



PRIVATIZING WAR:

The Impact of Private Military Companies on the Protection of Civilians

ISSUE BRIEF

RECOGNIZE. PREVENT. PROTECT. AMEND.

Organizational Mission and Vision

Center for Civilians in Conflict (CIVIC) is an international organization dedicated to promoting the protection of civilians in conflict. CIVIC envisions a world in which no civilian is harmed in conflict. Our mission is to support communities affected by conflict in their quest for protection and strengthen the resolve and capacity of armed actors to prevent and respond to civilian harm.

CIVIC was established in 2003 by Marla Ruzicka, a young humanitarian who advocated on behalf of civilians affected by the war in Iraq and Afghanistan. Honoring Marla's legacy, CIVIC has kept an unflinching focus on the protection of civilians in conflict. Today, CIVIC has a presence in conflict zones and key capitals throughout the world where it collaborates with civilians to bring their protection concerns directly to those in power, engages with armed actors to reduce the harm they cause to civilian populations, and advises governments and multinational bodies on how to make life-saving and lasting policy changes.

CIVIC's strength is its proven approach and record of improving protection outcomes for civilians by working directly with conflict-affected communities and armed actors. At CIVIC, we believe civilians are not "collateral damage" and civilian harm is not an unavoidable consequence of conflict — civilian harm can and must be prevented.

In line with its "do-no-harm" approach, CIVIC is not able to provide relevant illustrations of PMCs: one of the main findings of this brief is that taking pictures or gathering evidence of PMCs operating in conflict countries is notoriously difficult — and dangerous. The cover picture is not related to PMCs.

Cover: Private Waake Tua, a New Zealand Army soldier serving with 2nd, 1st Battalion, lays in the prone position behind a barricade while engaging targets at Range 218 here during Dawn Blitz 2013, June 14. 14/06/2013, Marine Corps Base Camp Pendleton, CA, US. The appearance of U.S. Department of Defense (DoD) visual information does not imply or constitute DoD endorsement.

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*Credit: Cpl. Joseph Scanlan/Defense
Visual Information Distribution Service*

EXECUTIVE SUMMARY

The use of “soldiers for hire” in war is not a new phenomenon. For most of recorded history, any sovereign with the means to pay could find mercenaries willing to fight for profit, no matter the cause. More recently, and in particular since the end of the Cold War, the term “mercenary” has fallen into disrepute. States have, however, continued to turn to private contractors as surrogates for their own military forces, whether within their own territory or outside of their borders.

In many conflict-affected environments today, private companies not only provide physical security for employees and infrastructure, they serve in roles traditionally reserved for the armed forces—providing, for example, logistical or intelligence support for military operations and training for state and non-state armed groups. In some cases, they also fight alongside—or on behalf of—a state. In the last two decades, private military contractors have surfaced in conflicts in Iraq, Central African Republic (CAR), Colombia¹, Libya, Afghanistan², Somalia³, Mozambique, Mali⁴, and Ukraine⁵, among others. They have played a multitude of roles, including providing security to combat operations, and they have frequently operated upon request or with formal or informal support from third countries, including the United States (US), the United Kingdom (UK), and Russia.

The option to use contractors in military roles may appeal to states for any number of reasons. Some use contractors to augment the capacity of their own national forces or as a way to provide support to partner states. Some countries may see contractors as a convenient means of exerting influence outside of their borders with fewer risks to their own forces or with less or no formal attribution for their involvement. Because contractors are one step removed from the armed forces, their use can also make wars more politically acceptable by making losses seem less immediate.⁶

Meanwhile, the proliferation of contractors in conflict-affected areas over the last thirty years has been accompanied by concerns about their association with human rights violations and violations of the laws of war. In the early 1990s, media and human rights organizations started reporting human rights violations and violations of the laws of war in Angola and Sierra Leone by contractors from private security firms like Executive Outcomes and Sandline International.⁷ Not long after, in the context of a deteriorating security situation following the invasion of Iraq, Blackwater—a security contractor hired by the US government—killed seventeen civilians in Nisour Square in Baghdad in 2007.⁸ Both cases called attention to the risk posed by the proliferation of under-regulated and barely accountable private entities in conflict-affected areas. They inspired an international movement among government, civil society, and the private sector itself to better monitor, regulate, and hold accountable private security firms. The two most visible outcomes of this movement have been the adoption of the Montreux Document⁹ and the creation of the International Code of Conduct Association (ICoCA).¹⁰

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Although the movement to enhance the accountability of private military companies (PMCs) has gained both strength and support since Nisour Square, the practice of hiring private contractors in war has not only further proliferated, it has also evolved in ways that make monitoring and regulating their conduct more challenging than ever.¹¹ This policy brief highlights several developments in the practice of employing private military contractors in conflicts, identifies the most important variables linked to the occurrence of civilian harm associated with private military contractors, and provides states, international organizations, and the private sector with recommendations for addressing issues related to the use of PMCs in conflict countries.

Drawn from in-depth research on PMCs in CAR, Libya, and Mozambique, as well as a historical study of Iraq, this brief provides a summary of the harms allegedly associated with the presence of private military contractors, including but not limited to:

- International humanitarian law (IHL) violations;
- International human rights law (IHRL) violations.

More specifically, this brief addresses:

- Harm to civilians resulting from military operations (air and ground-based);
- Sexual assault and abuse;
- Injury or death caused by improvised explosive devices (IEDs) and booby traps;
- Interruption or damage to critical civilian infrastructure assets and systems, including water and electricity supply;
- Widespread fear and anxiety among individuals and communities.

Based on the case studies provided, this brief identifies several common (and often related) obstacles or gaps that impede efforts to prevent, minimize, and address civilian harm caused by private military contractors and to hold private military contractors or their sponsors to account for violations of human rights and IHL violations. These obstacles and gaps include:

OBSTACLE 1

Use of PMCs to conceal states' involvement in conflicts:

Many states—and especially great powers—have been using PMCs to influence conflicts, shape the actions of partners, and signal resolve to adversaries. They have done so in a covert manner that prevents the links between companies and states from being identified. As there is often no evidence to corroborate any connection to the incident, states are able to use “plausible deniability”—denying responsibility for or knowledge of possible misconduct by private actors. As a consequence, the ability to attribute violations of human rights and provide remedies are even more limited.

OBSTACLE 2

Lack of specific attribution of harm in monitoring and documentation efforts:

Governmental, international, and civil society actors who find themselves—by design or by default—collecting information on civilian harm almost never disaggregate the data to reflect specific harm that can be attributed to PMCs. Frequently analyzed together with non-governmental armed groups, PMCs escape close scrutiny because they are rarely named as their own category in data gathering.

