

THE PRIVATISATION OF SECURITY IN AFRICA

Alan Bryden (Ed.)

Challenges and Lessons

from Côte d'Ivoire, Mali and Senegal



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Alan Bryden

Head, Public-Private Partnerships

DCAF

Preface

The adoption in September 2015 of the 2030 Agenda for Sustainable Development was a watershed moment. The framework provided by the 17 Sustainable Development Goals (SDGs)¹ sets out a roadmap to a more prosperous and secure future for all. The issues addressed in **The Privatisation of Security in Africa – Challenges and Lessons from Côte d’Ivoire, Mali and Senegal** offer an important test case for the SDG implementation process. Given the evident relationship between dysfunctional security governance, the private security sector and wider problems of insecurity and under-development, the commitment found in SDG 16 to “promote peaceful and inclusive societies, to provide access to justice for all, and to build effective, accountable and inclusive institutions at all levels” is particularly relevant. The prevalence of the private security industry in urban environments provides a direct link to the objectives of SDG 11 to make cities inclusive, safe, resilient and sustainable. Finally, a multistakeholder approach to private security governance that seeks to create positive synergies between actors – both public and private – at national, regional and international levels closely reflects the rationale of SDG 17 to revitalise the global partnership for sustainable development.

A private security sector that has developed under the radar screen of democratic oversight constitutes a significant challenge for the security of the State and its citizens, also in Africa. An essential starting point to address the security, development and human rights concerns that surround the private security sector is to understand the dynamics surrounding private security in different national contexts. As reflected in this volume, challenges of private security governance can only be addressed through the promotion of

multistakeholder approaches. For this reason, as part of our commitment to supporting security sector reform in Africa, the Geneva Centre for the Democratic Control of Armed Forces (DCAF) is strongly committed to fostering public private partnerships that builds trust and create synergies across international and regional actors, governments, the private security industry and civil society.²

This volume is the fruit of a highly-valued partnership between DCAF and the *Organisation Internationale de la Francophonie* (OIF). It reflects a common objective to respond to real needs on the ground in order to promote peace, security and good governance in the francophone world. In acknowledging with gratitude the support provided by the OIF to the work of DCAF, the recommendations for action at national, regional and international levels contained in the conclusion to this volume point the way to important new avenues for joint action at national, regional and international levels.

Ambassador Thomas Guerber

Director

Geneva Centre for the Democratic Control of Armed Forces (DCAF)

Notes

- ¹ Transforming our World : the 2030 Agenda for Sustainable Development, A/RES/70/1, 25 September 2015.
- ² For further information please visit DCAF's Public-Private Partnerships Hub : <http://www.ppps.dcaf.ch>

Acronym List

ADDR	Authority for Demobilization, Disarmament and Reintegration, Ivory Coast
AU	African Union
CEPC	First Cycle of Secondary Studies Brevet (Brevet d'Etude du Premier Cycle), Ivory Coast
CNRS	National Council for Security Sector Reform, Mali
CPCE	Certificate of primary education
CSO	Civil society organisation
DCAF	Geneva Centre for the Democratic Control of Armed Forces
DRC	Democratic Republic of the Congo
DST	National Surveillance Directorate, Ivory Coast
ECOWAS	Economic Community of West African States
FDFP	Development and Professional Formation Fund (Fonds de Développement de Formation Professionnelle), Ivory Coast
FDS	Defence and Security Forces, Mali
GPRS	Multidisciplinary Think Tank on the Reform of the Security Sector (Groupe pluridisciplinaire de réflexion sur la Réforme du Secteur de la Sécurité), Mali
ICoC	International Code of Conduct for Private Security Service Providers
ICoCA	International Code of Conduct Association
ICRC	International Committee of the Red Cross
IHL	International humanitarian law
MD	Montreux Document on pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict (also: Montreux Document)

MDF	Montreux Document Forum
MINUSMA	United Nations Multidimensional Integrated Stabilisation Mission in Mali
MONUSCO	United Nations Organisation Stabilization Mission in the DRC
NGO	Non-governmental organisation
OAU	Organisation of African Unity
PMSC	Private military and security company
PSC	Private security company
RADDHO	African Assembly for the Defense of Human Rights
SALW	Small arms and light weapons
SOMAGES	Société Malienne de Gardiennage et de Surveillance, Mali
SONATEL	Senegalese Telecoms Company (Société Nationale des Télécommunications du Sénégal), Senegal
SSG	Security sector governance
SSR	Security sector reform
SYNACOFAS	Senegalese National Union of Cash-in-transit and Security Guards (Syndicat National des Convoyeurs de Fond et Agents de Sécurité du Sénégal), Senegal
UK	United Kingdom
UN	United Nations
UNMIL	United Nation Mission in Liberia
UNREC	United Nations Regional Centre for Peace and Disarmament in Africa
US	United States of America
VPs	Voluntary Principles on Security and Human Rights

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CHAPTER I

Introduction

Alan Bryden

Private security in Africa is booming. Whether from the perspective of major multinational players or small-scale local enterprises, the market for commercial security has expanded and evolved over recent years. Different dynamics account for these changes. On the supply side, the downsizing of national militaries and high unemployment levels make private security an appealing employment avenue while the increased presence on the continent of transnational companies has significantly increased demand. A marked increase in terrorist attacks on African soil over recent years has also contributed to this growth. However, policy makers rarely address private security, national parliaments and regulatory bodies provide limited oversight in this area, and the attention of African media and civil society is localized and sporadic. In short, a fundamental shift in the African security landscape is taking place under the radar of democratic governance. Why is this?

There are multiple reasons why the growth of the private security industry in Africa is occurring by stealth. Across the African continent, security privatisation suffers from the same challenge as wider security issues; discussion of and decision-making on security constitutes a reserved domain that is jealously guarded by a narrow political and security elite. From a political standpoint, security is intimately linked to concerns of national sovereignty and in particular to the authority of the Head of State. The outsourcing of security functions to private actors runs counter to this narrative, resulting in a tendency to downplay its significance. This is particularly apparent in franco-phone contexts, with authorities rejecting more liberal Anglo-Saxon attitudes towards the business of security. In addition, oversight and regulatory bodies

often lack the knowledge and capacities to promote greater accountability of the private security sector. The absence of an effective regulatory framework allows grey and black markets to flourish while providing a permissive environment for corruption and human rights abuses.

Despite the evident linkages to wider security, development and human rights concerns, private security regulation and oversight is almost invisible within international assistance frameworks. Given its emphasis on a holistic approach to security provision, management and oversight, it is particularly striking that the private security sector rarely features in international security sector reform (SSR) programming. This means that private security regulation remains a niche area that is disconnected from wider efforts to promote good security governance in Africa. Requirements and good practices relating to the conduct of private security providers are articulated within the business and human rights discourse at the international level. Initiatives such as the Montreux Document, the International Code of Conduct (ICoC) and the Voluntary Principles on Security and Human Rights (VPS)¹ respectively set down legal obligations, requirements and good practices for States, the private security industry and the extractives sector. However, to date these normative developments have not been matched by implementation on the ground.²

A distinction can be made between private security companies (PSCs) providing security related services such as protecting goods and persons and private military and security companies (PMSCs) that also incorporate military-related services including material and technical support to armed and security forces. Both 'security' and 'military' sectors have expanded over recent years. A more general increase in the recourse to PSCs by individual and corporate clients in Africa has been accompanied by spikes in demand in certain contexts. For example, in Kenya following the September 2013 terrorist attack on the Westside Mall the industry rapidly expanded to some 300'000 employees (in comparison to 40'000 police officers).³ International PMSCs have become increasingly prominent in support roles for United Nations peacekeeping missions (e.g. in DRC and Somalia) and have also played a significant role in the training of African public security forces, notably in Liberia in what was the first instance in the history of West Africa of a private contractor taking the lead in restructuring a national army.⁴

A general problem of classification undermines efforts to promote good private security governance. Static definitions fail to capture the fluid nature of the industry. In some cases, companies are wound up then re-constituted under different names; in others, smaller entities are bought and amalgamated into larger companies. Moreover, the industry is inherently demand-driven; the services on offer adapt in response to shifting demand. For instance, in the mid 2000s, States were the major clients, but today a diversification in the client base is occurring with the private sector (small local enterprises as well as multinational companies and banking establishments, international organisations such as the United Nations or the European Union, humanitarian organisations and diplomatic missions as well as individual clients) resorting to private security services. Finally, private security personnel may exist within companies whose main activities are not security-related at all. In Africa this is particularly apparent in the extractives sector where mining, oil and gas companies may protect their sites and personnel using a combination of public, private and in-house security. For all these reasons, in order to distinguish the contours of the industry, a functional approach should be adopted that focuses on the services provided as opposed to simply distinguishing PSCs from PMSCs.⁵

A particularly African dimension to this issue is the drawing of parallels between the contemporary private security industry and the long history of mercenarism on the continent. Although there is a clear demarcation in international humanitarian law between the provision of private security services and mercenary activities, the distinction is less straightforward for Africans that have suffered due to such external military interventions. From this viewpoint, a common thread can be traced from the use of mercenary forces by the colonizing powers in the 1870s to the roles played by Western mercenaries in the 1960-1970s reinforcing weak governments or supporting insurgents and rebel groups on to the 1990s with international 'for profit' military companies providing support to African governments.⁶ In the latter period, the case of Sierra Leone is particularly emblematic through the association of external military intervention with questionable security gains and natural resource extraction. Given this chequered history, it is no surprise that an important constituency within Africa views PMSCs with suspicion and voices concerns whether regulation is tantamount to effectively legitimizing the industry. Attitudes are however changing and governments are increasingly recognizing the nuances between mercenaries and private military and security companies. In this respect, it is significant that the African

Union is seeking to update the OAU Convention on Mercenarism to reflect the realities of the modern private security industry.⁷

International initiatives

Increased attention to private security in Africa has arguably been catalysed by international responses to abuses involving companies operating in conflict theatres in the Middle East. Widely publicized human rights abuses suffered by civilians in Afghanistan and Iraq focused global attention on the international industry, highlighting a situation in which these actors seemed to operate in a legal and regulatory vacuum. The September 2007 Nissour square incident in Iraq was significant not only because of the shocking act perpetrated by employees of a US PMSC in killing 14 civilians and wounding 20 more, but because it took 7 years for a trial to be concluded.⁸ The view that something needed to be done to clarify international law and promote good practices translated into two complementary and highly innovative international initiatives developed under the stewardship of Switzerland: the Montreux Document and the International Code of Conduct. It has also spurred efforts within the United Nations to address the issue. Finally, human rights concerns surrounding the use of PSCs has been the focus of attention from an influential group of clients – the extractives sector – most notably through another multistakeholder initiative, the VPs.

Montreux Document

The Montreux Document is the result of an intergovernmental initiative launched by the Swiss Government and the International Committee of the Red Cross (ICRC) to gather applicable international law for Home States (where PMSCs are based), Contracting States (that contract PMSCs to provide services) and Territorial States (where PMSCs operate). The Montreux Document, which was adopted on 17 September 2008, is a 'soft law' initiative – it does not create new obligations nor is it legally binding. Rather, it recalls existing international legal obligations for States in relation to PMSCs and identifies good practices in order to promote respect for international humanitarian and human rights law wherever PMSCs are present: during

armed conflict, but also in post conflict situations as well as in peacetime. The good practices form a blueprint for States when regulating PMSCs and include recommendations for specifying which services may or may not be contracted out to PMSCs, requiring appropriate training, establishing terms for granting licences and adopting measures to improve supervision, transparency and accountability. The use of PMSCs in guarding extractive industries or for the protection of shipping against acts of piracy are examples of how the Montreux Document can be instructive and apply to situations outside of armed conflict.

Five years after the Montreux Document was agreed, an assessment was made of the progress achieved by the initiative. The resulting report,⁹ which drew on detailed research and inputs from numerous states and individual experts, identified a number of implementation gaps. Two observations were particularly significant: the initiative has suffered from the absence of a centre of gravity to drive implementation; and, there has been a conspicuous lack of buy-in from the Global South (of 54 Member States only 5 are from Africa).¹⁰ In response to these shortcomings, participants agreed in 2013 to establish the Montreux Document Forum (MDF) to provide a focus to efforts to promote implementation of the Montreux Document and share good practices.

Given the scale of the private security industry across Africa and the evident need for improved regulation, there should be demand from African States for the Montreux Document as a practical tool to help develop or improve national legal and policy frameworks. A particular priority for the MDF has been to raise awareness and build support for the Montreux Document. To this end, regional conferences in Dakar (2014) and Addis Ababa (2015) brought together 32 States, regional and international organizations as well as individual experts to consider the impact of security privatization in Africa. Discussions highlighted a range of different challenges and opportunities in relation to security privatization that should be addressed at national, regional and international levels. However, the headline conclusion that can be drawn from these conferences is that there is still a very limited awareness of the range of private commercial actors providing security in Africa. In short, Montreux Document outreach provided a wakeup call for States, drawing attention to the lack of transparency and accountability of this burgeoning industry and the need to adapt international good practices to local realities.¹¹

The International Code of Conduct

While the Montreux Document clarified obligations and good practices for States, it was acknowledged that engaging PSCs in the regulation of their industry was a key element of a comprehensive oversight system. This insight spurred the development of the ICoC, which complements the Montreux Document by establishing IHL and human-rights based obligations and good practices for the private security industry. Agreed in 2010, the ICoC was developed by a multi-stakeholder group of States, industry representatives and civil society organizations (CSOs). It constitutes a set of principles based on IHL and international human rights law that should be applied in the delivery of security services by PSCs operating in complex environments. PSCs need to integrate the Code in their management and operational practices, addressing issues such as the use of force, training and prohibitions including on torture, discrimination and trafficking. Like the Montreux Document, it is a pragmatic response to the need for international regulation that could be developed over a short timeframe. Despite its voluntary nature, the Code's requirements have 'teeth' because important clients of PSCs, including governments, international organizations and companies, increasingly require compliance with the ICoC or membership in the ICoC Association (see below) in order for PSCs to be eligible for contracts.

An independent governance and oversight mechanism – the International Code of Conduct Association (ICoCA) – was created to support implementation of the ICoC. The ICoCA consists of a membership of PSCs, but also governments and CSOs, making it a multistakeholder initiative governed equally by each of these three pillars. The ICoCA is responsible for implementation of the ICoC, and aims to achieve this by certification, monitoring and a complaints mechanism relating to the activities of member PSCs. Given that the current membership of ICoCA is dominated by the US and UK-based industry (constituting the big players on the global private security market), an important task for the association will be to implement and promote compliance with the Code by companies of all sizes operating in the Global South. While only seven African companies are current ICoCA members, many of the major UK and US based companies that operate in Africa have adhered to the Code.¹² Moreover, seven of sixteen current CSO members are from Africa, suggesting that the need for greater transparency and accountability is becoming more widely acknowledged.

Draft United Nations Convention on private military and security companies

Building on the 1989 UN Convention against the recruitment, use, financing and training of mercenaries, the UN Human Rights Commission created a working group in 2005 to bring greater focus to addressing the use of mercenaries. The working group has expanded its scope to consider the human rights impacts of the private security industry, presenting in 2009 the first draft of an international convention that sets out international norms for state regulation of this sector. Beyond providing a clear basis in international law to guide States, such a convention would also promote greater transparency and accountability on the ways in which PSCs/PMSCs are used around the world.

The draft Convention has now been under consideration for a number of years. Progress has been limited because States adopt diametrically opposed views on the private security industry and how it should be regulated. With no likely solution to this impasse in view, the Montreux Document and the International Code of Conduct represent the most significant international mechanisms currently in existence that can help support and reinforce oversight and accountability of the private security industry at the national level.

The Voluntary Principles on Security and Human Rights

A company's responsibility to respect human rights extends not only to its own operations and people but to the individuals, communities, and States in which they operate. Underpinned by this principle, the VPs is a multi-stakeholder initiative established in 2000 in which governments, extractives companies and non-governmental organizations (NGOs) work together to address security and human rights challenges arising from extractives operations. Nine governments and ten non-governmental organisations are VPs members. Most striking though is the industry membership which comprises 27 of the largest international mining, oil and gas companies.¹³ The VPs seeks to support these extractives companies when operating in particularly challenging environments to maintain the safety and security of their operations within a framework that ensures respect for IHL, human rights and fundamental freedoms.

The VPs are particularly relevant for African States given the scale of international extractives operations in the region. The VPs provides targeted guidance on risk assessments, relations with public and private security. Significantly, beyond the promotion of principles and good practices, the initiative seeks to foster cooperation between States, companies and civil society. The challenge for the initiative is to translate these positive dynamics into concrete implementation on the ground. To date, the absence of government buy in from the global South (only Ghana is a current member government from Africa) and a lack of field-based VPs activities means that the initiative has not realised its full potential. In the DRC, local VPs stakeholders have held regular multistakeholder security meetings since 2012 in Lubumbashi to discuss challenges and share good practices around extractives operations. Participation is open to all extractives companies in the area, local public institutions, public security forces, PSCs, human rights organisations and the United Nations Organisation Stabilization Mission in the DRC (MONUSCO). This forum pools knowledge and provides a platform for the exchange of different perspectives in order to address day-to-day security challenges. It also has an important confidence-building dimension.¹⁴ Such efforts to promote joined up approaches to security and human rights challenges point to how the initiative can become more implementation focused in the future.

Privatisation and security governance in Africa

A straightforward reason for the growth of the private security sector in Africa has been the need to plug gaps left by inadequate state security provision. From this perspective, it can be argued that the expansion of commercial private security – as with community-based non-state security providers – simply reflects the reality that African States are not and have never been effective providers of security to their citizens. The imperative to ensure the security of the State, or rather the regime in power, has left little or no room for addressing threats to human security.¹⁵ As a result, a range of private, non-state actors with varying degrees of formality and legitimacy have always played a significant part in people's day to day experience of security.

Inadequate state security provision in Africa is compounded by governance gaps. Outdated legal frameworks, under-capacitated parliaments, weak regulators and submissive judicial authorities fail to provide over-

sight, transparency or accountability that is required to protect human rights and uphold the rule of law.¹⁶ Legacies of autocratic rule and a lack of national capacity on security issues that combine to undermine the security sector governance environment are exactly the challenges that SSR seeks to address. This relationship between SSR programming and the need to promote good private security governance should be self-evident but is rarely realized in practice. In order to frame the issue from a security sector governance perspective, a number of questions have particular salience:

- *Does the State know who is delivering security on the national territory?*

Even in contexts where private security significantly outnumbers the police, the consequence of weak domestic regulation combined with a lack of public attention is that States do not recognize the extent of security privatisation or its consequences. The absence of effective vetting or record keeping means that there is limited transparency on who is employed within the industry. This may pose particular challenges in post-conflict environments where private security is a natural employment avenue for demobilised ex-combatants. Anecdotal accounts of former combatants entering the private security industry as formed units, with the consequent heightened threat of rapid re-mobilisation, should provide a salutary lesson for fragile African States. Other sensitive grey areas include the use, management and stockpiling of weapons by PSCs or training of personnel.

- *Are the roles and responsibilities of public and private security clearly delineated?*

In principle, the roles and responsibilities of public security forces and private security providers should be quite distinct with mandates and rules of engagement for private security far more narrowly circumscribed than those of state security providers. In practice, the distinction may be far less clear. In some contexts, units within the armed and security forces actively bid for or otherwise pursue private security contracts. In others, formal public-private policing partnerships between the State and PSCs are being tested.¹⁷ In many countries individual soldiers or police officers supplement their pay by moonlighting as guards when off duty. Imperatives to downsize the public sector in order to realize economies are also felt in this domain with PSCs

assuming increasingly sensitive tasks – such as critical infrastructure protection – that would not have been the case in the past. These examples of shifting or blurring roles and responsibilities raise important questions on the consequences of security privatisation for the security of the State and its citizens.

- *What are the consequences of inadequate oversight and accountability at the national level?*

In many contexts where governance is weak, the ownership structures of private security companies can be unclear. PSCs are frequently owned by members of political or security elites, raising potential red flags on corruption in relation to public procurement decisions. International companies may pose particular challenges; in certain regions the market for private security is increasingly being rationalised with big international players buying up smaller companies to increase market share. Even where national laws proscribe foreign nationals from owning PSCs, this can be circumvented through the acquisition of local subsidiaries that report to the parent company.¹⁸ In a similar vein, international PSCs may bring in staff from outside rather than drawing on local labour. While there are inevitable trade offs involved in such decisions, this raises the question how far international companies are attuned to and respectful of local realities and cultures. Weak national oversight can also be compounded when de facto responsibility for security provision, management and oversight lies with private clients. In particular, extractives companies operating in complex environments often face dilemmas in seeking to manage relationships with public security forces and private security providers responsible for protecting their operations.

- *How does a growing private security industry affect human rights?*

It is self-evident that commercial security is not a public good but rather is available to those that can pay. It is therefore essential to analyse and understand the impact of private security provision on individuals and communities: is this supplementing public security or in effect displacing insecurity to the poor and vulnerable? A low level of awareness within domestic human rights constituencies, the absence of effective monitoring (whether performed by regulators or civil society) and the general lack of an evidence base means that human rights abuses can occur with impunity. From a human rights perspective, inadequate oversight and accountability also has sig-

nificant consequences for the industry itself. On the one hand, standards of human rights training can vary significantly in their scope and application. On the other hand, working in private security is often one of the lowest paying forms of employment. Weak oversight means that PSC employees are left vulnerable to mistreatment, poor wages and unfair working practices. As in any other sector, when salaries are low and working conditions poor, individuals are likely to lack qualifications and motivation, increasing the risk of poor performance and human rights abuses.

Privatising security in West Africa

Commercial private security providers are an inevitable feature of the contemporary African security governance landscape. Important steps forward have been made in acknowledging this reality; it is significant in this respect that the need for private security regulation features in the African Union SSR strategy and the ECOWAS policy framework for security sector governance. However, there needs to be a shift from endorsement by States of progressive normative and policy frameworks to more effective domestic regulation. International regulatory initiatives such as the Montreux Document and the ICoC provide a means to catalyse action in this area.

It is particularly important to recognize that an effective, accountable and human rights-respecting private security industry forms part of a wider imperative to ensure that security provision is effective, well-managed and subject to democratic oversight. When oversight is weak or there is a blurring of roles between public and private security the scope of engagement of these actors needs to be carefully considered by national authorities. A holistic, governance-driven approach that addresses the roles and responsibilities of governments, parliaments, regulators, civil society and the industry itself offers the right framework to ensure that PSCs and PMSCs operate in a transparent, accountable manner. Hand in hand with a good governance approach is the need to apply a human security lens. This means taking into account the interests of all individuals and communities and not just those that are the beneficiaries of private security services.

Progress in international regulation of the private security industry was undoubtedly spurred by the ‘CNN effect’ created by highly visible incidents. Africa has seen an increase in security incidents in which private security

have been involved, notably the Westgate Mall terrorist attack in Nairobi in September 2013 and the Radisson Blu hotel attack in Bamako in 2015. Terrorism-fuelled insecurity has certainly contributed to the growth of the industry. However, these high profile incidents have not resulted in an increased public policy focus on the industry and its regulation. There is a need for an evidence base in order to raise awareness, foster dialogue and catalyse action to improve private security governance in Africa and learn the necessary lessons. This volume contributes to filling this knowledge gap. Accounts by African experts drawing on a combination of desk research, including local media sources, and interviews portray the realities of the private security industry in different African settings:

- Aliou Diouf offers a regional overview of the contemporary private security industry in Africa, addressing head on the ambiguities and tensions between Africa's commercial private security industry and the legacies of mercenarism. He provides an overview of the contours of the industry including services provided, its client base as well as regulatory and legal frameworks, before highlighting the major challenges linked to this phenomenon.
- In Côte d'Ivoire the generalized insecurity created by the civil war resulted in what Edem Comlan characterizes as the 'quasi-anarchic' growth of the private security industry. Mirroring the imperatives of the wider SSR process, he identifies the need for increased transparency and accountability of private security arrangements while at the same time acknowledging the requirement to be mindful of the sensitivities around an industry that has gone some way to addressing rampant domestic unemployment, notably providing a reintegration option for ex-combatants.
- Mali's private security industry has swollen as a result of the internal armed conflict of 2012-13 as well as more recent incidents such as the 2015 terrorist attack in Bamako. According to Kadidia Sangaré, the industry can be a positive force in the country. However, if private security is to contribute to reducing insecurity, a greater focus on human rights considerations by national authorities and the industry will be essential.

