

Private Military and Security Companies and Gender

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The Gender and SSR Toolkit

This Tool on Private Military and Security Companies and Gender is part of a *Gender and SSR Toolkit*. Designed to provide a practical introduction to gender issues for security sector reform practitioners and policy-makers, the Toolkit includes the following 12 tools and corresponding Practice Notes:

1. Security Sector Reform and Gender
 2. Police Reform and Gender
 3. Defence Reform and Gender
 4. Justice Reform and Gender
 5. Penal Reform and Gender
 6. Border Management and Gender
 7. Parliamentary Oversight of the Security Sector and Gender
 8. National Security Policy-Making and Gender
 9. Civil Society Oversight of the Security Sector and Gender
 10. Private Military and Security Companies and Gender
 11. SSR Assessment, Monitoring and Evaluation and Gender
 12. Gender Training for Security Sector Personnel
- Annex on International and Regional Laws and Instruments

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UN-INSTRAW

The United Nations International Research and Training Institute for the Advancement of Women (UN-INSTRAW) is the only UN entity mandated to develop research programmes that contribute to the empowerment of women and the achievement of gender equality worldwide. Through alliance-building with UN Member States, international organisations, academia, civil society, and other actors, UN-INSTRAW:

- Undertakes action-oriented research from a gender perspective that has a concrete impact on policies, programmes and projects;
- Creates synergies for knowledge management and information exchange;
- Strengthens the capacities of key stakeholders to integrate gender perspectives in policies, programmes and projects.

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ACRONYMS

BAPSC	British Association of Private Security Companies
CANASA	Canadian Security Association
CEDAW	Convention on the Elimination of All Forms of Violence and Discrimination against Women
CIA	Central Intelligence Agency
CSO	Civil Society Organisation
DDR	Disarmament, Demobilisation and Reintegration
GBV	Gender-Based Violence
IHL	International Humanitarian Law
IHRL	International Human Rights Law
ICC	International Criminal Court
ICRC	International Committee of the Red Cross
IPOA	International Peace Operations Association
KBR	Kellogg, Brown and Root
KFOR	Kosovo Force
MEJA	Military Extraterritorial Jurisdiction Act
MPRI	Military Professional Resource Incorporated
NATO	North Atlantic Treaty Organisation
NGO	Non-Governmental Organisation
OECD-DAC	Organisation for Economic Co-operation and Development – Development Assistance Committee
OHCHR	UN Office of the High Commissioner for Human Rights
PMCs	Private Military Companies
PSCs	Private Security Companies
PMSCs	Private Military and Security Companies
PSCAA	Private Security Companies Association in Afghanistan
PSCAI	Private Security Companies Association in Iraq
PTSD	Post-Traumatic Stress Disorder
SFOR	Stabilisation Force (Bosnia and Herzegovina)
SOP	Standard Operating Procedures
SSR	Security Sector Reform
TVPA	US Trafficking Victims Protection Act
UCMJ	Uniform Code of Military Justice
UN	United Nations
UNITA	National Union for the Total Independence of Angola
UN SCR 1325	United Nations Security Council Resolution 1325 on Women, Peace and Security (2000)
US	United States of America

Private Military and Security Companies and Gender

1 Introduction

This tool addresses the gender aspects and challenges of a relatively new phenomenon: the privatisation of security on a global scale. So far, reliable research data is scarce. Moreover, much of the relevant information, such as companies' standard operating procedures as well as the contents of most of their contracts, is strictly confidential. However, this must not lead to complacency. In order to ensure the effectiveness and long-term success of security sector reform (SSR) involving Private Security Companies (PSCs) and Private Military Companies (PMCs) it is indispensable to integrate gender aspects into all operations. This tool will explain why gender is important and how gender initiatives can be developed and implemented in operations involving PSCs and PMCs, largely focusing on international PSCs and PMCs.

The key target audiences of the tool include:

- PSCs and PMCs
- Industry associations of PSCs and PMCs
- Clients of PSCs and international donors to SSR programmes
- Stakeholders in the policy-making process and in the debate on private security, including as part of SSR (governments, international agencies)
- Signatories to the Voluntary Principles on Human Rights and Security (oil, gas and extractive industries)

Secondary audiences are:

- Civil society organisations working on issues related to PSCs and PMCs
- Academics and researchers working on issues related to PSCs and PMCs

The global private security industry has grown exponentially in the past five to ten years. Although the dynamics differ greatly depending on the specific context – that is in developed countries, countries in transition, post-conflict countries and developing countries – there seems to be one common denominator: privatisation of security takes place where the state, the traditional provider of security, is unable or in fact unwilling to fulfil this role. Furthermore, considerations of cost-effectiveness have contributed to a growing trend towards outsourcing and privatisation of state security functions. Public-private partnerships in the security domain are one of the most pertinent examples of this phenomenon.

PSCs in particular have emerged to meet the increasing demand for security services from communities, ordinary citizens, private businesses, international organisations and

agencies and the state itself. Some of these services, such as residential security and static guarding – in both developed and developing countries – are usually performed by unarmed local PSCs. Other services ensure the smooth functioning of a state's armed forces in an era of military overstretch.

The role of PSCs and PMCs in SSR, post-conflict reconstruction and related activities such as Disarmament, Demobilisation and Reintegration (DDR) has been steadily increasing. This is not only the case because of a growing demand for private security services; PSCs and PMCs themselves have also intensified their efforts to present themselves as professional and effective providers of SSR solutions.

With the arrival of private, commercial actors in the field of SSR, new challenges and opportunities have arisen for the integration of gender. This tool will provide a background for understanding these challenges and opportunities and make practical suggestions for addressing them in the following ways:

- Men and women as actors/contractors within the private security industry
- Men and women as stakeholders in SSR processes led by PSCs and PMCs
- Men and women as victims of gender-based violence (GBV)

PSCs and PMCs will be considered from two perspectives:

- PSCs/PMCs as providers of SSR
- PSCs/PMCs as subjects of SSR

2 What are PMSCs and the 'privatisation of security'?

Private security companies are defined here as 'companies that specialise in providing security and protection of personnel and property, including humanitarian and industrial assets'.¹ This means that their services are not necessarily armed; their operations are defensive rather than offensive in nature; and they cater to a large group of customers including governments, international agencies, non-governmental organisations (NGOs) and commercial organisations.

Private military companies 'are private companies that specialise in military skills, including combat operations, strategic planning, intelligence collection, operational

support, logistics, training, procurement and maintenance of arms and equipment'.² This implies that their clients are usually governments, but may comprise insurgents, militia groups, and other armed factions.

The Organisation for Economic Co-operation and Development – Development Assistance Committee (OECD-DAC) defines **Private Military and Security Companies** (PMSCs) as 'those commercial companies directly providing protective military or security-related services for profit, whether domestically or internationally'.³ This definition is also adopted in this tool.