OBSTACLE 3

Threats to local human rights organizations and media:

In the absence of a well-established international monitoring system, representatives of intergovernmental and non-governmental organizations (NGOs) often find themselves with no choice but to monitor abuses for which PMCs can be implicated. These organizations assume significant risks in doing so, including reprisals against personnel and targeted disinformation campaigns. While such risks can affect international and local NGOs alike, local actors tend to face the most significant consequences. These risks are likely one result of a global phenomenon: the shrinking of the space in which civil society operates. Without a secure environment to work in and with multiple limitations, especially for civil society organizations (CSOs) critical of governments, there is less room to advocate for more robust protection for civilians.

OBSTACLE 4

Definitional challenges and their implications for legal and regulatory regime applicability:

Excessive rigidity in some aspects of the regulatory regimes that apply to private contractors—such as the six cumulative steps defined in Article 47 of Protocol 1 to the Geneva Conventions, which shapes the definition of mercenaries—can enable companies and individuals to evade regulation. At the same time, the diverse range of labels for private companies and their staff (PMCs, private security companies [PSCs], private military and security companies [PMSCs], and mercenaries) means that key international players can use these terms interchangeably or avoid being labeled altogether, which has implications for the legal and regulatory frameworks that apply.

OBSTACLE 5

Insufficient national legislative or regulatory frameworks:

At this point, too few states have adopted sufficient regulations, and it is not clear whether many key players would be inclined to do so given the combination of influence and plausible deniability that such operations can offer. Home states—and, arguably, contracting states as well—tend to have insufficient regulation controlling PMCs' conduct and accountability, including limits on the activity of PMSCs who are registered in one country but perform services in another; clarity on legal frameworks that apply to them; and a monitoring regime. Moreover, territorial or receiving states have not developed enough regulations or legislative frameworks to govern the activity and accountability of PMSCs—both local and international—operating within their borders. National regulations should create an interlocking legal system that would increase overall control of PMCs' conduct and strengthen accountability by clarifying the applicability of legal regulations and jurisdictions where abuses can be pursued.

OBSTACLE 6

Lack of redress and accountability:

With limited monitoring, a lack of effective national legislation, and insufficiently disaggregated data to allow for specific attribution in instances of abuse, civilians harmed by PMSCs have very limited—if any—recourse to ensure accountability and redress.

This brief takes the position that each of the above-mentioned obstacles requires additional focus and collective action by individual countries, the United Nations and intergovernmental bodies, civil society, and the security industry. The brief concludes with several recommendations, including:

- 1 Actions states should take to reinforce international norms and standards** governing the conduct of private military contractors, along with measures necessary to strengthen national legislative and regulatory frameworks for both the use and export of the services of private military contractors.
- 2 Actions the United Nations and other intergovernmental bodies should take** to enhance monitoring of PMCs and ensure that security forces receiving support from PMCs take steps to prevent and address harm.
- 3 A non-exhaustive overview of measures that are available to civil society organizations** that may have the mandate or otherwise be in a position to monitor and report on IHL and IHRL violations or other incidents of civilian harm happening in connection with PMC operations, as well as to increase support from donors to help mitigate the full range of risks associated with monitoring and reporting on PMSCs.

METHODOLOGY

Research for this brief was conducted between March and June 2021. Our findings and conclusions are based on extensive qualitative research, including an in-depth literature review and remote interviews with over 40 individuals. Interviewees included stakeholders from international and local organizations, investigative journalists, and PMC staff members. Prior to interviews being conducted, an internal review group composed of CIVIC's legal and policy experts and field practitioners was asked to provide feedback on preliminary findings, recommend potential interviewees, and help assemble security protocols for such sensitive research. This brief has also been informed by external discussions held during the second session of the Intergovernmental Working Group on Private Military and Security Companies (IWG on PMSCs) held in Geneva on April 26–29, 2021,¹² as well as three webinars on PMCs.¹³

Primary interview subjects, all selected on the basis of a comprehensive desk review, responded to a set of specific open-ended questions designed to obtain first-hand data and observations, triangulate information obtained from other sources, and identify additional interviewees (i.e., “snowballing”). Each interview was conducted following the subject's informed consent and using an affirmative “do no harm” approach to the subject's safety, privacy, and security. Given the sensitivity of the subject matter, each interviewee was guaranteed confidentiality regarding their identifying information and affiliation. To protect interviewees' privacy and security, their identities have been recorded by CIVIC but are not revealed in this brief.

The research contained in this brief focuses on the contemporary use of private military contractors in three countries—CAR, Libya, and Mozambique—as well as the historical case study of Iraq. The contemporary cases were selected based on three criteria: the existence of armed conflict; the alleged presence of one or more private military companies; and the type, probability, and likely scale of impact PMCs have had on civilians (estimated on the basis of publicly available sources and interviews). The historical case study of Iraq has allowed the research team to draw further lessons based on Iraq's experience in regulating PMCs over fifteen years following the killing of seventeen civilians at Nisour Square in Baghdad by private military contractors affiliated with the US company Blackwater.

During the research process, CIVIC staff encountered two significant challenges. First, the COVID-19 pandemic made travel that would normally be undertaken to conduct interviews in primary research locations impossible. Interviews were therefore conducted virtually, with the researcher making efforts to secure the participation of individuals from different organizations and positions in each country studied to ensure that the information was representative and accurate. Second, locally deployed journalists and CSO staff members reported feeling vulnerable to reprisals if they were seen as possessing and sharing sensitive data on PMC activities. As a result, it was very difficult—and in some cases impossible—to obtain first-hand quantitative and qualitative data, such as estimated number of individuals harmed by PMC activities, notional lists of PMCs recruited by states, and examples of prosecutions and open cases against PMCs in each country. While interviewees mentioned instances of abuses by PMCs, they were hesitant to share specific data or videos/pictures of PMC personnel (if available) due to security concerns.

The sensitivity of the subject matter was particularly acute during periods of enhanced international media coverage of local incidents. The concerns outlined above affected both the number of interviews conducted and the granularity of information obtained: while about 60 individuals were contacted for interviews and 42 agreed to participate, a third of the interviewees only shared partial

or already publicly available information. Some potential interviewees responded initially, but did not wish to take the conversation further. As an alternative, CIVIC staff used secondary sources and/or proxy indicators (when available) from think tanks, watchdog organizations, and other relevant bodies to make informed observations. Significantly, the reluctance of many interviewees to discuss PMCs for fear of reprisal substantiates a major finding of this report—namely, oversight of PMCs is critically impaired by the increasingly hostile and intimidating environment in which CSOs operate.

TERMINOLOGY AND DEFINITIONS

This brief focuses primarily on private military companies (PMCs), as they carry out activities of a military nature in conflict countries where they are most likely to impact civilians' protection and contribute to significant civilian harm.

However, CIVIC acknowledges that the many labels used to describe private contractors providing services in security and defense sectors can create confusion that can, in turn, create a grey zone that companies and states take advantage of when they do not wish to be associated with a specific type of activity or a particular regulatory regime. Terms worth defining include: private military companies (PMCs), private security companies (PSCs), private military and security companies (PMSCs), and mercenaries. We will return to the importance of terminology for regulating private entities in war in a later section.

