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### Right of peoples to self-determination

## Use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination

### Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly, in accordance with Assembly resolution [73/159](#) and Human Rights Council resolution [33/4](#), the report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination.

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\* [A/74/150](#).



## **Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination: the gendered human rights impacts of private military and security companies**

### *Summary*

In the present report, the Working Group shines a gender-sensitive light on private military and security companies, to unpack associated gendered human rights risks and impacts and identify key gender considerations for those affected, particularly employees of such companies and communities in places where they operate. The Working Group examines the gendered impacts of the privatization of security, and highlights allegations of gender-based human rights abuses by personnel of private military and security companies, before turning to gender equality and gender-based discrimination inside such companies. It further outlines the obligations, responsibilities and roles of States, private military and security companies, and other relevant stakeholders such as corporate clients, civil society and multi-stakeholder initiatives.

The Working Group concludes that male domination of the industry, past major abuses of gender-based discrimination and sexual and gender-based violence, and the absence of human rights-compliant legal and regulatory frameworks should compel States, private military and security companies, clients and other stakeholders to push forward a gender-transformative agenda within the industry.

The Working Group sets out recommendations addressed to States, private military and security companies, clients of those companies and others to stimulate thinking, debate and practice around the private military and security industry in order to address critical gender-related human rights issues.

## I. Introduction

### A. Scope of the report

1. Building on its previous work regarding the inadequacy of national and international regulation of private military and security companies, and the lack of both accountability for human rights abuses committed by private military and security companies and their personnel, and effective remedies for victims, the Working Group has identified gaps in awareness and understanding about the gender dimensions and gendered human rights impacts of those companies. In the present report, the Working Group shines a gender-sensitive light on private military and security companies, to unpack associated gendered risks and impacts and identify key gender considerations for those affected, particularly employees of those companies and communities in places where they operate. The Working Group aims to create greater recognition and understanding of the differentiated impacts of the actions of private military and security companies on women, men, girls, boys and lesbian, gay, bisexual, transgender, intersex and gender non-conforming (LGBTI) persons. It further outlines the obligations, responsibilities and roles of States, private military and security companies, State and non-State clients of those companies and other relevant stakeholders, such as multi-stakeholder initiatives and civil society. The recommendations of the Working Group intend to stimulate gender-transformative thinking, debate and practice around the private military and security industry, in order to address critical gender-related human rights issues.

### B. Methodology

2. In January 2019, the Working Group called for submissions, seeking contributions from all relevant stakeholders,<sup>1</sup> and on 2 April 2019 convened an expert multi-stakeholder consultation in Geneva.<sup>2</sup> Extensive desk research and selected one-to-one interviews were also carried out.

3. During the research and consultation phase, it became increasingly evident that there is little public information on the gender dimensions of the private military and security industry. First, private military and security companies tend to maintain a level of secrecy around their operations, for security and/or commercial reasons, with limited access to internal policies and procedures. Secondly, gathering information about alleged abuses by private military and security companies is very challenging, as is documenting acts of sexual and gender-based violence generally. Thirdly, few organizations are monitoring the human rights compliance of those companies. Fourthly, in the broader context of the Guiding Principles on Business and Human Rights, which apply to private military and security companies, there has until very recently been little focus on gender issues.<sup>3</sup> The low levels of information around and lack of attention to this issue rendered impossible the provision of a complete picture of gendered aspects and impacts of the private military and security industry, and confirmed the urgent need for further research and action on this topic.

<sup>1</sup> See [www.ohchr.org/EN/Issues/Mercenaries/WGMercenaries/Pages/GenderPrivateMilitarySecurityCompanies.aspx](http://www.ohchr.org/EN/Issues/Mercenaries/WGMercenaries/Pages/GenderPrivateMilitarySecurityCompanies.aspx).

<sup>2</sup> See [www.ohchr.org/Documents/Issues/Mercenaries/WG/NoteExpertMeetingGender.pdf](http://www.ohchr.org/Documents/Issues/Mercenaries/WG/NoteExpertMeetingGender.pdf).

<sup>3</sup> A/HRC/17/31, annex.

## C. Definitions

4. This report refers to “private military and security companies”, a term defined previously by the Working Group as corporate entities providing, on a compensatory basis, military and/or security services by physical persons and/or legal entities.<sup>4</sup>

5. In using this term, the Working Group recognizes the immense diversity of entities encompassed by it, ranging from multinational companies operating transnationally to domestic firms; from a few large companies to numerous small and medium-sized enterprises, some of which may be illicit; from companies guarding private property, businesses and persons to those providing military services such as strategic planning and intelligence-gathering in conflict zones. In-house security integrated into the regular staff of a business entity or public security forces contracted under a private contract to provide security, while not stand-alone private military and security companies, may still be considered to fall under this term, given that they involve persons carrying out private military and/or security functions.

6. The Working Group found that the gendered risks and impacts presented by the activities undertaken by private military and security companies share many commonalities irrespective of size and services provided.

7. “Gender” in this report refers to socially constructed identities, attributes and roles of persons in relation to their sex and the social and cultural meanings attached to biological differences based on sex. These social constructs often result in hierarchical relationships between women, men and LGBTI persons and an unequal distribution of power and realization of rights, favouring men and affecting all members of society.<sup>5</sup> Here, the Working Group emphasizes specific human rights impacts on women caused by private military and security companies given the disproportionate and differentiated ways in which women suffer persistent structural and embedded discrimination and gender-based violence. Where information is available, the report also draws attention to other gendered constituencies and to multiple and intersecting forms of discrimination that further compound gender-based bias, such as socioeconomic status, race, age and nationality.

## II. Gender considerations related to operations of private military and security companies

### A. Gendered impacts of the privatization of security

8. The twenty-first century trend away from States’ monopoly on the use of force and towards security privatization provoked considerable reflection on its effects on the quality of security provision; oversight and accountability of private military and security companies; and the availability and accessibility of security as a public good.<sup>6</sup> Less focus has been put on the gendered effects of security privatization, and the different consequences it has for women, men, girls, boys and LGBTI persons; and even less on the ways that multiple and intersecting forms of discrimination further shape how individuals experience private security services. This is all the

<sup>4</sup> For the full definition, see [A/HRC/15/25](#), annex, art. 2.

<sup>5</sup> *Women’s Rights are Human Rights* (United Nations publication, Sales No. E.14.XIV.5), pp. 35–36.

<sup>6</sup> See P.W. Singer, *Corporate Warriors: The Rise of the Privatized Military Industry*, updated edition (Ithaca, New York, Cornell University Press, 2008); Alan Bryden and Marina Caparini, eds., *Private Actors and Security Governance*, Geneva Centre for the Democratic Control of Armed Forces (DCAF), 2006; Elke Krahmann, *States, Citizens and the Privatisation of Security* (Cambridge University Press, 2010).

more surprising given that many historic allegations of abuse by private military and security companies relate to sexual violence and human trafficking.<sup>7</sup>

9. Security privatization describes the process by which a State outsources to private actors security tasks that it is no longer able or willing to provide. Often this entails a significant shift from a situation in which the State is the main provider of security to one where formal and informal non-State security actors provide key security functions. Multiple providers conduct tasks that may have been performed previously by public security forces, as well as additional tasks that were never in the domain of State security forces.