- In Senegal, the private security industry has developed in a context of relative stability. However, Aly Sagne highlights a number of significant challenges associated with an ever-expanding industry. These include weak regulation, insufficient focus on employees' rights and significant concerns over the lack of emphasis on respect for human rights within the industry.

In many ways, the country case studies of Cote d'Ivoire, Mali and Senegal depict very different realities. However, they also bear witness to a shared experience of security provision that is being offered by a range of different public and private actors without effective oversight and accountability. Put simply, neither national authorities nor international security and development partners have a clear picture of who is delivering security on the national territory and how this impacts on the security of the State and its citizens. Building on the analysis and recommendations provided by the contributors, the concluding chapter analyses key characteristics of security privatisation in Africa, considers its significance from a security sector governance perspective and identifies specific entry points to promote good private security governance in Africa.

Notes

- ¹ Full titles: Montreux Document on pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict; International Code of Conduct for Private Security Service Providers; Voluntary Principles on Security and Human Rights.
- ² For an articulation of the relationship between SSR and business and human rights see: Rosa Mendes, Pedro, *Business and Security Sector Reform: the case for corporate security responsibility*, DCAF, 2015.
- ³ Report of the Ethiopia Regional Conference on Private Military and Security Companies, DCAF, 2016, p.36.

- ⁴ A. Ebo, *The Challenges and Opportunities of Security Sector Reform in Post-Conflict Liberia*, DCAF, 2005, p.24.
- ⁵ The Montreux Document follows this functional approach, describing PMSCs as “private business entities that provide military and / or security services, irrespective of how they describe themselves”. Montreux Document 2008, page 9, para 9.
- ⁶ A.-F. Musa and K. Fayemi (Eds.), *Mercenaries: an African Security Dilemma*, Pluto Press, 1999, pp. 1-5.
- ⁷ Ethiopia Conference Report, 2016, p.16.
- ⁸ A.-M. Buzatu, *Towards an International Code of Conduct for Private Security Providers: A View from Inside a Multistakeholder Process*, DCAF, 2015, pp 14-15.
- ⁹ Progress and Opportunities Five Years On: Challenges and Recommendations for Montreux Document Endorsing States, DCAF, 2013.
- ¹⁰ Angola, Madagascar, Sierra Leone, South Africa and Uganda. See: www.mdforum.ch
- ¹¹ See: Rapport de la Conférence régionale en Afrique francophone et lusophone, DCAF, 2014 and Ethiopia Conference Report, DCAF, 2016.
- ¹² See: www.icoca.ch
- ¹³ See: www.voluntaryprinciples.org
- ¹⁴ See: Case Study: Monthly Security and Human Rights Meetings in Lubumbashi, in *Addressing Security and Human Rights Challenges in Complex Environments Toolkit* 3rd edition, DCAF & ICRC, 2016, p. 55.
- ¹⁵ A. Bryden and F. Olonisakin, *Security sector transformation in Africa*, DCAF, 2010, pp. 12-13.
- ¹⁶ A. Bryden and F. Chappuis, *Learning from West African Experiences in Security Sector Governance*, Ubiquity Press, 2015, pp. 5-6.
- ¹⁷ Ethiopia conference report, 2016, pp. 12-13.
- ¹⁸ Ethiopia conference report, 2016, p.17.

CHAPTER II

The Regional Context

Aliou Diouf

Introduction

In recent years, there has been a world-wide increase in the influence of private security companies (PSCs). In general, PSCs are primarily used to protect people and property in countries where the State fails to provide sufficient protection, or when natural disasters or armed conflict make it necessary to strengthen security measures.¹ Like other continents, Africa is no exception to this phenomenon. Depending on their size, and especially on the services provided to their clients, PSCs generally include companies that provide security guards and those that specialise in more complex security missions, such as training the military and advising armed forces, operating complex weapons systems, and even direct participation in combat. These specialised companies make up what are commonly called private military and security companies (PMSCs). Partly due to the proliferation in internal conflicts and hotbeds of tension throughout the world, their number has increased significantly in recent years. They also offer a wider range of services.² Another factor is the growing tendency of States to outsource certain activities that are related to their sovereign responsibilities for national security and defence.

This chapter analyses the general context in which private security companies operate on the continent, the various aspects of the African private security market, and the many challenges posed by PSCs. In order to provide the reader with some context, a conceptual framework will be set out, defining terms such as 'private security company', 'private military and security com-

pany', and 'mercenary activities'. Clarification of these terms is particularly important as the historical ties between private military and security companies and mercenaries fosters confusion. It is therefore necessary to dispel the confusion that often occurs around these two activities, a confusion that is maintained by the sometimes very thin line between mercenary organisations and some PMSCs.

In terms of methodology, it should be noted that unlike the three case studies, this general chapter was not informed by field research. Such an approach was not necessary to achieve the aims of this chapter. Therefore, a methodological approach based primarily on an analysis of the existing literature on private security in Africa in general, and West Africa in particular was adopted. This literature review, which covered publications, reports, official statements, newspapers, websites, and other relevant documents, provided the information necessary for this chapter.

Conceptual framework

The literature uses many different terms to describe private security companies. Some references are to PSCs, others are to PMSCs. Alongside these acronyms, there are others that are used to designate the same entities, or other organisations with a similar status and activities. Thus, there are also terms such as 'Private Military Company' (PMC), 'Private Military Firm' (PMF), 'Private Military Contractor', 'Private Security Firm' (PSF), 'International Security Company' (ISC). The indiscriminate use of these terms helps maintain some uncertainty about the definition of players in the sector. This confusion even extends to the concept of a 'mercenary' which describes something quite different from the reality behind all these terms. It therefore seems useful to clarify terminology before going further in our analysis.

Definitions

According to the International Code of Conduct for Private Security Service Providers (ICoC),³ the term private security companies and private security service providers (collectively, PSCs) means: “*any Company (as defined in this Code) whose business activities include the provision of Security Services either on its own behalf or on behalf of another, irrespective of how such a Company describes itself.*”⁴ These security services include “*guarding and protection of persons and objects, such as convoys, facilities, designated sites, property or other places (whether armed or unarmed), or any other activity for which the Personnel of Companies are required to carry or operate a weapon in the performance of their duties.*”⁵

According to 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)⁶, “*Irrespective of how they describe themselves,*” PMSCs “*are private business entities that provide military and/or security services. Military and security services include, in particular, armed guarding and protection of persons and objects, such as convoys, buildings and other places; maintenance and operation of weapons systems; prisoner detention; and advice to or training of local forces and security staff personnel.*”⁷

The United Nations has also addressed this issue. Thus, the United Nations Working Group⁸ considers, in its draft international Convention on Private Military and Security Companies, that the term “*Private Military and/or Security Company (PMSC) refers to a corporate entity which provides on a compensatory basis military and/or security services by physical persons and/or legal entities.*” And that the term “*Military services refers to specialized services related to military actions, including strategic planning, intelligence, investigation, land, sea or air reconnaissance, flight operations of any type whether manned or unmanned, satellite surveillance, any kind of knowledge transfer with military applications, material and technical support to armed forces, and other related activities.*” And that the term “*Security services refers to armed guarding or protection of buildings, installations, property and people, any kind of knowledge transfer with security or policing applications, development and implementation of informational security measures and other related activities.*”⁹

The term 'mercenary'¹⁰ is defined in three international legal instruments: the Protocol Additional to the Geneva Conventions of 1949,¹¹ the Organisation of African Unity (OAU)¹² Convention on the Elimination of Mercenarism in Africa, adopted in July 1977 (only a few weeks after the adoption of the first Geneva Protocol)¹³ and the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, adopted by the United Nations on 4 December 1989.¹⁴ The first article of the OAU Convention reads as follows: *"A mercenary is any person who: a) is specially recruited locally or abroad in order to fight in an armed conflict; b) does in fact take a direct part in the hostilities; c) is motivated to take part in the hostilities essentially by the desire for private gain and in fact is promised by or on behalf of a party to the conflict material compensation; d) is neither a national of a party to the conflict nor a resident of territory controlled by a party to the conflict; e) who is not a member of the armed forces of a Party to the conflict; and f) has not been sent by a State other than a party to the conflict on official mission as a member of the armed forces of the said State."*

The second article of this Convention states that *"The crime of mercenarism is committed by the individual, group, or association, representative of a State and the State itself who with the aim of opposing by armed violence a process of self-determination, stability, or the territorial integrity of another State, that practises any of the following acts: a) Shelters, organises, finances, assists, equips, trains, promotes, supports or in any manner employs bands of mercenaries; b) Enlists, enrolls or tries to enroll in the said bands; c) Allows the activities mentioned in paragraph (a) to be carried out in any territory under its jurisdiction or in any place under its control or affords facilities for transit, transport, or other operations of the above mentioned forces."* Finally, the third article of the Convention adds that *"Any person, natural or juridical who commits the crime of mercenarism as defined in paragraph 1 of this Article commits an offence considered as a crime against peace and security in Africa and shall be punished as such."*¹⁵

The Montreux Document uses the term 'private military and security companies', unlike the ICoC which refers to 'private security companies'. This difference in terminology is due to the purpose of each document, the audience each addresses, and the contexts in which they apply. The Montreux Document is addressed primarily to States in connection with the services rendered by private military and security companies in the context of armed conflict. This particular context means that states must manage PSCs that

specialise in surveillance and guarding during peacetime, but also those that provide services that are much more linked, or even indispensable, to situations of armed conflict. The various military services provided by these companies must also comply with international humanitarian law (IHL) and human rights legislation. The ICoC, developed by private security companies, states and civil society in the wake of the Montreux Document, focuses on the ‘civilian’ side of private security. This refers primarily to PSCs that provide conventional security services, such as surveillance, guarding property, and personal protection. However, the Code does not exclude military enterprises: the ICoC also applies to them. This is all the more true since there is no firm barrier between PMSCs and PSCs, some companies providing both types of services. This is why the Montreux Document does not make a distinction between PMSCs and PSCs.

As for the term mercenary, it should be noted that the definition in Article 47 of the Protocol I Additional to the Geneva Conventions¹⁶ applies in situations of international armed conflict. The protocol does not make mercenary activity an offence, but excludes mercenaries from the protections that the Geneva Conventions guarantee to combatants or prisoners of war.

Conversely, the OAU and United Nations Conventions explicitly make mercenary activity a criminal offence that is condemned by the international community. The perpetrators of such offences must therefore be prosecuted and tried. The objective of the African Union in particular was to counter the serious threat to independence, sovereignty, security, and the territorial integrity of the continent posed by mercenary activities. In Africa, the term mercenary often evokes images of those ‘dogs of war’ who fear neither God nor man, and answer only to the law of supply and demand, like the infamous Bob Denard and his associates.¹⁷ Today, mercenary activity is seen as the opportunistic, mercantile and illegal exploitation of conflict situations by an individual or group of individuals. The definitions given in these two conventions do not, however, correspond to the generally accepted meaning of PMSCs, since the majority do not take part in fighting, although they may be contracted to provide services in the theatre of war. In addition, employees are often the nationals of one party to the conflict. PMSCs are lawful commercial companies (and therefore profit-making) that operate in a normal legal and financial framework. From this point of view, they have nothing to do with the mercenaries of the past who lived outside of the law, and who

were only attracted by the lure of gain and were quick to engage in a conflict without understanding the wider implications.

In summary, it should be remembered that despite the diversity of terms and definitions, private security companies include those that provide 'civilian' security services, commonly called PSCs, and those that deliver 'military' services, known as PMSCs. However, it is clear that this distinction is not definitive; rather it remains relatively theoretical, because in practice PSCs and PMSCs are often branches of the same company. Therefore, what ultimately matters is not the nature of the entity, but the nature of its activities. In addition, there are companies that are active in the private security sector but cannot be classified as either PSCs or PMSCs. This is particularly true of companies that provide States or other clients with surveillance and security equipment.

In this chapter, the term PSC is used to refer to companies that only provide security services and are mainly focused on guarding and surveillance. However, the UN only uses the services of security companies that can, if necessary, also provide military services.¹⁸ The term PMSC will be used to designate those that add a military dimension to their activities, also including those that do not deal directly with security issues on the ground, but provide PSCs, PMSCs, and States with security and communications equipment (sometimes used to conduct wiretaps). This broad concept of security will allow the study to cover all actors operating in the field of private security.

Analysis of the regional situation

Growth of the private security sector

PSCs are rapidly gaining ground in West Africa. This is due to external factors over which the region has no control, as well as various internal factors. These include an increase in centres of tension and internal political crises, the twin scourges of piracy and terrorism, and an abundance of natural resources. Finally, it is due to the general reduction in the governmental functions of States and the shortcomings of governments, which very often do not have sufficient human and material resources to deal with the legitimate

security needs of their populations. In addition, PSCs have long had their eyes on Africa. The continent offers them many opportunities, especially in the protection of people and critical infrastructure in unstable areas, and in the fight against piracy on commercial shipping in the Indian Ocean and off the coast of West Africa. Business is booming.¹⁹

The majority of PSCs operating in the region are domestic companies. Indeed, most PSCs operating in African countries do not have an international reach, nor do they deal with international security issues, let alone provide military services. Most companies are very small-scale and operate only within one country or region; some even focus exclusively on a single type of client. These domestic companies primarily provide security guards for private homes, industrial sites and office blocks but also provide services including close protection, electronic security, and the transportation of cash, valuable items, and documents.

We note that there are a huge number of PSCs in Africa. This observation is confirmed by the results of studies into PSCs in the three countries focused on in this publication, namely Côte d'Ivoire, Mali and Senegal. In all of these countries, domestic PSCs form a clear majority, and their number is continuing to increase. Rapid and poorly managed urbanization, youth unemployment resulting in juvenile delinquency, and the precarious living conditions of many families are factors that contribute to rising insecurity in urban centres. This insecurity creates, in turn, a greater need for those who can afford it to employ PSCs.

Beyond the external and internal factors behind the proliferation of PSCs, we must consider the major social and economic role that both domestic and international PSCs play. By protecting individuals and their property, they are protecting stakeholders and the production tools that the economy needs. They also contribute to countries' tax revenues and the maintenance of harmony and social stability in communities, preventing many conflicts between individuals. As highlighted in the three case studies that follow, PSCs are also important providers of employment, which is significant in a region where youth unemployment has become endemic. Indeed, they employ a large workforce recruited mainly from young people, former soldiers, and public security forces. This economic and social role cannot, however, conceal the many problems caused by the explosion of the PSC sector in Africa.

Human security²⁰ remains a major concern for both the African Union (AU) and the Economic Community of West African States (ECOWAS). The AU and ECOWAS do seem to be wary of international PSCs that some consider 'modern' or 'disguised' mercenaries. Therefore, without going so far as to deny their usefulness, many African countries see PSCs as having the potential to destabilize African States. There is some distrust on the part of States when it comes to making use of PSCs, especially foreign PSCs that provide complex military services. Cases have already occurred where some States have had to contend with mercenaries or PSCs that were considered to be carrying out mercenary activities. It was the destabilizing role of mercenaries²¹ during decolonization that prompted the OAU to adopt the Convention on the Elimination of Mercenaries in Africa. The bad memories linked to the mercenary fighters that undermined Africa during decolonization, and countries' visceral attachment to their sovereignty, in part justify their reservations about PSCs. Some countries that are very vulnerable due to numerous internal political crises could easily become unstable under the influence of PSCs.

Moreover, some see the expansion of PSCs as increasing the risk of the proliferation of small arms and light weapons. But it must be stressed that this mistrust particularly concerns international PSCs, which in addition to being owned by foreigners, often have substantial financial resources and significant influence. Their power leads some observers to think that they may in some cases constitute a threat to the sovereignty of fragile States.

In Africa, and particularly in West Africa, there is a strong belief that security issues are a prerogative of the State. Only the State has a monopoly on violence and it cannot be transferred to any company. However, the use of PSCs does not necessarily equate to a transfer or sharing of the State's monopoly on violence. The appropriate and well supervised use of PSCs could even help some States to preserve their sovereignty and stability. Given the proliferation of PSCs in Africa and the many challenges they pose, the African Union and ECOWAS would benefit from calling for an in-depth debate on the subject, in order to establish an adequate legal framework at the continental and regional level, and also to make better use of all the skills these players have to strengthen peace and security on the continent and in the subregion. However, they seem to have grasped the implication of the issues: as will be addressed further, the two organisations are already working on the issue of

PSCs. But for now, we will focus on the different aspects of the PSC sector in Africa.

The main features of PSCs in West Africa

Like the rest of the world, Africa is not immune to the expansion of PSCs. Both market and client, the continent has always attracted companies operating in the security sector. In the decolonization era it was mercenary fighters, nowadays it is professionals who provide security for multinationals or pursue a new breed of pirate off the Somalian coast. Alongside these international PSCs, there are of course domestic PSCs, which, as we have seen, dominate the African market for private security. This is a thriving market, as evidenced by the current state of private security in the three countries studied. This research also shows that there are several types of PSC operating in Africa, with diverse and varied services. They have a clientele which ranges from individuals, to mining companies that want to ensure the safety of their staff and installations, to major banks and even telecommunications companies.

i. Types of PSC

Several types of PSC operate in Africa. Alongside small firms that specialise in providing security guards, and whose reach barely exceeds the region or country of origin, there are also foreign multinational PMSCs whose work on the continent is either through local subsidiaries or through subcontracting some of their services to local PSCs. This market is mainly dominated by US and British multinationals. Some African PSCs, especially South African ones, are also very active on the continent. These companies stand out from others on the continent because of their number, size, and, especially, due to their experience in war zones across the subregion, especially in Sierra Leone.²² Finally, domestic companies are also present, but they are often restricted to the local market, and provide traditional security services such as security guards, personal protection, and cash-in-transit. These PSCs do not work in conflict zones, and they do not provide specific military services, even if they could, on request, work under contract to international PMSCs that require an African workforce for foreign operations. As already noted,

these companies are booming in many African countries. A proliferation of domestic security companies can also be observed in Senegal.²³ There are few statistics available, but the report into PSCs in Senegal shows that in 2010, there were 240 PSCs employing more than 15'000 people.²⁴ The number of PSCs is also growing in Mali,²⁵ where the market is very interesting because of the crisis that the country has experienced. In December 2015, there were 263 licensed PSCs in Mali, according to the study of the state of the sector there.²⁶ In Côte d'Ivoire,²⁷ the industry is also rapidly expanding, due principally to the political crisis the country has experienced in recent years, and also due to significant economic expansion. Thus, as the study of the sector notes, the figures for Côte d'Ivoire have increased from 35,000 agents employed by 100 PSCs in 2005, to 50,000 employed by 300 PSCs in 2009 and finally to 70'500 employees (including 69'000 security personnel) employed by 400 companies during 2011-2012.²⁸

This rapid growth in the sector poses many problems, especially related to public safety and compliance with workers' rights and human rights legislation. The lack of effective oversight of PSCs by competent authorities, the lure of profit, and the vulnerability of security agents, means that the sector does not always comply with current legislation. Moreover, in many countries, the number of private security guards is higher than the number of police officers, and PSCs are often better equipped than the police.²⁹ In the case of Côte d'Ivoire, the ratio is three private security guards to each police officer.³⁰ As has been noted in all three studies, the prevalence of the private security sector can be positive, because PSCs make substantial contributions both to public security and to the fight against crime. However, their activities can also present real challenges, as we shall see later.

ii. *Clients and services*

In general, PSCs' main client base includes governments, international organisations – including the United Nations – international financial institutions, large companies such as banks and telecommunications companies, the mining industry, and also large international NGOs, diplomatic missions and individuals.

Governments and individuals

PSCs offer governments a range of security services, including personal protection, police and military training, strategic intelligence, the supply of surveillance equipment, coastal surveillance, and the provision of security guards for government buildings. Thus, in 2012, when the Malian army needed regrouping and retraining in order to regain the north of the country, PSCs specialising in security training and military leadership were eager to get involved. Among these PSCs were two (one of South African origin and the other based in Dubai) that submitted tenders to the Bamako government and the European Union.³¹ The press also points out that these two companies “have already had some success in establishing elite units of the new Somali army in support of the African Union contingent” and that “companies of this type are already present in half a dozen African countries.”³² The government of Côte d’Ivoire also has no hesitation in transferring certain responsibilities to private companies. These include security at sensitive sites, economic and military intelligence, or even the fight against crime (including organised crime).³³ As stated in the Côte d’Ivoire study, these responsibilities have been tacitly passed to the private sector.

Thus, African countries are sometimes Contracting States, insofar as they directly employ PMSCs, but they can also be Territorial States, when foreign contracting States hire the services of such companies to perform tasks in Africa. This is the case in the fight against terrorism and piracy, where some governments, particularly the US, Britain, and France, are working with African states to counter these scourges on the continent. These are significant challenges as we shall see later. This illustrates the interconnections and multiple forms of collaboration that can exist between African governments and PSCs, whether local or foreign.

Like governments, individuals also use the services of PSCs, especially for personal security and/or to protect their property. They can also employ PSCs to transport money, objects, and documents of value.

Large companies, banks and international financial institutions

The relationship between large companies, banks, international financial institutions, and PSCs is somewhat simpler than that between governments

and PSCs. In general, large national or multinational companies use the services of PSCs to ensure the security of their personnel, property, facilities and premises. In addition to security, banks also use PSCs to transport funds or payment documents. Banks may use a local PSC or a foreign multinational, which mostly operates through local subsidiaries. Instead of using an external PSC, some large companies have their own security services.

Note also that large telecommunications and the extractive industries (i.e. mining, oil and gas companies) are major clients for private security companies. Security is a fundamental issue for the mining industry. Their operations often extend over large areas with complex installations and heavy machinery that require enhanced security to prevent theft and accidents. Moreover, their staff – particularly expatriate staff – are a favourite target of terrorists in some regions of the world. Since mining is a strategic industry, host governments often provide mining, oil, and gas companies with public security services to protect their personnel and operating sites. However, this public security force is often inadequate, prompting companies to hire PSCs. Additionally, relations between private security agents and the communities that live alongside the mines or oil fields protected by PSCs can sometimes be confrontational, as will be discussed below.

The United Nations and major international NGOs

As noted by the UN Working Group on mercenaries, “Since the 1990s, the UN has used private security companies, mostly unarmed local subcontractors, to ensure the security of its premises and to protect its staff and property from potential criminal activity. In recent years, the UN has also employed armed private security companies during complex emergencies and in conflict areas or post-conflict situations in which the host government was not able ensure the security of staff or United Nations property.”³⁴ The study “*UN Use of Private Military and Security Companies: Practices and Policies*”³⁵ analyses various aspects of the use of PSCs by the UN. The United Nations justifies the frequent use of PSC services by citing the existence of a new context characterized by the proliferation of conflicts, the increased vulnerability of local populations to violations of human rights law, and the impact of an increasing number of humanitarian crises, alongside a reduction in the resources available to member States to ensure the security of UN staff and property.

It is interesting to note that, at first, the UN kept its policy of using PSCs confidential. However, today, in consequence of the increasing need for transparency and good governance, as well as increased awareness on the part of governments of the risks and issues relating to the outsourcing of security services, the UN now provides all relevant information on these private means of ensuring its security. The UN also applies what it calls the “criterion of last resort”, that is to say, it only uses armed PSCs when it must intervene in a high-risk environment and has no other means of ensuring the security of its staff. Thus, the UN only uses PSCs when no other choice is available, making the use of armed PSCs an exceptional measure. These PSCs are obliged to comply with human rights law, the UN Guiding Principles for Business and Human Rights, IHL, and all other relevant UN documents.

