

**CALL FOR SUBMISSIONS: THE ROLE OF PRIVATE MILITARY AND SECURITY COMPANIES IN IMMIGRATION AND BORDER MANAGEMENT AND THE IMPACT ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANTS**

<https://www.ohchr.org/EN/Issues/Mercenaries/WGMercenaries/Pages/Callroleprivatemilitary.aspx>

The Amman Center for Human Rights Studies (hereafter “ACHRS”)<sup>1</sup> acknowledges the relevance of the call for submission enhanced by the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the rights of peoples to self-determination<sup>2</sup> within the context of the Arab world and more specifically, Jordanian civil society.

*1. General Relevance*

The general security approach to the migrant crisis is such that everyday services for refugees and asylum seekers are increasingly outsourced to private military and security companies (hereafter “PMSCs”) varying from immigration detention facilities to deportation and removal services, from housing to access to health care and distribution of food vouchers. It should be pointed out that the use of PMSCs does not only provide border security and migration control services, but are also significantly influential in the shaping of migration policies. The services provided by PMSCs lead to active involvement in the setting of priorities of a country’s defense and security agenda, which consequently leads to a privatized border scape resulting in a self-perpetuating convergence of interests between State and private security company. In general, the work of private border services heavily accelerate the drive towards militarized responses to migration, which has negative consequences on the protection of the migrants’ rights.

*2. Relevance for the Arab World*

The United States Department of Defense plays the largest role in financing private military and security companies in the region. In the aftermath of the 9/11 attacks, the U.S. military began outsourcing its hiring to fulfill its need for Arabic linguists and translators. After the severe abuse of prisoners by military contractors in Iraqi prisons, the international community began to question the legality of these “guns for hire”. Such military contractors often operate outside the realm of international law and do not face punishment for their actions in the international criminal court or their country of origin. The U.S. has a significant amount of military contractors stationed in Iraq and Syria. When the U.S. claims that it is withdrawing soldiers from this region, it often sends more military contractors to replace them. ACHRS could not find information on how private military and security companies play a role in managing borders in the region. However, we know that during the U.S. invasion of Iraq, private security companies had a role in managing American check points, where there was a need for Arabic linguists and translators. The U.S. controlled Iraqi borders with these private security companies, which as mentioned above, were accused of mistreating Arabs. Private security companies used harsh methods of controlling who gets passed checkpoints and border crossings, such a shooting cars that don’t stop or people who don’t comply. It can be assumed that similar tactics are used by private security contractors to control both internal and external migration in the region by Arab States and world powers like Russia and the United States. The violation of these migrants’ human rights needs to be brought to the attention of the United Nations, especially because this is a subject that is not commonly talked about, and difficult to find data on.

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<sup>1</sup> Being a civil society organisation

<sup>2</sup> As is pursuant to HRC/42/9 and Commission on Human Rights Resolution 2005/2

### 3. *Relevance for Jordan*

First and foremost, Jordan plays a key role in enforcing and maintaining security in the region. Its pivotal position acts as a passage both from East to West and North to South. Currently Jordan is the second largest host of refugees per capita worldwide and continues to be one of the countries most affected by the Syria crisis as its border with Syria is 378 kilometers long. At this moment, over 660,000 Syrian refugees are currently registered with the UN Refugee Agency in Jordan. Due to the incredibly high number of migrants coming in Jordan, the European Union has commenced to assist Jordan in strengthening its border management with a project called Integrated Border Management. As part of this project, the IOM has assisted refugees with emergency evacuation assistance to Syrians from borders to camps and has provided primary health care, however the overall concern is mostly aimed at the tackling of transnational crime and trade traffic.