10. This relocation of numerous security functions from States to private military and security companies results in the transfer of cultural and historical characteristics associated with heavily male-dominated State military and police institutions. This is effected by the so-called “revolving door” phenomenon whereby a significant number of personnel of such companies come from a military, police or combatant background. Traditional notions of masculinity predominate and are compounded by policies such as male-only conscription, and deeply ingrained stereotypes associated with security and protection that prevail beyond the security sector.<sup>8</sup>

11. Privatization is neither encouraged nor prohibited by international law, but the Guiding Principles recall that “States do not relinquish their international human rights law obligations when they privatize the delivery of services that may impact upon the enjoyment of human rights”.<sup>9</sup> States should thus reflect on how outsourcing to private military and security companies the core public function of providing security affects the accessibility and affordability of, and equitable access to, these services, and whether there are specific gendered impacts associated with it. Where public services have been partially or fully privatized, the State, as the primary duty bearer, must exercise due diligence by monitoring and regulating the conduct of private actors to ensure compliance with human rights standards, including requiring private military and security companies to address differentiated impacts of security privatization and mitigate negative effects on certain groups of rights holders. Ultimately, States remain accountable, nationally and internationally, for the impacts of private military and security companies on the human rights, well-being and self-determination of individuals and communities.

12. Concurrently, private military and security companies have a responsibility to ensure that security is delivered in a non-discriminatory manner that respects human rights. All the more so, given that in many countries they outnumber the police or at least play a significant role in security provision in public and private spaces. Moreover, like other business entities in society, private military and security companies can influence policies, economies, legal, social and cultural norms and practices, and have the ability to reinforce and perpetuate, or alter, them.<sup>10</sup> Thus, they

<sup>7</sup> See paras. 21–29 below.

<sup>8</sup> See, for example, Maya Eichler, “Gender, PMSCs, and the global rescaling of protection: implications for feminist security studies”, in Maya Eichler, ed., *Gender and Private Security in Global Politics* (Oxford University Press, 2015); Saskia Stachowitsch, “Military privatization as a gendered process: a case for integrating feminist international relations and feminist state theories”, in *Gender and Private Security in Global Politics* (2015); Amanda Chisholm, “Clients, contractors, and the everyday masculinities in global private security”, *Critical Military Studies*, vol. 3, No. 2 (2017).

<sup>9</sup> Commentary to Guiding Principle 5 (see [A/HRC/17/31](#)). See also Committee on Economic, Social and Cultural Rights, general comment No. 24 ([E/C.12/GC/24](#)), para. 22; and Human Rights Committee, general comment No. 31 ([CCPR/C/21/Rev.1/Add.13](#)), para. 8.

<sup>10</sup> Joanna Bourke Martignoni and Elizabeth Umlas, *Gender-responsive Due Diligence for Business Actors: Human Rights-based Approaches*, Academy Briefing No. 12 (Geneva Academy of International Humanitarian Law and Human Rights, 2018), p. 6.

are not mere suppliers of security-related services but active agents whose corporate decisions and actions influence dynamics in the places where they operate.

13. Private military and security companies influence the way in which women, men, boys, girls and LGBTI persons experience security as well as economic opportunities that stem from the security sector. For companies, there is a delicate balance to be struck between adapting to the local context and culture and failing to challenge prevalent gender stereotypes. Private military and security companies need to consider how to avoid contributing to the perpetuation of harmful stereotypes and practices, to listen to alternative voices beyond the dominant ones, and to work with a broad range of local community members to challenge conservative attitudes.<sup>11</sup> Cultural relativism should not be used as an excuse to justify compromises to the responsibility to respect human rights.<sup>12</sup> Furthermore, there is potential to use the skills and expertise available to private military and security companies to further respect for human rights. In this regard, it was recently proposed that private military and security companies working on surveillance and counter-surveillance could contribute to efforts to combat human trafficking.<sup>13</sup>

## **B. Diminished democratic oversight and accountability**

14. Privatization of security has resulted in diminished democratic control and oversight including lack of hierarchical control, lower levels of transparency, weak regulation, and reduced accountability for abuses.<sup>14</sup> In countries where there are well-functioning democratic oversight mechanisms, public security forces are often subject to strict regulations, such as gender equality and non-discrimination laws. In those societies, women, LGBTI persons and persons belonging to minorities have claimed, and achieved, greater inclusion within State forces in recent decades, aided by gender mainstreaming and equality measures; but this has not been replicated within private military and security companies.<sup>15</sup> In other contexts, where the State has been absent in oversight and regulation of public security forces, even in the face of widespread sexual and gender-based violence by those forces, privatization of the security sector occurs against a backdrop of discrimination and impunity.

15. Furthermore, in many countries, governmental authorities are required to publicly disclose demographic and organizational data about their security forces, regulations and incidents of transgression, and are subject to democratic oversight. Security privatization creates a plurality of security actors who do not fall automatically under public scrutiny. This lack of transparency has contributed to rendering the issue of gender invisible in the industry until recently, and makes claims for gender equality harder to substantiate. The lack of transparency also makes the pursuit of accountability for human rights abuses by private military and security companies more complex and elusive, and women and girls are disproportionately affected given the specific barriers they face in accessing an effective remedy.<sup>16</sup>

16. In addition, the attention of private military and security companies has been refocused on alternative markets and clients, including other business entities (notably companies operating in the extractive industry), and international, intergovernmental

<sup>11</sup> Expert consultation, 2 April 2019.

<sup>12</sup> See [A/73/227](#).

<sup>13</sup> Report of the expert panel on human trafficking to the Fifth Annual General Assembly of the International Code of Conduct for Private Security Service Providers Association, 30 November 2018.

<sup>14</sup> Bryden and Caparini, "Private Actors and Security Governance", 2006 (see footnote 6 above).

<sup>15</sup> Stachowitsch, "Military privatization as a gendered process", 2015 (see footnote 8 above).

<sup>16</sup> See [A/72/162](#); and Committee on the Elimination of Discrimination against Women, general recommendation No. 33 ([CEDAW/C/GC/33](#)).

and non-governmental organizations, including humanitarian actors. This expansion of the client base renders State regulation and oversight of those companies even more important because of the increased possibilities for serious human rights abuses. An underregulated and underscrutinized private military and security sector sustains low standards when there ought to be a push for high standards. Non-State clients have a significant role to play by insisting on human rights compliance by the private military and security companies with which they contract.

### **C. Gendered risks associated with operating contexts and types of service**

17. The wide variety of contexts in which private military and security companies operate and the types of service they provide entail different levels of risk to the enjoyment of human rights. Private military and security companies providing services in situations of armed conflict, post-conflict and transitional situations operate in settings in which women and girls are rendered particularly vulnerable and are differently and disproportionately affected by violence, including sexual violence, and death. In these and other environments, protection systems may be weak, rule of law and oversight diminished, and pre-existing levels of discrimination and violence against women high. In many conflict and post-conflict situations, private military and security companies have multiplied rapidly, filling a demand for security and often providing former combatants with a role, but operating frequently without appropriate regulation or oversight, thereby increasing the risks of human rights abuses and a lack of accountability.

18. In some countries, private military and security companies operating in the absence of any standards or oversight form a considerable part of the market and generate heightened human rights risks. In recent years, however, there has been a push to raise human rights and governance standards for those companies, and a few companies have followed this path. This has brought with it certain levels of awareness about training, vetting and other standards in relation to sexual exploitation, gender-based violence, human trafficking and discrimination. Nevertheless, there continues to be very little industry awareness and understanding of gender-related risks and how to mitigate them.