Mercenaries

Mercenaries, who have always been a feature of war, have been loosely defined as “soldier[s] fighting in another country’s army for profit without any affiliation to a cause or any loyalty to a country.”¹⁴ Article 47 of Protocol I to the Geneva Conventions, which is applicable in international armed conflicts, further defines a mercenary as someone who cumulatively fulfils the following criteria:

1. is specially recruited in order to fight in an armed conflict;
2. takes a direct part in hostilities;
3. is motivated essentially by the desire for private gain;
4. is neither a national of a party to the conflict nor a resident of territory controlled by a party to the conflict;
5. is not a member of the armed forces of a party to the conflict; and
6. has not been sent by a State which is not a party to the armed conflict on official duty as a member of its armed forces.¹⁵

The definition used in the International Convention against the Recruitment, Use, Financing and Training of Mercenaries (ICRFTM), which was adopted by the UN General Assembly in 1989, similarly establishes several criteria for identifying mercenaries. Unlike Article 47, however, it does not require that a mercenary take direct part in hostilities.¹⁶ A similar, though less detailed, definition can be found in the 1977 Organization of the African Unity (OAU) Convention for the Elimination of Mercenaries in Africa.¹⁷ One of the main—and most contentious—issues with terminology is the confusion between private military companies and mercenaries.

Private military companies

Although the term PMC lacks a universal or legal definition, Finabel (a recognized European center that promotes the cooperation and interoperability of armies in Europe) defines them as “corporations that carry out military and security-related tasks in conflict and fragile contexts.”¹⁸ Carlos Ortiz further defines PMCs as “legally established international firms offering services that involve the potential to exercise force in a systematic way and by military or paramilitary means, as well as the enhancement, the transfer, the facilitation, the deterrence, or the defusing of this potential, or the knowledge required to implement this force, to clients.”¹⁹ PMCs can serve a wide range of functions, including participating directly in military operations, maintaining and operating weapons systems, facilitating hostage negotiations, demining, and providing training for local forces and security personnel.²⁰ International PMCs are often legally established multinational entities that are frequently led by (often well-compensated) former high-ranking military officers.²¹ At the time of this writing, PMCs are contracted by states with a significant international military presence, such as the United States, United Kingdom, Turkey, the United Arab Emirates, Russia, and China, as well as by states such as CAR, Mozambique, Libya, and Syria.

Private security companies

The International Code of Conduct Association—a multi-stakeholder initiative formed in 2013 to ensure that providers of private security services respect human rights and humanitarian law—defines PSCs as “entities whose business activities include the provision of security services either on its own behalf or on behalf of another, irrespective of how such Company describes itself.”²² PSCs normally do not engage in any kinetic forms of warfare, and their typical services consist of non-offensive operations such as the armed protection of persons and of buildings/infrastructure, training security forces, and fulfilling police functions.²³ In some countries, including in the US and UK, PSCs are also used to guard prisons.²⁴ In a variety of complex environments, PSCs have also been delegated to manage detention centers for migrants.²⁵ PSCs’ key clients include states and private companies from a variety of sectors (such as extractive industries, hotels, and tourism), as well as UN bodies, international organizations, and INGOs operating in fragile and conflict-affected settings.

Private military and security companies

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 (Montreux Document) collapses PMCs and PSCs into a single term that covers the range of “private business entities that provide military and/or security services, irrespective of how they describe themselves.”²⁶ It goes on to note, “Their personnel are persons employed by, through direct hire or under a contract with, a PMSC, including its employees and managers.”²⁷ As such, both PMCs and PSCs can fall under the category of PMSC. Consequently, the functions described by the term may refer to any number of security and military services, including protection of persons and buildings/infrastructure, maintenance and operation of weapons systems, guarding prisons, intelligence gathering, hostage negotiations, and advising or training local forces and security personnel. Their main clients are states, private companies (especially in the extractive industry), and IOs and INGOs operating in conflict settings.

PRIVATE MILITARY COMPANIES AND INTERNATIONAL LAW

For the purposes of this brief, which is focused on the impact that using PMCs can have on the protection of civilians in countries affected by armed conflict, the key elements of the relevant legal architecture are:

- elements that define the obligations of individual contractors toward civilians;
- elements that speak to the obligations of states that might contract or be home to PMCs to respect and ensure their agents' compliance with international humanitarian law (IHL) and international human rights law (IHRL).²⁸

Formally assessing a state's specific responsibilities under international law may depend on several factors, including:

1. Whether the state directly contracts the private company ("contracting states"), is a state where the company operates or performs its services ("territorial states"), or is a state where the company is registered or incorporated ("home state");²⁹
2. Whether the contractors are considered civilians or combatants, an analysis of which may include whether or not they are formally members of the armed forces and whether or not they are directly participating in hostilities;
3. Whether or not there is a situation of armed conflict;
4. The degree of control exercised by the state over the conduct of the company or contractor.

In general, a state cannot distance itself from its obligations under international law simply by outsourcing its combat functions to private companies, nor can it shed state responsibility when laws are violated by private agents acting under its authority.³⁰ The International Law Commission's Draft Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA), which many states view as a source or reflection of customary international law,³¹ clarifies that when contractors are "empowered by the law of that State to exercise elements of the governmental authority," their conduct "shall be considered an act of the State under international law, provided the person or entity is acting in that capacity in the particular instance."³² In addition, it states that the conduct of private contractors "shall be considered an act of a State under international law" if the contractor is "acting on the instructions of, or under the direction or control of" a state.³³

As such, with respect to IHL:

- States retain their obligations under IHL, such as ensuring respect for IHL (Geneva Conventions, Common Article I) by taking steps to prevent IHL violations. They are also responsible for limiting the occurrence of violations committed by private contractors through regulations and sanctions.³⁴
- In an armed conflict, the participation of contractors in hostilities is subject to the obligations, restrictions, and rights contained in IHL.
- States are obligated to investigate IHL violations in order to repress grave breaches of the Geneva Conventions—i.e., employ all means, up to prosecutions, for violations that involve criminal responsibility. They are further obligated to suppress acts contrary to the provisions of the Geneva Conventions and apply all measures that can limit and prevent the occurrence of less severe violations that do not entail individual criminal responsibility.³⁵

Meanwhile, in accordance with international human rights law:

- Contracting states that use PMCs have a “negative” obligation to refrain from committing violations of human rights, including violations by private contractors that can be imputed to the state.³⁶
- Territorial states also have a positive obligation to take measures to prevent, investigate, and punish violations committed by private persons or entities operating in their territory.³⁷
- All states are required to adopt legislative, judicial, regulatory, administrative, or other appropriate measures in order to fulfil their international human rights law obligations.
- All states have a duty to provide accessible and effective remedy for violations, including prompt, thorough, and effective investigations as well as reparation to those whose rights have been violated.