A more comprehensive overview of the activities of PSCs and PMCs can be found in Box 1.⁴

Although these definitions reflect the empirical reality of two distinct types of services in the private security sector, they may not easily be applied to any company in any given national context. This is even more relevant in the field of SSR which is carried out by both PSCs and PMCs. For this tool, the overarching term Private Military and Security Companies will therefore be used both for companies *undertaking* SSR and companies *subject to* SSR, wherever appropriate. An exception will be made for the domestic private security sector, which is not involved in services for the state and/or the military: the companies in this domain are labelled PSCs.

PMSCs may either cater for a strictly domestic market or operate globally. Domestic PSCs usually offer armed or unarmed static guarding and personal protection services but also technical equipment such as CCTV cameras and panic-button systems. These services are most prevalent in the developing world and in transitional countries, but are expanding increasingly in the developed world. In South Africa, these companies now outnumber the police, and the market for private security services is the biggest worldwide as a percentage of gross domestic product. By June 2004, 3,553 PSCs were registered in the country. By March 2007 they were employing 301,584 'active security officers' while around 116,000 uniformed police officers were performing police functions for the South African Police Services.⁶

In contrast, international PMSCs with headquarters or offices in several countries offer what is sometimes called 'premium protective security services' in high-risk environments on a global scale. Their employees usually have a military or law-enforcement background and substantial experience in what are commonly termed 'hostile environments'.

PMSCs can be both actors assisting in or delivering SSR ('top-down') as well as entities 'subject' to an SSR process ('bottom-up') for instance when the regulation and control of their activities is developed and implemented.⁷

Challenges with the privatisation of security

The privatisation of security provides great opportunities as well as posing severe risks, especially from a human security perspective. PMSCs have the potential to improve the security situation if their services are delivered in a professional and accountable manner and, in particular, if democratic state institutions are involved in control and oversight.

However, private security can also exacerbate existing social tensions if security becomes a commodity which only the rich can afford, thus excluding a majority of the population from its benefits. Moreover, PMSCs with strong ties to state institutions can aggravate and reinforce oppressive practices and structures of a state's security sector.

A further challenge relates to the difficulties of ensuring accountability and transparency in the private security industry, in particular when services are being exported abroad. It is extremely difficult, practically, to hold companies and individual contractors accountable through existing laws and regulations (see Section 5). This kind of legal environment risks undermining long-term SSR and/or development efforts as well as fundamental tenets of the human security paradigm and the gender mainstreaming agenda.

The precise dynamics, advantages and risks of privatisation are, of course, different depending on the local and regional

Box 1 Services provided by PSCs and PMCs ⁵	
Services provided by PSCs	Services provided by PMCs
<ul style="list-style-type: none"> ■ Physical protection (static/mobile). ■ Close protection (e.g. bodyguard assignment). ■ Rapid response. ■ Technical security, ■ Surveillance services. ■ Investigative services. ■ Comprehensive risk assessment and risk mitigation services for private businesses. ■ Business intelligence, due diligence, political risk analysis. 	<ul style="list-style-type: none"> ■ Military training/consulting for national or foreign troops. ■ Military intelligence. ■ Arms procurement. ■ Combat and operational support. ■ Humanitarian de-mining. ■ Maintenance. ■ Military and non-military support services. ■ All other services that have been outsourced from the military.
<ul style="list-style-type: none"> ■ Supporting post-conflict reconstruction processes through protective and defensive security services to the agencies involved in the reconstruction. ■ New areas such as SSR, DDR, disaster relief and development. 	

context. A clear distinction of private security services has to be made between developed countries, transitional and developing countries and post-conflict countries. A discussion of these individual cases will follow in Section 6.

Private security and SSR

The delivery of SSR is a very new phenomenon for the private security industry. PMSCs are trying to break into a market, which is currently dominated by development consulting firms, risk management companies, freelance consultants and NGOs. Governments and other donors are increasingly prone to giving SSR-related contracts to PMSCs but it will take some time until the latter become fully established actors in SSR. At the moment, the main SSR activity PMSCs are involved in is the training of foreign troops and police forces, for instance in Afghanistan and Iraq. However, their activities are likely to expand as SSR becomes more dangerous in many post-conflict environments and as more traditional actors have to pull out of high-risk areas.

PMSCs are bringing in outside expertise, for instance from the development community, in order to submit credible bids for SSR-related tenders from governments and other donor agencies. Because they can recruit from a wide range of experienced personnel from a variety of backgrounds, as well as deploy teams comparatively quickly, they can offer tailor-made solutions to SSR challenges. Staff and contractors are often familiar with the administrative processes in government because revolving doors between the public and the private sector mean a continuing exchange of expertise.⁸

Both the number of private SSR providers and data on their performance remain hard to establish. Even donor agencies can rarely raise reliable data in a coherent and effective manner because SSR work is frequently distributed across different budgets (such as security/defence and development). The OECD-DAC Handbook on SSR, however, provides valuable guidance for donors and identifies good practice in SSR; this includes operations involving the private sector.⁹

Because of the lack of reliable data, but also because of a real or perceived lack of transparency and accountability among private, commercial actors in SSR, they are still struggling to establish themselves as legitimate players. Moreover, they face the criticism of insufficient standards for their operations. Yet it is largely up to the client/donor to define appropriate standard operating procedures (SOPs) and terms and conditions of contract. So far, there are no guidelines for outsourcing in SSR in any given national context, so it is difficult for donor agencies to make informed decisions about the skills, qualifications and credentials of those bidding for contracts.¹⁰ Private contractors themselves are now asking for more transparent and accountable decision-making and review processes. In a climate where their legitimacy in any security or development-related field is still questioned, it is in their own interest to demand standards and frameworks of accountability.

Among the tasks performed by the private sector in SSR programmes are training, management support, diagnosis and policy review. Training may be either technical (e.g. skills to use new equipment) or conceptual (human rights, international law, civil-military relations etc.), or a combination of both. Management support may refer to

police and justice reform and it may include: strengthening financial and human resources managerial processes, improving judicial case management, reformulating armed forces budgets, reforming pay and grading systems, revising promotion and disciplinary regimes, supporting civil management bodies and improving procurement systems. Diagnosis and policy review services for government institutions cover primarily strategic, operational and organisational analyses of SSR needs in the recipient country.¹¹

3 Why is gender important to PMSCs?

Gender refers to the particular roles and relationships, personality traits, attitudes, behaviours and values that society ascribes to men and women. 'Gender' therefore refers to *learned* differences between men and women, while 'sex' refers to the *biological* differences between males and females. Gender roles vary widely within and across cultures, and can change over time. Gender refers not simply to women or men but to the relationship between them.

Gender mainstreaming is the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels.¹²

For more information see
Tool on SSR and Gender

As the trend towards privatisation of security increases and regulation of PMSCs develops, incorporating gender could greatly improve operational effectiveness throughout the sector and positively shape its future development.

One indicator of the effectiveness of an operation is the generation of a safe and secure environment that is conducive to economic development, education and health care, and the growth of vibrant civil society organisations. These goals can only be achieved if women enjoy the same rights as men in shaping their immediate social environment.