If the UN is unquestionably a significant purchaser of private security services, other major international NGOs also use PSC services to protect their personnel and equipment, especially those that have a presence on the ground which sometimes leads them into conflict or post-conflict areas. Indeed, major international NGOs and humanitarian agencies are turning increasingly to the services of PSCs to cover their security needs.³⁶ NGOs operating in different regions of the world face many risks and threats that they cannot cope with alone. They therefore need the support of PSCs that are able to bridge these gaps. In general, the services most commonly used by NGOs are unarmed guarding, security training and security assessment, training in crisis management, physical protection and defence measures, and lastly, medical services such as evacuation, etc.³⁷

Legal frameworks for PSCs in West Africa

The efforts made at international level to regulate the sector – which are essentially the Montreux Document, The ICoC and the UN Draft Convention on private military and security companies – form the main framework for the regulation of PSCs. These initiatives were described in the introductory chapter. This section focuses on regional and national efforts to regulate PSCs.

i. Regional legal frameworks

It is good to note that although this is still tentative, both the African Union and the Economic Community of West African States are interested in the issue of the rapid development of PSCs on the continent. During the third annual High-Level Dialogue on Democracy, Human Rights and Governance in Africa (October 2014), the African Union called upon States to invest more resources in the management, oversight and regulation of PSCs, whether domestic or foreign.³⁸ This high-level conference asked the African Union Commission to work towards the adoption of a code of conduct containing standards and good practices for PSCs by the end of December 2015.³⁹ Another document on security sector reform states that, “The African Union deplores the use of private military companies (PMCs) in security sector reform activities in Africa, whether by the RECs [Regional Economic Communities], Member States, or their international partners.”⁴⁰ It adds that “where any of the above parties engages the services of private security companies (PSCs), such parties will conform to relevant international, regional, and national frameworks regulating the activities of PSCs.”⁴¹ The ECOWAS Regional Framework for governance and security sector reform, which is under development, “recognizes that democratic governance and human security are at the core of the strategy, which aims at making security a regional public good and an essential service for citizens as well as a vital component in achieving sustainable development.”⁴² In its Conflict Prevention Framework document, ECOWAS cites PSCs as one of the target groups in the ‘security governance’ component.⁴³

ii. National legal frameworks

In general, the activities of PSCs are covered by legislation in all countries of the world. However, the nature and extent of the regulation of these activities vary greatly in each State. It must be noted that national laws on PSCs are, in most cases, obsolete. This delay in updating legislation is particularly evident in Africa, where the number of PSCs is growing and new threats are emerging that national security and defence forces are unable to effectively manage. The legal framework for PSCs is weak and inadequate, and the legislature is being outpaced by the rapid development of the sector.

The regulation of private security in Côte d'Ivoire, Mali, and Senegal is relatively satisfactory, in that it covers the core issues related to the activities of PSCs. However, it remains designed to regulate only private security and cash and goods transportation companies. It is intended primarily for domestic PSCs and makes no mention of PMSCs or multinationals, which nevertheless operate in several African countries. As has been noted in the case of Mali, international PSCs are governed by the same texts as national PSCs. In Senegal, the law does not address subcontracting or the presence of multinational security firms in the country. In Côte d'Ivoire, PSCs are only permitted to operate if they are companies incorporated under Ivorian law with at least 51% of capital held by Ivorians (but it seems that a majority of PSCs do not comply with this provision). The legislation in Côte d'Ivoire, which is supported by the clear political will of the authorities to clean up the sector, seems to be further advanced in its reforms than Mali and Senegal. The laws of the three countries studied all define PSCs, address the profile of directors and employees, and set out the conditions under which the industry must operate – which is subject to obtaining a licence from the competent authorities. The texts also regulate the possession and use of firearms by security agents.

Seen alongside the Montreux Document and the ICoC, these regulations nevertheless reveal important shortcomings, and remain limited and obsolete in light of new challenges posed by private security today. It is imperative that these countries adapt their legislation in order to regulate all aspects of these new circumstances.

As part of its global review of national legislation relating to PMSCs, the United Nations Working Group on the use of mercenaries considered the laws and regulations of eight francophone African countries, including Côte d'Ivoire, Mali and Senegal.⁴⁴ It appears from this report that these States have regulated PSCs and their activities through laws aimed primarily at security, personal protection, and the guarding of property, but none of them have produced legislation or regulations covering the activities and services of private military companies.⁴⁵ The relevant texts are at a national level; they do not prohibit the provision of military or security services abroad, nor do they contain more explicit provisions covering the direct participation of PSC personnel in hostilities.⁴⁶ The legislation of these countries states that the only activities that private security companies are authorized to exercise are

security, personal protection, the guarding of property, and cash-in-transit services.

Private security is a dynamic and sensitive sector; these characteristics mean that there is a great need for an appropriate and effective legal framework. Internationally, we have seen that the United Nations Working Group, which has worked for years on issues related to mercenary activity, has added the issue of PSCs to its agenda, and is now working to develop an international convention covering the sector. The Montreux Document and the ICoC, which are currently the most successful international ventures in the field, were also analysed. At the regional level, the efforts of the African Union and ECOWAS remain, for the moment, quite tentative, although issues related to PSCs are gradually being inserted into the agenda of these organisations. At the national level, as shown by the report of the Working Group on mercenaries, in addition to Côte d'Ivoire, Mali and Senegal, other countries of Francophone Africa have also adopted laws and regulations governing PSCs. The UN Working Group's codification efforts, the Montreux Document, the ICoC, national legislation, etc., are important milestones in developing a legal framework for PSCs. However, to meet the many challenges related to the activities of PSCs, additional efforts will be needed at all levels to ensure effective and adequate regulation of the sector which is suited to its development, challenges and needs.

Challenges

Although their presence and activities are increasingly accepted, the existence of PSCs and the nature of some of their services nevertheless raise concerns and questions. There are many challenges linked to the activities of PSCs operating in West Africa. PSCs are at real risk of acting inappropriately or committing crimes due to factors such as the makeup of PSC staff (many directors and employees are former soldiers, *gendarmes* or police),⁴⁷ the nature of the many services they provide (especially when they operate in crisis or high-tension zones, or participate in the fight against terrorism). This is exacerbated by a quest for profit, by weak governments that are supposed to oversee PSCs, and by the often unclear legal environment in which they operate. The recent history of American PSCs operating in Iraq and Afghanistan reminds us that these private security companies may well be involved in violations of human rights and other abuses. In the case of Africa, several

factors make the rapid development of PSCs likely to cause many problems if they are not well regulated.

Challenges related to compliance with national legislation

One of the first challenges to be identified concerns compliance with the national legislation of the country in which a private security company operates. Indeed, it appears that some PSCs operate without first having obtained the approvals and documents required by law. Because of outdated or unclear regulations, or simply due to the negligence of the authorities who are responsible for ensuring compliance with the conditions required to set up a private security company and thus operate in the sector, many PSCs operate without complying with the law. Others, while having the necessary authorisation, operate without worrying too much about the obligations and limits set by law. This casual approach to the legislation very often translates into a notorious disrespect for workers' rights. Thus, it is not uncommon for security agents to work hours that far exceed the legal maximum, in very difficult conditions. Some positions require agents to remain standing for many hours, and sometimes without any opportunity to sleep at night, while others expose them to situations of conflict or tension where their lives are directly endangered. Despite these conditions, few agents receive decent wages or adequate social and medical coverage. Their rights are often flouted, and freedom of association is not always respected. This is the case for most PSCs operating in Senegal;⁴⁸ cases of abuse of employees by Malian PSCs have also been reported.⁴⁹ The three country studies confirm that most PSCs respect neither national law nor the rights of their workers, whom they exploit freely.

Challenges relating to the legal responsibilities of PSCs and their employees

Factors that make it difficult to establish agents' responsibility for offences include: the lack of a clear and binding international regulatory framework, national legislation that is often outdated, complex subcontracting arrangements between PSCs, the existence of subsidiaries of large multinationals operating in several countries, and close and sometimes complicit links with

government. Incidents involving PSCs working in several countries through subsidiaries have shown that the boundaries between the responsibilities of different stakeholders (governments, PSCs) are not always clear. In some cases, it was impossible to identify with certainty the chain of command between the PSC and its clients, resulting in an inability to determine their respective responsibilities. This confusion promotes impunity. PSCs must respect the rights of all those affected by their activities, whether personnel, clients, suppliers or the population of the areas where they work. They must also take responsibility for any violations of human rights. Normally, the authorities should ensure that PSCs and their personnel are held accountable for any violations attributable to them, and to ensure that effective remedies are available to victims. However, this does not always seem to be the case. The study on Senegal illustrates that when PSCs were accused of and sanctioned for human rights violations, they refused to comply with the decisions made against them, conduct which has not been met with an appropriate reaction from the authorities.⁵⁰

Challenges related to compliance with human rights and international humanitarian law

The presence of PSCs is a double-edged sword. Although they may provide services useful to society, they can also be a vehicle for human rights abuses and violations of IHL if they are not well regulated. Indeed, because of the nature of their work and the equipment they use (sometimes including firearms), the private security sector presents a degree of risk for human rights and IHL that is higher than in other sectors. Due to the nature of their activities, PSCs are at risk of involvement in violations of IHL when operating in conflict zones, or when operating in areas where trafficking of weapons, narcotics, or human beings take place. PSCs' responsibilities fit into the broader context of the responsibility that all companies have to comply with human rights legislation as enshrined in the UN Guiding Principles on Business and Human Rights.⁵¹ The ICoC also reiterates the obligation of PSCs to comply with human rights law, with reference to the Montreux Document and the Guiding Principles. Therefore, as we have seen, PSCs' compliance with human rights law is not optional, but it is an obligation, the legal basis of which is unambiguous. However, PMSCs have been involved in human rights violations during the course of their activities. As an example, we recall the case

of Executive Outcomes operations in Sierra Leone and the many allegations of human rights violations in Angolan diamond mines: violations that are as likely to be perpetrated by military personnel as by PSCs that belong to civilians or military leaders.⁵² One could also mention the case in the Democratic Republic of Congo (DRC) where, according to local NGOs, a private security company responsible for guarding facilities belonging to a mining company was implicated in a fatality.⁵³ All three studies found significant deficiencies in both the general training of private security agents, and in their training on human rights and IHL. Moreover, according to the studies, most PSCs and their employees are unaware of both the Montreux Document and the ICoC.

Challenges linked to the existence of a two-tier security system

The existence of a two-tier security system – like the two-tier health and education systems that already exist in Africa – is a real challenge. State security forces are inadequate and fail the poor, whilst private security is effective, but very expensive and reserved for a fortunate few. However, the security of people and goods is a fundamental right that should not be dependent on the economic situation of individuals. Private security is not accessible to all. Thus, in poor areas and shanty towns in Africa, insecurity sometimes reaches alarming proportions because state security services are very often lacking. The police are under-equipped and understaffed, while very expensive private security is beyond the reach of the general population.⁵⁴ In these circumstances, residents resort to ensuring their own security and justice, which may lead to unacceptable abuses of the rule of law. Meanwhile, wealthier neighbourhoods are guarded by private security companies that can, if necessary, and at any time, be supported by the state security forces. States should ensure the safety of all citizens and their property, including those living in poverty.

Challenges related to a lack of transparency in the sector and trading influence

The public security sector often lacks transparency, and there are examples that illustrate the grey area in which PSCs operate as well as their ability to lobby the government, with whom they often have ambiguous relationships.⁵⁵ Thus, it is not inconceivable that national or international PSCs operating in Africa can benefit from the confusion surrounding their activities and the weaknesses characteristic of most African governments, to influence governments in order to gain market share unfairly, or to ensure the impunity of their agents when in violation of the law. Bribery of public officials is a real risk, especially because directors of PSCs and their staff often have close connections with the state security services (for example, many directors of PSCs are former police officers or members of the military who benefit from connections as a result of their former career). Moreover, the nature of some of their activities may justify confidentiality, especially when a PSC is used directly by a State. This need for confidentiality, added to often outdated national legislation, may further facilitate the sector's tendency towards corruption. In this respect, we will mention the examples of the DRC, Kenya, and Nigeria where senior police officers were involved in private security companies (in these countries, some police officers are seconded to, and paid by, private security companies).⁵⁶ Problems of political influence and conflicts of interest are also posed by the fact that in countries like the DRC, Angola, and Liberia, some senior officials and high-ranking members of the military are PSC owners.⁵⁷

Challenges linked to respect for state sovereignty

As the European Commission for Democracy through Law (Venice Commission) has highlighted, "International law is based on the principle of state sovereignty. The reality is different, however: it is possible for "weak" States to have little control over all or part of their territory, or to have little control over the activities of multinational companies in these countries. For example, in a weak State, a PSC can help an irresponsible elite to hold on to power. It can be used to weaken or destabilize a legitimate government. It can help multinational companies to exploit the natural resources of a weak State."⁵⁸ It is effectively possible for a contract to place a PSC at the centre of govern-

ment, which enables the company to mix with various political movements or rebel groups. It is therefore important to ensure that PSCs are not involved in activities aimed at destabilising certain States (such as supporting rebellions or regimes that show little concern for democracy or respect for human rights, or destabilising a democratically elected government). This raises the question of the use of PSCs as an invisible arm of a foreign power that could have ulterior motives, whether political or economic. This is a serious challenge in view of the proliferation of PSCs and the expansion of their services.⁵⁹ The risk of collusion between PSCs and some rebel groups is not negligible.

Challenges to peace and security on the continent

PSCs play an increasingly important role in the fight against terrorism and piracy. Their contributions to the eradication of these treats, which are directly related to peace and security on the continent, are very important as they provide assistance to States that are unable to cope alone. Nevertheless, it is imperative to ensure that PSCs do not engage in acts prohibited by the domestic law of States and the rule of international law, such as the illegal trade in arms and military equipment, drug and human trafficking, etc. Internal security is also a challenge due to the carrying and use of weapons by employees of PSCs. For example in Côte d'Ivoire, the National Commission against the proliferation and illicit trade of small arms and light weapons (Commission nationale de lutte contre la prolifération des armes légères et de petit calibre – ALPC) denounced the illegal possession of firearms by PSCs operating in the country.⁶⁰ According to the Commission, the majority of 400 PSCs were in illegal possession of firearms, a situation tending to encourage and increase the illicit traffic of weapons in the country.⁶¹ However, in Côte d'Ivoire, the use of firearms by PSC agents is only allowed in cases of self-defence, and possession of any weapon is subject to authorization.⁶² In Mali, only private security agents that are engaged in surveillance, guarding, and cash transportation are permitted to carry class 2 and 3 firearms.⁶³ In Senegal, legislation relating to the carrying of weapons is also very strict. It is the private security company that requests authorization to carry or possess firearms and decides which contracts require their use. This is often limited to cash-in-transit contracts.⁶⁴

Governments have a duty to fight terrorism, piracy, the proliferation of small arms and light weapons, and the trafficking of all kinds mentioned above. The nature of these problems and the limited means available to the authorities sometimes make the use of experienced PSCs necessary. Thus, although the challenges surrounding PSCs are numerous and complex, they can be summed up in a single overarching challenge, primarily addressed to governments: regulate the activities of PSCs. 'Regulation' must be understood in the broadest sense and includes the following: legislate or adapt existing legislation to clarify what constitutes a PSC, who can establish one and under what conditions, and also to establish which services they can and cannot offer. 'Regulation' also means providing human and material resources to enforce the legislation. This includes having an effective administration that is capable of overseeing every aspect of PSCs' businesses in order to prevent non-compliance with the law, establish responsibilities in cases of abuse, apply any necessary sanctions, and finally, to enable victims to assert their rights if the damage has already been done. In short, the behaviour of PSCs, the quality of the services they provide, and their interactions with the environment in which they operate, depend largely on the commitment of African States to adopt strong and appropriate legislation, and also on their willingness and capacity to implement it.

Conclusion

It should be noted that, in general, domestic PSCs that specialise in guarding are most common in West Africa, as shown by the three country studies. The number of PSCs is constantly increasing. As a combined result of the weakness of state services in the present-day security context, the proliferation of political crises that affects the security of both people and property, and the globalization of the market economy, we are also witnessing the increased presence of large multinational private security firms on the continent. These foreign-owned companies often work with local companies or create their own subsidiaries, which operate directly without intermediaries. Whether local or multinational, the number of PSCs is increasing, and the range of services they offer is continually diversifying. This is, therefore, a booming industry and a very aggressive market. As elsewhere in the world, the clients of PSCs that operate in the subregion are primarily governments, large companies, and international organisations – principally the United Nations, but also large international NGOs – some media organisations and also individuals. As for large companies that use the services of PSCs, it is worth noting

the prominent place occupied by the extractive industry. The abundance of natural resources in most countries of the subregion is reflected in the presence and continual expansion of the extractive sector. To protect their facilities and staff, these companies use a large number of private security guards. This systematic recourse to private security poses a number of problems that are related to human rights. Indeed, it was found that private security agents have, in some cases, abused their power in the course of their duties, and have sometimes become involved in human rights violations committed by state security forces.

Although this study reveals the variety and vitality of the African private security market, it also highlights many shortcomings in the associated legislation. Thus, as we have seen, the legislation of the three countries studied only covers PSCs, that is to say companies that provide security guards, surveillance, personal protection, and cash-in-transit services. None of these countries has produced domestic legislation to cover PMSCs, particularly large multinationals that operate in several countries and in conflict zones. Therefore, the law does not cover the whole issue of private security. However, these shortcomings are not unique to Africa, as noted by an American researcher, “the cheese industry is better regulated than the private security industry.”⁶⁵ Indeed, in most countries in the region, the private security sector is poorly regulated. National laws are often outdated and not in line with the needs of a rapidly changing sector. However, attempts to improve the situation can be seen in some countries as well as at the level of the African Union and across subregional bodies. This includes ECOWAS, where private security fits into the broader context of peace and security, a major topic of concern to all members of this organisation.

The often outdated national legislation, the lack of a clear and binding international regulatory framework, the practice of subcontracting between PSCs, and the existence of subsidiaries of multinationals in several countries are all factors that make it difficult to ensure accountability for violations of international human rights laws and IHL. These issues, added to the close links that PSCs very often maintain with government, make it easy for PSCs to act with impunity. In addition, the general deficiencies in the legislation, coupled with recurrent internal political crises (such as in the cases of Côte d’Ivoire and Mali, or more recently that of Burkina Faso) and a geopolitical context troubled by new border threats (piracy, terrorism, trafficking of all kinds, etc.) means that the expansion of private security poses many challenges. These

challenges principally arise at the domestic level, where many PSCs work at the margin of the law, which results in the repeated violation of the rights of their own employees. The employees of many domestic PSCs, especially security guards, work in harsh conditions for very low wages, with insufficient social security coverage and rights for the freedom of association that are often ignored. These challenges also exist at an international level. Non-compliance with international standards is of particular concern in cases where PSCs are contracted to operate in war zones or areas of extreme tension, where they can easily be involved in human rights violations, or where there are opportunities to breach IHL. Finally, other major challenges are linked to respect for the sovereignty of States, peace-keeping and international security, and the fight against cross-border threats, including trafficking of all kinds, piracy, and terrorism.

Whether domestic or multinational, offering basic security services or specialised military services, PSCs play a clear social and economic role and their utility is not questioned. However, their activities also present many challenges, challenges that are growing and multiplying with the rapid evolution of the sector. It is thus imperative for the States of the subregion, both individually and in a concerted and collective manner through regional and international bodies, to take measures to address these many challenges. The Montreux Document and the ICoC already indicate the way forward.

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CHAPTER III

Côte d'Ivoire

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Introduction

Since the early 1990s, Côte d'Ivoire has experienced cycles of political violence and tensions between communities,¹ which resulted in a bloody armed conflict between 2002 and 2010.² This latter crisis left a recorded 3,000 dead, resulted in thousands of internally displaced persons and exiles, and had a fundamental impact on the socio-political and economic life of the country.

The sharp deterioration in the security situation has resulted in an almost anarchic emergence of private security companies (PSCs), offering various services either to fill the gaps in the state response to growing insecurity (particularly Abidjan), or to occupy new niches. Thanks to the military and political crisis of the last decade, the private security sector in Côte d'Ivoire has experienced an exponential growth that the authorities are trying to contain using regulations that are not well adapted to the country's needs. In this context, this study aims to analyse the scale of the privatisation of security, and to identify shortcomings in the legal and regulatory framework in order to make concrete recommendations based on international good practices as set out in the Montreux Document. To do this, the study was based on a methodological approach comprising of three key phases. First, the study provides a review of the documentation identifying and analysing relevant documents at both the theoretical and legislative level. This enabled us to understand the phenomenon of private security in Côte d'Ivoire, and more widely in West Africa.

Second, the study presents a collection of data from businesses in the private security sector and national regulatory bodies to provide more information about stakeholders and the existing links between them. This phase of the study was largely based on a qualitative approach. To this end, various stakeholders were interviewed individually to give the most realistic picture possible of the state of security companies in Côte d'Ivoire. Finally, the data was compiled and analysed to give a more sharply focused understanding of the situation of PSCs in Côte d'Ivoire. In summary, this study brings to light the recent changes in the private security sector in Côte d'Ivoire. It covers the regulation of the sector as well as its relationship to the problem of maintaining security on a national level, and also considers the challenges which surround its development.

In order to better understand the sector and the issues it raises, the historical context in which these private security companies became established in Côte d'Ivoire and how the sector has developed is first outlined. The main characteristics of the sector and the national legal framework that relates to it are then examined. The study then identifies the various challenges presented by the private security sector in Côte d'Ivoire. Finally, in light of the national context and the challenges identified, the study offers recommendations to improve governance of the sector.

Analysis of the situation in Côte d'Ivoire

Growth of the private security sector

Since the 1990s, some security services that are traditionally the responsibility of States have been increasingly handled by private security companies. The African continent in general, and Côte d'Ivoire in particular, are no exception to this trend.

Since the conflicts of 2002-2010, particularly following an intensification of hostilities in November 2004, and additionally scenes of violence against foreigners that ensued in Abidjan, the private security sector in Côte d'Ivoire has become a major industry which involves a variety of actors in various roles. Thus, the number of private security companies exploded during and after the conflicts, many operating illegally. The proliferation of PSCs is partly due

to the population's lack of confidence in the state security forces, as well as the latter's lack of efficiency.³ A review of regional data shows that tasks vary across PSCs and even across personnel; some PSCs offer personal protection and security services, while others are directly involved in conflicts and undertake various functions such as surveillance, transportation, or even, in some cases, direct participation in hostilities.⁴

In line with the increasing number of PSCs, the number of staff working in these companies has greatly increased. The statistics show that the figures have increased from 35'000 agents employed by 100 PSCs in 2005, to 50'000 employed by 300 PSCs in 2009, and finally to 70'500 employees employed by 400 companies in 2012.⁵ This rapid increase in the number of PSCs and their agents reflects the Ivorians' increased need for security in the wake of the conflicts and socio-political crisis the country has been through. It is also interesting to note that in 2014, 600-900 PSCs were identified as operating in the country, but according to the Ministry of Interior's register of approved companies, only 64 of them had been licensed to do so.⁶

In this context, reform of the security sector, implemented in 2012 by the Authority for Disarmament, Demobilization and Reintegration of ex-combatants (ADDR),⁷ has contributed to improved security. This process, completed in June 2015,⁸ succeeded in reintegrating 55'000 ex-combatants of a total of 74'000 who had been identified.⁹

As part of this reform, PSCs played a role by employing some of the former combatants. These companies emerged as a means of reintegration for some ex-combatants, either on their own initiative or by being 'placed' by the Authority for Demobilization, Disarmament and Reintegration (ADDR). Indeed, this sector provides an opportunity for former combatants who are unable to join the army to find a job somewhat similar to their previous work conditions (including wearing a uniform and following orders), but which offers them a better chance of reintegration into society. Nevertheless, many challenges remain, including the 19'000 ex-combatants who have not benefited from the reintegration scheme and who may be an additional security risk.

The main characteristics of PSCs and the national legal framework

i. Areas of PSC activity

In Côte d'Ivoire, PSCs are playing an increasing role in undertaking security activities that are traditionally the responsibility of the State. The development of the private security sector is linked to the increasing feeling of insecurity and the State's withdrawal from certain security activities. Indeed, the State has significantly refocused its security obligations. Thus the gradual increase in demand for security by citizens has been met by the private sector, which has both adapted and diversified the services that it offers.

Unlike the State, PSCs operate in a contractual framework and in a limited area. It is the State which effectively defines the shape of the PSC market, as it gradually withdraws public efforts from traditional roles, such as economic and social intelligence gathering, the transportation of funds, the screening of passengers and baggage at ports and airports, and the close protection of persons. These areas have therefore been conceded, sometimes tacitly, to the private sector. Accordingly, the private security sector has, over time, become an important part of overall security policy.

More concretely, the scope of PSC activities is defined by Decree No. 2005-73 of 3 February 2005 on the regulation of private security and cash-in-transit services (2005 decree) which establishes three types of authorised activities:

- the provision of services relating to human surveillance or monitoring by electronic security systems, the guarding of movable or immovable property or buildings as well as ensuring the security of persons present in these buildings;
- the transportation and guarding of funds, valuable objects and documents;
- personal protection.