Private companies who commit serious violations may be held criminally liable either in domestic courts, international tribunals, or in courts that exercise extraterritorial jurisdiction over certain violations of international law.

To fully implement international law, states may enact domestic laws to regulate the conduct of PMCs operating within their borders, regulate the conduct of contractors accompanying their forces, and regulate the export of contracting services abroad when companies are incorporated in their territory. Domestic regulation is a way of closing the “responsibility gap” that can emerge from competing views regarding the responsibilities of contracting, territorial, and home states (see Key Issue 5 in the Key Issues section of this brief).

Following several notorious incidents in Iraq, the international community came together to clarify and simplify the legal obligations of states using PMSCs (bundling PSCs and PMCs into the larger PMSC label) and compile a set of best practices, standards, and guidelines for recruiting, training, vetting, and operating PMSCs. The resulting documents—the Montreux Document and the International Code of Conduct for Private Security Service Providers (ICoC)—were created in 2008 and 2010, respectively. The Montreux Document, now supported by 58 UN member states, promotes best practices for PMSCs.³⁸ The ICoC articulates responsibilities of PSCs under international human rights and humanitarian law to ensure the responsible provision of private security services, particularly in complex environments.³⁹ With a narrower focus than that of the Montreux Document, the ICoC applies only to PSCs rather than to all PMSCs.

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THE MONTREUX DOCUMENT

Finalized in 2008 after over two years of consultations, 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” reaffirms the existing obligations of states under international law relating to the activities of PMSCs. This non-binding document does not generate any legal obligations for signatory states, but it does reaffirm the existing obligations of states under international law to adequately regulate PMSCs in situations of armed conflicts, and it offers best practices and recommendations on how to use and engage PMSCs in times of armed conflict. These principles can also be applied in non-armed conflict settings, including settings that are sensitive, volatile, or unsafe.

Part One of the Montreux Document recalls the pertinent legal obligations of states regarding PMSCs, and Part Two brings together good practices that aim to provide guidance and assistance to states in regulating PMSCs. Good practices include identifying the services that may or may not be contracted out to PMSCs, requiring appropriate training, establishing terms for granting licenses, and adopting measures to improve supervision, transparency, and accountability of PMSCs.

PRIVATE MILITARY COMPANIES AND CIVILIAN HARM IN CONTEMPORARY CONFLICT

The history of war in the late 20th and early 21st centuries would be incomplete without reference to the growing prominence—and prevalence—of private military contractors in conflict.

In the period immediately following the Cold War, states increasingly sought the services of PMCs to augment their own capacity to compete with a range of armed challengers for territory, power, and state resources through force of arms.⁴⁰ The operations of PMCs during that period were closely associated with concerns about human rights abuses, civilian harm, corruption, and, in one case, the attempted overthrow of a government.⁴¹ Human Rights Watch called attention to the role of private foreign “security specialists” from companies such as Executive Outcomes in the commission of human rights and IHL violations in Angola between 1992 and 1995.⁴² The UN reported on violations of human rights and violations of an arms embargo in Sierra Leone by Sandline International in 1998.⁴³ In the early 2000s, PMCs gained even greater notoriety when efforts to stabilize Iraq with the aid of under-regulated private entities—as many as 177 in 2006⁴⁴—resulted in calamities such as the murder of seventeen Iraqi civilians at the hands of contractors from Blackwater, a US firm.⁴⁵ These abuses are often cited for having motivated a new global movement among governments, civil society, and the private sector to better monitor and regulate the conduct of private security and military contractors in war.⁴⁶

A broad variety of private military companies have surfaced across the full range of contemporary conflict-affected areas, and with them, a new wave of concern about civilian harm and human rights. Limitations in data availability and granularity make it challenging to establish clear, unambiguous links between patterns of harm and PMC activity in each of the above cases. However, research conducted for this brief, as well as conclusions contained in other sources, suggest that civilians in conflict areas where PMSCs are operating can face significant risk.



Moreover, the presence of PMCs may also correspond with attacks on humanitarian workers and interruptions to humanitarian access.

Circumstances in countries experiencing conflict today—such as Central African Republic, Mozambique, and Libya—illustrate the challenges in preventing and addressing international humanitarian law and human rights abuses caused or abetted by PMCs.

Central African Republic

In 2022, following eight years of persistent instability and conflict in the **Central African Republic**—including atrocities committed by Séléka, ex-Séléka, and Antibalaka groups—six armed opposition groups formed a new alliance ahead of elections. Called the Coalition of Patriots for Change (CPC), this alliance launched an offensive against the central government.⁴⁷ The CPC quickly took control of major towns and large areas of the country and eventually reached the outskirts of the capital, Bangui. In response, the CAR government sought support from its bilateral allies, including the Russian Federation and Rwanda, both of which provided bilateral security assistance.⁴⁸ With international military reinforcements, the government of CAR defended Bangui and mounted a counteroffensive. MINUSCA also assisted in defending the capital.



Russian instructors have been deployed in CAR as part of Russia's bilateral support to the government.⁴⁹ While official statements limit the extent of bilateral assistance to instructors, UN reports indicate that Russian PMC staff have also been present in the country. According to UN experts, Russian PMSCs are also deployed in the country.

In March of 2021, a group of individuals comprised of UN working groups and UN experts “expressed alarm at the increased recruitment and use of foreign PMSCs by the government of the Central African Republic, as well as the close contact these companies and their personnel have with UN peacekeepers.”⁵⁰ The UN experts specifically referenced the “interconnected roles” of Wagner Group and of Lobaye Invest SARLU and its security subsidiary, Sewa Security. A report released subsequently by MINUSCA and the UN Office of the High Commissioner of Human Rights (UN OHCHR) also reported that Russian instructors and PMSC employees had taken part in combat operations alongside the Central African armed forces (FACA) and internal security forces (FSI) against the CPC.⁵¹ The report documented IHL and IHRL violations and abuses, “including cases of conflict-related sexual violence and serious violations of the rights of the child” by armed groups affiliated with the CPC, FACA, FSI, and other security personnel, including Russian instructors and employees of private security companies operating in CAR.⁵² The report noted, however, that it wasn’t possible to distinguish between Russian instructors and PMSC employees.⁵³ As such, the report does not attribute IHL or IHRL violations directly to either the Russian instructors or the PMSCs in CAR.

UN working groups and UN experts expressed alarm at the increased recruitment and use of foreign PMSCs by the government of the Central African Republic.



The armed conflict in the Central African Republic has displaced several thousands of civilians since 2014. Most families have been displaced several times in search of safety.