3.1 To improve operational effectiveness – international PMSCs as SSR providers

International PMSCs can benefit enormously from the integration of a gender perspective into all aspects of their operations:

- Men and women usually have different experiences, needs and understandings of security and justice. In order to increase the chances of operational success, security personnel need to consider the impact of all of their activities on men, women, girls and boys in host communities.
- Gender training will also help staff adjust to the host community and will help them to be more responsive to

the cultural milieu in which they will work. Local acceptance of the presence of private security staff may be enhanced significantly if operators have undergone gender training tailored to the local situation.

- Condoning and cultivating certain forms of aggressive behaviour is part of the institutional culture in many PMSCs and has, in the past, been linked to human rights abuses. Appropriate gender training, alongside training in international humanitarian law (IHL) and international human rights law (IHRL) for PMSC operators will help prevent human rights abuses and the concomitant loss of revenue and reputation.

Recruiting women into PMSCs is an important strategy for improving operational effectiveness. So far, men are highly over-represented in PMSCs, not least because the companies largely recruit former service personnel. The following points highlight, however, why women can have a positive impact on operational effectiveness:

- Research shows that local men and women tend to see female staff as more approachable and less threatening, even in traditional societies. Thus, the presence of female staff can strengthen the legitimacy of a company and its operations amongst host communities.¹³
- Female operators are needed for guarding buildings, road-blocks, airports, etc. to perform body searches on women. Women may also play a placatory role in potentially threatening situations during these searches.
- When involved in SSR-related operations, female security operators can serve as positive role models for local women who are considering joining, for instance, the police.¹⁴
- Female operators may be able to take a different approach in the detection of security risks, thereby potentially enhancing identification of the specific types of danger that women are exposed to in host societies.¹⁵
- When gathering intelligence on safety issues ahead of a planned operation (such as ensuring the safe passage of a convoy or guaranteeing the safety of an individual client travelling in a high-risk environment) security personnel need to understand how to liaise with women as well as men in the population. In traditional societies, such as Afghanistan and Iraq, it is dangerous for a local woman to be seen speaking to male security personnel; she could, however, talk to a woman. Therefore, the employment of female staff can ensure a better utilisation of resources; the extraction/gathering of information may be more effective and the analysis of issues affecting local communities more accurate.
- It must be kept in mind that the capacity of PMSCs to recruit large numbers of women is constrained by women's under representation in the military and the police, the main recruitment pools for PMSCs. As police and militaries increasingly strive to recruit more women, this provides a larger recruitment pool for PMSCs. Further, PMSCs can learn from good practices within militaries and police in recruiting and retaining female personnel.

See Tools on Defence Reform and Gender, Police Reform and Gender

3.2 To improve staffing procedures and employment standards – PMSCs as ‘subjects’ of SSR

- Macho subcultures, which can be found in the military and police, do not provide a hospitable environment for women. This must change if the skills of women are to be drawn on for the operations of PSCs and PMCs alike. One researcher has noted that as men test their masculinity against one another they must repeatedly reconstitute their bravado; one of the methods they employ to do so involves the objectifying, sexualising and/or diminishing of women.¹⁶ Where they have female colleagues, this often takes the form of sexual harassment. Sexual harassment undermines an institution through a loss of productivity, lowered moral, absence from work, increased staff turnover, and hinders the integration of women. In the military, a study in the United States of America (US) has shown a strong correlation between the high incidence of sexual harassment, lower combat readiness and a poor leadership climate.¹⁷ These impacts should be of serious concern to PMSCs also.
- Gender trends in the security sector largely imitate the broader trends of the labour market. Namely, while women are entering the workforce, particularly in domestic PSCs, their integration is uneven and often they are given positions which are low in status, largely unskilled, and tedious.¹⁸ Many women are subject to a form of ‘re-segregation’ whereby they are assigned positions viewed as suitable for their gender.¹⁹ In particular, women tend to be perceived as unsuitable for and excluded from jobs requiring: a great deal of authority, such as high-level management; physical strength; technical skills; exposure to physical risk or physically uncomfortable work environments; and involving authoritative social control, such as private police work.
- Reducing gender discrimination, harassment and violence on the job will inevitably increase effectiveness and reduce friction both within the company and in the operating environment. It will also reduce existing macho occupational cultures, thus making employment in the industry of privatised security more attractive to women, who bring differing skills and experiences to their employers.²⁰

3.3 To create an institutional culture that prevents misconduct and human rights violations – PMSCs as ‘subjects’ of SSR

- A single case of major misconduct – especially when occurring in an environment of legal grey zones – can discredit the entire private security industry and thereby undermine international and local public trust in ongoing SSR operations by private actors.
- Violent forms of masculinity are prevalent in militaries and (despite the absence of reliable data) it can be inferred that they are equally common in the private security sector.²¹ Human rights violations, such as sexual exploitation, sexual abuse and other forms of GBV, must

be prevented by addressing the institutionalisation of violent forms of behaviour.

- There have been instances of private security personnel, both male and female, being implicated in GBV including the sexual abuse of women, men, boys and girls. At the Abu Ghraib Prison in Iraq, a juvenile male detainee alleged that he was raped by a civilian interpreter working for the contract company Titan. At the same facility, allegations of sexually demeaning interrogation techniques have been made against a civilian employee of CACI Corporation. Neither cases have been prosecuted.²² (Also see Box 8). Reporting of such incidents remains poor, however. Instances of GBV and sexual abuse can discredit both an individual company and, potentially, an entire operation.
- There is a historical link between prostitution/sex work, the trafficking of women and children for the purposes of prostitution and the presence of regular armed forces.²³ Because of the tendency by PMSCs to draw employees from regular armed forces, it is likely that these linkages and practices also apply to private contractors.²⁴ The involvement of DynCorp personnel in illegal prostitution and trafficking in Bosnia (see Box 2) and the wrongful dismissal by DynCorp of one female employee and one male employee for implicating colleagues in forced prostitution served to tarnish the industry as a whole.²⁵ In Afghanistan, there have been reports that security contractors have fuelled the emergence of numerous brothels and are involved in trafficking of arms and women. They are also widely perceived to have been the cause of the deterioration of relations between the international (Western) community and local Afghan communities.²⁶ These examples starkly highlight the importance of addressing misconduct, including sexual exploitation and abuse by PMSC personnel, as well as the need for companies to have effective internal complaint procedures.
- If security operators are involved in sexual assault, abuse, or the exploitation of local women, not only are they committing human rights violations, but they also cause increased security risks for their clients and for themselves. This poses a significant threat to operational success.
- Private companies should take steps to address the risk of misconduct by their personnel. Industry-level discussions and training to eliminate GBV and improper sexual

conduct will address a *de facto* culture of immunity for gender-based crimes. It will also correct the false belief in some quarters that due to a gap in regulation, *de jure*, private security actors and their employees cannot be held responsible for violations of IHL, international criminal law or IHRL (see Section 5).