- a. *Types and level of private security services performed in immigration and border management and related regulatory and contractual frameworks*
- b. *Allegation of human rights abuses against migrants by PMSCs*
  - i. *Efforts to secure accountability for abuses and violations*
  - ii. *Efforts to provide effective remedies for victims*
- c. *Importance of gender and intersectionality*
  - i. *Impact of PMSC actions on individual migrants and others*

### 4. *Major Pitfalls*

As can be seen in the Report on private security companies (2016/2238(INI)), security and defense are public goods managed by public authorities on the basis of the criteria of efficiency, effectiveness, accountability and the rule of law. This does not solely depend on the provision of sufficient financial resources, but also on knowledge. Whereas the outsourcing of military activities is taking place, among other things, to provide security in a more cost-efficient manner, but also to compensate for a shortfall in capabilities in shrinking armed forces or the result of an unwillingness of decision-makers to commit appropriate resources, private security services often do not possess the same level of knowledge and/ or means as State security companies. This comes with the fact that, as can be seen from the *Kamasee v Commonwealth Case*,<sup>3</sup> victims often face jurisdictional hurdles due to the non-State actor status of PMSC, who are traditionally not bound by international law.<sup>4</sup> As a consequence, victims experience many challenges when it comes to achieving remedy.

### 5. *Suggestions and Recommendations*

As has been mentioned before, PMSCs have often been used for reasons at political convenience to avoid limitations on the use of troops, which subsequently does not mean the private services have the same level of knowledge as State security services. This is why it is essential that the use of PMSCs are subject to effective parliamentary control in order to ensure that the legitimacy and potential benefits of PMSCs are fully obtained. Especially because in the past, PMSCs have been accused of engaging in a number of human rights violations and incidents, which due to the lack of transparency by the PMSCs has revealed in considerable gaps within accountability structures.

Legally speaking, a first step to holding PMSCs accountable is to adopt a legal framework with binding regulatory and monitoring mechanisms at international level. As is

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<sup>3</sup> *Kamasee v Commonwealth of Australia & Ors* [2017] VSC 537

<sup>4</sup> PMSC services should be regarded as a State organ or an entity exercising elements of governmental authority as stated in International Law Commission, Articles on State Responsibility, Articles 4 jo. 5

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stated, the context of migration control and human rights risks suggests a very dangerous zone. This is even more the case when migration is controlled by different companies or services that are both State as well as private driven. Hence it should be argued that the involvement of PMSCs within the context of border management meet the conditions of a high-risk area for the purposes of the application of the United Nations General Principles (hereafter “UNGP”).<sup>5</sup> Redefining border management carried out through private services as a high-risk area would highlight the high risk of occurrence of gross human rights abuses and the importance of focusing on safeguarding the rights of people on the move. As is stated in UNGP 7, States have an active obligation to ensure that business enterprises operating in conflict-affected areas are not involved in gross human rights abuses. A close analysis of UNGP 7 and its commentary has revealed that more weight should be given to the criterion of gross abuses than on the conflict context. Also, UNGP 23 in conjunction with UNGP 24 state that business enterprises should always respect internationally recognized human rights, and should priorities actions have aimed at preventing and addressing adverse impacts, also called the human rights due diligence principle. However, it is essential that these UNGP principles are rendered to be the basic safeguard principles. PMSCs should be subjected to even higher scrutiny due to the fact that PMSCs in general frame the current migration flows as a security threat. A good legal framework would be the Montreux document,<sup>6</sup> however the document tends to have a rather restrictive character caused by the indication that international humanitarian law only applies in armed conflict. Nevertheless, it has acted as a very good guiding document in reiterating the existing obligations of States and PMSC and their personnel under international human rights law, which can be seen for example in the International Code of Conduct for Private Security Service Providers. This document is built upon the principles of ‘respect, protect, remedy’, which clearly entails due diligence to avoid infringing the rights of others. Therefore, it is essential for all legal documents within the context of PMSCs to be read in line with the human rights due diligence principle.

#### 6. Conclusion

It should be made clear that PMSCs are not in the position to substitute national armed forces personnel within the context of border and migration management as this could have huge implications for the human rights protection of migrants. Hence, the highest priority should be accorded, when implementing defense policies, to ensuring that the armed forces of a State, *in casu* Jordan, has sufficient resources, instruments, training, knowledge and means with which to perform their tasks fully in line with the rule of law and international human rights mechanism.

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<sup>5</sup> United Nations General Principles 7 jo. 23 jo. 24

<sup>6</sup> Full name: Montreux Document on Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies During Armed Conflict