Similarly, the group of individuals comprised of UN working groups and UN experts reported that they “have received, and continue to receive, reports of serious violations of human rights and international humanitarian law, attributable to private soldiers operating jointly with the Central African armed forces (FACA) and, in some cases, with United Nations peacekeeping forces. These violations include reports of mass summary executions, arbitrary detentions, torture during interrogation, enforced disappearances, forced displacement of the civilian population, indiscriminate targeting of civilian installations, violations of the right to health and growing attacks on humanitarian actors.”⁵⁴ Again, however, this report noted that it is not possible to distinguish between Russian instructors PMC staff.⁵⁵

In 2021, the Central African government set up an investigation commission to check the allegations of IHL and IHRL violations committed by national security forces, FACA, and Russian actors, including PMSCs.⁵⁶ According to Amnesty International, “In October the minister of justice presented the results of this investigation, in which the authorities acknowledged certain allegations against national forces and its allies, and the majority of allegations made against armed groups. The report was not made public and the next steps were not known.”⁵⁷ Despite some positive steps, it will likely be difficult for any actor to monitor and investigate past and potential future harm to civilians that may be the result of PMSCs in CAR. Threats to civilians, journalists, human rights defenders, and other non-governmental actors advocating for greater transparency of these entities’ activities remain a present danger.



Credit: Nicole Tung/OM.

Libyan nationals and migrants from third countries have suffered from over a decade of armed violence in Libya. Many have chosen to leave the country.

Libya

Libya has faced over a decade of violence and institutional instability since the assassination of leader Muammar al-Qaddafi in October 2011.⁵⁸ Since 2020, in between stalled efforts to establish a national unity government, a coalition of armed groups supporting the Tripoli-based Government of National Accord and backed by Jordan, Qatar, and Turkey have squared off against a coalition of armed groups in eastern Libya led by Field Marshal Khalifa Haftar and supported by the UAE, Egypt, and Russia.⁵⁹ Armed groups from both sides have reportedly been supported by foreign fighters and PMCs, including the Wagner Group, throughout the conflict.



According to reports from the Panel of Experts on Libya and interviews conducted for this brief with investigative journalists and staff of international organizations, the most common forms of physical harm caused to civilians in Libya that are attributable to PMC activity are sexual assault and abuse, injury or death caused by IEDs and booby traps, and death as collateral damage in the context of in-air or land operations in urban or village communities.⁶⁰ Civilians and civilian infrastructure are also at risk of targeted attacks. For example, the Independent

Fact-Finding Mission on Libya, established by the Human Rights Council in 2020, identified violations committed by the Wagner Group, including killing four civilians and placing landmines in civilian areas that were not removed following hostilities. A US AFRICOM report about Wagner Group staff also attributed harm from “laid minefields and improvised explosive devices amid civilian areas extending from Tripoli to the LNA frontline in the coastal city of Sirte.”⁶¹

The presence of foreign fighters, including PMCs, on both sides of the conflict in Libya has also contributed to an environment of public fear brought on by threats and intimidation. According to a local CSO director interviewed for this brief, “the daily danger for civilians is to be caught in the lines of fire or for women and girls to walk alone and be attacked... Russian mercenaries and other troops do not differentiate civilians from other combatants, especially in urban settings.” Another interviewee complained: “If you own a store, the Russian soldiers come and help themselves without paying, and threatening the people in the store.”⁶²

The most common forms of physical harm caused to civilians in Libya that are attributable to PMC activity are sexual assault and abuse, injury or death caused by IEDs and booby traps, and death.

Mozambique

Since 2017, Mozambique has been seized by a wave of violence and insurgency in the northern region of Cabo Delgado, which has the second largest natural gas field in Africa.⁶³ Emerging from a crisis in local governance and instability fueled by ethnic discrimination, corruption, and poverty, local armed groups close to the Islamic State (IS)—such as Ahlu Sunnah Wa-Jamaa, locally known as al Shabab—have begun to vie for power and territory throughout the region through the use of violence. Armed groups have forced over 700,000 people to flee their homes and have taken over several district towns in the region of Cabo Delgado, which has become the epicenter of a humanitarian and security crisis that risks spilling over to other parts of the country.⁶⁴ In 2019, with limited security and defense capabilities of its own, the government of Mozambique turned to PMCs such as the Wagner Group to aid their response. The Wagner Group was tasked with using military power to intervene in Cabo Delgado, but faced extreme operational challenges. It lost seven of its members and ultimately pulled out of the region in early 2020.⁶⁵



In April 2020, the government of Mozambique recruited Dyck Advisory Group (DAG)—a South African PMC—to provide air support to national security and defense forces. In 2021, allegations surfaced in a report from Amnesty International that DAG had killed an unknown number of civilians by dropping hand grenades and firing machine guns from helicopters at both civilians and civilian infrastructure, including hospitals, schools, and homes in villages held by al Shahab.⁶⁶ The exact number of casualties caused by these DAG tactics is unknown. However, as a result, the Mozambican government did not renew DAG’s contract in March 2021 and investigations are reportedly underway.⁶⁷ Following DAG’s withdrawal in late 2021, the Paramount Group became the

main PMC partner of the Government of Mozambique. Notably, Paramount Group is only supposed to supply helicopters, armored cars, and training; according to CIVIC interviews, their contract does not include combat operations.⁶⁸

In Mozambique, civilians are frequently exposed to significant levels of harm. Attacks from al Shabab continue to trigger mass displacement, which creates challenges such as access to food, healthcare, education, electricity, and housing.⁶⁹ Mass displacement also increases vulnerability to violence perpetrated by armed actors, including insurgent groups, local security forces fighting alongside PMCs, and other non-state armed actors.⁷⁰ International pressure spotlighting the deteriorating environment, combined with the Mozambican government's failed attempts to tame the al Shabab attacks in Cabo Delgado, triggered the deployment of Rwandan troops in July 2021 as part of efforts by the Southern African Development Community (SADC) to reduce the influence of IS and associated groups.⁷¹

CIVILIAN HARM, PMCS, ATTRIBUTION, AND ACCOUNTABILITY: KEY ISSUES

As this report establishes, the use of PMCs can exacerbate risks to civilians in conflict. Yet attempts to understand root causes of harm within PMCs, efforts to explore and analyze patterns of harm, the ability to assign responsibility, and the desire to ensure accountability for perpetrators are all hampered by a lack of clarity in PMC use—specifically, by gaps in regulatory systems, limited availability of data, and an overall environment of fear and constraint.

KEY ISSUE 1

States increasingly using PMCs to conceal involvement

Deliberate efforts to conceal or partially conceal the role of states in sponsoring PMCs have presented significant challenges for attributing harm in conflict to specific governments and their agents. States such as Russia, the US, the UK, and China may employ PMCs covertly (secretly and without acknowledgement of the state's role) as a means of influencing adversary behavior or, according to Candace Rondeaux, “to communicate resolve to competitors, to lower costs, manage escalation risks, to delimit the bounds of conflict.”⁷² “Plausible deniability” not only distances a state from the political effects of their support, it provides states with the ability to evade responsibility for or knowledge of harm caused by private actors.⁷³

Russia, in particular, has been augmenting its influence through the non-acknowledged deployment of PMCs such as the Wagner Group to wage proxy warfare and expand its reach in strategic countries like Sudan, Syria, and CAR.⁷⁴ The Wagner Group does not “exist,” per se—instead operating through locally established entities—but multiple sources (including a report from US-based think tank Center for Strategic and International Studies) underscores its close links with the Kremlin, the Russian Ministry of Defense (especially the Main Intelligence Directorate), the Russian Foreign Intelligence Service (SVR), and the Russian Federal Security Service (FSB).⁷⁵ Other well-known Russian PMCs include Moran Security Group, Slavonic Corps, Vega, and Rossiskie System Bezopasnosti Group.