3.4 To improve coordination among agencies in peace support operations – PMSCs as actors in complex multi-agency operational environments

- For the coordination of agencies and the organisation of interventions, it is critical to operational effectiveness that all actors, including private contractors, understand and agree to operational practices that will increase security for all members of the host society. This should specifically include measures to eradicate GBV, including sexual exploitation and abuse.
- All actors involved in peace support operations have to know where they can report instances of GBV. Moreover, there should be mechanisms for the local community to report any such incidents to non-partisan third parties and to seek advice.
- More broadly, for gender mainstreaming within peace and reconstruction operations to be fully realised, PMSCs need to be included in planning and implementation regarding gender mainstreaming.
- Most actors in SSR would agree that better cooperation is necessary to achieve a higher degree of coherence and consistency, and avoid duplication, within the framework of peace support operations, SSR programmes and related fields. However, each organisation at present seems to be happy to take the lead and somewhat less prone to follow. This has clear implications for the viability of including gender in SSR. In particular, private companies involved in SSR may only accept orders from their client/donor organisation and ignore broader programmes within the donor community to include gender in SSR. This underscores the need for client and donor organisations to play a role in integrating gender issues into PMSCs.

Box 2 Illegal prostitution and trafficking in Bosnia

Contractors of the US company DynCorp Aerospace Technology UK Ltd were allegedly involved in illegal prostitution and human trafficking in Bosnia. The company was mainly providing services for the US military and the United Nations (UN) International Police Task Force, which was formed to monitor, advise, and train law enforcement personnel in Bosnia.²⁷ DynCorp personnel have been accused of frequenting brothels where women were imprisoned and of trading in under-age sex slaves.²⁸

The accusations were made by another DynCorp employee, Kathryn Bolkovac, who was subsequently fired by DynCorp, but won a lawsuit for wrongful contract termination. While DynCorp dismissed the implicated personnel, no formal charges were made by Bosnian, British or US authorities. Uniformed peacekeepers were also accused, but a US Department of Defense Office of Inspector General case report noted that 'contract employees, while considered members of the SFOR and KFOR community, are not subject to the same restrictions that are placed on US Service members'; this included permission to live outside military installations and some companies' lack of monitoring of employee behaviour and misconduct. As a consequence, the likelihood of misconduct is greater among private military contractors than uniformed personnel.²⁹

Box 3

Third party oversight of SSR activities in Croatia

Croatia provides a successful example of how PMSCs may be used to encourage institutional development and the transference of democratic norms within the security sector, including civilian control of the military, professionalism and respect for human rights. At the same time, the example demonstrates that third-party oversight of SSR activities is crucial to achieving the full potential of SSR programmes led by civilian contractors.

Beginning in 1994, MPRI signed a contract to help the Croatian government restructure its defence department.³⁰ Early on, the services Croatia purchased from MPRI were designed to help its armed forces prepare for eventual participation in NATO's Partnership for Peace (PfP) Programme. In this case, the contracts to professionalise the Croatian Armed Forces were justified by and operated under a specific international framework, NATO's Democracy Transition Assistance Programme, with the purpose of democratising the military and transforming the troop structure. Researcher Deborah Avant argues that the framing of privatised SSR through contractual obligations by international organisations may produce cases where PMSCs can have a positive effect on state-building, by influencing the impact of private forces on political processes and social norms on the use of force.³¹

4 How can gender be integrated into PMSCs?

The integration of gender into private security operations is challenging from several points of view. First, most contracts – be they with clients in the public or the private sector – rely on an extremely high degree of confidentiality. The terms and conditions of contract, or even the business relationship itself, are therefore rarely known to outside observers. This in turn makes it difficult to monitor the implementation of and compliance with human rights and gender-related standards and best practices.

Second, the transnational nature of the industry and a lack of political will make it challenging to hold companies accountable for their actions abroad.

Finally, convincing the commercial private security sector of the operational benefits of gender mainstreaming might be challenging at first because the cost of gender training and other initiatives might not translate immediately into commercial profit goals. The long-term advantages, therefore, have to be emphasised and clients have to use their leverage to impose standards and best practices.

Initiatives to integrate gender into PMSCs' operations, in particular SSR operations, should thus include combined approaches of:

- Including gender issues in contractual obligations and quality control processes.
- Developing specific internal policies on sexual harassment and abuse.
- Industry mainstreaming of gender issues in hiring, staffing, training and vetting, to improve professionalism and effectiveness.
- Including gender issues in evolving industry self-regulation.

National and international regulation of PMSCs as it concerns human rights violations, including against women, is discussed in Section 5.

4.1 Contractual obligations and quality control of PMSCs

Contracts are the most immediate tool through which standards and binding guidelines can be introduced to PMSC operations. Clients thus play a key role in shaping PMSC behaviour, especially if fulfilment of contractual obligations is monitored through regular audits and other quality control procedures.

It is therefore crucial for governments and other clients of PMSCs to include standards of good practice regarding gender issues in their contracts with PMSCs. For instance, there should be clear mechanisms of accountability; guarantees that human rights abuses will be prosecuted; assurances that personnel have completed gender training; and that PMSC staff have otherwise been sufficiently trained and vetted.

When PMSCs act as deliverers of SSR within host societies, donors, in particular, have to ensure that companies adhere to acceptable standards, including the integration of gender issues. This could be achieved through an accreditation system for SSR providers – who can be companies or individuals – which could be run by a government, an independent agency or an international body.

Quality control, auditing and review processes should accompany SSR operations. This ensures a satisfactory outcome to the operation and helps to improve future operations through the collection of data and lessons learned.

4.2 Include local PSCs in SSR processes

Another measure donors should take is the explicit incorporation of local PSCs in the SSR process. In developing countries, countries in transition and in post-conflict settings, PSCs are frequently a major source of insecurity and violence, including GBV. The main reasons for this include companies' close links to influential political movements; the collapse of law and order; and the reliance of former combatants on work in the private security sector to make a living after the end of war.³² At the same time, however, the potential of PSCs to improve the security situation in a country, in particular for the more vulnerable members of society, has to be taken into account in any SSR

process. As Abrahamsen and Williams stress, '[i]n countries where private companies perform vital security functions, focusing on public security forces alone may significantly reduce the effectiveness of reform and, at worst, have unintended negative outcomes'.³³ Thus, gender issues could be introduced into a country's private security sector whenever PSCs are subject to a broader SSR process.

4.3 Policies and codes of conduct to address sexual harassment and abuse

As discussed in Section 3.2, PMSCs will benefit from reviewing and reforming staffing practices to ensure a non-discriminatory and inclusive work culture. In particular, companies need to address sexual harassment and/or assault, crude and offensive behaviour, such as inappropriate sexual jokes and comments made to other employees or about third parties, and sexist behaviour, including condescending or differing treatment of employees due to their sex or perceived gender roles.³⁴ This should also apply to company-sponsored events, and policies regarding rest and relaxation that might contribute to a discriminatory or offensive work environment and culture.³⁵

PMSCs should therefore have clear policies and codes of conduct which include workable grievance procedures for complaints about sexual harassment, bullying and GBV. Four recent allegations of rape and sexual harassment of female civilian contractors by other male PSC employees in Iraq have highlighted this lack of clarity on internal codes of

conduct.³⁶ Policies should explicitly include prohibition of sexually abusive or exploitative behaviour or behaviour that might facilitate human trafficking. Complaints should be possible from PMSC staff, as well as from members of the local community within which PMSCs are working. Employers must make it clear to employees that no culture of impunity exists and that infractions of company policies will be dealt with firmly and will have legal consequences.