19. The nature of the services that private military and security companies provide also has an impact on the levels of human rights risks. Services that involve the actual or potential use of force carry high risks. Even in stable environments, the services that private military and security companies may provide often place them in a position of power, performing tasks that, either by their implicit use of force or control, still imply heightened risks. Power imbalances are inherent when supervising a prison or checkpoint, or acting as a gatekeeper for access to health care or food in a migrant detention centre. In some countries, private military and security companies operate in all spheres of life, including guarding schools, universities and hospitals, where they have regular contact with members of the public. Personnel of private military and security companies also carry out security risk assessments where they play a defining role in identifying who is considered a security threat on behalf of the client and, in the process, often perpetuate prevailing security narratives that fail to take into account gender, race and socioeconomic factors.

20. In addition to impacts on communities, asymmetric power dynamics play out internally within a highly masculinized industry where women and LGBTI persons tend to have marginal employment roles, are often seen as inferior, and may be the target of violence.

## **D. Allegations of gender-based human rights abuses by personnel of private military and security companies received by the Working Group**

21. Allegations of serious human rights abuses by private military and security companies, including widespread sexual violence and trafficking for sexual exploitation, emerged more than 20 years ago. Most allegations analysed by the Working Group arose in conflict, post-conflict and peacekeeping settings, around extractive projects that were often located in remote areas, or in areas affected by natural disasters, where the overall risk of sexual and gender-based violence is elevated.

22. Not every case attracts international attention but every case nonetheless has a profound impact on the victims. A large, militarized and predominantly male private military and security presence, whether contracted by States or non-State actors, can generate feelings of unease, which men, women, boys and girls may experience differently. For example, women have reported that their ability to move around freely, and thereby access workplaces, markets and health-care facilities, was restricted as they sought to avoid a road guarded by private military and security personnel. Women also reported repeated sexual harassment, such as being shown pornography, being subjected to sexual remarks or inappropriate touching, or living in fear that they might be subjected to sexual violence. This was reported as happening at informal or formal checkpoints and in refugee and migrant detention centres. In contexts categorized by high levels of insecurity, there are significant differentiations in the quality of security that individuals receive depending on their socioeconomic status. Consequently, actions of private military and security companies may directly or inadvertently expose local communities to heightened risks or undermine the enjoyment of their human rights.

23. The Working Group established that women and girls form the majority of victims of sexual and gender-based violence and discrimination by private military and security company personnel, the perpetrators being predominantly men. Women with lower socioeconomic status and women from indigenous communities face particular risks. Rape, sexual harassment and abuse have been allegedly used as a means to harm, punish and control an entire community, women being particularly threatened and vulnerable to abuse when they protest, work in fields, or bathe children. Women human rights defenders have allegedly been confronted by private military and security companies when defending their communities' rights to livelihood and property. Private military and security companies have been accused of surveillance and intimidation against human rights defenders, including women human rights defenders.<sup>17</sup> Victims also include men who suffer abuse, including sexual violence, because of their sex or gender. This has included sexual abuse of male prisoners, aimed at humiliating them, perpetrated by interrogators who were both male and female.

24. Serious human rights abuses by private military and security company personnel of the magnitude seen 20 to 30 years ago have not drawn public attention in recent years. Caution should be exercised in interpreting this as an improvement in the situation. The Working Group believes that underreporting of allegations against private military and security companies is probable given the general underreporting of sexual and gender-based violence regardless of the perpetrator, compounded by little to no systematic monitoring of the actions of those companies by States, civil

<sup>17</sup> See, for example, "Women human rights defenders confronting extractive industries: an overview of critical risks and human rights obligations" (Association for Women's Rights in Development and Women Human Rights Defenders International Coalition, 2017), p. 23.



society, United Nations bodies or other actors. Monitoring of such acts is complicated by several factors, in particular by the difficulties in identifying the affiliation of perpetrators. Often, private military and security company personnel do not wear identifiable uniform or markings and, in many situations, operate alongside public security officers, making it difficult to distinguish between them.

25. Cases in which private military and security companies have contributed to human rights violations and abuses committed by their clients, notably State actors and businesses, have been brought to the attention of the Working Group. These include personnel of those companies on the front line during tense situations or conflict between business entities and local communities; and a private military and security company that oversaw the management and security of a detention facility for refugees and asylum seekers reportedly failing to act to stop sexual assaults between detainees. Cases of forced displacement, enforced by private security personnel, have been reported, and women are particularly affected as primary caretakers of their children and families. Women and others were subsequently denied access to their lands. Those women most affected often suffer compounded forms of discrimination due to gender, race, ethnicity and socioeconomic status, as in cases of indigenous women and segments of the population already marginalized because of poverty, such as farming and rural communities.

26. Human rights abuses by private military and security companies have taken place in near total impunity, the companies or their personnel being rarely brought to justice. Many factors appear to have thwarted efforts to pursue criminal accountability before national courts in both territorial and home States, including a lack of clarity on responsibilities and jurisdiction. In two cases, personnel employed by transnational private military and security companies to support international peacekeeping missions were granted immunities preventing prosecution in the territorial State. Other obstacles include difficulties in collecting and preserving evidence pertaining to allegations of sexual violence from a conflict zone and/or a remote location, and the home States of the companies being unwilling to assume jurisdiction.

27. In court cases involving incidents of sexual and gender-based violence at extractive sites, two particularities can be noted. First, civil cases have been brought against the client company in the home State of that company, but criminal prosecutions were not pursued against individual personnel or the private military and security companies themselves. Secondly, typically, cases have been settled out of court with compensation awarded to some of the victims. In the absence of identification and prosecution of the responsible company personnel, however, such a response falls short of redressing the abuses in a holistic manner by achieving accountability, securing guarantees of non-repetition, and affording effective remedies to victims.

28. Complex corporate structures, reincarnations of private military and security companies, and mergers and acquisitions, coupled with contractors moving regularly between companies, make efforts to hold perpetrators of human rights abuses accountable extremely difficult. There also appear to be instances in which there were no contract renewal consequences for private military and security companies whose personnel were accused of perpetrating acts of sexual and gender-based violence and human trafficking.

29. In general, women face additional barriers in gaining access to justice.<sup>18</sup> This is exacerbated in relation to corporate human rights abuses, due to, for example,

<sup>18</sup> See Committee on the Elimination of Discrimination against Women, general recommendation No. 33 (CEDAW/C/GC/33); and *Women's Rights are Human Rights* (see footnote 5).

discriminatory laws, gendered roles, economic marginalization, social stigma, power imbalances, religious values and cultural norms.<sup>19</sup> These barriers are likely to be higher for women seeking redress for human rights abuses by private military and security companies for several reasons. Specific hurdles are created by the challenges of identifying the affiliation of perpetrators and the lack of clarity regarding the hierarchical structure under which that person operates, particularly in situations where a plurality of security providers are operating. These complexities then make it difficult to determine the appropriate remedial mechanism. Additional challenges arise in contexts where the rule of law is severely diminished and judicial mechanisms may not be accessible or well-functioning. In the event that a private military and security company is identified, its grievance mechanism may not be known, easily accessible or suitable for serious human rights abuses, especially for women.