KEY ISSUE 2

Lack of specific attribution of harm in monitoring and documentation efforts

In each of the contexts examined for this brief, INGO reporting and human rights monitoring mechanisms commonly include PMCs among actors responsible for harm in their reports and statements. However, they rarely attribute specific cases or trends of harm to PMCs—although most reporting does not exculpate them from involvement, either.

Evaluating the specific role of PMCs in civilian harm in many contexts is made more difficult by the lack of disaggregated data, which often reports incidents by category—such as attributing incidents to state or non-state groups—rather than by specific actors. For example, UNSMIL's civilian casualty data does not distinguish between the troops of the Government of National Accord (GNA), those of the Libyan National Army (LNA), and the foreign fighters or PMCs supporting them, even though PMCs represent the largest percentage of combatants in Libya. Similarly, as noted earlier in this brief, a report released by MINUSCA and OHCHR reported that Russian instructors as well as PMSC employees had taken part in combat operations alongside the Central African armed forces

(FACA) and internal security forces (FSI) against the CPC in Central African Republic. This report documented IHL and IHRL violations and abuses, but it was not in a capacity to distinguish between Russian instructors and PMSC employees.⁷⁶

Interviewees for this brief stated that, in many contexts, human rights monitoring does not specifically consider the potential role played by PMCs in harm at all.⁷⁷ In some cases, human rights reporting makes no specific mention of PMCs, even when they are active in operations that result in allegations of human rights abuses or civilian harm. Under these circumstances, it can be difficult to ascertain if the PMCs had no role in the harm or if they were included within broader reporting categories, such as “security forces.” For example, Human Rights Watch called attention to harm (including unlawful arrests and extrajudicial killings) caused by “government forces” while fighting Islamist groups in Cabo Delgado between August and December 2018. However, it did not clarify if PMCs were included in that designation, even though PMCs were conducting or supporting operations by government forces in that region at the time.⁷⁸

KEY ISSUE 3

Threats to local human rights organizations and media

In the absence of well-established international monitoring systems, representatives of intergovernmental and non-governmental organizations often find themselves with no choice but to monitor abuses in which PMCs can be implicated. These organizations assume significant risks in doing so, including reprisals against personnel and targeted disinformation campaigns. While these risks can affect international and local NGOs alike, local actors tend to face the most significant consequences.

Representatives of civil society and international organizations interviewed for this brief in CAR, Libya, and Mozambique raised fears and challenges associated with maintaining access and protection for staff and local communities while also reporting violations or incidents of civilian harm by PMCs. Interviewees only agreed to speak with us under strict conditions of anonymity, with their names, titles, and affiliations kept confidential. In addition, while some had initially agreed to share raw data, videos, and pictures related to specific incidents, none of them did in the end.

Such concerns are arguably linked to the shrinking space for civil society and the restrictions that particularly affect CSOs in many conflict-affected areas where PMCs operate, including those examined for this brief. Where conflict rages, civil society often faces burdensome legal, regulatory, and financial restrictions, especially for groups that are perceived as critical of the government.⁷⁹ The lack of a safe and secure environment to operate in particularly affects civil society’s ability to advocate for better protection of civilians in conflict-affected states—and without protection and freedom to operate, CSOs might be more vulnerable and less able to monitor and record abuses, including those where PMCs are implicated.

KEY ISSUE 4

Definitional challenges and their implications for legal and regulatory regime applicability

The world of PMSCs appears to be defined with excessive rigidity in some areas and with insufficient clarity in others, resulting in less transparency and label-shopping depending on reputational and other considerations.

On one hand, the term “mercenary” provides a compelling example of how terminology can render efforts to regulate private contractors less meaningful in practice. The criteria required to meet the definition of “mercenary” in the Geneva Conventions or the International Convention against the Recruitment, Use, Financing and Training of Mercenaries (ICRFTM)—chief among them the ability to demonstrate a primary motivation of private gain—are notoriously difficult to satisfy, rendering a ban on the use of mercenaries close to meaningless in practice. On the other hand, using the correct label for the many kinds of private contractors in conflict-affected settings may help ensure that the appropriate normative and regulatory regime is applied to their conduct. In order to reduce the possibility of companies evading controls placed on them, a certain degree of precision and consistency is therefore warranted when using specific terms like “private security company” versus “private military company.”

Blurred terminology can also help companies avoid reputational issues: private companies may be able to evade the reputational stigma and regulatory regimes narrowly prescribed to either “private military companies” or “private security companies.” PSCs, PMCs, and PMSCs rarely refer to themselves using any of these labels, despite providing the same services. For example, Patriot Group prefers to describe itself as a “global mission support service provider [...] providing services to select clients within the intelligence, defense, and private sectors.”⁸⁰ Another company, Amentum, describes itself as “a premier global government and private-sector partner whose experience, passion, and purpose drive mission success.”⁸¹

Much like “mercenaries” before them, the actions of PMCs have led to negative public perceptions over the years, and some companies prefer to define themselves as PSCs or PMSCs rather than PMCs. PSCs may be more positively viewed, as they are not involved in the direct combat operations that tend to create higher risks for civilians. However, instances of a lack of transparency surrounding their activities, combined with the fact that some companies operate in a hybrid manner by offering both PMC- and PSC-type services, contribute to confusion and gaps in civilian protection.⁸²

KEY ISSUE 5

National legislation

National legislation provides a promising means of closing the “responsibility gap” for the conduct of PMCs among contracting, territorial, and home states. Depending on their role in the PMC/PSC ecosystem, countries—especially home or territorial states—can increase oversight and accountability as well as frame the conduct of PMCs and PSCs either by regulating the export of services of companies registered in their territory or by restricting and overseeing the activity of those operating within their borders (both for local and international entities).⁸³ For instance, all EU countries have national laws regulating the use of PSCs internally, although these regulations are of varying quality and have varying degrees of compliance and success. Moreover, these laws do not necessarily regulate the use of PSCs abroad.⁸⁴

National laws regulate how PSC are established, licensed, trained, recruited, and vetted, but there is usually no monitoring body that oversees their activities and services delivered abroad if they are hired internationally. Under international guidelines and best practices, including the UN Guiding Principles for Businesses and Human Rights, the “home state” is to intervene if the “host state” does not have adequate regulatory or legislative frameworks to address risks of IHL or IHRL violations and harm to civilians. However, due to the nature of the contracts and of international law, home states cannot intervene in another country’s affairs unless requested by the host state for support.