Box 4 is a checklist developed by the US National Center for Women and Policing of the type of information that should be included in a sexual harassment policy, which could be adapted by PMSCs to formulate appropriate internal policies on sexual harassment, bullying and GBV.

Once such a policy is developed, the following steps can be taken to promote effective implementation within the PMSC:

- Reinforcement of the importance of the policy by the head of the PMSC, such as by a communication to all personnel that there will be 'zero tolerance' for transgressors
- Establishment of mechanisms to monitor or report violations of the policy (including anonymous complaint processes)
- Wide distribution and posting of the policy in all PMSC workplaces
- Incorporation of the policy into the terms and conditions of contract for individual personnel (e.g. by having them sign a code of conduct)
- Training programmes for all personnel on or including the policy.³⁸

Box 4 Sexual harassment policies should include: ³⁷

A statement that the organisation supports the rights of every employee to be free of sexual harassment in the workplace. Harassment based on gender, sex, race, sexual orientation, age, disability or other 'difference' is unacceptable.

A statement that offenders will be held accountable for acts of sexual harassment and disciplined appropriately.

A statement that supervisors and managers are responsible for maintaining a harassment-free workplace and that they will be held accountable for stopping and appropriately reporting harassment.

A statement that acts of retaliation against members who complain about sexual harassment shall be considered as additional acts of misconduct, and investigated and disciplined accordingly.

An explanation of the law prohibiting sexual harassment.

A definition and examples of harassing behaviours that can be easily comprehended.

Formal procedures to resolve complaints of harassment.

A process to encourage early intervention and resolution of hostile work environment complaints, such as ombudsperson programmes.

An assurance that complaints will be kept confidential to the extent possible.

A description of the level of discipline that may be imposed for violations of the policy.

The process for reporting complaints, with an emphasis on multiple places for filing complaints such as:

- Any department supervisor
- Any command officer
- A designated diversity coordinator
- The state labour division responsible for enforcing discrimination laws

Timelines for investigating and resolving complaints of sexual harassment.

A statement that complainants shall be notified of their rights, statutes of limitation for filing civil complaints and referrals to administrative agencies.

The names and telephone numbers of persons to contact if the employee has questions about the policy.

Box 5

Recruitment of women into the National Interdiction Unit, Afghanistan ⁴⁶

Since 2004, Blackwater USA, contracted to the US Drug Enforcement Administration (a component of the US Department of Justice) trains, mentors and supports the Afghan Ministry of Interior's (MoI) National Interdiction Unit (NIU) - an investigative narcotics unit working all over the country. To date, the NIU has been responsible for 50% of all drug seizures in Afghanistan. Blackwater recruitment for the NIU ran from August 2004 to August 2005. Since then, recruitment and vetting have been conducted by the MoI.

The NIU consists of 174 Afghan men and women. As of 2005, over 6% of all graduates from Blackwater's training programme were women. Before the first course took place in 2004 interviews with potential recruits demonstrated the interest of women in a career with the NIU.

Two women who participated in the first NIU training course are still working with the NIU. A woman was the honours graduate on the second course, demonstrating women are well able to perform on a par with men.

Each of Blackwater's courses lasts six weeks covering, amongst other things, training in firearms, first aid, negotiation techniques, searches, navigation, patrols, and intelligence gathering. The women carry out exactly the same exercises and duties as men, and all do so in uniform and with their hair uncovered. With the highest salary of all of the MoI's law enforcement programmes, men and women are paid the same wage.

The training programme is now being transferred into Afghan hands. Blackwater will soon begin a 'training of trainers' programme whereby trainers are recruited from within the NIU, which means that such a career would be open to both men and women.

4.4 Recruiting and retaining more women

Section 3.1 discussed the operational benefits of including women in PMSC work, especially as SSR providers. Companies need to know how and where to recruit female as well as male staff and operators.³⁹

PMSCs can draw upon the wealth of experience in the police and military, as well as in other parts of the private sector, in promoting the recruitment, retention and advancement of women.

See Tools on Police Reform and Gender, Defence Reform and Gender

A PMSC's strategy to target recruitment and retention of women should include:

- Assessment of current status: e.g.
 - How many women are working for the PMSC and in which roles?
 - How do women's salaries compare with men's at the same level?
 - Do current female employees (in focus groups and exit interviews) have any concerns regarding their work or work environment?
 - What are male employees' attitudes toward female colleagues?
- Assessment of current barriers to recruiting and retaining women: e.g.
 - Is recruitment largely carried out through an 'old boys' network? How can female former police and military personnel be recruited?
 - Do job descriptions and performance evaluations include the full range of skills needed – e.g. in SSR jobs – such as facilitation and communication skills, and the ability to work with people from different cultures?
- Reviews of policies and procedures: e.g.
 - What are the company's policies and practices on sexual harassment and sexual misconduct?

- Does the company's health insurance cover everybody's (including women's) particular health needs?
- Are equipment, uniforms and living quarters, where relevant, appropriate to both men and women?
- Analysis of problems, challenges and ways forward
- A plan of action, with targets, timelines, designated responsibilities and mechanisms for monitoring and follow-up

4.5 Employees' mental and physical health

A little researched area is the health and social impact on PMSC operators, arising from their work in high-risk, high-stress conflict areas such as Afghanistan and Iraq. New research and evidence suggest that contractors suffer the same kinds of combat-related mental health problems that affect returning military personnel.⁴⁰ The brunt of the effects of post-traumatic stress disorder (PTSD), for instance, are usually borne by the spouses and close relatives of PTSD sufferers; thus, those in the family home will be indirectly affected by events in the field.

Unfortunately, most contract employees are not provided with comprehensive briefs concerning the possibility of developing PTSD as well as its prevention and treatment; neither are they likely to receive treatment. In the US, there have been numerous cases where PMSC employees, not covered by the US Department of Veterans Affairs, were also denied treatment by insurance companies.⁴¹ The US Army estimates that about 17% of personnel in Army combat units in Iraq showed symptoms of PTSD one year after their deployment, but this figure rises to 30-35% if one includes marital problems, alcohol abuse and other adjustment issues. A DynCorp study of their police trainers in Iraq similarly revealed that 24% of employees showed PTSD symptoms.⁴²

The effects of these health issues extend beyond the individuals to affect their families and other social relations, sometimes in severe ways. Family violence in particular is

largely male violence against women and children. Companies need to be aware of these post-deployment issues and should provide resources for their employees upon return. Incorporating PTSD issues into pre-deployment training and post-deployment briefs should be a minimum requirement.