Thus, Ivorian legislation provides a clear definition of permitted and prohibited activities for PSCs, as recommended by the best practices described in the Montreux Document. The 17 different services provided by PSCs are

categorised on the basis of the areas defined in the Ivorian legislation. We note that these are dominated by surveillance and security (26%), close protection/provision of bodyguards (12%), guarding with dogs and dog handlers (12%), video surveillance (9%) and electronic security services (8%). We also note that there are few cash-in-transit companies.¹⁰

In addition, there are other less widespread activities, but due to their specific nature, they nevertheless assume a strategic character. This is for example the case with airport and port security, electronic security, mobile security, cash-in-transit services and the selling of security equipment.

ii. Types of PSC

Under the 2005 decree, PSCs of all types must be established under Ivorian law, and at least 51% of their capital must be held by Ivorians.¹¹ However, a recent study shows that a significant proportion of PSCs (47.1%) do not comply with this provision. Only 15.7% of companies have 51% of their shares held by Ivorians.¹²

PSCs in Côte d'Ivoire take various legal forms. A large majority – 89.7% of PSCs – are limited liability companies (SARL), while 6.2% are partnerships, and 4.1% are limited companies (SA). Furthermore, 57.4% of PSCs are under sole ownership, while the remaining 42.6% have multiple owners.

iii. PSC clients

The private security industry has developed to reflect the socio-economic needs of the population. Its evolution can be explained by an increase in business volume, and an increased demand for security, as well as the increasing use of technology. Clients for security, surveillance, and electronic security systems are mainly businesses, governments, and households.

For example, industrial companies use PSCs to protect against theft or misappropriation (including by its own staff), destabilisation risks (disinformation campaigns), industrial espionage, attacks on information systems (saturation of networks, destruction of data and critical information), or to ensure the security of sites against external malicious acts.

Due to growing demand, private security services have, over time, become an important aspect of overall security policy. Data shows that there is a ratio of three private security agents to each police officer. The contribution of the private security sector to crime prevention, more precisely to situational crime prevention, has therefore become significant. Indeed, by tackling common factors that are conducive to crime, such as the environmental context, or social contemporary factors that predispose criminal activity, PSCs contribute to an overall improvement in the security situation.

iv. Requirement to obtain a licence

Efforts to regulate the private security sector began in 1998 and have continued over the years. With the adoption of the 2005 decree and its implementing decrees, Côte d'Ivoire has strengthened the legislative framework relating to private security, hitherto composed solely by general legislation such as the Penal Code¹³ and national laws relating to the suppression of violations of regulations concerning weapons, ammunition and explosive substances.¹⁴ This decree regulates the activities of private security companies. It addresses, among other things, the formation of PSCs, the conditions with which directors and agents must comply in order to work in the industry, and additionally, it regulates the practices in relation to detention and weapons.

Under Article 4 of the decree, PSC activities are subject to obtaining a licence issued by the Ministry of Internal Security, after consulting the advisory committee for approval of private security and cash-in-transit companies. This committee meets in regular session once every six months and the procedure for granting a license approval normally takes six months.

According to the law, three types of licence are required. Not only must the PSC itself be approved, but its directors and personnel are all also required to obtain a licence. Indeed, under the 2005 decree, no one may be engaged as a director, or be employed by a private security or cash-in-transit company, unless they have a licence from the national surveillance directorate (Direction de la Surveillance du Territoire – DST). The issue of a licence is subject to a background check conducted by the police services for the Director of the DST.

We note that since 2012, the authorities have regained control of the private security sector. On 21 May 2012, the Minister of State for the Interior issued a statement giving private security and cash-in-transit companies a three month grace period to ensure compliance with the provisions of the 2005 decree governing the profession, or else to risk being closed down. However, a census conducted a year later identified 400 PSCs, of which only nine held licences, and a further 30 cases that were awaiting investigation. There were no consequences for those PSCs operating without approval.¹⁵ On 10 July 2015, a new statement from the Minister of State for the Interior and Security reported that there were 67 PSCs holding licences, but did not specify what would happen to unlicensed companies. It thus seems that a large majority of PSCs in Côte d'Ivoire continue to operate illegally.

v. Staff training

In addition to the requirement to obtain a licence to operate, there are minimum training requirements for directors and staff of PSCs. The decree of 02 February 2007¹⁶ stipulates a number of prerequisites for both directors and agents of PSCs. Managerial staff must have completed secondary education (qualifying for the Brevet d'Etude du Premier Cycle – CEPC), while operational staff must, as a minimum, hold a certificate of primary education (Certificat d'Etudes Primaires – CPCE).¹⁷

Under Article 10 of the Ministerial Order of 24 November 2008,¹⁸ “Companies must ensure that their staff receives training at an accredited training centre every two (02) years.” To qualify as an ‘accredited centre’, training centres must obtain a licence that is jointly issued by the Ministry of Internal Security and the Ministry of Vocational Training. Côte d'Ivoire has a total of four training centres, of which only one has the approval of both the aforementioned ministries. The other three are only approved by the Ministry of Vocational Training.¹⁹

vi. Regulatory mechanisms and self-regulation

The establishment of oversight mechanisms to check compliance with contractual obligations, and the requirement to obtain a licence are an integral part of an adequate oversight system. In general, the legal framework deter-

mines procedures for the supervision of the activities of the private security sector. The regulations target specific objectives: to oversee the industry by submitting it to a certification regime, to perform background checks on directors and staff in preventing persons of bad character from entering the industry, and to prevent wrongdoing.

As a part of the separation of the roles of stakeholders in the security industry, regulation also aims to avoid any confusion with the official services of the police and gendarmerie, and finally, to define the activities of professional organisations. In this context, specific roles are assigned to state bodies responsible for regulating the sector. Thus, the DST and the Ministry of State for the Interior and Security are jointly responsible for the regulation of the private security sector. Background checks, the issuing of licences to personnel, and the processing of licence applications from companies, are all the responsibility of the DST. As for the issuing of licences to companies and the application of disciplinary sanctions, they fall under the authority of the Minister of State for the Interior and Security. Finally, the oversight of PSCs is a prerogative of the national police. However, since PSCs are placed under the auspices of the Ministry of State for the Interior and Security, police officers have free access to the premises and facilities of PSCs. As such, they can require PSCs to hand over the documents and records necessary to perform monitoring activities. Similarly, they can inspect company operations at their place of business.

The vast majority of PSCs in Côte d'Ivoire operate on a contractual basis. They are therefore subject to the supply and demand of the security market, and they are required to comply with Ivorian labour laws and contractual procedures. Common practice for the recruitment of PSC agents appears to be by application or by word of mouth. The majority of employees are young people seeking employment, and students. These are often informal contracts, which are agreed without proper oversight from the State.

These irregularities highlight the need for self-regulation of the industry so that the shortcomings of the official agencies can be overcome. However, it transpires that at present, PSCs are not inclined to set up self-regulatory mechanisms to improve governance of the sector.

vii. *Possession of firearms and the use of force*

In accordance with the decree of 3 February 2005 on the regulation of private security and cash-in-transit services, PSCs are free to use pepper spray, batons, and rubber bullets, as well as paralysing or immobilising gas. Conversely, the use of firearms and grenades is subject to the conditions defined by order of the Minister of Internal Security, without prejudice to the rules on the carrying of weapons. The implementation rules of the aforementioned decree give three main conditions for the use of firearms:

- the use of firearms is only permitted in cases of self-defence;
- possession of any firearm is subject to authorisation;
- when not in use, firearms, components, and ammunition must be stored in a designated armoury.

Côte d'Ivoire has ratified the ECOWAS Convention on Small Arms and Light Weapons (SALW). Article 21 of this convention requires Member States to review and update their national legislation in order to harmonise them with the Convention, “to ensure that the provisions in this Convention are minimum standards for small arms and light weapons control and their ammunition, as well as other related materials.”²⁰

Similarly, the harmonisation guide issued by the Executive Secretary of ECOWAS identifies areas for harmonisation, namely: the definition of terms relating to SALW, marking, tracing, brokering, transfer, manufacture, transparency and exchange of information, operational mechanisms, institutional arrangements, and finally, sanctions. However, as the 2013 study for the National Commission shows, Ivorian legislation is not yet in line with the Convention. Indeed, two major points are missing: first, a requirement for the initial training of agents, and secondly, operational arrangements for the management of weapons stocks, marking, tracing and marketing activities, transfers, and arms brokering.

viii. The relationship between PSCs and state security services and place of PSCs in the overall security apparatus

In a changing environment with new security risks, the private security sector cannot operate in isolation. This fact is also being integrated into the overall thinking on national security in more and more countries, particularly as they address security sector reform (SSR).

The legislation establishes a clear separation between the activities of PSCs and those of the state security forces. It thus distinguishes between private and public security activities.

Due to the dichotomy between crime prevention and law enforcement, state security forces alone undertake law enforcement operations. Thus, private security activities are limited to prevention. The law excludes PSCs from undertaking all law enforcement activities, as well as policing and criminal investigation. Private security guards are therefore restricted to acting as a deterrent in a monitoring role, and, whenever they witness anti-social behaviour, criminal activities or offences, intervening and alerting the appropriate state authorities.

A comprehensive approach to security sector reform must take into account all aspects of security, including of course the national police force and the army, and also PSCs. However, this approach is seldom reflected in the implementation of SSR. In Côte d'Ivoire, SSR is focused on a post-crisis context, and works to restore security as a prerequisite for peace, stability, justice, and sustainable development. It is based on a series of reforms that are structured around the following six pillars: national security, post-crisis reconstruction, the rule of law and international relations, democratic oversight, economic governance, and the human and social dimension.

Challenges

PSCs and new risks

In recent years, security challenges have evolved considerably throughout the world and in West Africa in particular. Alongside conventional threats, new ones have emerged, such as: cybercrime, cross-border crime, drug trafficking, terrorism, natural disasters and maritime piracy.²¹

Consequently, the roles of stakeholders in the security sector have also changed, and PMSCs and PSCs are now involved in operations that were once sovereign functions of the State. It follows that new challenges are developing. Although from a commercial point of view, PSCs quickly adapted to provide services to counter these new threats, it is clear from this study that Ivorian legislation has not, or not sufficiently, adapted to changes in the sector. It thus appears that not only is the legal framework obsolete, and does not take into account recent developments or respond adequately to the needs of the sector, but its practical implementation is also inadequate.

Lastly, while Côte d'Ivoire has developed SSR aimed at restoring security as a prerequisite for peace, stability, justice, and sustainable development, the consideration of issues related to the management and coordination of PSCs with other parts of the security system – in particular the national police force – is still lacking in the national vision of SSR.

PSCs and respect for fundamental rights and liberties

One of the major challenges confronting the private security sector is respect for civil liberties and fundamental rights. Inadequate or improperly conducted PSC operations can present a risk to public security, with direct consequences on the overall security of individuals and property. This is the case with video surveillance and its implications for fundamental rights and freedoms. Indeed, the development of increasingly advanced video surveillance devices highlights the need to strengthen legislation to prevent risk of abuse connected to intrusions into private life, including the violation of image rights.

The lack of standardisation in the training of PSC personnel also poses a risk to public safety. It appears that despite the legal obligation of PSCs to train their staff in accredited training centres, the majority of PSCs do not use these centres to train their directors or personnel. Large and medium-sized companies mostly have their own training centres, which are approved by the Fonds de Développement de Formation Professionnelle (FDFP), and train their own agents. This lack of standardisation of training, which should be ensured by the State through duly accredited training centres, results in disparities in the skills of PSC agents. Adequate training, particularly in the protection of rights and fundamental freedoms, is essential to ensure that no violations are committed by PSC personnel in the course of their duties.

The failure of PSCs to comply with both labour law and contracting procedures also constitutes a major challenge to ensure effective governance of the sector that respects the rights of both employees and clients. As mentioned above, PSC employees are mostly young people and students who have not found alternative employment. In many cases, these agents work without a formal contract and do not always benefit from the relevant legal entitlements. This situation creates risks, both for their own health, and for the security of the persons and property they guard. This environment increases the likelihood of work-place accidents (due to fatigue, poor working conditions, etc.) and also the risk of misconduct on the part of agents (theft, violence, corruption, etc.).

Despite these working conditions, reports of breaches of the Labour Code are rare. This is mainly due to a fear of dismissal. In a context of mass unemployment, working for a PSC is seen as a last resort. It is therefore up to the authorities to take account of this worrying situation and ensure the rights of employees of PSCs.

The use of force and possession of weapons by PSC personnel also has considerable potential for violations of fundamental rights and freedoms, in addition to various other issues that can be identified in this regard. The number of weapons of all classes held by PSCs is estimated at a total of 18'000.²² It appears that a majority of PSCs do not comply with the law covering the possession and use of weapons. Indeed, although the weapons held by PSCs in Côte d'Ivoire are mostly legal, such as Gomm-Cognes pistols, and tonfas (American batons), there are also illegal weapons in their stockpiles, such as revolvers, assault rifles (30% of which are AK-47s), knives, and homemade

guns.²³ Thus, 45% of PSCs may use weapons that are not authorised by the 3 February 2005 decree, and 38% of agents may use weapons without receiving adequate training.²⁴

It was also reported that procurement procedures do not always conform with the law. Many of the weapons held by PSCs come from the black market. This raises the question of the marking and tracing of weapons and ammunition. Furthermore, there is evidence that 70% of PSCs do not have adequate facilities for storing weapons, in violation of Article 18 of the Decree of 24 November 2008.²⁵ Analysis of the way PSCs manage their weapons, from their armouries to their record-keeping, show numerous irregularities. It seems that weapons are not stored or managed adequately or in compliance with the legal provisions.

In view of these issues, it is apparent that Côte d'Ivoire has still not brought its legislation in line with the provisions of the ECOWAS Convention on SALW. Doing so would improve governance of the private security sector. These shortcomings are particularly serious as regards the initial training of agents in the use of force and weapons, as well as the establishment of systems for the management of the storage, marking and tracing of weapons, and for marketing activities, weapons transfers, and arms brokering. Consequently, oversight must be strengthened, and, above all, its effectiveness must be increased so that weapons held by PSCs can be properly monitored. Although the adoption of legal texts that comply with international commitments is an important step, it is also essential to ensure their effective implementation in order to limit the potential risks of abuse and insecurity for the population once legislation has been passed.

Ultimately, the major issues concerning the management of PSCs in Côte d'Ivoire are focused on implementing ambitious structural reforms that will clean up the sector in the long term. However, in the absence of appropriate reforms and greater stakeholder awareness, the rampant privatisation of security, along with the withdrawal of the State in a number of areas, carries the seeds of a potential crisis within the sector.

Private security regulation

As shown in this study, the regulation of the private security sector in Côte d'Ivoire is still very much under construction. On the one hand, the current legislation on PSCs is obsolete, and does not take into account recent developments in the sector. On the other hand, its implementation is in many cases inadequate.

The main system of oversight and supervision of PSCs required by the legislation is licensing, as described above. However, as reported, it must be noted that most PSCs operating in Côte d'Ivoire do not hold such a licence, and the majority operate illegally and therefore without adequate oversight or state supervision. It was also reported that decisions to grant or deny a licence often lack transparency and are often entirely dependent on the individual licensing official. Furthermore, the fact that a PSC holds a licence is not always synonymous to compliance with the legislation.²⁶ Thus, it appears that the Ivorian authorities' commitment to clean up the private security sector remains only partially realised, giving free rein to many irregularities. Moreover, the duration of the licensing procedure, which can last up to six months, causes further weaknesses in the system. This excessively long period results in companies being established in anticipation of the decision, and then continuing to operate even when their application is unsuccessful. A shortening of this period therefore seems appropriate in order to both streamline the process and reduce non-compliance.

There are similar procedures for directors and staff of PSCs, who are also required to obtain a licence to carry out their duties. Similar issues and problems to those seen in the licensing of PSCs are also evident in the licensing of directors and personnel of PSCs. As with the licensing of companies, there are excessive delays in issuing licences. There is also no provision requiring background checks on PSC personnel to ensure that the person in question has not previously been involved in violations of human rights.²⁷

The national police has the necessary expertise to oversee PSC activities, and is permitted free access to the premises, facilities, and documents of PSCs. However, it appears that in practice, inspections are rare, which limits opportunities for the effective monitoring of the industry. In addition, there is no means of redress for victims in cases of abuse.²⁸ In Côte d'Ivoire, the adoption of codes of conduct by PSCs is also largely lacking in the private se-

curity sector. The enactment and implementation of such codes of conduct is an additional challenge that would promote proactive professional behaviour in the sector while emphasising a greater concern for better governance of private security.

Conclusion and recommendations

The analysis of the PSC industry in Côte d'Ivoire – and particularly the identification of the challenges that still lie ahead – shows that the reform of the private security sector requires both a strong political will and the commitment of all stakeholders. At present, it seems that the Ivorian government is attempting to clean up the sector incrementally, without engaging in a wide scale reform that would have real potential to address and solve various structural issues that characterise the sector.

Faced with this situation and the resulting challenges, it is clear that at present, there is a lack of in-depth discussion that would lead to improvements in private security governance in Côte d'Ivoire. Significant measures must be taken to ensure effective and sustainable regulation of this sector. These measures must be both general and specific, and there should be plans of action for short, medium, and long-term timeframes.

General recommendations

Two major recommendations are worth making at a global level. They are aimed as much at the authorities responsible for good governance of the sector, as to those directly involved in private security, including PSCs and their agents, as well as more widely to clients and civil society.

- i. Follow and enhance the policy of cleaning up the private security sector*

As seen above, the Ivorian government has in recent years demonstrated the political will to regulate the private security industry. Thanks to the measures already undertaken, it has been possible to identify which PSCs are operating

in accordance with the law and which are operating illegally. However, so far this first step has not been followed up with enforcement measures to end illegal PSC operations. This raises doubts about the effectiveness of the efforts to regularise the industry, as well as the strength of the political will to do so. To maintain the credibility and effectiveness of these measures, it is essential that the relevant authorities complete their current course of action and put in place incentives to enable PSCs that are operating illegally to regularise their status. It is imperative that coercive measures be considered, if necessary.

ii. Begin a comprehensive debate on private security

It is imperative that there should be a comprehensive debate on the security sector in Côte d'Ivoire, in order to address the issues and challenges surrounding the security sector in general, and particularly within the private sector. Such a debate should take into account all opportunities and challenges for the sector, including the relationship between the state security apparatus and the private security sector.

In order to adequately consider all aspects of the sector, such an initiative should bring together all stakeholders: regulatory bodies, private security professionals, clients of PSCs, and civil society. Thus all issues relating to security can be addressed, particularly those relating to private security activities and the strengthening of governance of the sector. In general, security sector reform must take more account of PSCs. Security sector reform in Côte d'Ivoire, which was launched several years ago, must move towards a more comprehensive approach and include the issue of private security. This requires a comprehensive debate that considers how all actors could work together to improve security. The objective would be that the private security industry could fully complement state security services and strengthen the capacity of the State to ensure public security.

Specific recommendations

This study has revealed shortcomings and weaknesses surrounding the governance of the security sector in Côte d'Ivoire. We have principally identified shortcomings in the legislation itself, the random nature of the training of PSC directors and staff, the inadequately applied licensing procedure, poor oversight by the relevant authorities, inadequate oversight of weapons held by PSCs, non-compliance with social security legislation, and a lack of willingness of PSCs to undertake self-regulation. To meet these challenges in Côte d'Ivoire, the following specific recommendations are made.

i. Strengthen the legislative and Institutional framework

This study shows that the legislative and institutional framework is no longer appropriate for meeting the challenges and needs posed by the evolution of the private security sector. It is therefore necessary to update the legal framework and strengthen institutional capabilities.

Given the growing use of new technologies, the legislation should be clarified and strengthened to ensure respect for fundamental rights and freedoms.

ii. Establish standardised mandatory training

Given the specificity and sensitivity of private security activities, it is important that directors of PSCs and their agents have the necessary skills to carry out their duties, especially in terms of respect for human rights. However, as we have seen, training remains haphazard and is often left to the discretion of the companies themselves. This inevitably raises the question of the standardisation of training – a role that falls to the State – through training centres designated for the purpose. However, it appeared that the four centres which currently train PSC staff do not themselves possess the necessary accreditation.

In order to have a reliable and responsible private security industry, staff training requirements must be standardised, and steps must be taken to ensure that they are consistently applied.

iii. Strengthen inspections by relevant bodies

The study noted the rarity of inspections of PSCs by officials from the Ministry of State for Internal Security. This lack of effective oversight increases the risk of fraud and corruption within PSCs going undetected. These authorities are the watchdogs of good governance of private security. To ensure that PSCs comply with the regulations, both regular and unannounced inspections should be made. Such inspections must assess compliance with licensing regulations as well as regulations covering management, the working conditions of staff, and firearms regulations for those PSCs that are authorised to hold weapons.

iv. Strengthening arms control

Côte d'Ivoire, as a member of ECOWAS, should proceed with the harmonisation of its legislation with the requirements of the ECOWAS Convention on SALW. In addition to this convention, it is recommended that ECOWAS should play a greater role in the fight against the proliferation of SALW, which have fed conflicts in West Africa for more than 30 years. Thus, in addition to prevention, enforcement action should be considered across the subregion.

Pending the compliance of Ivorian legislation with the ECOWAS Convention, the Ivorian authorities should, in the short term, take concrete measures to ensure better storage of weapons after hours, and to force the PSCs concerned to comply with the regulations.

v. Strengthen industry self-regulation

To overcome the shortcomings of the State, professionals in the private security industry must be encouraged to set up self-regulatory mechanisms. This should include the adoption of codes of conduct that would identify measures designed to improve governance of the sector at both national and regional level.

In addition, the industry, along with the relevant authorities, could contribute to the development of industry benchmarks, as well as a training pro-

gramme based on a clear identification of the needs of both directors and staff of PSCs.

vi. Adoption of the Montreux Document and the International Code of Conduct

The adoption of the Montreux Document and the International Code of Conduct (ICoC) by Côte d'Ivoire would give a strong signal of its will to improve the regulation of the private security industry. It is particularly desirable that Ivorian PSCs – and also, more broadly, civil society organisations – sign up to the Code of Conduct in order to contribute to better governance of the sector. Developed jointly by private security firms, representatives of governments and civil society organisations, the final text – adopted in 2010 – not only contains a set of principles for PSCs (which are based on international humanitarian law and human rights legislation) but also practical rules that can be applied by PSCs in the course of their business. It therefore directly addresses PSCs – meaning companies that offer security services as defined by the Code of Conduct.

Finally, the Code of Conduct provides a monitoring mechanism that gives both States and clients of PSCs information on how well individual companies' services comply with international humanitarian law and human rights. This can be especially useful when drawing up contracts and choosing between several PSCs. This due diligence process (which usually takes the form recommended by the International Code of Conduct Association)²⁹ enables both the implementation of some of the good practices of the Montreux Document³⁰ and the United Nations Guiding Principles on Business and Human Rights.³¹ In the absence of effective governance or the unambiguous registration of PSCs, the usefulness of such a mechanism in the Ivorian context remains hypothetical for the time being. The adoption of the ICoC could be the culmination of a successful reform of the private security sector.

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- ¹ Primarily between the predominantly Muslim north and the south of the country, which is mainly Catholic.
- ² In 2002, rebels known as the 'New Forces' attempted a coup and gradually occupied the north of the country. The intervention of France, then the United Nations, kept Côte d'Ivoire in a situation of "neither war nor peace" until the Ouagadougou peace agreement in 2007, which led to a transitional government until elections in 2010. However, the 2010 elections began a new period of violent political crisis.
- ³ S. De Tessière, *Reforming the Ranks, Public Security in a Divided Côte d'Ivoire*, in 'Small Arms Survey 2011: States of security', Cambridge University Press, Cambridge, 2011, pp. 193-4.
- ⁴ UN Human Rights Council, *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: Mission to Côte d'Ivoire (7-10 October 2014)*, 17 August 2015, A/HRC/30/34 /Add.1.
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- ⁷ Decree No 2012-787 of 8 August 2012 on the establishment, responsibilities, organisation and functioning of the Authority for the Disarmament,

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- ⁸ The Council of Ministers ended the activities of the ADDR on 24 June 2015 and simultaneously created the Coordination Unit for Monitoring and Reintegration (Cellule de Coordination, de Suivi et de Réinsertion - CCSR). This unit is responsible for the organisation and coordination of re-socialization activities carried out by the Ministry of Solidarity, Family, Women and Children, the National Gendarmerie, the National Institute of Public Health, the Blue Cross or any other national or international body. It will also manage the database and list of organisations that specialise in providing reintegration activities for former combatants, as well as the agreements made by the ADDR.
- ⁹ It should be mentioned that of 74,000 former combatants identified, only 64,000 turned up to participate in the scheme. Of these, over 53,000 actually participated in the process. See, for example: *Côte d'Ivoire: 74 000 ex-combattants à désarmer d'ici fin juin*, in 'RFI Afrique', 12 May 2015, available at: <http://www.rfi.fr/afrique/20150512-cote-ivoire-74-000-ex-combattants-desarmer-reinserer-demobiliser-gbagbo-addr>.
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- ¹¹ Decree No. 2005-73 of 3 February 2005 on the regulation of private security and cash-in transit activities, Art. 9.
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- ¹⁵ *Ibid.*, p. 22.
- ¹⁶ Order No. 150/MS/CAB of 02 February 2007 laying down the conditions for issuing licences to the personnel of Private Security and Cash-in-transit companies.
- ¹⁷ *Ibid.*, Section B.7.
- ¹⁸ Ministerial Order No. 743/MI/MD/MEF of 24 November 2008 setting the specifications for private security and cash-in-transit companies.
- ¹⁹ The training centres are: LAVEGARD, KIBIO, Security Academy & Management and the Academy of Professional Security (ASP); the latter is the

only one to hold the two licences cited above.