### III. Inside private military and security companies: gender equality and gender-based discrimination

#### A. Gender diversity in the workforce

30. Incomplete gender-disaggregated data can be found for private military and security companies in Europe, Latin America and the Caribbean, but is available only for a few sporadic years, and covers only male-female participation. Available data also lack explanatory information that would allow for interpretation of the data set, such as the profile, level and functions of the staff included. By way of example, a study conducted on private military and security companies in Europe in 2018 found that women comprised an average of 15 per cent of the workforce of those companies,<sup>20</sup> while another covering Latin America found several countries where over 90 per cent of private military and security company employees were men.<sup>21</sup> Some exceptions exist, including a South American country where women comprise 33 per cent of the private military and security company workforce,<sup>22</sup> and a Caribbean country where women outnumber male personnel in medium and large private military and security companies.<sup>23</sup>

31. Low participation among women is common to many employment sectors, as is discrimination against women and mothers, and according to the International Labour Organization the restriction of women and men to certain occupations or sectors is one of the most detrimental aspects of gender inequality in the labour market.<sup>24</sup> This phenomenon is particularly stark in the private military and security industry. It appears to be linked to socially prescribed roles, norms and stereotypes that have led to a perception that men are most suited to this work and have impeded women from accessing the sector or, if they do enter, from attaining more senior positions with decision-making powers.<sup>25</sup> Where women are hired, it is usually to perform defined tasks, such as administrative or other back-office functions. Also, sometimes women

<sup>19</sup> [A/72/162](#), para. 30.

<sup>20</sup> Paul Baker and Andrea Broughton, *Anticipating, Preparing and Managing Employment Change in the Private Security Industry, final report* (Confederation of European Security Services (CoESS), UNI Europa and ECORYS, October 2018), chap. 2.

<sup>21</sup> DCAF and United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean, *Armed Private Security in Latin America and the Caribbean: Oversight and Accountability in an Evolving Context* (2016).

<sup>22</sup> *Ibid.*, p. 17.

<sup>23</sup> Expert consultation, 2 April 2019.

<sup>24</sup> International Labour Organization, *Women at Work: Trends 2016* (Geneva, 2016).

<sup>25</sup> See, for example, Simona Sharoni and others, eds., *Handbook on Gender and War* (Northampton, Massachusetts, Edward Edgar Publishing, 2016).

are tasked with conducting searches on other women or liaising with communities, or called upon in circumstances in which female security staff may appear more approachable and less threatening.

32. Poor representation of women within private military and security companies affects women's right to work and access to economic opportunities, as in many countries those companies constitute a significant employer. It may also affect the delivery of effective security for all members of the public. In the peacekeeping context, it has been argued that female security personnel may be more adept when reaching out to and gaining the trust of women and girls in local communities, and in understanding and detecting their unique protection needs and tailoring the responses. In places experiencing fragile security, the presence of women has been seen to help to prevent sexual exploitation and abuse of the local population and to improve operational effectiveness.<sup>26</sup> Both men and women are said to be more likely to report sexual and gender-based violence to female officers.<sup>27</sup> A more gender and otherwise diverse workforce may enrich operational planning, including risk assessments, and improve aspects of operational effectiveness.

33. Increases in numbers of women, LGBTI persons and other underrepresented groups alone are unlikely to change the workplace cultures of private military and security companies. One important measure involves the hiring and/or training of personnel who are well versed in gender and human rights, irrespective of their gender, to work on the mainstreaming of gender and human rights in the practices and culture of private military and security companies. Training of company personnel at all organizational levels on these issues can also contribute to raising awareness and changing attitudes and behaviour as a basis for ensuring far-reaching changes to policies and procedures.

## **B. Gender-related policies, procedures and mechanisms**

34. In general, internal policies, procedures and mechanisms are rarely available on the websites of private military and security companies or otherwise accessible to the public. This impairs monitoring of those companies' practice against stated policy commitments and hinders potential complainants. Moreover, there is no commercial incentive for information-sharing among companies, including the sharing of good practices.

35. A few private military and security companies have committed to comply with the 2010 International Code of Conduct for Private Security Service Providers, which articulates the human rights responsibilities of private security companies and sets out good governance principles and standards, based on international human rights and humanitarian law, for the responsible provision of private security services, when operating in "complex environments".<sup>28</sup> For the present report, a brief review was conducted of public documents and websites of all certified members of the

<sup>26</sup> United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), *Preventing Conflict, Transforming Justice, Securing the Peace: A Global Study on the Implementation of United Nations Security Council resolution 1325*, 12 October 2015, pp. 135–136; Report of the High-level Independent Panel on Peace Operations on uniting our strengths for peace: politics, partnership and people (see [A/70/95-S/2015/446](#)), para. 212.

<sup>27</sup> UN-Women, *Progress of the World's Women 2011–2012: In Pursuit of Justice* (2011), pp. 59 ff.

<sup>28</sup> The International Code of Conduct defines complex environments as "any areas experiencing or recovering from unrest or instability, whether due to natural disasters or armed conflicts, where the rule of law has been substantially undermined, and in which the capacity of the state authority to handle the situation is diminished, limited, or non-existent".

International Code of Conduct Association<sup>29</sup> and several members of the Association that are not yet certified with the expectation that they would adhere to higher standards. Even in these cases, however, only very few were found to display their full policies publicly.<sup>30</sup>

36. Where such policies were available, it was possible to find integrated provisions on equal employment opportunities, equal treatment and prohibition of discrimination, as well as commitments to training on and the prevention and reporting of gender-related crimes such as sexual and gender-based violence and human trafficking, probably because these issues are explicitly referenced in the International Code of Conduct. In contrast, specific attention to stimulate the recruitment and retention of women and LGBTI persons was not found. In this regard, formal equality or gender neutrality in policies may not be sufficient to address current levels of inequality in the sector; rather special measures, such as affirmative action, may be needed. In order to do this, an assessment is required of the participation of women and LGBTI persons, as well as the barriers to increased inclusion based on, inter alia, concerns, culture and attitude of employees and job descriptions, in order to address them through policy change.<sup>31</sup>

37. Besides a general human rights policy, all private military and security companies (not just members of the Association) should have in place stand-alone policies and procedures to operationalize their human rights and gender commitments across their operations. This should include an internal code of conduct, ethics or behaviour that defines professional conduct anchored in the company's overall commitment to respect human rights, prohibit discrimination, and promote gender and other forms of diversity both internally and externally. Disciplinary procedures then need to be in place to handle misconduct as soon as it occurs. Specific policies are usually lacking on, inter alia, harassment, including sexual harassment, and sexual and gender-based violence; gender equality and non-discrimination; and gender-specific workplace health and safety requirements. Where they exist, they tend to be brief and general, lacking definitions of certain key concepts and how to put into practice abstract concepts, such as non-discrimination. They are often not translated into local languages, thereby limiting access to information of relevance to local communities, such as complaints procedures.

38. The International Code of Conduct Association recently issued guidelines for private security providers on preventing and addressing sexual exploitation and abuse that seek to help companies to comply with the provisions of the Code of Conduct on sexual exploitation and abuse, mitigate the risks, and address incidents and allegations. They outline measures to address sexual exploitation and abuse in policies and procedures; codes of conduct; recruitment, performance appraisal and discipline; training and awareness-raising; operation design and risk assessment; agreements with partners and subcontractors; and complaints and investigation

<sup>29</sup> The International Code of Conduct Association was established in 2013 to serve as an independent governance and oversight mechanism for implementation of the International Code of Conduct for Private Security Service Providers, to promote responsible provision of security services as well as respect for human rights and national and international law in accordance with the International Code of Conduct. As of July 2019, 88 private military and security companies were members.

<sup>30</sup> This confirms the findings of a recent study: Sorchia MacLeod and Rebecca DeWinter-Schmitt, "Certifying private security companies: effectively ensuring the corporate responsibility to respect human rights?", *Business and Human Rights Journal*, vol. 4, No. 1 (January 2019).