4.6 Vetting and training

As the industry of privatised security has exploded, the vetting of employees has become a problematic issue.⁴³ At a minimum, PMSCs should include thorough background checks that vet for criminal charges, human rights abuses and GBV in their recruitment processes.

Training deserves closer attention as well. Because employees and contractors usually have a military or law-enforcement background and because most well-established companies apply vetting and selection procedures, it is commonly assumed that additional training is either not necessary at all or only required in terms of refresher training. The requirement that personnel undergo additional training, specifically on IHL, IHRL and gender issues should be included in contractual obligations by clients. This will reduce the tendency for PMSCs to deploy new employees without adequate training.

4.7 Gender training

Training in identifying and addressing gender issues is important for everyone in SSR and related fields.⁴⁴ There are no general standards or commonly followed best practices for training, including gender training, of private security operators. PMSCs should integrate gender issues into all existing staff training. Ideally, these programmes should be ongoing and involve civil society organisations, such as women's organisations. Gender training could also be incorporated into a broader course of one to three days on international law and related issues.

Most importantly, however, gender training always has to be based on context-specific evidence in order to be effective.

See Tool on Gender Training for Security Sector Personnel

Topics for gender training for PMSC operators and management personnel could include:⁴⁵

- What does gender mean?
- Definitions of the core work of PMSCs and understanding the disaggregate impact on women and on men of all activities.
- Why incorporating gender can increase chances of operational success and effectiveness.
- Viewing your work through gender spectacles – how to include a gender perspective within your security operational work.

- Addressing gender in SSR (e.g. working with local women's organisations, recruitment of women into security forces).
- How to work with and protect female and male members of your host community.
- What does GBV mean? How can it be addressed?
- Company codes of conduct and zero tolerance policies on sexual harassment, sexual misconduct and sexually offensive behaviour.

4.8 Industry self-regulation and internal company codes of conduct

Gender mainstreaming should also be part of emerging self-regulatory frameworks that govern increasing parts of the industry. The setting and monitoring of standards in the area of gender could be done alongside other issues (such as human rights) in a comprehensive standards-setting process. In order to enforce standards and in order for self-regulation to work, a government mandate and a degree of government involvement is certainly desirable. Cooperation between the state and the industry on regulatory questions would, for instance, avoid the problem of driving companies underground if regulation becomes too cumbersome or too expensive. For instance, bids for competitive international tenders have to be produced according to tight schedules; if a company needs a bid to be signed off by the government where it is registered it might be tempted to move offshore or to a less regulated environment. At the same time, however, norms and policies regarding gender mainstreaming have to be audited and monitored, and the involvement of a government would certainly be beneficial.

Standards, in particular if they become compulsory, work in two ways. Firstly, they improve the performance, transparency and accountability of PMSCs. Secondly, they drive 'cowboys' out of the industry. However, these positive effects can only be achieved if enforcement mechanisms ensure companies' compliance with standards.

Codes of conduct at the company or industry-level may be one of the most effective means of promoting accountability, gender mainstreaming and respect for human rights by encouraging organisational and professional norms. The Canadian Security Association (CANASA), for example, includes in its code of ethics a detailed mechanism for complaints to be investigated by an ethics committee, with possible sanctions that include expulsion from CANASA.⁴⁷ The International Peace Operations Association (IPOA) Code of Conduct⁴⁸ and the British Association of Private Security Companies (BAPSC) Charter and Code of Conduct⁴⁹ are documents that could lend themselves to the inclusion of gender issues, in clauses on employment practices, respect for human rights, and sexual exploitation and abuse. The current absence of gender issues from these Codes of Conduct highlights the importance of creating awareness of gender issues within the bodies representing the industry.

However, despite reputational incentives to self-regulate, not all PMSCs adhere to an internal, association or external Code of Conduct. In 2006, the IPOA conducted a survey of its 30 members. 21% of the respondent companies admitted that they did not maintain and follow an internal Code of

Box 6

Self-regulation in the United Kingdom

The first steps towards the self-regulation of the industry were taken in early 2006 when the British Association of Private Security Companies (BAPSC) was launched. Against the background of the 'Iraq bubble', the British private security industry had grown disproportionately in the years 2003 to 2005, but was struggling with issues of legitimacy and respectability. Against the background of a complete lack of regulatory tools in the UK and in the absence of any government action in this area, the Association was therefore launched in order to regulate and control the UK-based industry. The BAPSC represents roughly 95% of the British industry by contract value, so any standards-setting efforts – if enforced appropriately – would have considerable effects on the market.

The strict membership criteria, including a thorough vetting process; the introduction of mandatory training courses in IHL and IHRL; and the development of a comprehensive Code of Conduct have made BAPSC an effective tool to raise standards in the industry. The British Government is therefore poised to give BAPSC a mandate for self-regulation.

Yet self-regulation can only ever be effective with some degree of government involvement. The development of an investigative capacity and the potential appointment of an ombudsperson in a government department would be two crucial tools whereby self-regulation could be made credible and effective.

Since private security operations are usually delivered overseas where audits can only be performed with difficulty and on an irregular basis, companies need to recognise that a real business advantage can be gained from the implementation of standards, including with regards to gender issues. Gender training in particular would ensure a better understanding of the benefits of gender mainstreaming for a company's operations.

Self-regulation provides a unique opportunity to introduce gender issues in the private security industry because the standards-setting process is inclusive and bottom-up. Moreover, the self-regulatory body knows the members of the Association and can discuss advantages and problems of gender mainstreaming on a bilateral basis if necessary.

Conduct. 14% of respondents also did not subscribe to any external Code of Conduct.⁵⁰ Moreover, self-regulation, by definition, cannot regulate companies that choose to stay outside a regulatory regime at the industry level. Self-regulation is therefore no silver bullet and only makes sense in the framework of a matrix of interlocking and, ideally, mutually reinforcing regulatory schemes at both national and international levels and at the level of the industry itself.

At the same time, however, advocating self-regulation has become the default position of the United Kingdom Government with regards to the regulation of most industries (see Box 6).

5 Addressing gender issues in international and national regulation of PMSCs

So far, only two countries have specific regulatory regimes for their national private security industries with operations overseas: South Africa and the US. However, both regimes are deeply flawed, as ongoing debates in both countries demonstrate.⁵¹

The development of regulatory regimes for PMSCs, both at national and international levels, should be guided by the existing international legal framework. A range of international and regional instruments and laws:

- Mandate the integration of gender issues into all aspects of peacekeeping and post-conflict resolution.
- Establish the possibility of states being held responsible for violations by PMSC personnel.

- Establish the direct accountability of PMSC personnel for violations of IHL, IHRL, international criminal law and national laws on extraterritorial crimes and wrongs.

While this section does not provide comprehensive recommendations for international or national regulation of PMSCs, it identifies relevant existing standards with particular reference to gender issues.