- ²⁰ ECOWAS Convention on Small Arms and Light Weapons, their Ammunition and Other Related Materials, 14 June 2006, (entered into force on 20 November 2009).
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- ²⁷ *Ibid.*
- ²⁸ *Ibid.*
- ²⁹ See the official website of the International Code of Conduct Association for more information, available at: www.icoca.ch.
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CHAPTER IV

Mali

Kadidia Sangaré Coulibaly

Introduction

Mali is a landlocked Sahelo-Saharan country in West Africa with an area of 1'241'238 km.² It is the second largest country in the Economic Community of West African States (ECOWAS), after Niger. It borders seven countries: Algeria, Burkina Faso, Côte d'Ivoire, Guinea Conakry, Mauritania, Niger, and Senegal. Two-thirds of its territory is desert, which includes a wide Sahelian belt, with a Sudanian zone in the southern part of the country.

During 2012 – 2013, Mali experienced the most serious crisis in its history as insurgent groups in the north led an open campaign against the ruling government. This crisis, which led to the overthrow of the president and the occupation of two-thirds of the country by armed rebel and terrorist groups,¹ caused a breakdown in the rule of law requiring the involvement of foreign forces.² These events have plunged Mali into an unprecedented humanitarian and security crisis, and given rise to serious violations of human rights.

As a result of the multidimensional crisis of 2012 – 2013, the security challenges that Mali already faced were exacerbated. Mali experienced a rise in crime and an increase in sporadic terrorist attacks sponsored by international terrorist networks, such as the terrorist attack on the capital in November 2015.³

The progressive deterioration of the security situation showed the need to give new impetus to the security sector. Major shortcomings have been not-

ed, particularly the lack of preparedness and capacity of the Malian Defence and Security Forces (FDS) to deal with the diversity and intensity of new threats. In this context of growing instability, both national and international private security companies (PSCs) have multiplied, playing an increasingly important role in the provision of security services. According to media reports, the number of PSCs operating in Mali seems to have increased considerably since the beginning of the crisis in 2012, as they seek to offer services to meet the needs created by the security situation.⁴

This study aims to understand the role and extent of the privatisation of security at a national level in order to identify challenges to and possible gaps in the legal and regulatory framework. This study also provides practical recommendations based on good practices.

With this aim in mind, the methodological approach includes three phases:

- A literature review to assemble all relevant documents – including those covering the existing regulations, the terms of licences, whether the specified regulations are complied with, and details of penalties – and to enable gaps in legal liability and judicial accountability to be identified;
- A mapping exercise to identify firms authorised at national level and to define their main characteristics;
- The development and dissemination of a questionnaire to collect information from key stakeholders. After the completed questionnaires were collected, the information obtained was shared and a summary produced.

In order to present the results of the research, this report is structured around three main sections. First, the study focuses on the growth of the private security sector in Mali. It describes the main characteristics of the sector and the national legal framework governing it. This sheds light on its origins and its present extent. Second, it identifies the challenges faced by the industry. Finally, on the basis of these findings, conclusions are drawn and recommendations made to improve compliance with human rights law, to facilitate the security mandate of the private security sector and to ensure appropriate and democratic control.

Analysis of the Situation in Mali

The growth of the private security sector

Mali is experiencing rapid population growth and has a predominantly young population. Of a total population estimated at 14'528'662 inhabitants, approximately 65% of the population is under 25. The country is also seeing a rapid acceleration in urbanization.⁵ Along with Mali's difficult economic situation, which includes high unemployment rates and a high poverty level, these factors combine to foster increased insecurity. As a result of these social pressures, Mali's multiple security problems include international terrorist networks, drug traffickers, organised crime, corruption, and human trafficking. The proliferation of weapons and arms trafficking is also a major source of insecurity. The spread of conflicts, both within Mali and in neighbouring countries, has made Mali a perfect hub for arms traffickers, especially in the wake of the Libyan civil war of 2011, when the chaotic situation provided the black market with a well-stocked arsenal. This means that the various Malian armed groups mainly obtain their weapons from Libya.⁶ In its latest briefing, the United Nations Regional Centre for Peace and Disarmament in Africa (UNREC) highlighted a "growing sense of insecurity among the population, who in most parts of the country are often victims of armed robberies".⁷

As mentioned in the introduction, the multidimensional crisis of 2012 – 2013 added an additional layer of political instability and led to the break out of armed conflict. This has exacerbated the pre-existing security challenges. To deal with this crisis, the United Nations Security Council adopted several resolutions, which were aimed at restoring peace and security, and protecting human rights.⁸ The deteriorating situation also revealed the weakness of law enforcement bodies, particularly the FDS, and its inability to effectively address the various security challenges. The deficiencies of the FDS have also resulted in a loss of public confidence in their authority and legitimacy. It is in this context that the previously weak private security industry took off, playing an increasingly important role in providing security services.

Prior to 1991, there were two successive authoritarian regimes in Mali. Under these regimes, issues of defence and security were entirely controlled by the State. It took more than three decades to see the involvement of oth-

er stakeholders in this field. The first PSC was established in May 1986: the *Société Malienne de Gardiennage et de Surveillance* (SOMAGES). The first PSCs were mainly staffed by low-skilled and poorly educated young people from the rural exodus.⁹ The advent of democracy and a multi-party system in 1991 led to the establishment of many more PSCs within the country. Foreign PSCs were also able to enter the market, and there are now more than two hundred PSCs operating in Mali. The emergence of new kinds of threat, such as the terrorist attack on the capital in November 2015,¹⁰ and the public's lack of trust in state law-enforcement have fostered the extremely rapid development of the private security sector in Mali. According to media reports, the number of PSCs operating in Mali has increased considerably since the beginning of the crisis in 2012, as they seek to offer services to meet the needs created by the security situation.¹¹ The recent attack on the Radisson in Bamako also seems to have triggered an increased demand for private security services from hotels in the capital.¹²

The majority of services provided by PSCs consist of the surveillance and security of buildings, the protection of persons and property, escorting humanitarian convoys, and the transportation of cash. With the growth of the private security sector, the type of personnel recruited has also changed. PSCs now employ many former soldiers, gendarmes and police officers – who generally have better skills and are better educated. The development of the sector and its professionalization has also helped to attract young university graduates, as well as many young women who found PSCs to be an alternative to unemployment.¹³

While both national and international attention has largely been concentrated on the crisis in northern Mali, central Mali has also seen an increase in armed violence. Widespread robbery, conflicts relating to the management of natural resources, ethnic tensions, and jihadist insurgency are all consequences of the inefficiency of state control, which has been plagued by corruption and generally weakened in the wake of the 2012 – 2013 crisis. The state's security response focuses primarily on anti-terrorist operations. These are often violent, sometimes damaging to the population, and politically ambiguous, further increasing the population's lack of trust in the State.¹⁴

In November 2013, the President of the Republic adopted a “2013 – 2018 government action programme” (PAG)¹⁵ in recognition of the importance of security for the construction and consolidation of peace, as well as for de-

velopment. It also addressed the need to transform the security sector so as to equip both public and private sector bodies with the skills needed to adequately carry out their security mandates. The PAG is a six-point programme. The second point is “the restoration of security of people and goods throughout the country”.¹⁶ The main measures envisaged are security sector reform (SSR), a subsequent upgrade in the capabilities of the armed and security forces, and a prioritization of human security. To do this, a multidisciplinary think tank on the reform of the security sector (GPRS) was created by decree.¹⁷ This group – which includes civilians, members of the military, and development partners – aims to “contribute to the definition of the security sector reform process, to define the organisation of the process, and to put forward a resource mobilisation strategy in support of the national effort to reform the security sector.” A report submitted to the prime minister of Mali by the GPRS includes provisions aimed at creating a steering and decision-making organisation: the National Council for Security Sector Reform (CNRSS). This organisation was created by decree and given responsibility for the direction of, and decision-making within, the security sector reform process.¹⁸

The government’s priorities for the period 2013 – 2018 state that “the security and institutional crisis that hit the country necessitates the reconstruction of the State and improvements in its procedures in order to modernize and increase government efficiency.”¹⁹ Thus, SSR began in August 2014 with the creation of the CNRSS, and will be continued with the establishment of the organs of the Council and the recruitment of its staff. The main aims of the reform process are, firstly, to ensure adequate and appropriate security coverage of the country, and secondly, to make adjustments to the security network by establishing Security and Defence Units and recruiting new personnel. The government has placed a particular emphasis on the implementation of the Military Planning Act and the Security Planning Act, the organization of humanitarian relief, and the fight against trafficking and organised crime. Further security sector reform will seek to continue to improve governance through the allocation of substantial human, material, and financial resources.

However, despite the clear need for reform of the security sector in Mali, the current security plan is criticized for being static and obsolete in light of recent developments.²⁰ The success of any reform process largely depends on the support of the population. People must be able to understand its scope in order to own the process. To do this, civil society organizations, the me-

dia, and traditional communicators received training on concepts relating to the principles of security sector governance and reform. The training also covered the principles and objectives of SSR in Mali, as well as the roles of various stakeholders. The training provided good practices in empowering the civilian population in terms of security management, other countries' experiences of the engagement and involvement of civil society in SSR, and governance of the security sector.

However, Mali still does not have a central body to deal with operational coordination, so the various initiatives aimed at security sector reform are not coordinated.²¹ Mali has a great need for peace-building and security. PSCs undoubtedly have a crucial role to play in this given the diversity of security problems and the increasing number of terrorist attacks on the private institutions they protect. For this reason, it is essential that the PSCs are an integral part of the SSR undertaken by the authorities.

The main characteristics of PSCs and the national legal framework

i. Permitted activities and licencing conditions

A growing number of organizations now use PSCs, including many government services, private companies, banks, diplomatic missions, and even individuals – for example for the protection of residential homes. The mining (especially gold mining) and industrial sectors are also using the services of PSCs due to their increasing and specialised security needs.

PSCs play an important role in Mali's economy, providing many jobs and contributing tax revenue. There were 263 licensed companies²² at the end of December 2015. PSCs are most numerous in the capital, Bamako, and the vast majority operate in the field of surveillance and security. Private security companies in Mali are mainly governed by Act No. 96-020/AN governing Private Security Companies in Mali, and its implementing decree No. 96-064/PRM, dated 29 February 1996.²³ All private security companies must operate as a company constituted under commercial law. The law distinguishes three types of companies, according to their activities:²⁴

- Surveillance and security firms that provide surveillance and security services to legal entities or individuals relating to the security of movable and immovable property and people;
- Cash-in-transit companies that provide transport and security for cash, jewellery, precious metals, and payment documents;
- Personal protection companies that provide the protection services of self-defence experts to individuals.

The law relating to private surveillance and security companies, cash-in-transit companies, and personal protection companies, defines the areas of activity permitted for PSCs in Mali and also specifies that only a Malian citizen may be a director, partner, or manager of a PSC. PSCs may not include any term as part of their company name that is likely to cause confusion with a public service. PSCs are also prohibited from interfering in labour disputes and from monitoring the political, religious, or trade union views of citizens, or creating files for that purpose. Similarly, PSCs are not allowed to conduct law enforcement operations, or do anything that may disturb the public order or free movement of people and goods. Private police and detective activities are prohibited throughout Mali. International PSCs that are present and active in Mali, such as G4S, are governed by the same legal provisions as Malian PSCs. The provision of private security services is subject to obtaining a licence.²⁵

Applications,²⁶ which should be addressed to the Minister of Security, must include:

- An information sheet completed by the applicant;
- A birth certificate or equivalent official document;
- A criminal record check dating back at least 3 months;
- A certificate of residence;
- A certificate of Malian nationality;
- A certificate of inclusion in the Trade Register, if this formality has already been accomplished;
- A copy of the company's articles of association;
- Four recent black and white passport photos;

- A receipt for the application fee, the amount of which is fixed by joint decree of the Minister of Finance and Minister responsible for security;
- The logo or initials of the company or business;
- The names of the founders, partners, managers, directors and employed staff.

Once the information has been received, the Minister of Security may grant a licence within three months. The applicant will be notified if the application is refused.

On formation, PSCs are obliged to take out insurance²⁷ that covers the special risks taken by their agents, as well as any damage that could be caused to others because of them. Nevertheless, it has been reported that in most cases, this measure is not implemented.

The law provides for various disciplinary sanctions: a simple warning, a suspension of activities for a maximum period of three months, or the withdrawal of the licence. Fines and custodial sentences are also available. These penalties are invoked for failure to comply with relevant legal provisions and/or when the activities of the PSC are likely to disturb public order. Penalties for disturbing public order most often occur in cases of unwarranted beatings causing injury, or the use of prohibited weapons.

PSCs work in close collaboration with the national security services (police, gendarmerie and civil protection) to which they are connected by a warning system. This allows agents on the ground to alert the various state structures of any potential danger. The mere presence of private security agents acts as a deterrent which both enhances safety and reduces crime. The public has a positive view of the fact that there is a clear link between these private companies and the authorities responsible for ensuring security in Bamako.

Nevertheless, the national legislation does not sufficiently take into account technological advances, such as video surveillance or data storage. Very few PSCs in Mali use computer security tools or surveillance videos.

Military services lie exclusively within the domain of the State. Private security companies are not allowed to provide military services: the law explicitly

excludes any activity that is not defined as surveillance and security, cash-in-transit, or personal protection services.²⁸

Drawing from various interviews with directors of Malian PSCs as part of this study, evidence shows that almost all of the PSCs operating in Mali are unaware of both the Montreux Document and the International Code of Conduct for Private Security Service Providers. This lack of knowledge of international instruments and standards causes a real problem for these PSCs in complying with international humanitarian law and human rights in their operations.

ii. PSC personnel: selection, duties and working conditions

PSC personnel in Mali are recruited by licence holders who are required to continually monitor staff²⁹ and guarantee the moral and physical fitness of their agents. The law sets the minimum selection criteria for PSC personnel. The selection of agents is made on the submission of a full application file. Thus, no-one who has been subject to disciplinary action, or sentenced to prison or any other judicial sentence (on probation or not) for conduct contrary to honour, probity or morality, or for endangering the safety of property and people, can be employed by a PSC.³⁰ A minimum level of education, including among other criteria the ability to read and write, is also required. Staff training is the responsibility of the employer. Training generally includes the theory and practice of martial arts. Article 27 of Law No 96-020 expressly provides that *“The training of surveillance and security, cash-in-transit and personal protection personnel is the responsibility of the companies that employ them. The security services have access to these companies and training centres at any time, in order to monitor security and training conditions.”* However, there is no legal framework formalizing recruitment procedures, and each company has its own structures and sets its own rules.

There is a collective agreement for security companies which sets out the rights and duties of employees and employers regarding labour regulation. The agreement, amongst other things, defines a pay scale for employees. However, the convention is unknown to most companies and their staff. As mentioned above, the professionalization of the sector is attracting a growing number of young graduates, who see the sector as a last resort when faced with unemployment. It was also reported that pay levels are determined by

level of education.³¹ However, some security personnel that were contacted reported that they can neither read nor write, and that they have received no training. The training of PSC personnel is not subject to any oversight by the authorities, and these training requirements are very unevenly applied.

It is mandatory for surveillance, security, and cash-in-transit personnel to wear a uniform when carrying out their duties. Cash-in-transit personnel are permitted to carry class 2 and 3 weapons. Those engaged in personal protection, however, are not permitted to carry weapons. This prohibition is a great weakness for security companies providing personal protection services. Thus, many deficiencies were identified relating to staff safety and security in terms of the tools available to them. The conditions for issuing a firearms licence are identical for PSC staff as those for any citizen, requiring only an identity document, a certificate of residence and a criminal records check. Procurement of weapons and ammunition is the responsibility of the company, which issues the latter to employees when required to carry out their duties.³² The Minister of Interior Security can withdraw gun licences, particularly if the holder is convicted of a crime.³³

iii. Supervisory institutions: analysis and operation

The regulation of private security companies is the responsibility of the ministry responsible for internal security and civil protection. A register of all approved PSCs in Mali is kept by the Ministry of Internal Security. Any violation of the provisions of the law, without prejudice to criminal and civil penalties, is punishable by a warning, suspension, or simple withdrawal of the licence. These penalties are applied by the Minister of Internal Security. The court has jurisdiction to order a prohibition to practice against anyone violating the relevant provisions of the law.

The National Directorate of Security, through its inspectors, is responsible for ensuring the regulatory compliance of PSCs. However, shortcomings were noted in the inspection process, and it seems to be ineffective. In some cases, the legal provisions appear to be simply ignored: for example, the prohibition against any person not of Malian nationality to be a “*director, partner, manager in law or fact, of a business engaged in surveillance and security, cash-in-transit or personal protection company*”³⁴ seems not to be applied. Indeed G4S, which has the privilege of providing security services to most

Western governments (the American, Canadian, Swiss, Danish and German embassies and the offices of mobile phone operator Orange-Mali) is run by a Zimbabwean. This violation of the aforementioned national legislation appears nevertheless to be accepted.

It is also noted that in Mali, PSCs are not allowed carry out any other commercial activity than those that the law permits, that is: surveillance and security, cash-in transit and personal protection services. However, it is clear that in practice these PSCs do conduct other activities or operate simultaneously in the three areas, in violation of the law. In sum, although, in theory, the legislation provides for oversight, it appears to be virtually ineffective in practice.

Challenges

Permitted activities and license conditions

It appears from an analysis of the current situation that one of the major challenges is directly related to the national legal framework and the rapid growth of the private security sector. An exponential increase in demand for private security services has been observed. This is directly linked to growing insecurity in Mali and the public's lack of trust in the state security forces. However, the law governing the activities of PSCs in Mali dates back to 1996. It does not reflect changes in the sector, the evolving Malian security context, or updates in technology, and is therefore unable to respond to new challenges or needs.

Although the analysis shows that PSCs and state security forces have a good relationship and have established an efficient system of collaboration, some confusion of roles has also been reported. Due to a lack of training, some PSC agents seem to be confused as to their status, a situation likely to lead them to undertake tasks that are strictly the responsibility of state law enforcement officers, such as placing people under arrest.

It was also observed that international norms and standards governing PSCs are generally unknown to Malian PSCs and their staff. This lack of knowledge

may therefore be behind the lack of professionalism and instances of human rights violations exhibited by some PSC employees. It is generally found that the application of the law is only weakly respected by PSCs, either due to a lack of knowledge or a lack of effective oversight and supervision of the sector.

PSC Staff

Inadequate, insufficient and uneven training of PSC personnel presents a considerable challenge. This results in agents with insufficient knowledge, especially regarding human rights and the use of force, which can lead to inappropriate behaviour and abuse. While the law specifies some minimum training criteria for the staff of PSCs, each PSC is responsible for its implementation. Since training is not subject to any oversight by the authorities, the statutory criteria are applied very unevenly. It was reported that many PSC staff did not receive any training. PSC personnel in Mali are therefore insufficiently trained to deal with the challenges they face when carrying out their duties. The events at the Radisson Hotel Bamako³⁵ on 20 November 2015 illustrate the risks that PSC personnel take in the course of their duties. These events demonstrated the inadequacy of training in light of new security threats and the scarcity of resources and equipment available to PSC agents. Indeed, it was found that the security agents at the Radisson Hotel on the day of the attack were not in possession of adequate security equipment to help them deal with this type of threat. The attack has been a sad example of the inadequacy of resources and training to enable PSC agents to carry out their duties. Many PSC agents guarding the Radisson were affected, and the head of security lost his life in the attack.³⁶

The proliferation of weapons and arms trafficking are another major challenge facing Mali that also threatens the safety of PSC agents who, in most cases, are not equipped with weapons. There are frequent reports of assaults on PSC agents by armed bandits.

The working conditions of PSC staff also appear to vary significantly and often do not meet the required legal standards, particularly with regard to minimum wage, insurance, and working hours. Despite pay rises and an increase in the minimum wage to 40'000 CFA francs per month,³⁷ the salaries of some

guards remain below this level; meanwhile, a number of PSC agents complain of inadequate pay and welfare benefits related to the high risk exposure of their duties. They also report having been threatened with dismissal after contacting their union.³⁸ This behaviour by the security companies, which take advantage of the high unemployment rate among young people who often have no alternative employment, is illegal. This is a violation of human rights law,³⁹ which requires that all workers, without discrimination, should receive fair wages and equal remuneration for work of equal value. The PSC staff interviewed for this study have described the treatment to which they are subjected as “slavery” and claim that PSC directors operate in violation of several fundamental principles of the collective agreement governing security companies. The Labour Inspectorate, having received several complaints from workers, has not, however, succeeded in forcing PSCs to comply with current regulations, specifically, the Labour Code.

In addition to the lack of training and poor working conditions, the prohibition on personal protection officers carrying weapons appears to be a weakness in the industry, making staff vulnerable and potentially unable to carry out their security duties. In addition, although Mali signed up to the ECOWAS Convention on small arms and light weapons, the provisions of this regional treaty are not reflected in national legislation.

Oversight

Despite the existence of an inspection regime responsible for ensuring regulatory compliance by PSCs, shortcomings were noted in the process, which seems to be ineffective. Effective oversight is very rare or non-existent. This lack of oversight can result in an abuse of and/or failure to comply with the stipulated standards. The inspection process is therefore inadequate, and effective inspections are almost never made. The only effective oversight appears to take place when an application for approval⁴⁰ is under consideration.

Ineffective oversight and regulation of PSCs is also due to the lack of a specific national authority for the regulation and oversight of PSCs, a lack of coordination between existing structures, and a general lack of resources and personnel. As a result, various legal provisions are regularly ignored, to the point that some violations seem to be tacitly accepted by the authorities, par

ticularly, as noted previously, the prohibition on non-Malian citizens directing Malian PSCs.

Conclusion and recommendations

The role of PSCs in the security sector is becoming increasingly prominent as a result of the various types of threats with which Mali is confronted. These threats endanger the security of citizens and their property, as well as the security of the authorities and public institutions.

Given the role that the private security sector can play in improving the overall security landscape, it is essential to move towards appropriate reforms aimed at ensuring that the activities of PSCs conform to internationally recognised standards and best practices. PSCs should, in their activities and in the treatment of their staff, be able to be held responsible for their actions and answer for any violations that they may commit or that may be committed by their employees in the course of their duties. It is necessary to reform national legislation to clearly differentiate PSCs from other commercial companies.

The involvement of civil society should be strengthened, in particular to ensure the oversight and monitoring of PSCs and compliance with human rights legislation. In this context, it is important to emphasize capacity building for human rights organizations, while supporting the establishment of a framework for dialogue and action on the issue. In consideration of the challenges identified in the previous chapter relating to the operations of PSCs in Mali, this study offers recommendations aiming to improve compliance with human rights law and to facilitate the security mandate of the private security sector to ensure appropriate and democratic oversight. The first category of recommendation concerns national legislation. The second addresses the application of legislation, national, and international standards. Finally, recommendations are provided aimed at raising awareness and empowering PSCs in terms of compliance with human rights law.

Recommendations for national legislation

- Update the legislation governing PSCs to reflect new needs and the development of the private security sector. National legislation should also comply with international norms and standards, in particular the Montreux Document and International Code of Conduct;
- In particular, national law should address or update the following clearly and in detail:
 - the PSC licensing process – including the keeping of a register of PSCs;
 - selection requirements for personnel;
 - minimum requirements for staff training;
 - obligations of PSCs and their staff;
 - the use of firearms and related training.

Recommendations regarding the application of laws and national and international standards

- Create a dedicated national authority for the regulation and control of PSCs. This authority must be provided with sufficient financial and human resources to carry out its mandate effectively and to exercise effective oversight of the PSC industry;
- Create an external oversight mechanism to monitor PSCs and verify that they are conforming to the legal provisions and complying with human rights legislation;
- Ensure that the authorities, including parliamentarians, are sensitised to the challenges and good practices in relation to the private security industry in order to achieve greater participation in the oversight process;
- Educate and support civil society and human rights organizations and engage them in playing a role in monitoring and improving the accountability of the private security sector.