<sup>31</sup> Sabrina Schultz and Christina Yeung, "Private military and security companies and gender", *Gender and Security Sector Reform Toolkit*, Megan Bastick and Kristin Valasek, eds. (Geneva, DCAF, Organization for Security and Cooperation in Europe/Office for Democratic Institutions and Human Rights and United Nations International Research and Training Institute for the Advancement of Women, 2008), p. 8.

mechanisms. This practical document is welcome and needs to be expanded to include guidance on other gender issues, from prevention and response to the wider spectrum of sexual and gender-based violence, to gender equality and non-discrimination.

39. Stringent selection and vetting procedures, anchored in national legislation, are needed to ensure that individuals with prior records of misconduct, notably in connection with sexual and gender-based violence and other human rights violations, are not hired or rehired; and this should be applied also to subcontractors. Cross-border cooperation is also crucial to ensuring effective vetting procedures. The absence of appropriate records in many settings adds an additional layer of difficulty to holding private military and security companies and their personnel accountable. Thus vetting procedures should extend to exercising due diligence to find alternative means to conduct background checks. Internal reporting systems should be established to enable reporting to the regulatory authority, as well as gender-sensitive complaint processes and whistle-blower policies.

40. Policies on continual training should also be a legal requirement. In such policies, private military and security companies should set out training content, recurrence and any other requirements. Training criteria and curricula provide a key opportunity to raise awareness on gender, including prohibitions of any type of discrimination, harassment, sexual and gender-based violence and human trafficking, and to train personnel at all levels and in all functions to recognize and report differentiated human rights impacts on various segments of the population.

41. The ability of private military and security companies to develop internal policies and procedures, and the exigencies to do so, will necessarily depend on the size of the company, the nature of, and the risks associated with, its operations, and the existence, or absence, of national legislation and policies. Regardless, private military and security companies, like other business entities, should take steps to internalize their human rights responsibilities, and allocate appropriate budget and resources to achieve this. The Guiding Principles lay out three cornerstone pieces to fulfil those responsibilities, namely, a corporate human rights policy, a human rights due diligence process, and an internal grievance mechanism, and these are reflected in the International Code of Conduct and its associated processes.<sup>32</sup>

42. Effective human rights risk and impact assessments provide an opportunity for private military and security companies to assess the actual and potential human rights impacts of their actions and those of subcontractors, integrate and act upon the findings, track the effectiveness of their responses, and communicate how impacts are addressed.<sup>33</sup> Introducing a gender analysis into these assessments will bring to the fore the adverse human rights impacts on different groups of people and therefore contribute to the better tailoring of response strategies.

43. The nature of the assessment may vary according to the size and type of private military and security company as well as the type of risks in its field of operations. Private military and security companies operating in conflict, post-conflict and transitional environments or those with regular contact with persons in vulnerable situations, where the risk of abuse is higher, have heightened due diligence responsibilities. Some practical examples cited from operations of private military and security companies in responding to risks include not driving by a school when parents, often mothers, drop off or pick up their children, and providing safe transport home to female workers after late shifts. Very few assessments are made public,

<sup>32</sup> Guiding Principle 15 (see [A/HRC/17/31](#)); see also, for example, the preamble to the International Code of Conduct.

<sup>33</sup> Guiding Principles 17–21.

however, making evaluation of the quality and monitoring of their implementation impossible.

44. While the Working Group recognizes that State judicial and non-judicial remedies should be the primary focus for holding private military and security companies to account, nevertheless, the International Code of Conduct and the Guiding Principles envisage that private military and security companies will establish or participate in effective and accessible operational-level grievance mechanisms for individuals and communities that may be adversely affected. From examination of a limited sample of private military and security companies, it seems that some do not publicly indicate whether they have a grievance mechanism, while most others mention a telephone number and/or email address on the company website, often accompanied by a statement to the effect that all complaints will be “treated confidentially” without further explanation. This leaves potential complainants with a procedure that is wanting in transparency and with no information about how the company will ensure confidentiality and what they can expect.

45. Fundamentally, private military and security companies should learn from previous flawed approaches to reports of gender-based discrimination and sexual and gender-based violence, and consider whether their grievance mechanisms are in fact suitable and equipped to handle such allegations. An analysis of certain emblematic cases of sexual and gender-based violence by private military and security companies raises several critical issues. For example, a number of survivors of sexual violence were not aware that a remedial mechanism had been set up. This was particularly true for women who had no Internet access, were illiterate, and/or were largely confined to their homes. Other women were aware of it but, in the absence of clear definitions, did not understand that the abuse to which they had been subjected fell under its scope. Often the remedy offered was financial compensation, sometimes in exchange for legal waivers forgoing the right to pursue a case before a court of law. Several women who reached an out-of-court settlement were given up to four times more financial compensation than victims of the same abuses whose allegations were handled through the company’s grievance mechanism. The waivers were all the more problematic when coupled with the reality that some of the women who had been asked to sign them were illiterate or poorly educated. In one case, women survivors of sexual violence were awarded cash compensation only to have it taken away by male relatives and squandered. Several years later, some victims complained that their compensation package (including school fees for children, business grants and medical support) had not been fulfilled. Attempts to ensure confidentiality around grievance mechanisms failed, with serious consequences including stigmatization of women survivors of sexual violence.

46. The International Code of Conduct Association has issued guidance on company grievance mechanisms that aims to support private military and security companies in their efforts to establish a complaint mechanism.<sup>34</sup> Further reflection and guidance is required to ensure that such grievance mechanisms are gender-transformative so that they move beyond a purely compensatory approach to broader responses aimed at preventing further abuses, providing transformative reparations, and challenging existing power structures that underpin gender-based discrimination.<sup>35</sup> There is also an urgent need for clear guidance to help private military and security companies to assess the scope of human rights abuses that their grievance mechanisms should

<sup>34</sup> Available at <https://icoca.ch/en/guidance>.

<sup>35</sup> See A/HRC/14/22; and A/HRC/41/43.

handle, and in particular whether they are equipped to respond appropriately to serious human rights abuses.<sup>36</sup>

### C. Sexual and gender-based violence and discrimination in the workplace

47. Information received by the Working Group suggests that female employees of private military and security companies often work in precarious conditions and are at risk of sexual harassment and other forms of sexual and gender-based violence by supervisors, co-workers, staff representing the client, and members of the public. There is a lack of monitoring and data on allegations and follow-up to them, but comparable information from public military and security forces, as well as other non-related sectors, supports the assumption that such incidents are underreported.

48. Information received suggests that the phenomenon could be widespread, with heightened risks in some situations, such as when female security guards are posted to remote locations or are the only female workers. A commonly reported allegation appears to be supervisors demanding sexual acts in exchange for promotions or better work schedules or conditions, and threatening retaliation if met with refusal.<sup>37</sup> For example, the Working Group received testimony of repeated harassment and abuse from two women working in the industry, namely a female private security guard working in an airport in North America and another working in East Africa who explained that she first experienced sexual harassment at the training school to become a guard.<sup>38</sup>

49. In a sector in which female employees are in the minority, the specific needs of women in the workplace are often not met. Facilities needed to ensure women's health and safety, such as separate places to change, separate toilet facilities that are accessible during all working hours, and breastfeeding rooms are scarce. Employees often work under uncertain contracts with few labour protections, including paid maternity leave. Equipment, such as uniforms (including maternity uniforms) or weapons, are rarely designed with female bodies in mind and therefore are often ill-adapted. Women are also less well represented in trade unions for private security personnel, which are also said to have a strongly masculine culture. As a result, women have fewer means to negotiate improvements in their labour conditions.<sup>39</sup>

50. Private military and security companies have also been accused of employing men from the global south in conditions that amount to trafficking for labour exploitation. These men often come from rural areas and remote villages that offer few employment opportunities to young men and they are hired to perform support functions, such as cooking, driving and other support tasks for the security staff. In comparison to well-paid expatriate staff performing security functions, these men are often paid pitiful salaries. Moreover, reports suggest that many of these men find themselves in situations of debt bondage, where they are lured into their jobs under false pretences, forced to stay by having their passports confiscated, and accumulate debts to recruitment firms in order to secure their contract. They are reportedly often subjected to verbal and physical abuse and made to live in dire conditions. In addition, some of the jobs involve heavy work schedules and dangerous work conditions, while compensation for death, disability or injury is practically non-existent.<sup>40</sup>

<sup>36</sup> Expert consultation, 2 April 2019.