5.1 International human rights and international humanitarian law

International law does not explicitly regulate the activities of PMSCs and individual contractors. Specific norms in international law exist only in relation to the issue of mercenaries – a largely outdated term, which fails to adequately describe the modern PMSC phenomenon.⁵² Nor do international or regional instruments enshrining the rights of women or children, or general human rights instruments, specifically address the private security industry.⁵³

UN Security Council Resolution 1325 (UN SCR 1325) on women, peace and security focuses on gender mainstreaming in conflict resolution, peace-building, and post-conflict reconstruction but does not explicitly discuss the private security sector and how gender issues could be integrated.⁵⁴ The resolution does, however, call for gender perspectives to be mainstreamed into peacekeeping operations according to the Windhoek Declaration and the Namibia Plan of Action, including DDR and police and judiciary reform programmes; presumably this would include private contractors to UN peacekeeping missions.⁵⁵ Moreover, UN SCR 1325 declares that all peacekeeping personnel should receive special training on the protection, special needs and human rights of women and children in conflict situations. The resolution also reminds 'all parties to

armed conflict to fully respect international law applicable to the rights and protection of women and girls as civilians’.

See the Annex on International and Regional Laws and Instruments

State responsibility for human rights violations by PMSCs

Nonetheless, states have a duty to protect persons from human rights abuses. IHL standards are directly relevant because States can, and are in fact obliged to, implement them and thereby hold companies to account when they engage in behaviour that is detrimental to human rights. A good example is the **Convention on the Elimination of all Forms of Violence and Discrimination against Women (CEDAW)**, which has been ratified by 185 states.⁵⁶ Article 2, for example, commits States to undertake a range of measures that impact on the private sector, such as:

- ‘To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all ‘Discrimination against women’, (Article 2b).
- ‘To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination’, (Article 2c).
- ‘To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise’, (Article 2e).

More specifically, the understanding of state responsibility for human rights violations has significantly widened in recent years to include not only violations of human rights by the state or its agents, but also positive obligations to prevent abuses by private actors. Under international law, states have a general obligation to act with ‘due diligence’ to prevent, investigate and punish international law violations and pay just compensation. States may be held responsible if they fail to exercise due diligence to prevent or respond to a violation of human rights by a ‘private actor’ (such as a PMSC).

A number of international legal instruments specifically confirm this due diligence obligation in relation to violence against women. In the **Declaration on the Elimination of Violence against Women**, adopted by the UN General Assembly in 1994,⁵⁷ Article 4 states that:

‘... States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should: ... (c) Exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons’.

At the regional level, Article 7(b) of the **Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (1994)** (Convention of Belém do Para) similarly requires that States ‘apply due diligence to prevent, investigate and impose penalties for violence against women’; Article 125 of the 1995 **Beijing Declaration and Platform for Action** reaffirmed state responsibility to exercise due diligence to

prevent, investigate and punish acts of violence against women committed by non-state actors.⁵⁸

States are thus under a positive obligation to prevent, investigate and punish crimes associated with GBV and discrimination.⁵⁹ If the state fails to act with due diligence to prevent, investigate and punish abuses committed by private actors (including acts of GBV by PMSC personnel) it may also be responsible under IHRL.

Direct accountability of PMSC personnel

Staff of PMSCs can also be held directly accountable as individuals under IHL if the latter applies during an operation, i.e. if the operation is conducted in a zone of armed conflict. According to IHL, PMSC staff have the status of civilians (unless they are part of the armed forces of a state). They can face individual criminal responsibility for any war crimes they may commit. Any prosecution of crimes would usually require action by states, the enforcers of both IHL and IHRL in most jurisdictions. State action in this area is currently largely absent. The potential for the International Criminal Court (ICC) to try PMC personnel for war crimes should also not be discounted. The Rome Statute of the ICC recognises and prosecutes sexual and GBV as war crimes and crimes against humanity.⁶⁰

One reason for the lack of state action may be the practical difficulties concerning the conduct of investigations for a criminal case in a high-risk or hostile environment. A further reason may be political expediency. Governments can use PMSCs as a convenient political tool in a conflict or a post-conflict mission, either to ensure deniability, especially if a mission fails, or to cover the death of individuals working on a dangerous operation – after all a contractor’s death matters less in public consciousness than the death of a soldier. This implies that it may not necessarily be in the interest of governments to impose tight regulation and oversight on PMSCs since regulation can, of course, increase a government’s accountability for the actions a PMSC performs in its name.

5.2 National legislation and guidelines for extraterritorial crimes and wrongs

Even if private companies could be held legally accountable by international legal frameworks on human rights, these obligations would most likely have to be enforced through legislation and legal systems of individual states.⁶¹

At the moment, only very few countries, notably South Africa, Switzerland and the US have taken legislative measures to regulate PMSCs registered in their territory or ban their citizens from working as mercenaries, in an effort to prevent violations of international law and human rights.⁶² Since the US Government and US PMSCs are amongst the most significant actors in SSR activities worldwide, it is worthwhile examining the regulatory environment in the US in more depth.

For contractors with agreements with the US Government, applicable instruments include the US Military Extraterritorial Jurisdiction Act (MEJA)⁶³ and the Uniform Code of Military Justice (UCMJ).⁶⁴ Both laws proscribe gross misconduct, such as rape or homicide. Although, theoretically, both instruments can already be used, major debates are being

conducted regarding the constitutionality of some aspects of the UCMJ and the feasibility of applying MEJA. As to the UCMJ, it is unclear how an amendment making the law germane to military contractors in contingency operations, as well as in times of war, will apply to non-US companies and nationals as well as to contractors who are working for clients other than the US Government. Similar challenges apply to MEJA, although the act does not apply to non-Defence Department contractors, such as those on contract to the Department of the Interior.⁶⁵ An additional problem for the enforceability of MEJA is the complicated and expensive nature of extraterritorial prosecution: witnesses have to be questioned and evidence has to be produced thousands of miles from the US mainland. Although it has been suggested that approximately twenty civilian contractors (working for the military or CIA) have been implicated in cases of abuse of detainees in US custody in Afghanistan, Guantanamo Bay and Iraq, thus far only one, a CIA contractor, has been prosecuted by the US Department of Justice for committing acts of torture in Afghanistan (see Box 7).⁶⁶

Further, regulation of PMSC personnel can be directed at specific illegal behaviour. For example, the US Trafficking Victims Protection Act (TVPA) establishes the jurisdiction of US courts over federal government employees and contractors accused of trafficking offences committed abroad. Enforcement of the TVPA should be strengthened through regular compliance audits of contractors and subcontractors, and other states should be encouraged to adopt similar legislation and compliance mechanisms.