The Swiss Confederation, for example, regulates the activity of Swiss-registered PMSCs through the 2013 Federal Act on Private Security Services Provided Abroad, which regulates and strengthens the Swiss oversight mechanisms related to the actions and scope of operations of Swiss PSCs nationally and abroad. The act intends to guarantee compliance with international law and applies to individuals and companies from Switzerland who provide private security services abroad or who provide services in connection with private security services provided abroad. It also covers companies based in Switzerland that exercise control over security companies operating abroad. It prohibits by law certain activities connected with direct participation in hostilities, as well as IHL and IHRL violations, and it provides for a list of compliance requirements that can be issued “ad hoc” by the competent authority in specific cases.⁸⁵

Meanwhile, once a case study for impunity relating to the conduct of PMCs, Iraq now offers another compelling example of the way that national legislation can be helpful in regulating the conduct of contractors—local and international—operating in the country’s territory (see Text Box: A History of PSC Regulation in Iraq).

Put together, the Swiss and Iraqi regulatory regimes offer a way forward for the international community: ensuring accountability and bringing forth better practices in the conduct of PMCs, achieved through regulation by home states (similar solutions could be considered by contracting states) and complemented by requirements and monitoring set up by receiving states.

A HISTORY OF PSC REGULATION IN IRAQ

Starting in June 2004, both national and international PSCs operating in Iraq were required to register with the Ministry of Interior in accordance with the Coalition Provisional Authority (CPA) Memorandum Number 17, which provides guidance on registration, licensing, and regulation of PSCs.⁸⁶ At the time, these regulations were fairly loose, and US and UK PSCs and PMCSs could go in and out of Iraq very easily. Between 2005 and 2008, incidents of human rights violations (such as extrajudicial killings, sexual abuse, illegal detention, and torture) were documented involving 17 out of the 89 international PSCs and PMSCs operating in Iraq, as well as a handful of national PSCs.⁸⁷

According to interviews with analysts and staff from PSCs operating in Iraq, the 2007 Blackwater incident precipitated major changes in the PSCs’ legal and operating environment.⁸⁸ One PSC interviewee told CIVIC, “It is very difficult for foreign PSCs to operate and remain cost competitive, as it became very expensive to obtain a license to register the company as a foreign entity.” In December 2007, 32 PSCs with 10,000 employees worked for the US Department of Defense (DoD) in Iraq; a year later, this number dropped to 18 PSCs employing 7,000 people.⁸⁹ This shift was a result of the reinforcement of Iraqi legislation that restricted international PSC access and operations in Iraq. Additionally, the Iraq-US Status of Force Agreement signed in 2009 subjected US contractors to Iraqi laws, which had not previously been the case. This included, for example, the CPA Memorandum Number 17, which was valid until a new law was proposed in 2017 with stricter regulations for registering as a PSC or foreign company.⁹⁰ This agreement opened the door to increased control over the presence and conduct of PSCs in Iraq.

While national legislation could help bring clarity to laws governing PMC use and create oversight and accountability systems, too few states have adopted effective legislative or regulatory regimes at this point.⁹¹ With PMCs providing a measure of deniability in the face of opportunities to influence the course of events in conflict states, it is not clear that many influential states would be prepared to help close the loopholes; without wide-ranging progress, commonly seen loopholes will continue to decrease the effectiveness of the system overall.

KEY ISSUE 6

Lack of redress and accountability

The cumulative effect of most of the aforementioned issues is a persistent accountability gap for civilians harmed by the activities of PMCs. As it stands, in most conflict-affected environments, civilians who have been harmed or suffered the loss of loved ones have few—if any—channels to avail themselves of effective claims systems for accountability or redress. In contexts where PMSCs are active, civilians and representatives of civil society face even greater obstacles to accountability for harm as a result of the excessive secrecy, information disadvantage (in large part represented by the inability to identify the affiliation of perpetrators), and significant personal risks that tend to accompany the presence of private military contractors.

RECOMMENDATIONS

To States:

As clients, regulators, and armed actors, all national governments—whether host states, 3rd-party supporting states, or home states to PMCs—play an essential role in fostering higher national and international standards for the use and operation of PMCs. To that end, they should:

- Sign the Montreux Document on private military and security companies. Adhere to and promote its principles and best practices, which demand transparency in the recruitment process of private contractors and the monitoring of their activities, especially in conflict-affected countries.
- Promote protection standards on the use of PMCs that are in line with IHL, IHRL, Article 47 of Additional Protocol I of the Geneva Conventions, and the International Convention against the Recruitment, Use, Financing and Training of Mercenaries (ICRFTM),⁹² including through strengthened national-level legal frameworks that would regulate the use of PMCs, offer remedy mechanisms to victims, and impose greater oversight and accountability on PMCs.
- Acknowledge that PMCs are “state agents” when performing state duties; incorporate applicable legal obligations directly into the contracts signed with the PMCs and into the licensing or regulatory scheme under which PMCs are incorporated.
- Support multilateral initiatives that aim to promote higher standards in the use of PMCs, including by contributing to the “Open-ended intergovernmental working group on PMSCs” established by the United Nations (UN) Human Rights Council (HRC) in 2010—including encouraging progress on the “Revised Zero Draft Instrument on an International Regulatory Framework on the Regulation, Monitoring of and Oversight over the activities of Private Military and Security Companies” (shared in April 2022)⁹³—and by contributing to the annual meetings of the UN Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination (UN Working Group on the Use of Mercenaries).
- Join the International Code of Conduct Association for Private Security Providers (ICoCA) and adhere to the International Code of Conduct for Private Security Service Providers.
- Ensure that national armed forces upgrade their frameworks—doctrine, policies, and operational guidance, as well as tactics, techniques, and procedures (TTPs)—so that military operations and activities can better identify and address threats to civilians arising from the use of PMCs in their operational areas. Ensure that internal civilian harm-tracking efforts include harm perpetrated by PMCs and offer support to fill possible POC gaps coming out of the tracking process
- Whenever private contractors are being hired by national armed forces to support security force assistance activities (including training, logistical support, and intelligence), ensure that best practices with respect to vetting, transparency, and training also apply to such contractors. In addition, ensure that the contracted companies abide by IHL and IHRL, and that they are provided with appropriate guidance on incorporating POC, including civilian harm mitigation (CHM),⁹⁴ into military assistance activities.
- Support the development of capabilities, access, and safety of international and regional intergovernmental organizations and entities as well as non-governmental actors that have the mission and mandate to increase monitoring of IHL and IHRL violations and other forms of harm to civilians in contexts where PMCs are operating.

