are operating.

Prevention, Protection and Remedy

Approaches to seek accountability

ICoCA has developed manuals and guidance targeted to PSCs and contractors of PSCs which can be implemented to prevent the creation of victims, protect from potential abuses, and offer effective remedies in the event that abuses take place. The opacity of the private security sector in many regions and the lack of uniformly adopted regulations are issues which make it difficult for victims of human rights abuses by PSCs to seek and access justice. With this in mind, ICoCA has published guidance for private security providers on how to conduct effective human rights assessments and on developing grievance mechanisms offering effective remedies. Together, these and other tools are aimed at preventing human rights abuses by private security providers, protecting individuals and communities from abuses, and ensuring that remedies are available if any abuses occur.

⁴ Private security contracting in the humanitarian sector: time to take responsibility, ICoCA and GISF, 2021, <https://icoca.ch/wp-content/uploads/2021/12/ICOCA-GISF-FULL-RESEARCH-REPORT-2021-WEB.pdf>

Prevention and Protection Guidance for Private Security Companies

ICoCA has created guidance for PSCs on conducting human rights impact assessments (HRIAs) which can be used to ensure that PSCs and contractors of PSCs effectively prevent and mitigate adverse impacts on human rights, especially when operating in complex environments.⁵ ICoCA recommends that HRIAs are conducted before and during operations to identify potential concerns for the prevention of abuses. Companies should look at adverse impacts which they directly cause or could cause, to which they contribute, and to which they are directly linked to prevent and mitigate abuses across areas of involvement. Impact analysis should then be based on the scope, scale, and remediability of adverse consequences, prioritizing protection in the areas of greatest severity. HRIA findings should be given an adequate budget to address and remedy adverse impacts or potential adverse impacts. By conducting HRIAs before and during operations, PSCs can ensure greater respect for human rights in the private security sector.

ICoCA's Guidelines for Private Security Providers on Preventing and Addressing Sexual Exploitation and Abuse target the prevention of SEA, the protection of potential victims and the creation of remedies for those victims.⁶ PSEA-specific policies must be implemented into existing company procedures. For example, personnel should be regularly trained on PSEA policies, and SEA-related risks should be assessed and mitigated prior to each operation undertaken by a PSC. Accessible reporting mechanisms and a survivor centered approach ensure the highest level of respect and protection for the complainant. When a claim is substantiated, remedy must be provided by taking immediate action against the perpetrator, and both immediate and long-term assistance should be provided to the survivor. By taking measures to prevent SEA, protect victims of potential abuses, and provide adequate remedy, PSCs can ensure a greater level of respect for human rights.

Additionally, ICoCA and the Small Arms Survey have recently collaborated to create industry specific recommendations on the management of materials of war, weapons, and weapons training to improve the handling of weapons by PSCs; a key step in preventing potential human rights abuses linked to the proliferation of weapons and their improper use.⁷ Industry good practices mean first and foremost that the accounting and storage of weapons is done effectively. Staff assessment and recurrent training are necessary for all private security personnel who will be handling weapons. Private security personnel should be trained on rules surrounding the use of force, health and safety when handling weapons, and the security, storage, and maintenance of weapons. These steps are key to increasing the responsibility of PSCs and mitigating a potential risk vector for human rights violations.

Prevention and Protection Guidance for Procuring Private Security

ICoCA's recently published Private Security Services Procurement Guide offers contractors of private security a comprehensive how-to guide, mitigating potential risks when companies contract PSCs.⁸ This guidance offers advice in conducting contract due diligence, managing the environment through security protocols and briefings, and establishing clear expectations on work environment and fair and equal treatment of personnel. To ensure that contractors are respecting human rights, the guide urges companies to contract ICoCA certified, Member and Affiliate companies or conduct their own human rights due diligence by providing the criteria necessary for PSC assessment.

⁵ https://icoca.ch/wp-content/uploads/2021/07/ICoCA_HRIA_Guidance_A4_EN_WEB.pdf

⁶ https://icoca.ch/wp-content/uploads/2020/07/ICoCA_PSEA_Guidelines_A4_web_1.pdf

⁷ <https://icoca.ch/2022/03/30/indicators-on-management-of-weapons-and-ammunition-available/>

⁸ <https://icoca.ch/wp-content/uploads/2022/02/A-Procurement-Guide-for-Contracting-Responsible-Private-Security-Providers-En.pdf>

ICoCA also collaborated with GISF on “Security to Go,” a toolkit for humanitarian agencies seeking to establish stronger security systems.⁹ Module 14 of the toolkit provides a step-by-step guide which humanitarian organizations can follow when making the decision to contract PSCs. This is based on defining the agency's need for private security, developing a strong procurement process, conducting due diligence on the PSCs selected, a responsible monitoring mechanism, and the development of a relationship with the PSC personnel employed by the agency. If agencies and companies follow these guidance toolkits, they are following steps to best prevent potential abuses from their contracting of PSCs and protect the rights of PSC personnel and relevant stakeholders.