<sup>37</sup> Idem; interview with representatives of UNI Global Union.

<sup>38</sup> LaDonna, *This American Life*, WBEZ/PRX, episode 647, 25 May 2018; testimony shared with the Working Group.

<sup>39</sup> UNI Global Union; expert consultation, 2 April 2019.

<sup>40</sup> American Civil Liberties Union and Allard K. Lowenstein International Human Rights Clinic,



## IV. Obligations, responsibilities and roles of States, private military and security companies and other actors

### A. Selected international human rights instruments and guidance

51. It is now widely accepted that States' obligations to protect and fulfil human rights extend beyond their own agents and also encompass protecting against human rights abuses by third parties, including private companies, and to take positive steps to fulfil human rights.<sup>41</sup> Furthermore, in order to fulfil its obligations, a State must take appropriate measures "to prevent, punish, investigate or redress the harm caused by ... acts of private persons or entities".<sup>42</sup>

52. States should not prioritize the interests of business entities over human rights treaty provisions to which they are parties.<sup>43</sup> This requires States to take steps to prevent human rights abuses by private military and security companies, including by adopting legislative and administrative measures to regulate their actions, and to provide victims of abuses by such companies with access to effective remedies. National regulations governing the activities of private military and security companies should be particularly stringent given that the State has outsourced one of its core public functions. The obligation to fulfil requires States to take steps to facilitate and promote the enjoyment of human rights. For example, under the Convention on the Elimination of All Forms of Discrimination against Women, States must go beyond merely requiring equal treatment for men and women, and also put in place proactive special measures to achieve substantive equality, including by addressing discrimination against women by private actors.<sup>44</sup>

53. The Committee on the Elimination of Discrimination against Women has elaborated upon these obligations as they relate to the provisions contained in the Convention, which cover both public and private acts. Through its general recommendations on the provisions of the Convention, the Committee emphasizes that the obligations incumbent upon States parties, including their due diligence obligations, extend to acts of corporations operating intra- and extraterritorially.<sup>45</sup> It further clarifies that "acts or omissions of private actors empowered ... to exercise elements of governmental authority, including private bodies ... operating places of detention, are considered acts attributable to the State itself, as are the acts or omissions of private agents acting on the instruction or under the direction or control of that State, including when operating abroad".<sup>46</sup> The Committee identifies "private military contractors" as one of the groups of non-State actors that may affect women's

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Yale Law School, *Victims of Complacency: The Ongoing Trafficking and Abuse of Third Country Nationals by U.S. Government Contractors* (2012); report of the expert panel on human trafficking to the Fifth Annual General Assembly of the International Code of Conduct for Private Security Service Providers Association, 30 November 2018.

<sup>41</sup> See Human Rights Committee, general comment No. 31 (CCPR/C/21/Rev.1/Add.13); Committee on the Elimination of Discrimination against Women, general recommendations No. 28 (CEDAW/C/GC/28) and No. 30 (CEDAW/C/GC/30); Committee on Economic, Social and Cultural Rights, general comment No. 24 (E/C.12/GC/24).

<sup>42</sup> Human Rights Committee, general comment No. 31(CCPR/C/21/Rev.1/Add.13), para. 8.

<sup>43</sup> Committee on Economic, Social and Cultural Rights, general comment No. 24 (E/C.12/GC/24).

<sup>44</sup> Convention on the Elimination of All Forms of Discrimination against Women (United Nations, *Treaty Series*, vol. 1249, No. 20378), arts. 2 (e) and (f) and 5 (a).

<sup>45</sup> Committee on the Elimination of Discrimination against Women, general recommendation No. 28 (CEDAW/C/GC/28); and general recommendation No. 35 (CEDAW/C/GC/35), updating general recommendation No. 19 of 1992.

<sup>46</sup> Committee on the Elimination of Discrimination against Women, general recommendation No. 35 (CEDAW/C/GC/35), para. 24 (a).



rights in conflict prevention, conflict and post-conflict processes, and highlights that violations “could entail individual criminal responsibility”.<sup>47</sup>

54. The Guiding Principles recall States’ duties with regard to all business entities, including private military and security companies, as well as the responsibilities of business entities to respect human rights.<sup>48</sup> They include a general principle of non-discrimination, but little emphasis had been put on gender integration in the context of their implementation. In May 2019, the Working Group on the issue of human rights and transnational corporations and other business enterprises issued gender guidance for the Guiding Principles. The guidance elaborates a three-step gender framework of gender-responsive assessment and gender-transformative measures and remedies.<sup>49</sup> The newly adopted Convention Concerning the Elimination of Violence and Harassment in the World of Work provides protections for all workers from violence and harassment in the workplace.<sup>50</sup>

## **B. International initiatives regarding private military and security companies**

55. In the absence of an international legally binding instrument containing human rights standards for the regulation, monitoring and oversight of the activities of private military and security companies, other initiatives have been developed to raise standards. The 2008 Montreux Document on pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict is an intergovernmental document that reaffirms existing State obligations under international humanitarian law and international human rights law, and sets out good practices relating to the activities of private military and security companies operating in armed conflicts. While the Montreux Document contains no gender-specific language, many of the good practices contained therein are relevant for preventing and addressing sexual and gender-based violence. These good practices include vetting past conduct of private military and security companies and their personnel, including verified records of sexual offences, as a prerequisite for a contract,<sup>51</sup> training personnel in international human rights law and international humanitarian law, as well as for performance under the specific contract and environment, including on gender issues,<sup>52</sup> internal regulations within private military and security companies for reporting and monitoring and accountability mechanisms for complaints, misconduct and incidents,<sup>53</sup> and requiring company personnel to be identifiable.<sup>54</sup>

56. The other key initiative is the International Code of Conduct (see para. 35 above). It includes a prohibition on discrimination, including on the basis of sex and sexual orientation, and on companies and their staff benefiting from or engaging in sexual exploitation and abuse or gender-based violence or crimes, either within the company or externally. It further calls on companies and their personnel to remain vigilant for all instances of sexual or gender-based violence and human trafficking and, where discovered, to report such instances to competent authorities. In addition, it sets out requirements for the vetting of personnel, including a background check to

<sup>47</sup> Committee on the Elimination of Discrimination against Women, general recommendation No. 30 (CEDAW/C/GC/30), paras. 13 and 16.

<sup>48</sup> See A/HRC/17/31, annex.

<sup>49</sup> See A/HRC/41/43.

<sup>50</sup> Adopted in June 2019, it has yet to enter into force.

<sup>51</sup> Montreux Document (A/63/467-S/2008/636, annex), part two, paras. 6 (a), 32 (a) and 60 (a).

<sup>52</sup> Ibid., paras. 10 (c), 35 (c) and 63 (c).

<sup>53</sup> Ibid., paras. 12, 37 and 65.

<sup>54</sup> Ibid., para. 16.

ensure that they have not been convicted of certain crimes, including rape, sexual abuse or trafficking in persons. It also includes criteria for training, including on human rights, and requires companies to adopt policies that support a healthy work environment, such as policies on sexual harassment.