Recommendations for raising awareness and empowering PSCs to comply with human rights legislation

- Encourage PSCs to adopt internal codes of conduct and regulations consistent with national and international regulations;
- Make PSCs aware of the issue of human rights violations and their responsibilities.

Finally, it is important to organize an event to discuss the results of this study with the various stakeholders in order to consolidate and validate the information gathered, and to launch the PSC sector reform process. Such an event would enable stakeholders from civil society, human rights organizations, unions (including those representing PSC staff), directors of PSCs, and national authorities responsible for PSCs, not only to take ownership of the content of the study, but also to understand the challenges surrounding the regulation and oversight of the sector. This will ensure that diverse views are taken into account, within the wider security sector reform process now underway.

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Decree No. 05-441 of 13 October 2005 laying down detailed rules for implementing Law No. 04-050 of 12 November 2004, regulating weapons and ammunition in the Republic of Mali.

Decree No. 2015-363-P-RM of 19 May 2015, fixing the guaranteed minimum wage.

Decree No. 96-064 / P-RM on the regulation and oversight of private surveillance and security, cash-in-transit and personal protection companies.

Law No. 92-020 of 23 September 1992 on the Labour Code in the Republic of Mali.

Law No. 96-020 of 18 January 1996 on private surveillance and security, cash-in-transit and personal protection companies.

Mali, Programme d'actions du gouvernement (PAG) 2013-2018, Chapitre 1, November 2013, available at: http://www.maliapd.org/IMG/file/pdf/DOCUMENTS_CLES/15.%20PAG/15.20PAG%/%PAG202013-2018.pdf.

Treaties and international standards

General Assembly of the United Nations, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III).

General Assembly of the United Nations, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, A / RES / 2200.

Montreux Document On pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict 17 September 2008.

Notes

- ¹ Such as the Ansar Dine armed movement – which originated in the Tuareg rebellion, the Movement for Oneness and Jihad in West Africa (MOJWA) or Al-Qaeda in Islamic Maghreb (AQIM).
- ² Including intervention by the French army and the armed forces of African Union member states.
- ³ A terrorist attack, which has been claimed by several terrorist groups, took place in the Radisson Hotel in Bamako on 20 November 2015. That morning, two gunmen attacked the Radisson Hotel, located in the heart of the ACI 2000 district to the west of the city centre, killing many people, including security staff at the hotel. See, among others reports: *Mali: retour sur l'attaque de l'hôtel Radisson à Bamako*, in 'RFI Africa, 20 November 2015, available at: <http://www.rfi.fr/afrique/2min/20151120-direct-mali-radisson-blu-hotel-fusillade-bamako>; *Mali: deux groupes terroristes ont revendiqué l'attaque du Radisson de Bamako, l'enquête se poursuit*, in 'Jeune Afrique', 23 November 2015 available at: <http://www.jeuneafrique.com/280736/politique/mali-deux-groupes-terroristes-ont-revendique-lattaque-radisson-de-bamako-lenquete-se-poursuit/>.
- ⁴ See, for example, *Sécurité privée, un secteur en plein boom* in 'Journal du Mali', 28 January 2016, available at: <http://www.journaldumali.com/2016/01/28/securete-privee-un-secteur-en-plein-boom/>.
- ⁵ However, the population is unevenly distributed across the country and is mainly rural, with an urbanization rate of 43%. Source: *ANPE-RASAMT-2012 Rapport d'Analyse Situationnelle Annuelle du Marché de Travail*, December 2013, pp. 6-10; UNPD, *Global Human Development Report 2014; Sustaining Human Progress: Reducing vulnerabilities and*

building resilience, 24 July 2014, available at: <http://hdr.undp.org/sites/default/files/hdr14-report-fr.pdf>.

- ⁶ G. Bergehezan, *Côte d'Ivoire et Mali, au coeur des trafics d'armes en Afrique de l'Ouest*, Les rapports du GRIP, Brussels, January 2013, available at: http://www.grip.org/sites/grip.org/files/RAPPORTS/2013/Rapport_2013-1.pdf.
- ⁷ UNREC, *Diplomatic Briefing on UNREC activities in Mali*, February 26, 2016, available at: <http://unrec.org/default/index.php/en/unrec-updates/454-diplomatic-briefing-on-unrec-activities-in-mali>.
- ⁸ Resolutions 2056, 2071, 2085 and 2164 of the UN Security Council: **Resolution 2056**, adopted July 5, 2012, required armed groups the North to end hostilities and renounce any affiliation incompatible with peace, security, the rule of law and the territorial integrity of Mali. It also expressed its support for the restructuring of Mali's Defence and Security Forces and for the re-establishment of the authority of the State; **Resolution 2071**, adopted on 12 October 2012, required all armed groups to cease violations of international humanitarian law, including targeted attacks against civilians, sexual violence, the recruitment of child soldiers and forced displacement; **Resolution 2085**, adopted on 20 December 2012, provided for the deployment of the International Support Mission in Mali (MISMA) under African leadership. This resolution paved the way for many international military interventions: the French Opération Serval, which ended on July 15, 2014, the African Union and ECOWAS's African-led International Support Mission to Mali (MISMA), and the Chadian armed forces intervention in Mali (FATIM) which merged with MISMA in March 2013. The integrated multidimensional United Nations Mission for Stabilization in Mali (MINUSMA16) succeeded the MISMA in July 2013; **Resolution 2164** of 25 June 2014, focused the mandate of MINUSMA on priority tasks such as security, stabilisation and the protection of civilians, support for national political dialogue and national reconciliation, as well as support for the re-establishment of the authority of the State throughout the country, the reconstruction of the Malian security sector, the promotion and protection of human rights, and humanitarian aid. The mission's mandate was extended for another year in June 2015.
- ⁹ Source: reports from the various PSCs contacted as part of this study.
- ¹⁰ See note no. 3.
- ¹¹ See, for example, *Sécurité privée, un secteur en plein boom*, in 'Journal du Mali', 28 January 2016, available at: <http://www.journaldumali>.

[com/2016/01/28/securite-privee-un-secteur-en-plein-boom/](http://www.afrique-sur7.fr/17745/mali-a-bamako-on-mise-sur-la-securite-privee-pour-pallier-les-lacunes-des-fama/).

- ¹² See for example: Rufus Mali: à Bamako, on mise sur la sécurité privée pour pallier les lacunes des Fama, in 'Afrique Sur7', 12 February 2016, available at: <http://www.afrique-sur7.fr/17745/mali-a-bamako-on-mise-sur-la-securite-privee-pour-pallier-les-lacunes-des-fama/>.
- ¹³ L. Almouloud, *Sociétés de surveillance et de gardiennage : l'expansion du marché* de la sécurité privée, in 'Mali Actu', 21 March 2013, available at: <http://maliactu.net/societes-de-surveillance-et-de-gardiennage-lexpansion-du-marche-de-la-securite-privee/>.
- ¹⁴ *Central Mali: An Uprising in the Making?* in 'Crisis Group Africa Report N° 238', 6 July 2016, available at: http://www.crisisgroup.org/en/regions/africa/west-africa/mali/238-central-mali-an-uprising-in-the-making.aspx?alt_lang=fr.
- ¹⁵ See Mali, *Programme d'actions du gouvernement (PAG) 2013-2018* Chapitre 1, November 2013, available at: http://www.maliapd.org/IMG/file/pdf/DOCUMENTS_CLES/15.%20PAG%20/15.20PAG%20/%202013-2018.pdf.
- ¹⁶ *Ibid.*
- ¹⁷ Order No. 2013-4444 / MS-SG of 22 November 2013 establishing the *Groupe pluridisciplinaire de réflexion sur la Réforme du Secteur de la Sécurité (GPRS)*.
- ¹⁸ Decree° 2014-0609 / P-RM of 14 August 2014 creating the *Conseil national pour la réforme du secteur de la sécurité (CNRSS)*.
- ¹⁹ *Ibid.*
- ²⁰ See for example: *Société de sécurité et de gardiennages privées au Mali: Une réforme en profondeur désormais indispensable* in 'News Bamako', 4 December 2015, available at: <http://news.abamako.com/h/110368.html>.
- ²¹ A. Vessier, *What Place for SSR in the Malian Peace Process?* in 'à Propos' *What future for Mali*, SwissPeace, July 2016, available at: http://www.swisspeace.ch/apropos/wp-content/uploads/2016/06/%C3%A0propos_146_fr.pdf.
- ²² Ministry of Security and Civil Protection of Mali, General Secretariat.
- ²³ A complete list of texts governing these companies in Mali: Law No. 96-020 relating to private surveillance and security, cash-in-transit and personal protection companies; Decree No. 96-00621 / MATS / SG on the wearing of uniforms by staff of private surveillance and security, cash-in-transit and personal protection companies; Decree No. 96-0566 /

MFC-MATS of 15 April 1996 fixing the application fees for the licensing of private surveillance and security, cash-in-transit and personal protection companies; Decree No. 96-064 / P-RM on the regulation and monitoring of private surveillance and security, cash-in-transit and personal protection companies; Decree 2011-0589 / MS / PC of 24 February 2011 laying down the procedures for applying the regulatory conditions of the activities of private surveillance and security, cash-in-transit and personal protection companies.

- ²⁴ Private security companies in Mali can only carry out one of the activities listed; they are forbidden to provide additional commercial services.
- ²⁵ The application fee for obtaining a licence is set at one hundred thousand CFA francs (100,000 CFA francs). Source: Decree No. 96-0566 / MFC-MATS of 15 April 1996 fixing the application fee for the licensing of private surveillance and security, cash-in-transit and personal protection companies, Art. 1: “The application fee for the licensing of private surveillance and security, cash-in-transit and personal protection companies is set at one hundred thousand (100,000) CFA francs.”
- ²⁶ Decree No. 96-064 / P-RM on the regulation and monitoring of private surveillance and security, cash-in-transit and personal protection companies, Art. 3.
- ²⁷ Law n ° 96-020 private surveillance and security, cash-in-transit and personal protection companies, Art. 17.
- ²⁸ Law n ° 96-020 on private surveillance and security, cash-in-transit and personal protection companies, Art. 5: “The activities referred to in Articles 2, 3 and 4 above can be exercised by commercial companies. Surveillance and security, cash-in-transit and personal protection companies may only exercise one of the activities defined in Articles 2, 3 and 4 above (...)”; Art. 12: “Surveillance and security, cash-in-transit and personal protection companies may not engage in law enforcement operations (...)”
- ²⁹ *Ibid.*, Art. 16.
- ³⁰ *Ibid.*, Art. 13.
- ³¹ L. Almouloud, *Sociétés de surveillance et de gardiennage : l’expansion du marché de la sécurité privée* in ‘MaliActu’, 21 March 2013, available at: <http://maliactu.net/societes-de-surveillance-et-de-gardiennage-lexpansion-du-marche-de-la-securite-privee/>.
- ³² Decree No. 05-441 of October 13, 2005 laying down detailed rules for implementing Law No. 04-050 of 12 November 2004, regulating weapons

and ammunition in the Republic of Mali, Art. 22 and 26.

- ³³ *Ibid.*, Art. 26.
- ³⁴ Law n° 96-020 relating to private surveillance and security, cash-in-transit and personal protection companies, Art. 6.
- ³⁵ See note 10.
- ³⁶ *Faillite sécuritaire au Radisson: Comment le chef du peloton de sécurité a été exécuté* in 'Maliweb', 25 November 2015, available at: <http://www.maliweb.net/insecurite/faillite-securitaire-au-radisson-comment-le-chef-du-peloton-de-securite-a-ete-execute-1266512.html>.
- ³⁷ Decree No. 2015-363-P-RM of 19 May 2015, fixing the guaranteed minimum wage, available at: <https://bamada.net/decret-n2015-0363-p-rm-du-19-mai-2015>.
- ³⁸ S. Kondo & A. Ahmadou, *Mali: Plus de 250 sociétés de sécurité et de gardiennage privées sont enregistrées en 2014* in 'MaliJet', 27 November 2015, available at: http://malijet.com/la_societe_malienne_aujourdhui/141047-mali-plus-de-250-societes-de-securite-et-de-gardiennage-privées-.html; L. Almouloud, *Sociétés de surveillance et de gardiennage : l'expansion du marché de la sécurité privée*, in 'Mali News', March 21, 2013, available at: <http://maliactu.net/societes-de-surveillance-et-de-gardiennage-lexpansion-du-marche-de-la-securite-privée/>.
- ³⁹ UN International Covenant on Economic, Social and Cultural Rights, 3 January 1976, Art. 7.
- ⁴⁰ Source: interview with directors of PSCs, conducted as part of this study.

CHAPTER V

Senegal

Aly Sagne

Introduction

The State monopoly of force has shifted considerably. An increasing number of private companies contribute to tasks such as ensuring that security is maintained, and offering services for the security of persons, institutions and property.

Internationally, the trend towards the privatisation of security goes back to the 1990s, with the emergence of commercial private security providers.¹ For example, in 2009, there were a total of 6'392 active and registered private security companies (PSCs) in South Africa, employing 375'000 active agents.² By 2014, the number of South African PSCs had risen to 8'144, employing a total of 487'058 active agents.³ This trend towards the privatisation of security takes different forms, depending on the context in which it develops and the social, economic and geopolitical issues that surround it. Most often seen as a defensive measure, PSCs are commonly used to ensure the security of persons and property. This is the case when PSCs protect private or public buildings, goods, individuals, or convoys. Nevertheless, PSCs are also increasingly called upon to provide services of a military nature, such as training the armed forces of developing countries, and particularly in the context of implementing peacekeeping missions.⁴ For example, in the conflicts in Iraq and Afghanistan, PSCs are primarily employed by governments. The services they provide typically include activities such as logistical support and intelligence gathering, but also include the direct participation of PSC personnel in hostilities.⁵

This phenomenon is much debated internationally, particularly regarding issues of transparency and the accountability of PSCs for human rights violations. Although several international instruments apply to the activities of PSCs, with the exception of the Montreux Document⁶ – which mainly addresses governments – and the International Code of Conduct (ICoC),⁷ there are no international regulations focused exclusively on the private security sector.

The African continent has seen the increasing use of PSCs, and the trend towards the privatisation of security seems irreversible.⁸ However, statistics on this industry are scarce or non-existent, and there has been very little research into the private security sector. This is equally the case in Senegal, where mention of the sector is very rarely to be found among academic references or university studies.⁹

This study aims to better understand the scale and scope of the privatisation of security in Senegal, and to identify potential shortcomings in the existing legal and regulatory framework in order to make concrete recommendations based on good practices in the field. To this end, a literature review was undertaken, combined with field surveys conducted between 15 August and 25 September 2015. Nevertheless, given the sensitive nature of the topic, many requests for interviews have remained unanswered.¹⁰ None of the PSCs contacted as part of this research were willing to take part, despite various attempts to arrange interviews.¹¹ No replies have been received from parliamentarians, nor from the largest clients of PSCs such as embassies or banks; likewise, none of these groups agreed to be interviewed. Observations of various people with expertise in the field have made a valuable contribution to this research.¹²

In order to provide an overview of the factors that have influenced the growth of the sector in Senegal, this chapter begins by describing the evolution of the private security sector, along with the national context. It then identifies the various challenges that the sector faces, divided into three categories: those associated with the legal framework, those concerning PSC staff, and those affecting human rights and public safety. Finally, recommendations are offered to improve governance of the PSC sector in Senegal.

Analysis of the situation in Senegal

Growth of the private security sector

In Senegal, the first private security companies were created in 1963, before the advent of specific legislation. Policing has always been the sole responsibility of the State, and any form of private policing is prohibited. It was not until 1978 that the government, through the Minister of the Interior,¹³ decided to allow some private security activities under certain conditions.

In 1978, this legal vacuum was filled by Law No. 78-40, prohibiting private policing and requiring any company offering services including surveillance, guarding, and convoy services for private property to seek authorisation.¹⁴ This law categorised PSCs as providing temporary work, and placed them under the collective labour agreement for the business sector.¹⁵ Consequently, PSCs were accorded no specific status under the law and are regarded in the same way as any other business – with no account taken of the special nature of their activities. This law was subsequently supplemented by Decree No. 2003-447 of 18 June 2003 laying down the conditions for surveillance, guarding, and convoy services for private property.

The 1978 Law and the Decree of 2003 were thus adopted in response to the rapid expansion of the private security sector in Senegal over the previous decade. The expansion of the sector can be partially explained by the state security institutions' lack of human and material resources and their inability to address the resurgence of urban crime and juvenile delinquency.¹⁶ The constant growth of the private security sector also offers many job opportunities, especially for young people, and provides an alternative to the unemployment that is endemic in the country. For this reason, the government of Senegal created the Agence d'Assistance à la Sécurité de Proximité (ASP)¹⁷ in 2013. This new hybrid security structure, motivated by "the need to establish 'local security governance'¹⁸", aims to develop partnerships between police and local stakeholders to prevent and fight crime. It recruits its agents, known as 'Agents de Sécurité de Proximité' (local security agents), mostly from among young, unemployed people, especially those with low levels of education. ASP agents receive training,¹⁹ and then commit to a two-year term (which may be renewed once) as civilian volunteers – although they are neither volunteers nor employees, but undertake to carry out security duties for

the benefit of society in return for a monthly stipend.²⁰ These agents are most frequently placed in police stations and *gendarmérie* brigades, or provide security for government buildings and other public places.

For similar reasons, and to meet growing security needs, various publicly owned companies, such as the Port of Dakar (PAD) and Dakar's public transport company, Dem Dikk, have created their own security companies to ensure the security of their personnel, buildings and equipment.²¹ These innovations in the field of security in Senegal are symptomatic of the increased need for security and the inadequacy of state law enforcement agencies. They show that the authorities are aware of the issues, and provide an opening to security sector reform and good governance, promoting collaboration between different stakeholders.

The main characteristics of PSCs and the national legal framework

The majority of services offered by Senegalese PSCs originally consisted of security services protecting homes and private institutions. Supply and demand for private security services has evolved, and now also includes personal protection of public figures, cash-in-transit, and electronic security services.²²

As mentioned above, Decree 2003-447 was adopted in 2003 as a direct response to the proliferation of applications for licenses, and additionally in consideration of many recorded incidents.²³ Aiming to update the legislation, it establishes a posteriori oversight of licensed activities, as well as an obligation to thoroughly investigate the moral and substantive guarantees given prior to licensing.²⁴ Thus, in order to grant a licence to operate, the authorities must examine the moral standards of the directors of the company and its staff.²⁵ However, the text does not mention compliance with human rights, nor international humanitarian law as a condition for obtaining a licence, nor does it impose compulsory and regular training of PSC personnel.²⁶

The Decree also provides for a possible extension of activities, providing that the PSC making the request provides a financial review of the past year and demonstrates that it has the financial, material and human resources necessary for the proposed extension. The Decree also requires an annual inspec-

tion of any authorised company to review the company's tax affairs, social security obligations and technical competence. These annual inspections are carried out by the finance, labour and interior ministries respectively.²⁷

Only natural or legal persons of Senegalese nationality can be authorised to provide services involving surveillance, guarding, and convoy services for private property. Applications for authorisation must be addressed in writing to the Minister of the Interior and must include the following:

- The applicant's curriculum vitae;
- Birth certificate;
- Certificate of Senegalese nationality;
- A criminal record check issued within the last three months;
- A business plan, clearly indicating the estimated revenue and expenditure for the first year of operation;
- Proof of right of use, whether due to ownership or rental, of a commercial property suitable for a company head office;
- A detailed description of the proposed uniform for company personnel;
- Business card design (badge);
- Details of the area, or areas, in which the company intends to operate;
- If the applicant is acting as the representative of a company, a copy of the articles of the said company.²⁸

Following the filing of the application, the police or *gendarmes* (as appropriate) will carry out a background check²⁹ and forward the file along with a substantiated recommendation.³⁰ The application is then submitted to an advisory committee whose composition is determined by order of the Minister of the Interior.³¹

However, in practice, no binding procedure is imposed and these controls are not adequately carried out. Moreover, no oversight or monitoring is carried out by the Ministry of the Interior. According to our investigations, management of the sector is not even included in the organizational structure of the Ministry, which only gets involved in the procedure for assessing applications

for authorisation. Only the labour inspectorate tries to exercise its supervisory role, but it is ineffective due to limited resources. As for the Ministry of Finance, it intervenes only when renewing tax clearances.

Beyond the Ministry of the Interior, no other institution (public or private) is involved in the processing or approval of PSC applications. This weakens transparency and the oversight of these companies to the detriment of the security of persons and property.

This deficit in the governance of the security industry was noted by the secretary general of the Senegalese national union of cash-in-transit and security guards (Syndicat National des Convoyeurs de Fond et Agents de Sécurité du Sénégal - SYNACOFAS): *“It could be said without fear of being mistaken, that of the more than two-hundred authorised security companies, those that more-or-less meet the provisions of the labour code number 2 or 3 at most. The labour inspectorate has now had to suspend inspections of the sector due to a lack of resources.”*

Unfortunately, there is little official data on the sector and the Ministry of the Interior does not keep a dedicated register of PSCs, since the Senegalese legal framework does not require it.³² A study reports that in 2010, 240 security companies were operating in the country, employing more than 15,000 people.³³ Unfortunately, there is no data on the number of licensed PSCs or the number of PSC employees for 2015.

The reality on the ground reveals many other shortcomings. Indeed, given the limitations of the legal framework and the lack of effective oversight, companies can easily find ways around the regulations. Various stakeholders interviewed for this study reported that many of the PSCs active in Senegal are bankrupt, undeclared, or simply illegal.³⁴ The majority of PSCs are based in Dakar and operate throughout the country. PSCs based elsewhere in the country operate in more precarious conditions, since the security sector is financially less attractive than in Dakar. While the majority of PSCs simply offer conventional surveillance, guarding, and convoy services for private property, some companies stand out from the crowd and offer a variety of services, such as cash-in-transit, close protection, and electronic security.³⁵

PSC staff are generally made up of young, unqualified, and unemployed people as well as former or retired military personnel. However, former military

and law enforcement personnel prefer to take public sector posts where possible, and often consider a position in a PSC to be no more than an interim measure. Since it does not take into account the applicant's level of education, employment in the private security sector is often considered a last resort by people faced with a lack of economic opportunities and poverty.

The regulations concerning the carrying of weapons by PSC staff are poorly developed. National legislation includes only a single basic article stating that "the carrying of class 2 firearms may be authorised by a special decree of the Minister of the Interior."³⁶ While the law provides for the obligation to obtain special permission from the Minister of the Interior and limits the type of weapons authorised, neither the management (procurement, number of weapons authorised, types of unauthorised weapons, etc.), transportation, or storage of weapons by PSCs is covered by Senegalese national legislation. In practice, the issue of firearms licences to PSCs is very strict. The company must apply for the licence to carry or store firearms and it will be registered in that name. It is the PSC that decides which assignments require the use of firearms, and they are mostly limited to cash-in-transit services. As a result of this strict licensing scheme, PSC staff do not generally carry firearms. Thus, incidents involving the use of firearms by PSCs are very rare.

Although the law only permits PSCs to be founded by persons of Senegalese nationality, it takes no position on the presence of multinational private security companies and/or outsourcing by PSCs. However, this issue deserves to be considered, especially given the expansion of the private security market on a global level, and the business opportunities created by conflicts and insecurity in the West African subregion. For example, this is the case of the South African private security company Denel Mechem, which is involved in mine clearance in the south of the country, and is contracted directly by the State.³⁷

National legislation on PSCs is not clear about the profile of authorised security personnel, the permitted and prohibited activities of PSCs and their staff, or their areas of competence. Thus, since the police generally operate in urban areas, the *gendarmerie* in rural areas, and the army at the borders – and PSCs are in principle authorised to operate in any area – the region in which a PSC intends to operate must be mentioned in the license application. However, if a PSC wants to expand into other regions, the regulations only

require an examination of the financial standing of companies already holding a licence.³⁸

In addition, specific regions where there are particular security needs (in terms of type of company, expertise, technology, weapons, etc.) and especially those where the extractive industries operate – such as Kédougou, in the east of the country – are not adequately covered by the current legislation. The mining sector is known for its financial strength, its heavy use of expatriate workers (especially from Western countries), and its ability to promote the flow of money, goods, and services. In the Kédougou region, in particular, mining operations occur at isolated sites (in the bush), sometimes in border areas of the country where the level of insecurity is particularly high.³⁹ As a result, mining companies' security needs are complex and increasing, and national PSCs are not always able to provide what is required. By default, these mining companies call on the services of international PSCs. Tense relations have been reported between PSCs ensuring the security of mining companies and local communities.⁴⁰ To cite one example, Teranga Gold, a Canadian company that operates the gold mine at Sabodala⁴¹ in the southeast of the country, has hired three former members of the Tibetan and Nepali military in addition to the services of a local PSC. These former soldiers provide security for the loading of gold into cargo aircraft, in collaboration with the *gendarmérie* on site.⁴² Nevertheless, the conditions of employment of this former military personnel raise various questions: have they been subjected to background checks and by whom? Do they have a past linked to conflicts? Do they use weapons/security equipment that is declared or undeclared, authorised or unauthorised?