- Take active steps to reduce the risk that international and regional intergovernmental entities and non-governmental actors face when engaging in IHL and IHRL monitoring and reporting in contexts where PMSCs are operating. For example, donors that want to support non-governmental actors undertaking IHL and IHRL monitoring and reporting activities in contexts where PMCs are operating should be aware of the acute risks—including the risk of reprisals and disinformation campaigns—faced by these independent actors. They should adopt a “do no harm” policy and practices with respect to consulting or supporting these actors. Donors can consult an abundance of available guidance for providing support responsibly to these actors—including through support for security infrastructure—in restrictive environments.

To Private Military Contractors:

Private companies are encouraged to adapt their internal frameworks, policies, and practices in ways that will prevent and mitigate potential civilian harm arising from their presence, activities, and operations in conflict countries. They should:

- Commit to and take appropriate measures to operate in accordance with applicable laws and regulations, in accordance with relevant corporate standards of business conduct and in compliance with IHL, IHRL, and domestic laws.
- Adopt and implement basic safeguards to prevent and mitigate the risk of civilian harm arising from their presence and activities in conflict countries, in accordance with the Montreux Document. This includes adopting and implementing appropriate policies and oversight mechanisms, as well as thorough recruitment, vetting, and training mechanisms. Trainings should include specific modules on IHL and IHRL compliance, including measures to operationalize these legal norms (e.g., via different CHM practices).
- Monitor and track civilian harm incidents arising from presence and activities to exercise heightened IHL and IHRL due diligence. Companies should establish internal inquiry systems for incidents such as civilian casualties and damage to civilian infrastructure, seeking to establish the facts and provide remedies to victims.
- Proactively establish internal grievance mechanisms to prevent, mitigate, and respond to potential incidents against vulnerable populations, especially women and girls, and develop policies and procedures to prevent sexual exploitation and abuse (SEA) regardless of whether the governments or licensing requirements require it.

To the United Nations and Other Intergovernmental Bodies:

Gaps in the international regulatory framework, as well as challenges to monitoring IHL and IHRL violations attributed to PMCs, call for a strengthened role by the UN and other appropriate international and regional intergovernmental bodies to increase accountability and transparency on incidents of civilian harm and violations arising from the use of PMCs in conflict countries. In particular:

- The UN Working Group on the Use of Mercenaries should continue to monitor the activities of private contractors and their impact on civilians in conflict.
- When operating in the same context as PMCs, intergovernmental bodies and entities such as UN peace operations and the Office of the High Commissioner for Human Rights (OHCHR) should monitor and publish disaggregated data on harm to civilians resulting from PMC presence, activities, and operations, including IHL or IHRL violations. When harm includes IHRL violations, these UN entities should collaborate with national and regional human rights commissions.

- Intergovernmental organizations and entities (including the UN) should take steps to prevent or mitigate harm that could result from UN support provided to national security forces when those national forces are operating alongside or receiving support from PMCs whose presence, activities, or operations harm civilians. This is particularly important in contexts where national security forces are operating alongside or receiving support from PMCs that are committing violations of international humanitarian, human rights, and refugee law. In these contexts, UN entities should strengthen their implementation of the UN-wide Human Rights Due Diligence Policy (HRDDP)⁹⁵ and take relationships between the national security forces and the PMCs into account when determining whether and how to provide support to the national security forces.

To International Non-Governmental Organizations (INGOs) and Humanitarian Organizations:

INGOs that have the mandate and capabilities to monitor and report on IHL and IHRL violations and abuses, on other forms of harm to civilians, or on diverse armed actors in conflict settings, can play a critical role in documenting incidents of civilian harm attributed to PMCs, including through field research. Other actors, including humanitarian agencies, may be providing humanitarian assistance and/or protection of civilians programming in contexts where PMCs are deployed. These contexts have proven to be increasingly dangerous over the past few years, raising strong concerns in regards to staff safety and data security. These INGOs and humanitarian organizations are encouraged to:

- For organizations operating in contexts where PMCs are deployed: develop training for field-based staff on how to engage with private contractors. Training modules should include awareness-raising, mediation, negotiation, and conflict resolution, as well as training for field researchers on how to conduct interviews in a conflict-sensitive manner.
- For organizations gathering, storing, and analyzing data that could put their staff or other stakeholders at risk (e.g., gathering testimonies regarding IHL and/or IHRL violations): reinforce or create security protocols for the use of technical devices and data management. Such protocols may include using highly encrypted emails, messenger and cloud services, and encrypted hard drives rather than saving sensitive documents on computers.
- For organizations operating in contexts where PMCs are deployed: adopt strict security protocols for staff physical security, including adopting “low-profile” measures and other journey-management procedures.
- For organizations with the mandates and capabilities to do so: develop and integrate indicators on the impact of the use of PMCs on conflict-affected populations within baseline studies, conflict sensitivity strategies, and other related activities that contribute to monitoring, documenting, preventing, mitigating, or responding to incidents of civilian harm, including IHL and IHRL violations.
- Apply the “do no harm” principle internally and externally, e.g., when looking to use local partners. Acknowledge and address the security challenges resulting from a transfer of risk to local partners. Excessive safety and security risks should not be transferred to local partners.
- For organizations with appropriate mandates and capabilities: strive to contribute to strong evidence on the impact of the use of PMCs on conflict-affected populations, including through using a variety of sources from social media, satellite imagery, etc.

To Local Civil Society Organizations:

Local civil society organizations may have the mandate or otherwise be in a position to monitor and report on IHL and IHRL abuses and violations or other incidents of civilian harm happening in specific contexts where PMCs are operating. However, they are also particularly exposed to potential retaliation or security threats if they are perceived to be or are in fact undertaking these activities. Due to their size and/or resources, they may have weaker security management capabilities when compared to INGOs. It is of paramount importance that local civil society organizations that choose to undertake these monitoring and reporting activities have the capabilities to do so, including the ability to mitigate risks to their staff and stakeholders. To achieve this, CSOs that are or wish to undertake these activities could consider the following:

- Monitor incidents of civilian harm allegedly attributed to PMCs while simultaneously adopting a “do no harm” approach in relation to preserving the security of staff members.
- Liaise with local/international CSOs, local coalitions, and other monitoring agencies to strengthen monitoring on incidents of civilian harm allegedly attributed to PMCs, with a view toward creating a stronger body of evidence on incidents of civilian harm by PMCs.
- Engage in evidence-based advocacy with governments in order to promote stronger regulatory and policy frameworks on the use of PMCs in conflict countries.
- Train staff members on developing and adopting security, evacuation, and social research protocols for individual protection in support of the collection of data on threats to civilians caused by PMCs.
- Reinforce or create internet security protocols similar to those recommended for INGOs and international humanitarian agencies above, noting that there may be limitations to the availability of internet cloud services in some countries. Local CSO staff are strongly advised to not speak in public about any of the data collected on PMCs or foreign fighters, as information can leak and put the organization and its members in danger. Alternatively, they may consider funneling the information through relevant INGOs or UN entities.
- Develop internal security reporting mechanisms in case CSO employees need to report any security incidents; adapt procedures based on prevalent risks.

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