Remedy Guidance for Private Security Companies

ICoCA’s Guidance for Developing and Operating Fair and Accessible Company Grievance Mechanisms (CGMs) that Offer Effective Remedies are accessible to third parties and personnel alleging failure by the company to respect the Code.¹⁰ CGMs should be integrated with the external landscape to respect local, regional, and national regulations beyond the company's internal practices. Complaints should be accepted from all external stakeholders to ensure the broadest remedies possible to potential abuses. At a minimum, the CGM should accept complaints in relation to violations of the code, confidentiality should be granted, and fairness and accessibility should be ensured by defining a timeframe and establishing an appeals process. Priority should be placed on the complainant, ensuring their protection, and developing solutions and remedies which are compatible with their desires, including the right to appeal should the resolution not offer adequate remedy. By following these mechanisms, PSCs increase access to remedies for third parties harmed by their activities, taking steps to prevent future instances of human rights violations.

The Responsibility of States and Governments

Under international law, the responsibility for human rights violations lies first and foremost with states. They have a key role to play in terms of the oversight and accountability of PSCs and have ultimate responsibility for violations as the main holder of rights and responsibilities under international law. States must provide the necessary legal frameworks and judicial mechanisms to hold PSCs accountable for abuses. The Montreux Document compiles the pertinent international legal obligations for states relating to private security in terms of contracting states, territorial states, home states and all other states.¹¹ Despite the work of the non-governmental actors and the contribution of CSOs, ICoCA would like to highlight that the ultimate responsibility for prevention, protection, and remedy for PSC related abuses lies with state actors.

⁹ Security to go: a risk management toolkit for humanitarian aid agencies, GISF, 2020, p. 93-101, https://gisf.ngo/wp-content/uploads/2020/04/1330_GISF_Security-to-Go_download_Oct20.pdf

¹⁰ <https://icoca.ch/wp-content/uploads/2020/07/interpretative-guidance.pdf>

¹¹ The Montreux Document https://www.eda.admin.ch/dam/eda/en/documents/aussenpolitik/voelkerrecht/20192511-montreux-document_EN.pdf

Conclusions and Recommendations

ICoCA monitors its Member and Affiliate companies, develops guidance and indicators, and highlights best practices to promote respect for human rights and humanitarian law by private security companies in compliance with the Code, avoid situations which would violate human rights, and provide accountability to victims in case human rights violations occur. By looking at areas where due diligence can be improved and by developing guidance to implement best practices for PSCs and their contractors, ICoCA is raising the standards of the private security industry to ensure compliance with human rights.

On the context of human rights violations, ICoCA calls for:

1. increased efforts to improve oversight and bring greater transparency to the work of private security companies operating in complex environments; and
2. the strengthening of legal frameworks for private security providers operating in the border management and immigration sectors.

On the documentation of human rights abuses, ICoCA recommends:

3. supporting the work of CSOs in collecting, documenting, and reporting information on private security providers to build their capacity for oversight of the private security sector, especially in high-risk environments.

On the role of humanitarian actors, ICoCA recommends that:

4. organizations ensure that contracting policies are in line with humanitarian principles and that guidelines are established, shared, and applied; and
5. Organizations should acknowledge that they have a duty of care towards their contracted security personnel, ensuring that the quality of the PSC contracted is the key consideration rather than the cost.

On prevention, protection, and remedy, of human rights abuses in the private security sector, ICoCA recommends that:

6. private security providers follow best practices provided in ICoCA guidance documents and training for conducting human rights impact assessments, preventing sexual exploitation and abuse, appropriately maintaining weapons, and ensuring that private security personnel are adequately trained in their use; and
7. private security providers should have company grievance mechanisms that provide accountability and remedy for victims of abuses, and they should join the Association.

On the responsibilities of clients of private security providers, ICoCA recommends that:

8. contractors should follow best practices when contracting private security, as laid out in ICoCA's procurement guide, and the "Security to Go" toolkit for humanitarian organizations, including clear contracts and monitoring for compliance.

On the roles of governments, ICoCA recommends that:

9. appropriate legal frameworks are developed to regulate private security and provide remedies in case of potential abuses.

ICoCA's work seeks to involve the industry, contractors, and other relevant stakeholders to improve human rights and positively impact the safety and security on the ground of every sector related to the private security industry. By following these recommendations, it is possible not only to provide accountability to victims of abuses by PSCs, but to minimize the likelihood of violations from occurring, deterring the conditions that create victims in the first place.

On behalf of the International Code of Conduct Association,

A handwritten signature in black ink, appearing to read 'J.A. Williamson', followed by a long horizontal flourish.

Jamie Williamson
Executive Director