The conditions of employment and scope of operations of PSCs in Senegal are unclear and suffer from lack of effective oversight from the authorities and the imprecisions the law.⁴³ It was not possible to track down the profits, nor the turnover of the sector, or even to pinpoint its national economic importance, due to a lack of data. Nevertheless, the figure of 10 billion CFA francs could be given for the company SAGAM alone.⁴⁴ It is interesting to note that the market is dominated by a few companies that are generally better equipped and have substantially greater financial and technical resources. This enables them to win the most profitable contracts: generally consisting of the provision of security services to foreign embassies⁴⁵ as well as close protection services for diplomats, banks, and mining and oil companies.

Challenges

Legal framework

As demonstrated in the previous chapter, the private security sector is booming in Senegal. With a transformation of the security landscape due to the development of new types of threats – such as terrorism, cross-border crime, and cyber-crime – supply and demand for private security services has rapidly evolved and is becoming increasingly sophisticated. Nevertheless, it is clear that Senegalese national legislation concerning PSCs is insufficient. The 1978 law and 2003 decree clearly do not take into account the new needs caused by developments in the sector and the national and international context.

The current system seems to mainly benefit PSC owners – who set the rules themselves, and PSC clients – who benefit from tailor-made, cheap security services. The accreditation process is so relaxed that it is common to see security contracts signed before authorisation to provide such services has been granted. It has been observed that anyone can easily obtain a licence, as long as he or she knows the system and can benefit from personal contacts. This further weakens the authorisation process and leaves the door open to countless opportunities for corruption. In addition, systemic failures – for example the lack of a centralised register and the lack of transparency in the sector – make it difficult to know who the real owners of PSCs actually are, or the state of their financial, human, and material resources.

The inefficiency and inadequacy of the authorities charged with oversight of the sector not only increases the lack of transparency and contributes to multiple opportunities for corruption, but also undermines the effective implementation of the law, as well as the accountability of PSCs and the handling of disputes. Thus, several cases of human rights violations committed by PSCs are waiting to go before the courts. Nevertheless, despite judicial decisions in favour of complainants and the imposition of fines against PSCs, the latter have refused to pay them and suffered no consequences from the authorities, who failed to react.

The following cases, among others, have been reported:

- A security company was accused by the SYNACOFAS, of owing 206 of its employees 115 million FCFA worth of social security contributions;

- Twelve security agents working at the US embassy were summarily dismissed for having caused unrest.⁴⁶

On the other hand, the law does not address the issue of subcontracting or the presence of multinational PSCs in Senegal. In the previous section, we noted that some new security needs, such as those of mining companies, require increasingly sophisticated solutions that national PSCs are not always able to meet. This means that the market is increasingly turning to international PSCs. These companies are finding Senegal to be an emerging market that opens up new opportunities.⁴⁷ So although international PSCs already operate in Senegal, the law is silent as to the legality of their presence and the types of activities that they are permitted or prohibited from undertaking.

PSC personnel

The working conditions of PSC personnel and the status of the profession in general, represent major problems. It was reported that the working conditions of PSC staff are extremely poor and sometimes constitute human rights violations. In addition to the poor working conditions reported, the profession is generally poorly regarded. Regardless of their high personnel numbers, accessibility to citizens due to the services they provide, and additionally the fact that PSC staff are often more socially accepted than state law enforcement officers, the profession generally lacks consideration and respect, with personnel sometimes being perceived as 'second-class security agents'. State law enforcement personnel also tend to patronise PSC staff, despite their participation in the national security apparatus.

It seems that the new regulations have failed to improve employment and working conditions in the sector; violations of basic human rights related to poor working and employment conditions continue to be seen on the ground.

Indeed, personnel have no specific mandatory training to adequately prepare them for the challenges of their profession. By way of training, it has been reported that after recruitment, agents are given 15 days of interviews to bring them up to speed. These interviews mainly focus on professional conduct. Since military service is no longer obligatory, only former members of the

military have benefited from training offered in their previous careers, while new recruits with no military background have never had access to such training. Recruitment conditions are very haphazard. PSCs must guarantee the physical and moral fitness of their agents, and can request a background check from the relevant authorities before recruiting employees.⁴⁸ However, the regulations do not specify a procedure for carrying this out, nor do they indicate the authority responsible for carrying out such checks. In practice, background checks are rarely made. Contracts are mostly fixed-term or hourly paid contracts that require clocking on and off. These practices contribute to a feeling of job insecurity and often contribute to a devaluation of wages. Security agents' pay remains well below the minimum wage set by an agreement that applies to this sector. This causes tension and inequalities.⁴⁹ Staff salaries are set according to their level of responsibility (supervisor, team leader, or agent). Research has shown, however, that salaries are modest and are generally around 40'000 – 80'000 CFA francs (61 to 137 euros)⁵⁰ depending on the kind of company and the services provided. The late payment of salaries is very frequently reported and it is rare for PSC staff to benefit from employers' contributions to social security (such as CSS, IPRES, IPM).⁵¹ Only staff employed on permanent contracts receive such benefits, and then only in rare cases.

Although the wage agreement sets average working hours at 55 hours per week, in practice the employer sets working hours to correspond with the client's requirements. This practice means that staff are sometimes subjected to gruelling work patterns that do not comply with the regulations. According to the secretary general of SYNACOFAS, it may be common for PSC agents to work up to 72 hours per week.

The exploitation of workers in this sector is widespread, and PSC agents continue to criticize this practice that serves to further enrich company owners at the expense of the workers. The scarcity of employment in the country encourages company owners to blackmail and harass workers. The following issues and violations to the dignity of workers have (among others) been reported by PSC agents in Senegal:

- Lack of respect, insults, and assault by the public;
- Lack of toilet facilities in some workplaces;
- Lack of meal breaks during shifts that can last up to twelve hours;

- Work days exceeding the 40 hours per week allowed under the Labour Code;
- Delays in the payment of wages, sometimes by up to three months;
- Non-existent social security benefits;
- Abuse and harassment by superiors and unjustified sanctions (such as arbitrary assignment to a distant workplace);
- Corruption of staff representatives, who are bribed by company bosses;
- Unlawful dismissal, which is facilitated by shortcomings in the legal system; impunity of employers and ineffective means of redress;
- Excessively low wages;
- Lack of oversight by the authorities due to a lack of resources.⁵²

The threat of dismissal is often enough to discourage workers from making complaints or to prevent them from unionising. This situation creates a tense atmosphere and friction between employers and employees, resulting in a general climate of frustration.

In these conditions, the question arises of how PSC staff can adequately carry out their security duties.

Human rights and public safety

As explained above, PSC agents' knowledge of international humanitarian or human rights law is not assessed during the recruitment process, neither are they given any mandatory, systematic training in these areas. Former soldiers or state law enforcement personnel are the only PSC staff to have such knowledge in these areas – since training institutions for the *gendarmes*, the police, and armed forces do teach international humanitarian law and human rights. However, given the modest wages offered by these companies, former members of the military and qualified law enforcement officers prefer to earn money from their skills elsewhere, and few work in PSCs. Various NGOs defending human rights in Senegal, such as the African Assembly for the Defence of Human Rights (Rencontre Africaine pour la Défense des Droits de

l'Homme - RADDHO) and Amnesty International Senegal have expertise in this area. Unfortunately, given the limited financial resources of NGOs and a lack of political will from the Senegalese authorities, their impact on the ground is almost zero⁵³. It has emerged from various interviews and research that neither the Montreux Document nor the Code of Conduct are known by the stakeholders that are involved in public and private security in Senegal.

The combination of the proliferation of PSCs in Senegal and the limitations and shortcomings in national regulations discussed above, especially the lack of adequate selection and training procedures for personnel, have resulted in some PSC agents themselves being reported as being a threat to public safety. Thus, according to the sociologist Fatou Sarr, private security may present a danger for the organization and management of security and should therefore be regulated by a legal framework guaranteeing its compatibility with the security responsibilities of the State.⁵⁴

It has also been reported that the inadequacies within the sector may encourage PSC agents to use their experience and knowledge of the places they guard to commit crimes. In recent years, several cases of robberies, thefts, and the formation of crime syndicates have been committed by PSC agents. The following cases, reported by a retired *gendarme* interviewed for this study, provide examples of alleged crimes related to PSC agents;⁵⁵

- In 2010, employees of a private security company formed a crime syndicate and faked a robbery to divert funds they were transporting to Tambacounda on behalf of the Société Générale de Banque du Sénégal;
- In July 2015, a motorway toll point was robbed by agents of the private security company responsible for protecting the premises;
- In October 2015, a theft was reported to the office of the Senegalese telecoms company, the Société Nationale des Télécommunications du Sénégal (SONATEL) in Thiaroye, a suburb of Dakar. A PSC agent, along with SONATEL staff, was involved in the disappearance of mobile phones and top-up cards worth a total of six million FCFA;
- On 24 July 2015, a murder case in Grand Yoff, a suburb of Dakar, involved several private and local security agents who were accused of failing to assist someone in danger as well as having arrested and mistreated several people;

- In December 2003, cases of violence and intimidation with firearms against gold miners were reported in the mining area of Kharakhéna. These were allegedly committed by mining company security personnel, with the assistance of *gendarmes*.⁵⁶

Conclusion and recommendations

Senegal is a relatively stable country compared with many others in the West African subregion. Despite this relative stability, Senegal must also address some specific security challenges. Since 1982, there has been a separatist insurgency in Casamance in the south of the country, causing general instability for communities in the region. The eastern part of the country and along the border with Mali, which is struggling to recover from conflict, are also potentially vulnerable areas that require special government attention. The Senegalese State, despite having consolidated its position as a democratic model for the region, has seen its political and institutional situation deteriorate in recent years. The security sector has become segmented, and private security companies have an important role in strengthening the police.⁵⁷ It is nevertheless clear from this study, that while the private security sector is booming in Senegal, the legal and regulatory framework has not kept up with the changing environment or changes in the industry, and is not able to adequately respond to new needs and challenges. Indeed, PSCs are constantly growing on a national scale, whereas oversight and supervision remain virtually non-existent.

On the other hand, the growth that has been seen in the extractive industries during the past decade, especially in gold mining areas in the east of the country, means that there has been increased insecurity due to the emergence of new security challenges. To mitigate these security challenges, mining companies increasingly use the services of PSCs. The extractive industries, which have ample financial resources, often prefer to use international PSCs that have wider experience and offer more diverse services than local PSCs.

In this context, it is imperative that the authorities pay more attention to the private security sector. Firstly, national legislation must be updated in line with international best practices, including the Montreux Document and the International Code of Conduct. Secondly, it is important to improve the overall governance of the private security sector, to ensure that the working

conditions of PSC staff are improved, as well as to work on improving public perceptions of the industry and the way state law enforcement personnel view the sector. In light of the various challenges identified earlier in this study, specific recommendations are provided below.

Legal framework

It is essential that the national legal framework for the private security sector should be reviewed so that it can reflect changes in the industry as well as new needs and constraints. The revision of the national legal framework should also reflect the provisions of the Montreux Document in order to bring national law in line with international best practices. In particular, mechanisms for effective oversight and supervision of the operations of PSCs should be set up. For this purpose, an independent body should be created, where all stakeholders involved in security matters are represented. This body would be responsible for issuing licenses, as well as the supervision and oversight of PSCs. It is imperative that this body has the human and financial resources necessary to fulfil its mandate effectively.

To improve transparency in the sector and combat corruption, the conditions for obtaining a licence should be clear and strictly enforced. In addition, the competent body should keep a register of authorised PSCs and their staff to ensure greater transparency in the sector. The updated national legislative framework for PSCs should also clearly define the permitted and prohibited activities of PSCs.

In particular, in consideration of the increased and specific security needs of the extractive industries, the law should define the conditions under which multinational PSCs may operate, as well as to address the issue of outsourcing. Finally, there should be clear and precise provisions regarding clients' responsibilities as regards to security contracts and procurement, particularly in the areas of in-service training, the transparency of contracts, and guarantees of compliance with human rights legislation.

PSC personnel

The struggle to improve the status of PSC agents is fundamental and has been brought to the attention of the highest authorities in Senegal.⁵⁸ It will therefore be imperative to consider the adoption of a collective agreement, as proposed by the unions,⁵⁹ to replace the agreement currently in force. This agreement applies to PSCs, but is too permissive and, because it was not specifically designed for the private security sector, does not adequately meet its specific needs. The adoption of the new collective agreement would also be a big step towards demonstrating the political will to clean up the sector.

On the other hand, it is also necessary to promote policies to restore the dignity and respect of the private security profession, as well as working to improve the reputation of the sector with the public and the state security services. This could be promoted by adopting self-regulatory policies, requiring all PSCs wishing to operate in the country to adopt a code of conduct. Such a code of conduct should always be developed in cooperation with workers' representatives, be based on existing good practices, and incorporate at least the following elements:

- Requirements for personnel selection (with particular attention to background checks during the recruitment process);
- Minimum requirements for working conditions (including a decent wage, respect for working hours and respect for human dignity);
- Transparency;
- Accountability for upholding human rights ;
- Respect for freedom of association;
- Use and storage of firearms;
- Community relations;
- Improved relations and collaboration with public security forces.

Human rights and public safety

In addition to the above recommendations, particular emphasis should be placed on the recruitment process and training of PSC staff. Thus, when selecting staff, minimum requirements should be defined, including a background check.

To overcome the problem of different training levels between PSC agents with a background in the military or law enforcement (who have usually already received some training) and those who have never received any training in security, it is imperative to standardise training requirements for PSC staff at a national level. With this in mind, all PSC agents should therefore at least receive training including the following modules:

- Training on human rights and international humanitarian law, specifically tailored to their needs;
- Training in the use of force;
- Training in the proper use of equipment, including firearms;
- Additional training for specific roles (e.g.: security for the extractive industry, or when involved in intervention in conflict zones) and regular refresher courses.

As indicated above, it will also be imperative to oversee the creation of decent jobs in order to avoid the risks associated with poor working conditions, frustration, devaluation of the sector, and tensions between employees and bosses.

The challenges and recommendations identified in this study are intrinsically linked to each other and can not be treated independently. Holistic reform of the sector must be envisaged in order to adequately respond to changing circumstances and new security requirements in Senegal. It is thus necessary to involve all stakeholders in the process of reform, including, principally, the authorities and PSCs, but also PSC personnel (especially trade union representatives), the various clients of PSCs and civil society. Finally, these measures, which are certainly not exhaustive, will enable Senegal to begin to manage the overall issue of human security⁶⁰ in a holistic manner, and thus improve governance of the security sector more broadly.

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- ⁴ As part of the “Global Peace Operations Initiative,” a dozen African States are using PMSCs to train their armies and to conduct counter-terrorism operations. Source : Institut des Hautes Etudes de la Défense Nationale, *Les «Entreprises Militaires et de Sécurité Privée »: outil indispensable ou abandon par l'Etat de ses prérogatives de souveraineté?*, Session Nationale n° 62, Comité 2, 30 juin 2010, p.12-13, available at: http://www.ac-grenoble.fr/disciplines/hg/file/institution/trinome-defense/Interventions/Rapport_final_Comite_2_-_62e_session_IHEDN_C2_-_17_juin_2010.pdf.

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- ⁶ The Montreux Document is the first international document to describe international law as it applies to the activities of private military and security companies (PMSCs) present in the context of an armed conflict. See the official website of the Montreux Document Forum: <http://www.mdforum.ch/>.
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- ¹⁰ In September 2015, we requested a meeting with the Interior Ministry, but these requests went unanswered. The Chief of Staff of the Army put us in touch with a senior officer, who unfortunately did not respond to requests for interviews.
- ¹¹ Requests were sent to the four largest PSCs operating in Senegal, namely SAGAM, Viga Assistance, Pheonix, and Elite International.

- ¹² The following experts agreed to contribute to this research: two Senegalese officers who participated in the Montreux +5 Conference in Switzerland in December 2013; a trade unionist PSC agent fighting for the rights of workers in the sector who took part in the regional conference in Dakar in June 2014, a retired Senegalese policeman.
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- ¹⁶ The President of the Republic reiterated "the need to ensure citizens" peace of mind, regardless of their place of residence, despite the resurgence in insecurity and delinquency. « Source : *Conseil des Ministres du 12 mars 2015, Communiqué*, available at: <http://www.gouv.sn/Conseil-des-ministres-du-jeudi-12.html>.
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- ²⁹ This background check aims to examine the psychological profile and past of a person, in order to inform the authorities about the capabilities (intellectual and moral) of the applicant to manage public affairs.
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- ³⁹ Crimes involving firearms are very common in the main areas of small-scale gold mining, especially in the regions of Tenkoto, Bantaco and Sabodala.
- ⁴⁰ A. Sagne, *Conférence régionale sur la mise œuvre du Document de Montreux, Panel 2 : Problématiques régionales liées aux Entreprises Militaires et de Sécurité Privées (EMSP) en Afrique : Valeur ajoutée du Document de Montreux*, Dakar, le 4 juin 2014, available at: <https://alysagne.wordpress.com/2014/06/12/senegal-etat-des-lieux-des-entreprises-de-secutite-privée-le-mal-vivre-des-agents-des-esp/>.
- ⁴¹ The only industrially operated gold mine in the east of Senegal is in the village of Sabodala.
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- ⁴⁴ Interview with Jean Léopold Guèye, 11 September 2015.
- ⁴⁵ The largest clients include the United States' Embassy, the World Bank and the Central Bank of West African State. SAGAM won the contracts for all three.

- ⁴⁶ Interview with Jean Léopold Guèye, 11 September 2015.
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- ⁴⁹ DCAF, *Rapport de la Conférence régionale en Afrique francophone et lusophone*, p 23.
- ⁵⁰ This equates to roughly to the average salary in Senegal, according to figures from the World Bank in 2012. Source : *Les salaires au Sénégal*, Journal du net, disponible sous : <http://www.journaldunet.com/business/salaire/senegal/pays-sen>.
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- ⁵⁵ Interview conducted in the framework of this study.
- ⁵⁶ MARP Report by the NGO Lumière, January 2004 (not available), confirmed in a letter to the Executive Secretary of the NGO from the representative of AGEM / IAMGOLD, 24 June 2004.
- ⁵⁷ A. Bryden & B. N'Diaye (eds.), *Gouvernance du secteur de la sécurité en Afrique de l'Ouest francophone: bilan et perspective*, DCAF, Genève,

2011, p. 212, available at: <http://www.dcaf.ch/Publications/Gouvernance-du-secteur-de-la-securite-en-Afrique-de-l-Ouest-francophone-bilan-et-perspectives>.

- ⁵⁸ Letter from the Secretary General of SYNCOFAS to the President of the Republic 18 August 2015: “*Security personnel, whether private or public, have an urgent need to improve their living and working conditions.*”
- ⁵⁹ According to the Secretary General of SYNCOFAS, PSC union representatives received a mandate on 13 May 2015 from the office of the President of the Republic to make a proposal to that effect. However, employers do not support it.
- ⁶⁰ *Colloque International de Dakar 8-11 novembre 2010 Forces de Défense et de Sécurité au Cœur de la Sécurité Humaine Compendium des Contributions*, Etat-Major Général des Armées, July 2011, p.41, available at: http://jaga.afrique-gouvernance.net/docs/mise_en_page_securite.pdf.

CHAPTER VI

Conclusion

Alan Bryden & Emmylou Boddi

Attitudes to private security in Africa have been marked by simplistic assumptions and entrenched views. Whether the business of security conjures positive or negative associations, there is a need to challenge such preconceptions by critically assessing the implications of security privatisation for African States and their citizens. With a focus on West Africa, the regional overview and the country case studies contained in this volume provide only snapshots of security dynamics that are at the core of Africa's contemporary security landscape. Nevertheless, they offer important reference points given the dearth of knowledge and the scarcity of analysis in this domain. Developing a clearer understanding of the place of private security in Côte d'Ivoire, Mali and Senegal constitutes a first step toward fostering a wider research and policy agenda, providing a knowledge base to inform debates at national, regional and international levels.

A deeper contextual understanding of this topic offers insights to wider questions relating to security provision, management and oversight. Addressing challenges associated with security privatisation in a sustainable, effective manner means acknowledging deep-rooted pathologies of weak governance. It also requires an understanding of the political economy that underpins the security sector in Africa. Thus, delineating the individual and corporate interests that underwrite the private security industry constitutes an essential step towards identifying realistic drivers of change. From individual guards to the proprietors of large companies, from non-governmental organisations that promote human rights to national authorities, efforts to promote great-

er transparency, apply good practices and better respect human rights will only be feasible if these disparate stakeholders identify shared interests in working together. Through the Montreux Document and the International Code of Conduct, the insight that a multistakeholder approach can provide impetus to efforts to improve oversight and accountability across public and private domains has spurred the development of innovative regulatory processes at the international level. The same logic applies at the national level: neither industry-self-regulation nor government oversight is adequate by itself. Rather, based on overlapping interests, approaches must be developed that allow different stakeholders to fulfill their respective roles while exerting mutually reinforcing checks and balances.

This concluding chapter draws on the analysis provided by the contributors to examine key characteristics and challenges surrounding the private security industry in West Africa. On this basis, the significance and implications of security privatisation are considered, allowing the identification of specific entry points to promote good private security governance. The chapter concludes with a number of recommendations for follow up action at the national, regional and international levels.

The face of private security in West Africa

A general observation that can be drawn from the case studies confirms the introductory statement of this volume: private security in Africa is booming. On one level, reasons for the expansion of the industry are highly context dependent: in Côte-d'Ivoire and Mali growth has been the result of generalized post-conflict insecurity, coupled with the emergence of new security threats, notably terrorist attacks on domestic soil as well as the rise in trafficking of arms, drugs and people. These factors need to be considered alongside more general structural tensions: populations are young, increasingly urbanized and suffer from high unemployment. It is therefore no coincidence that – outside of specific sub-sectors such as the protection of mineral resources – much of the growth of the industry can be found in urban settings. In the case of Mali, the internal armed conflict of 2012-13 exacerbated the already precarious security situation in the country. The aftermath of the crisis saw an upsurge in crime and the advent of a new form of terrorism for the country with the attacks on the Bamako Radisson Blue Hotel in November 2015. For Senegal, in the absence of the kind of insecurity experienced in Côte d'Ivoire

and Mali, the industry has seen significant growth over the last ten years as a means to protect goods and property in a context of rising crime and inadequate public security provision.

Inadequate security provision provides one explanatory factor for the hybrid nature of security arrangements in West Africa. Inevitably, as noted by Aliou Diouf, in the absence of effective state security, individuals and communities develop informal mechanisms to provide for their security. Despite legal distinctions between law and order and private security functions which tend to be very clear, in practice public and private security represent two sides of the same coin, sharing significant overlaps. For example, in Bamako, a coordination mechanism has been developed through an alert system that private security companies (PSCs) can use to call the police, gendarmerie or civil protection when needed. According to Kadidia Sangaré Coulibaly, this complementarity is viewed positively by the population. In Senegal, hybrid arrangements have been developed to plug the gap in public security provision through initiatives such as the establishment of *Agents de Sécurité de Proximité* and the creation of their own PSCs by public enterprises such as the Dakar port authority and the national public transport association.

It is significant that across these contexts the general feeling across the population is one of increased insecurity. For those that can pay, commercial security seems to offer a ready solution. The growth of the industry has thus been driven by the belief that public security forces have not been able to cope with rising crime, nor to respond effectively to the increasing diversification and level of threats faced by individuals, communities, the State and businesses. From this perspective, the roles, mandates and space for the private security sector should be understood in direct relation to negative perceptions surrounding public security. Indeed, the lack of popular trust in state security forces has commoditized security as a service to be paid for rather than a public good to be expected. According to Edem K. Comlan, in Côte d'Ivoire the fact that there are three private security guards for every police officer is welcomed as contributing to an improved overall level of security. The unfortunate consequence of this positive public perception is that there is little scrutiny of the industry or pressure for improved regulation.