57. Among the functions of the governance mechanism overseeing the implementation of the International Code of Conduct, namely the International Code of Conduct Association,<sup>55</sup> is the ability to receive complaints of alleged violations of the Code. There is still much work to be done to make the complaints mechanism more robust and to strengthen monitoring of compliance with the Code of Conduct, including bringing to light abuses in ways that will ensure the protection of victims and witnesses as well as offering victims access to an effective remedy in line with international human rights standards.

58. The Association also certifies compliance with the International Code of Conduct through a system that hinges on the company that is a member of the Association obtaining certification by an industry “quality and management standard” that is recognized by the Association’s Board of Directors. To enable this process, an American national standard, known as ANSI/ASIS.PSC.1, was created, and an international standard of the International Organization for Standardization, ISO 18788, was subsequently published. They are the first third-party auditable management system standards containing human rights safeguards and are aligned with the Guiding Principles.<sup>56</sup> They integrate provisions of the Code of Conduct into a quality management system and therefore mirror gender-related provisions of the Code, occasionally developing them further, for example, by including training on sexual exploitation and abuse and gender-based violence.<sup>57</sup> Certification to these standards is conducted by third-party certification bodies (auditors), accredited by national accreditation bodies, and should attest to the incorporation by the private military and security company of human rights standards in its systems and processes.

59. Combined, the International Code of Conduct and the associated industry standards have potential to ensure that private military and security companies are strengthening respect for human rights, including gender aspects, in their operations and those of their subcontractors. However, considerable challenges persist in ensuring that the system functions as it was conceived; for example, certified companies not complying with outward-facing elements or failing to achieve certain benchmarks, the use of private auditors to certify private military and security companies,<sup>58</sup> and the exclusion of a large number of those companies from the scope of the Code of Conduct because they do not operate in “complex environments”.

### **C. National legislation and regulation of private military and security companies**

60. While the legislative and regulatory framework pertaining to private military and security companies varies considerably from one country to another, broadly speaking related national laws and regulations contain few human rights safeguards. In general, national laws on private military and security companies contain inadequate provisions on licensing, registration, vetting of personnel, the scope of permissible and prohibited activities, the use of force, firearms and other weapons, reporting obligations for infractions or violations of domestic and/or human rights

<sup>55</sup> See footnote 29 for information on the International Code of Conduct Association.

<sup>56</sup> See commentary to Guiding Principles 17 and 18 (see [A/HRC/17/31](#)).

<sup>57</sup> ANSI/ASIS PSC.1, para. 9.3; ISO 18788, paras. 7.2.2.d) 2) and A7.2.

<sup>58</sup> MacLeod and DeWinter-Schmitt, “Certifying private security companies: effectively ensuring the corporate responsibility to respect human rights?”, 2019 (see footnote 30).

law, accountability, including penal and civil sanctions for human rights abuses, and remedies for victims.<sup>59</sup> The dearth of human rights protections is further compounded by the lack of gender-specific provisions within those laws. Yet national legislation offers an opportunity for States to introduce legal requirements regarding human rights and gender compliance by private military and security companies. Specifically, introducing authorization or licensing criteria into laws and regulations can be a concrete tool to ensure that private military and security companies have adequate internal policies and procedures.

61. There have been efforts in some countries to introduce some elements in this direction, for example, the development of a national code of conduct detailing behavioural requirements, including respect for human rights and non-discrimination, or guidance based on the International Code of Conduct that private military and security companies can use to integrate human rights compliance into their internal policies. Other examples include laws on private military and security companies that stipulate training requirements that are then supported by elaboration of a training curriculum on international human rights law and international humanitarian law, including on sexual and gender-based violence, to varying degrees of thoroughness. The revision of existing laws, by-laws and regulations on private military and security companies, or the adoption of new ones, should be preceded by a human rights and gender-sensitive analysis, looking at the specific impacts on women, men, girls, boys and LGBTI persons of different services and operations of such companies.

62. Regulatory authorities have the responsibility to monitor the compliance of private military and security companies with the law and subsequent licensing criteria. A regular renewal of the licence should ensure that compliance is reviewed at set intervals, while additional controls, for example following receipt of a complaint, further strengthen monitoring capacity. Data collection and storage by an industry regulator in a Central American country represents good practice. In this case, the regulator maintains all data concerning the registration and compliance of individual private security providers online, collating the data from different responsible institutions. In another example of good practice, the regulatory authority created a publicly accessible online verification process. Company personnel are obliged to wear badges and people can use the information on the badges to identify the person providing security in their vicinity, verify their compliance with licensing criteria, and signal potential misconduct to the regulatory authority. Similar innovative ways to encourage reporting of human rights abuses committed by personnel of private military and security companies should be considered by regulatory bodies worldwide.

63. Private military and security companies are also subject to laws or measures that are applicable to business entities more broadly, such as those aimed at tackling discrimination against women or equal opportunities policies. A study conducted in 2013 found a number of European countries with equal opportunities policies in place for the private security sector specifically, and some others covered by nationwide equal opportunities legislation.<sup>60</sup> Specific laws have also been developed to address gender-based crimes by private military and security companies or other companies, such as a law on human trafficking by government contractors and another law on slavery and human trafficking under which companies must attest to steps they have taken to ensure that slavery and human trafficking is not taking place in their business and supply chains. Transparency laws may require, for example, that companies report on their gender pay gaps.

<sup>59</sup> See [A/HRC/36/47](#).

<sup>60</sup> Confederation of European Security Services, "Private security services in Europe: CoESS facts and figures 2013".

## V. The role of the client

64. By virtue of the fact that private military and security companies are contracted by clients to provide military and/or security services, clients have significant leverage to influence the way the hired company operates. In many cases, clients have policies and commitments to human rights, including non-discrimination and gender equality, but often no connection is made between those commitments and those that it expects its contractors to uphold.

65. Procurement bids and contracts are a crucial and underutilized tool for human rights implementation within private military and security companies.<sup>61</sup> Through these processes, clients can require certain commitments from contractors, including regarding gender equality and non-discrimination and a prohibition of sexual and gender-based violence. In some countries, States hiring private military and security companies require membership of the International Code of Conduct Association, thus indirectly integrating human rights and gender aspects covered by the International Code of Conduct. This is positive but carries a risk of making human rights safeguards invisible. A stronger approach would be to make explicit reference to human rights standards in contractual clauses, thereby providing a clear incentive for the private military and security company in question to comply with its human rights responsibilities and making them enforceable under private contract law, with the possibility of severing the contract in case of non-compliance.

66. Besides the State, other types of client could use procurement bids, concession agreements and other contracts more proactively as tools to prevent human rights abuses by private military and security companies. For example, the United Nations has two policies governing the procurement and use of private security, one for armed private security companies and the other for unarmed private security companies.<sup>62</sup> While the International Code of Conduct is referred to in these policies and guidelines, and the United Nations Procurement Manual puts in place a system of performance monitoring and complaints procedures,<sup>63</sup> more could be done to mainstream gender equality and the prevention of sexual and gender-based violence in these policies and the accompanying guidelines.<sup>64</sup> With regard to the use of private military and security companies in the extractive industry, the Voluntary Principles on Security and Human Rights, a multi-stakeholder initiative established in 2000, provide guidance on interactions with such companies. Gender concerns are not specifically mentioned in the principles, though a wealth of guidance has been produced on implementing the principles, including for extractive companies to ensure that their security arrangements are accompanied by risk assessments that are based on external stakeholder engagement and build in gender sensitivity. Much more should be done to ensure that, in these processes, companies take into account the differentiated impacts of private security provision on different groups of individuals.

## VI. Conclusions and recommendations

### A. Conclusions

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<sup>61</sup> “A contract guidance tool for private military and security services: promoting accountability and respect for human rights and international humanitarian law”, DCAF, 2017.

<sup>62</sup> See United Nations Security Management System Security Policy Manual.

<sup>63</sup> United Nations Procurement Manual, revision 7, July 2013.

<sup>64</sup> See also [A/69/338](#); and “Mercenarism and private military and security companies” (HRC/NONE/2018/40).

67. The Working Group hopes that the present report will initiate deep reflection and conversation within the private military and security industry around gender that until now have been in nascent form. The male domination of the industry, past major abuses in the form of gender-based discrimination and sexual and gender-based violence, and the absence of human rights-compliant legal and regulatory frameworks should be sufficiently compelling reasons for States, private military and security companies, clients and other stakeholders to push forward a gender-transformative agenda within the industry.

68. There is room for optimism that tangible steps can be taken in this direction. Multi-stakeholder initiatives that enjoy the participation of private military and security companies have shown a progressive attitude on the part of a small number of those companies towards raising human rights standards and greater external scrutiny. Industry standards, such as PSC.1 and ISO 18788, have the potential to generate much-needed improvements, including in the area of gender and human rights, but require more robust implementation and monitoring to adequately perform the functions for which they were designed. Private military and security companies should also consider the positive roles they could play in preventing abuses.

69. That said, these initiatives need to systematically integrate approaches that promote substantive equality and gender-mainstreaming throughout the operations of private military and security companies. Practical guidance for private military and security companies, provided it goes beyond a superficial checklist approach, is necessary to support them in working progressively towards organizational cultural change. However, it will be effective only if coupled with principled, firm and swift actions to address sexual and gender-based violence, structural inequalities and underlying discrimination. The development of new policies and procedures could be a vehicle within private military and security companies to start conversations on changing organizational cultures, and gain the buy-in of company personnel at large. Beyond the private military and security companies themselves, these changes also need to trickle down to subcontractors and permeate through all levels of the supply chain.

70. Moreover, the multi-stakeholder initiatives can only go so far in the absence of legal and regulatory frameworks at the national and international levels. States have the ultimate responsibility to ensure that the core public function of security that has increasingly come to be provided by private actors is delivered in ways that respect human rights. Action is needed in areas of legal reform, regulatory and oversight bodies, and accountability and remedy mechanisms. In all these areas, being gender-neutral is not an option and rather all measures should be informed by a gender analysis and seek to take a gender-transformative approach. Furthermore, States need to create an environment that does not facilitate violations and to send a clear message to private actors that abuses will not be tolerated.

71. Clients of private military and security companies have a vital role to play in setting expectations and enforcing standards, using procurement bids or concession agreements, for example, as levers to ensure compliance. Civil society also has an important role in monitoring and reporting on the actions of those companies, contributing to human rights impact assessments and standard development, advocating for legal and policy change, and working with victims to give them a voice and support them in the pursuit of remedies.

## **B. Recommendations**

72. States, private military and security companies and their clients must not only consider gender differences and adapt responses and strategies accordingly, but also seek to transform the power dynamics and structures that serve to reinforce gendered inequalities.

73. Gender-disaggregated data-gathering is a critical first step towards building the case for tailored legal and policy responses at the level of the State, and the private military and security company and the client, as appropriate. Data should include information on, inter alia, victims of gender-based discrimination and sexual and gender-based violence, encompassing members of the local population and company employees; State and non-State responses to abuses; decision-making and leadership positions in private military and security companies, types of function, pay and conditions at work; and broader inequalities in gender relations and structural factors.

74. Turning specifically to State obligations, States have the ultimate responsibility to respect, protect and fulfil human rights, and to protect against abuses by third parties. In this regard, there is an imperative on States to strengthen the legal and regulatory framework governing private military and security companies and embed strong human rights safeguards. Before taking any legal or regulatory measures, States should conduct a gender analysis to ensure that all measures adopted take account of and integrate differentiated gender perspectives. Such actions should be incorporated into national action plans on business and human rights.

75. States should use tools such as licensing or authorization as a means to enforce human rights standards. From a gender perspective, this should include the mandatory collection of gender-disaggregated data and adoption of relevant internal policies. Such information should be made public for transparency purposes unless there are well-argued reasons not to do so.

76. States should ensure that personnel of private military and security companies who have committed acts of sexual and gender-based violence are investigated and brought to justice, including in relation to crimes committed in previous years whether at home or abroad, and that effective remedies are accessible to women, girls, men, boys and LGBTI victims of human rights abuses by private military and security companies.

77. With regard to their responsibilities to respect human rights, private military and security companies must dedicate adequate time and resources to facilitate the development and implementation of gender-transformative approaches in their operations. Internally, in addition to the above-mentioned data-gathering, private military and security companies should work towards increasing significantly the numbers of underrepresented groups within their companies. This must be coupled with far-reaching changes to policies and procedures. In this regard, private military and security companies should introduce new or strengthen existing policies expressing their commitment to human rights, non-discrimination and gender equality; stand-alone policies on preventing and addressing sexual harassment and sexual and gender-based violence inside and outside the workplace; policies on vetting and training; internal reporting systems; and suitable mechanisms to address alleged abuses.

78. Private military and security companies should assume that sexual harassment and other forms of sexual and gender-based violence take place, even in the absence of reporting on allegations. On this basis, they should enact

appropriate policies, procedures and mechanisms that fulfil the duty of care towards their staff, prevent abuses by their staff of members of the community and protect the latter from such abuses.

79. Private military and security companies should engage the most appropriate means for the pursuit of accountability and effective remedies for victims of abuses by their personnel, recognizing that State judicial and non-judicial remedies, where they exist, are the most suitable avenue for addressing serious human rights abuses. Critically, there is a need to carefully reflect on the appropriateness of remedial processes with victims themselves and with local experts, including women leaders, and to benefit from their knowledge and understanding of their specific context to design or revise the grievance mechanism, process and outcomes, in line with international human rights standards.

80. Furthermore, private military and security companies should use existing tools to further gender integration. Notably, human rights risk and impact assessments should include gender-specific dimensions of overall human rights risks. They should also involve meaningful consultations with a representative cross-section of affected populations so as to adequately reflect the wide spectrum of views in any one society and the differentiated impacts that may be experienced by different segments of the population. On the basis of those assessments, private military and security companies should adopt mitigating measures that appropriately address risks affecting all members of the community.

81. As for State and non-State clients, they should use their contracts and procurement processes as a means to introduce requirements for private military and security companies to have policies, procedures and mechanisms in place to address sexual and gender-based violence and gender-based discrimination, and promote gender equality. Where possible, State contracts and procurement processes should be made accessible to the public or States should provide adequate justification why this is not possible.

82. Multi-stakeholder initiatives, national human rights institutions and relevant non-governmental organizations could support reflection among private military and security companies on how to achieve structural, company-wide integration of gender equality and prevention of abuses. They could develop practical guidance, for all staff at all levels of the company as appropriate to their function, on strengthening gender approaches to selection, vetting, training, human rights risk and impact assessments, and operational deployments. All such reflection and guidance should seek to target the root causes of discrimination and work towards the internalization of standards to change company cultures.

83. United Nations human rights mechanisms are encouraged to pay closer attention to monitoring and reporting on the actions of private military and security companies. Non-governmental organizations can also play a pivotal role in this regard.