Alongside its growth, another feature of security privatisation is its multi-faceted identity. A wide diversification in the client base has occurred, producing bespoke solutions for specific needs. The ability to adapt swiftly in re-

sponse to new demands has enabled the private security industry to offer services to a wide variety of clients including embassies, banks, small local enterprises or multinational corporations, international organisations, individuals or non-governmental organisations. Extractive industries, with large scale operations in remote areas where the rule of law may be weak, maritime businesses threatened by modern-day piracy or the hotel industry targeted by terrorist attacks are among the many new clients turning to the private sector for security solutions that the State cannot provide. The State itself has also become a significant client. In Côte d'Ivoire, critical infrastructure such as ports and airports that in the past would have been protected solely by the national police and armed forces are now the subject of tenders offered to PSCs. Across the subregion, these developments have taken place without a national reflection on the security roles and responsibilities that can be outsourced, as opposed to these that should remain within the remit of the State.¹

It is important to acknowledge that the domestic industry is closely inter-linked with and shaped by the context within which it develops. The ability of the industry to prosper lies in this capacity to adapt to shifting needs and demands. This organic development can be a double-edged sword. On the one hand flexibility favors the growth of a domestic industry that is more likely to be locally-grounded in comparison to international PSCs. On the other hand, in the absence of an accompanying focus on good regulatory practices, there is a greater risk that the industry is not exposed to international standards and good practices in key areas such as human rights training or vetting. This poses a dilemma for international clients who may be encouraged or even required under national law to 'buy local' but who demand the predictable levels of service offered by international PSCs.

The evolution of the private security sector should be understood in relation to the wider labour market. In contexts of high unemployment, PSCs are an important source of jobs for different segments of the working population. According to Kadidia Sangaré Coulibaly, Mali has seen a shift from the beginnings of the industry in the 1990s when personnel were drawn from predominantly rural and poorly educated backgrounds to a situation today with a higher proportion of better educated and trained individuals with previous experience in the gendarmerie or police forming part of the industry. If the industry includes many with limited education, this is not always the case – in Côte d'Ivoire and Mali unemployed university graduates also fill the ranks

of PSCs. Gender stereotypes are also not universally applicable. While the industry remains largely male-dominated, in Mali certain sectors are opening up to women.

A particularity of post-conflict environments is that the private security industry offers a legitimate and natural employment opportunity for demobilized combatants, thus contributing to their reinsertion into society. While in many cases the path from demobilised ex-combatant to PSC employee happens organically, in Côte d'Ivoire this transition reflects a defined policy by the national authority responsible for the disarmament, demobilization and reintegration (DDR) of ex-combatants.

Challenges of private security governance

If the case studies depict very different realities, they also illustrate shared experiences and common issues linked to wider questions of security sector governance. This section identifies the most significant governance challenges highlighted by the various contributors in relation to the growth of the private security industry.

Opacity of the sector

A central concern of security sector governance underlined by the case studies is that the private security sector remains under the radar screen of democratic oversight. Simple questions that would be essential to clarify in order to effectively regulate the sector remain unanswered in Côte d'Ivoire, Mali and Senegal: how many companies are operating in the country? Who owns them? How many firearms do they possess and how did they acquire them? What are the numbers and backgrounds of company employees? The absence of effective record keeping by regulators and companies that could help to answer such questions is symptomatic of wider deficiencies in security sector oversight and accountability. As a consequence, a large part of the industry is surrounded by unknown parameters, making it difficult to evaluate the real scope and the global impact of the sector.

Company ownership structures are often unclear. Mali's regulation forbids the ownership of PSCs by non-Malian nationals, yet cases where foreigners manage or own PSCs operating in the country abound and seem to be ignored by authorities. In Côte d'Ivoire, companies must be 51% nationally-owned, a requirement that is also ignored in practice. Similarly, the Senegal study points to the silence of the law regarding multinationals, despite the fact that foreign PSCs are already widely active in the country. This lack of transparency is further compounded by opaque sub-contracting arrangements made after contracts are awarded.

A lack of transparency cannot be solely attributed to weak regulatory systems and processes or to capacity gaps; obfuscation seems to be carefully cultivated. In this respect, it is important to acknowledge the sensitivity of the industry, the political and financial interests involved and the power asymmetries that lie behind problems of transparency. In all of the studies, the authors encountered significant difficulties in gaining access to information. Companies refused to open their doors; government officials declined interviews; and many of those who accepted to answer questions preferred to do so under condition of anonymity. While links between the private security industry and public officials are anecdotal in these cases, the wider examples of corrupt practices and conflicts of interest cited by Aliou Diouf in Angola, Kenya, Liberia, Nigeria and the Democratic Republic of the Congo point to a problematic ambiguity around the overlap between PSC ownership structures and political and security elites. The responsibility for public procurement decisions in relation to contracting of PSCs is an evident area of concern with greater transparency particularly important in a context such as Senegal where a few large companies appear to have cornered the market. There is a notable lack of information in relation to the extractives sector. This is damaging given the importance of effective security arrangements for international companies operating in insecure environments and the key role that such a powerful client can play in requiring minimum standards from service providers.

Weak regulatory environment

Despite the increasing prominence of the private security sector on the domestic security landscape, national regulatory frameworks remain outdated and weak. The rapid expansion of the industry has outpaced regulation which

has failed to capture the growth and evolution of the sector. The case studies show that regulatory frameworks and procedures tend to be generic rather than focused on the particularities of the industry. National authorities responsible for the control and oversight of the sector are as a consequence ill-suited to their purpose, often lacking both specialised knowledge and resources to effectively carry out their mandate. This can be seen in both Mali and Senegal where diffuse responsibilities across government departments, the absence of coordination mechanisms and a lack of clarity surrounding regulatory requirements combine to allow companies great latitude to interpret their obligations in ways that suit them. These problems of capacity, mandate and organisation at the national level have the effect of disincentivising companies from playing by the rules. In Côte d'Ivoire, for example, the licensing process takes six months to complete so companies continue to operate whether licensed or not: according to figures cited by Edem K. Comlan, in 2014 from an overall estimation of between 600-900 PSCs operating in the country, only 64 were licensed.

Deficiencies in legislative and regulatory frameworks are compounded by a serious lack of enforcement. Insufficient resources and inadequate political will means that companies only tend to be scrutinized at the point when they seek to become licensed. The case studies highlight multiple ways in which the translation of regulatory requirements into concrete implementation on the ground is problematic. National authorities have only a partial picture of the sector and lack both capacity and knowledge to implement regulation. In the case of Mali, despite the existence of an oversight mechanism with the mandate to ensure consistent respect of the national regulation by the private security sector, interviews undertaken by Kadidia Sangaré Coulibaly reveal that those control mechanisms are in practice never used. In such situations there is little incentive for companies to distinguish themselves positively from black or grey market entities operating at the margins of or outside the law.

A weak regulatory environment precludes the development of a strategic approach to addressing national security challenges. The multiplication of conflicts in and around West Africa has been fuelled by arms trafficking, making illegal small arms and light weapons (SALW) widespread and easily accessible on the black market. As has been the case in Mali as a consequence of the Libyan civil war, the ready availability of SALW in post-conflict or insecure environments fuels crime, increasing the risk of armed violence and a return

to conflict. Although the issue is under-researched, there is an evident nexus between the widespread availability of SALW in the region, weakly regulated private security and wider insecurity. As described by Edem K. Comlan in Côte d'Ivoire, black market SALW have found their way into the hands of PSCs and PMSCs with illegal weapons being used by poorly trained guards. With illegally acquired weapons deliberately kept off weapons registers and legal weapons not properly accounted for, the situation creates confusion and provides an enabling environment for proliferation. This makes effective oversight impossible: regulators cannot trace the origin of a company's weapons, how many it possesses (and whether this is consistent with legal maximums) and thus how many weapons are in circulation. Moreover, vulnerable PSC weapon stockpiles pose a security risk – fueling black markets and insecurity. The weapons are unmarked and unsafely stored, posing a significant risk that they are lost, stolen or sold illegally, in direct contravention to the country's obligations under the ECOWAS Convention on Small Arms and Light Weapons.²

Human rights concerns

Through a human security lens, the central question that should be posed is how private security affects the lives of individuals and communities. There is an implicit assumption in the generally positive reactions to the growth of the industry that more security equates to better security. However, in the absence of reliable statistics it is not possible to say whether this is the case or if, in fact, insecurity is being displaced from the wealthy (who pay) to the poor (who cannot). Without effective monitoring, the impact of the industry is impossible to capture accurately.

It is a particularly significant omission that human rights and international humanitarian law obligations are not translated into specific requirements for companies. The absence of practical guidance is compounded by a lack of awareness from regulators of these same concerns. As a result, there is no pressure on companies to provide human rights and international humanitarian law training or to monitor their own personnel to ensure that these requirements are observed. In this respect, the absence of effective means of redress for grievances against PSCs and their personnel constitutes a major gap in regulation across all the case studies.

In contexts of high unemployment, the private security industry offers an important employment opportunity. It also tends to be an option of last resort. Despite the growing reliance on private security services and the jobs that this demand has generated, the sector is rarely perceived as a desirable employment avenue. As was highlighted by Aly Sagne in the Senegal case, poor treatment of personnel contributes to their identification as ‘second class security agents’, downgrading the profession in the eyes of its employees, public security forces and the public at large. A contributing factor to this negative perception is that companies are often reported to take advantage of the lack of alternatives, in particular for the young and unskilled. Commonly reported human rights abuses suffered by PSC personnel include below minimum-wage salaries, non-existent entitlements, working hours exceeding the legal maximums, unsafe working environments and unsuitable equipment. A widespread practice of short-term contracts also contributes to the depreciation of wages and increased work insecurity. The threat of dismissal is usually enough to dissuade employees to protest or claim better conditions, effectively constituting a form of modern day ‘slavery’ according to Kadidia Sangaré Coulibaly. This combination of factors combines to create a particularly harsh working environment, elevating the risk of professional accidents and mistakes. It also increases the risks of human rights violations and personnel committing criminal acts by robbing goods and people they are meant to protect as a way to supplement low incomes.

Training and vetting

Company policies governing their activities, personnel and equipment (including firearms) fall very short of international good practices. Inadequate or non-existent staff training is both prevalent and highly damaging. The case studies demonstrate that if national regulation does stipulate minimum training requirements for PSC personnel, those obligations are systematically disregarded in practice. Mali’s national regulation establishes such requirements and places the responsibility for training on the company. Yet, the lack of oversight from national authorities permits a very inconsistent application of those criteria with a high number of private security agents having received no training at all. Similarly, in Côte d’Ivoire it is reported that only few companies use certified training centres – as required by law – for the training of their personnel. Instead, most companies bypass this requirement

through setting up their own training centres. As a result, there are enormous disparities in how private security agents are trained across the country.

Inadequate training has a number of deleterious consequences, creating confusion around the differentiated roles of public and private security and increasing the risk to both the public and clients posed by badly trained personnel. It also means that PSC personnel are unprepared for certain situations – for example when faced by an armed opponent but also in applying a graduated use of force in less threatening situations. Where SALW are prevalent, personnel are often victims of armed violence since the majority of private security guards in the different case studies operate unarmed. In addition, those carrying weapons are often inappropriately trained, making them particularly vulnerable if attacked for their weapons and increasing the risk to innocent people as a result of inappropriate use of weapons.

Whether in relation to the public or private security sector, vetting is a key requirement in order to ensure that individuals with criminal records, histories of human rights abuse or otherwise inappropriate antecedents are not given security functions that can pose a risk to others. The Senegal case study reported that, in practice, vetting of personnel is very limited. If PSCs guarantee the physical and mental health of their personnel, companies are free to apply their own procedures and criteria as a basis for selection. Equally, in Côte d'Ivoire, licensing procedures do not require vetting of staff or company owners. This is particularly problematic given that the roles and tasks assigned to the private security sector are becoming increasingly complex and diverse, carrying a higher potential to result in human rights abuses or wider security risks.

Promoting good governance of the private security sector in Africa

The private security industry has become an important player in the provision of security in Africa. It is important to acknowledge this reality and ensure that the commercial private security sector forms part of a wider framework of democratic security sector governance. This section identifies a number of entry points – grouped under the themes of integrated approaches, bridging

the international-local divide and fostering dialogue – that can support good governance of the private security sector.

Promoting integrated approaches

As discussed in the introductory chapter to this volume, challenges surrounding private security are under-emphasised at the international policy level. Being at the same time a concern of the business and human rights and security sector reform communities, it remains something of an orphan issue. Linking security privatisation to a focus on implementation of the 2030 Agenda for Sustainable Development³ can help to rectify this situation. Most notably, Sustainable Development Goal (SDG) 16 commits States to “promote peaceful and inclusive societies, to provide access to justice for all, and to build effective, accountable and inclusive institutions at all levels.”⁴ Given the expansion in urban environments of the private security industry and its sometimes ambiguous relationship to public security provision, it is also directly linked to the objectives of SDG 11 to make cities inclusive, safe, resilient and sustainable. Finally, a multistakeholder approach that seeks to create positive synergies between actors – both public and private – at national, regional and international levels closely reflects the rationale of SDG 17 to revitalize the global partnership for sustainable development. In short, the issue of security privatisation can offer an important test case for wider SDGs implementation.

Through highlighting the relationship between the private security sector and wider insecurity and under-development, the studies provide a strong case to move beyond siloed thinking and stovepiped approaches to post-conflict peacebuilding. It is necessary to understand the relationship between DDR and private security. In particular, as in the case of Côte d’Ivoire, reintegration into the private security sector as a deliberative choice by the national DDR authority should not be undertaken without assessing the security implications of channeling ex-combatants into the private security industry. Côte d’Ivoire and Mali provide strong indications that a badly regulated private security sector can facilitate the misuse and trafficking of SALW. This coincides with experience from other world regions where companies and national authorities have recognised this problem and developed partnerships to address the negative effects of a weakly regulated armed private security

industry.⁵ Similar partnerships should be developed in Africa to support the work of national regulators and companies to promote good practices.

There is a clear need to create synergies between private security regulation and SSR programmes that focus on good governance of the security sector. Promoting effective, well-managed and democratically accountable national security institutions and reinforcing the oversight role of both national parliaments and civil society is essential for a well-regulated private security sector. Both the African Union SSR strategy and ECOWAS security sector governance framework emphasise that the regulation of commercial private security providers is part of a global and holistic approach to SSR so must be addressed within national efforts to enhance security, development and respect for human rights. In addition, the ECOWAS Convention on Small Arms and Light Weapons provides clear guidance on specific regulatory measures to address SALW. However there is no recognition within this framework of the relationship between the private security industry, SALW and insecurity. The comprehensive normative frameworks that exist at continental and regional levels point to a strong role for ECOWAS and the AU in promoting good private security governance. However, to date, this acknowledgement has rarely been translated from policy to action at the national level.⁶

Leveraging international initiatives at the local level

The legal obligations and good practices contained in the Montreux Document provide an international reference document to support effective private security regulation. The document underlines ways in which States can ensure that the industry is covered by an adequate legal framework that is responsive to change, promotes international humanitarian law and human rights-sensitive practices and limits the potential for abuses linked to their activities. It offers a blueprint to benchmark against legislation, regulation and good practices for implementation at the national level.

It is important that the private security industry understands its responsibilities in terms of IHL and international human rights. The ICoC provides such a framework by translating human rights and IHL requirements into management practices that companies can readily adopt. It should be in the interests of companies to facilitate transparency of the sector and ensure re-

spect for the national regulation of their country of operation and, where relevant, of their country of origin. Governments should incentivize such good behaviour accordingly by awarding contracts to ICoC-compliant companies and disqualifying those companies that do not play by the rules. The ICoCA can also serve as a force multiplier for civil society organisations that work to protect human rights. Through ICoCA promoting a strong role for civil society in monitoring the conduct of member PSCs, it can empower these actors in contexts where the space for civil society is constrained by allowing their voices to be heard. This win-win dynamic provides the basis for a close relationship between African civil society and the ICoCA.

The Voluntary Principles on Security and Human Rights convenes a major client for PSCs in Africa – the extractives sector. With the VPs initiative increasingly focusing its efforts on implementation on the ground, opportunities exist to engage with mining, oil and gas companies to ensure that human-rights sensitive security practices are followed by PSCs. National authorities can draw on guidance developed within the framework of the VPs outlining good practices for extractives companies contracting PSCs.⁷ By following the example of Ghana and joining the initiative, African governments can also benefit from the platform for exchange and the sharing of good practices offered by the VPs.

Fostering dialogue and developing knowledge

Edem K. Comlan indicates the need in Côte d'Ivoire for a multistakeholder meeting in which regulators, companies, clients and civil society can sit down together, discuss challenges surrounding the industry and identify how best to work together in a complementary manner. This proposal has much wider application in terms of the need for more joined up approaches at the national level. In all the national cases considered in this volume, a comprehensive national conversation is required to identify issues and challenges, including on the relationship between public and private security. While these questions may seem particularly pressing in fragile environments such as Côte d'Ivoire and Mali, it is also important for a stable democracy such as Senegal. By outpacing the legislative and regulatory capacity of the State, the expansion of the industry has resulted in security and human rights challenges.

Addressing these gaps forms an essential element of a well-governed security sector.

Civil society has a particularly important role to play in promoting oversight and accountability of the private security industry. The lack of formal means to channel and address complaints concerning alleged human rights abuses provides an entry point for non-governmental organisations and the media as well as national human rights commissions to take up such human rights issues. In addition, gaps in knowledge on wider security and development concerns highlights a gap in knowledge that should be addressed by African policy research organisations.

There is a need for a regional forum or platform for exchange in order to monitor the evolution of the private security sector in the region. In addition to shouldering an oversight and monitoring role that could be linked to relevant international initiatives such as the Montreux Document, ICoC or Voluntary Principles, such a forum could support the role of ECOWAS through providing a space for reflections and the identification of proposals for action aimed at improving and harmonizing the control of the industry at the regional level. Good practices could also be shared through such a network. Such a structure exists in nascent form through the African Private Security Governance Observatory, developed in order to empower African civil society to engage effectively on this issue at national and international levels. This initiative should be expanded from its initial focus on francophone African contexts.⁸

Conclusion and recommendations

Drawing on the experience of experts with deep contextual knowledge of Côte d'Ivoire, Mali, Senegal and the region as a whole, this volume underlines the growing scale and significance of the private security sector in West Africa. It identifies potential gaps in regulatory frameworks and in particular the lack of effective implementation of these measures. These insights are intended to provide a wakeup call that can generate public debate and catalyze action around this issue. The following recommendations identify action points that could be developed at national, regional and international levels.

At the national level

- A clear understanding of who is delivering security on the national territory – and how public and private sector actors intersect – is an essential ingredient of a security sector governance framework that protects both state and human security. Building on the analysis in this study, national authorities should draw on all relevant sources, including civil society, research organisations and the media, to develop a baseline understanding of dynamics relating to the domestic private security industry.
- States should ensure that national legal and policy frameworks are tailored to the specificities of the private security industry and that adequate resources are allocated to regulatory bodies. Drawing on relevant international good practices, it is essential that a multistakeholder approach to regulation is adopted at the national level involving close coordination between government, industry and civil society.
- African States should join the Montreux Document and participate in the Montreux Document Forum in order to engage in peer to peer learning and benefit from the initiative's mandate to support States in their further development of national legislation and regulation. As a non-binding 'soft law' initiative this step does not create any new political commitments for States.

At the regional level

- The African Union Commission has developed a multi-year plan to support SSR implementation in Africa. The AU has recognised the clear relationship between SSR and private security regulation and should therefore develop entry points to reinforce security sector governance as a means to improve private security regulation in Member States and in Regional Economic Communities.
- ECOWAS has developed important normative instruments including the ECOWAS Security Sector Governance Framework and the ECOWAS Convention on Small Arms and Light Weapons. Through the implementation of these instruments, ECOWAS should develop

a key role in supporting good private security governance in Member States.

- The role of African civil society in promoting oversight and accountability of the private security sector will be much more effective if efforts are federated at the regional level. Interested civil society actors from across Africa should contribute to ongoing efforts to develop an African Private Security Governance Observatory.

At the international level

- PSC operating in Africa as well as African civil society organisations should be encouraged to join the International Code of Conduct Association, as well as to draw on its provisions to inform the adoption of internal policies in term of respect for IHL and international human rights law.
- African States and civil society organisations should engage actively with the Voluntary Principles on Security and Human Rights. Increased African participation in the VPs would simultaneously enhance the initiative and strengthen the ability of national stakeholders to engage with the international extractives sector on shared security and human rights concerns.
- Given its legitimacy, expertise and broad scope of operations, the United Nations is ideally placed to help address policy incoherence and stovepiped approaches to post-conflict peacebuilding as highlighted in the relationship between private security, DDR, SALW measures and SSR. Given its cross cutting mandate and focus on security sector governance concerns, the UN SSR Unit could provide a focal point for efforts to develop synergies at policy and operational levels.
- The Organisation Internationale de la Francophonie (OIF) plays a key role in the promotion of peace, democracy and human rights. The OIF should build on the findings of this study to raise awareness on challenges and to support practical efforts in the francophone space to promote democratic private security governance.
- Security sector governance challenges linked to security privatisation in Africa are directly related to broader issues of peace, safety, justice

and inclusion that underpin the sustainable development agenda. Security and development challenges relating to security privatisation in Africa should therefore be addressed as an important test case for implementation of the 2030 Agenda for Sustainable Development.

Notes

- ¹ The Montreux Document recommends as a good practice that all States determine which services may or may not be contracted out to PMSCs.
- ² ECOWAS Convention on Small Arms and Light Weapons, their Ammunition and Other Related Materials, 14 June 2006.
- ³ Transforming our World: the 2030 Agenda for Sustainable Development, A/RES/70/1, 25 September 2015.
- ⁴ *Ibid.*, p.26.
- ⁵ Innovative work is being carried out by the United Nations Regional Centre for Peace, Disarmament and development in Latin America and the Caribbean (UNLIREC) and the Geneva Centre for the Democratic Control of Armed Forces (DCAF) to promote effective regulation of the armed private security sector in the LAC region. Operational activities are underpinned by the first ever baseline study on the relationship between SALW and private security which highlights the challenges this sector faces in terms of governance and small arms control.
- ⁶ Liberia offers an important positive example in which the United Nation Mission in Liberia (UNMIL) and DCAF are working to support national partners in government with Liberian civil society to develop an effective national legal framework for the domestic private security industry.
- ⁷ Addressing Security and Human Rights Challenges in Complex Environments Toolkit, Third Edition, 2016. Chapter III, Working with Private Security Providers. Available at: www.securityhumanrightshub.org.
- ⁸ See: <http://observatoire-securite-privee.org/en>.

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About the Geneva Centre for the Democratic Control of Armed Forces (DCAF)

The Geneva Centre for the Democratic Control of Armed Forces (DCAF) is an international foundation whose mission is to assist the international community in pursuing good governance and reform of the security sector. To this end, the Centre develops and promotes appropriate norms at the international and national levels, determines good practices and relevant policy recommendations for effective governance of the security sector, and provides in-country advisory support and practical assistance programmes to all interested actors. Detailed information is available at www.dcaf.ch.

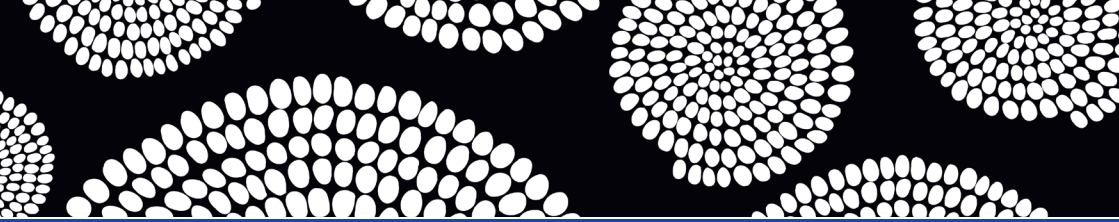
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Private security in Africa is booming. Whether from the perspective of major multi-national players or small-scale local enterprises, the market for commercial security has expanded and evolved over recent years. However, policy makers rarely address private security, national parliaments and regulatory bodies provide limited oversight in this area, and the attention of African media and civil society is localized and sporadic. In short, a fundamental shift in the African security landscape is taking place under the radar of democratic governance. **The Privatisation of Security in Africa – Challenges and Lessons from Côte d’Ivoire, Mali and Senegal** provides expert accounts which portray the realities of the contemporary private security industry in Africa. The volume analyses key characteristics of security privatisation in Africa, offers new insights into the significance of this phenomenon from a security sector governance perspective and identifies specific entry points that should inform processes to promote good governance of the security sector in Africa.



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