There are several practical problems that may be raised with respect to national legislation and guidelines regulating the privatisation of security. For example, states have a duty to protect persons from potentially harmful activities by companies and private actors within their own territory and within territories under their control (e.g. during an occupation). However, there is no corresponding obligation within IHRL to establish extraterritorial jurisdiction to protect potential victims who are under the effective control of a third state, unless the violations are subject to universal jurisdiction as grave breaches of the Geneva Conventions or other serious violations of human rights, such as genocide

and apartheid. If a company operates outside the state in which it is registered, the state of registration only has 'the obligation to enact legislation and regulations to prevent the abuse of human rights by the company registered in its own jurisdiction *as far as possible*'.⁶⁸

Many states where PMSCs operate do not have the political will or the capacity to protect persons within their own territory from the actions of PMSCs. This is especially the case in failing or failed states where the legal system has effectively ceased to function. This has led one legal advisor with the International Committee of the Red Cross (ICRC) to remark that 'the lack of accountability in the state in which companies carry out activities, especially in situations of conflict, combined with the lack of enforcement in the state of registration because of procedural obstacles or the lack of legislation can lead to serious protection gaps'.⁶⁹

The pursuit of a violation of human rights in a third state is difficult, and few states recognise the criminal responsibility of companies.⁷⁰ There is, however, the possibility of civil litigation for damage suffered in another state in a number of national legal systems, such as those of the UK and the US. This option has yet to be fully explored, but companies are expecting lawsuits under instruments such as the Alien Torts Claims Act (US) and vicarious liability in English law. Vicarious liability is legal responsibility imposed on an employer for a tort (civil wrong) committed by his employee in the course of his employment.

Civil litigation is currently occurring in four cases being brought before the civil courts in the US for alleged sexual harassment and rape perpetrated in Iraq by employees of the contractor Kellogg, Brown and Root. (See Box 8). This demonstrates that internal investigations are not sufficient and that companies should pass on any cases concerning allegations of sexual harassment and rape to the relevant authorities as a default policy.

Box 7

United States of America v. David A. Passaro ⁶⁷

One example where national law was applied effectively was the case of David A. Passaro, an independent contractor working in Afghanistan on behalf of the CIA. In June 2003, he was engaged in paramilitary training activities in support of the US military at the Asadabad Base in Kunar Province, North Eastern Afghanistan.

Abdul Wali, a local Afghan farmer, was among a group of individuals who were suspected of perpetrating attacks. On 18 June 2003, Wali voluntarily turned himself in to American forces at Asadabad Base after being assured of his safety.

Passaro tortured Wali during interrogation while at least three paratroopers from the Army's 82nd Airborne Division watched. Witnesses said Passaro enthusiastically volunteered to interrogate Wali and became enraged when he wasn't able to answer questions, evidently because Wali had nothing to do with the rocket attacks. According to the prosecutors, Wali, whilst chained to the floor and wall of a cell, was tortured and beaten by Passaro on the arms, wrists, knees and abdomen using a metal flashlight, closed fist and shod foot. Passaro also, on at least one occasion, kicked Wali in the groin and his prostrate body. On 21 June 2003, Wali was pronounced dead.

On 17 June 2004, Passaro was the first civilian to be charged in connection with prisoner torture in Afghanistan and Iraq and the first American charged under the USA PATRIOT Act, which extended the jurisdiction of US prosecutors overseas.

Passaro was found guilty of one felony and three misdemeanour assault charges and sentenced by a North Carolina Federal Court in February 2007 to serve a term of 8 years and 4 months.

Box 8 Civil action against Kellogg, Brown and Root over rape and sexual harassment

The plaintiffs, employees of Kellogg, Brown and Root (KBR), claim that they encountered a sexually-charged, alcohol-fuelled atmosphere in 2004-2005, where women were repeatedly demeaned and solicited for sex despite reporting harassment to supervisors. One suit alleging rape claims that '[t]his attack never would have occurred but for the 'boys will be boys' attitude that permeated the environment that the defendants first created, then failed to warn (the women) about – an environment that was excused, if not encouraged, and of which the defendants had ample prior notice'.⁷¹ Despite the fact that KBR claims to have fully investigated this case of rape, the US Equal Employment Opportunity Commission found that the company's internal investigation of the incident was inadequate and did not offer an adequate remedy.⁷²

5.3 Non-binding international guidelines

One example is the Code of the Voluntary Principles on Security and Human Rights, adopted in 2000 by governments, corporations in the oil and extractive industries, NGOs and observers.⁷³ The Voluntary Principles provide clear guidelines for interactions between companies, and private security providers; gender issues could be incorporated in the implementation of the Voluntary Principles at the company level. A more recent example is the Sarajevo Code of Conduct for Private Security Companies, which was drafted by industry representatives from South Eastern Europe and the UK as well as a number of representatives of NGOs and international organisations.⁷⁴

These international guidelines cover a variety of areas where gender issues could be integrated, such as hiring practices, training and respect for human rights. However, as with the company and industry-level codes of conduct, these instruments are purely voluntary and thus far only involve a fraction of the hundreds of PMSCs operating globally. They also tend to be the lowest common denominator which various stakeholders could agree on.

A more promising initiative has been launched by the Swiss Government in cooperation with the ICRC, which encourages states to promote and ensure respect for IHL and IHRL by PMSCs operating in conflict situations. The drafting of a code of conduct for international PMSCs is being considered, and gender issues are likely to be included.

5.4 Other relevant international instruments

There are other international 'soft law' standards which might be of particular relevance to PMSCs that use force.⁷⁵ Examples include the UN Code of Conduct for Law Enforcement Officials; the UN Basic Principles on the Use of Force and Firearms for Law Enforcement Officials; the Standard Minimum Rules for the Treatment of Prisoners; the Basic Principles for the Treatment of Prisoners; and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. While these international instruments have been established to apply to states and their agents, clients and hiring states could make contractual references to them as standards.

6 Integrating gender into PMSCs in specific contexts

6.1 Conflict and post-conflict countries

In conflict and post-conflict countries there is usually a shortage of public security services, and PMSCs frequently fill the gap. The dynamics in post-conflict countries are of particular interest because the recent boom in the private security sector worldwide has largely taken place in post-conflict countries, and in particular in Afghanistan and Iraq. The problems, challenges and opportunities for the use of private contractors to provide security in these two countries are highly idiosyncratic. They are therefore unlikely to be encountered again in a different setting in forthcoming years. However, because a significant presence of PSCs will still be required in both Afghanistan and Iraq for at least another five to ten years, it is crucial to consider these cases in more depth.

Reliable figures on the number of PMSCs – both local and international – in Afghanistan and Iraq are hardly available. Estimates within the industry suggest that there are about 20,000 to 25,000 private security contractors in Iraq. It is not always clear whether these figures include local Iraqi forces or not, but according to the Private Security Company Association of Iraq (PSCAI) only about half of them are from foreign countries, of which 5,000 are from Western countries and even more are nationals of third countries. Because no data is collected centrally it is also not known how many foreign contractors provide support services, such as cooking and cleaning, to the foreign forces and the PMSCs in the country today. Estimates on the number of private security contractors in Afghanistan range from 18,500 to 28,000.⁷⁶ This figure seems to include local forces but again there is no reliable data available.

Afghanistan and Iraq have highlighted the globalised nature of the private security industry and growing inequalities. PMCs and PSCs operating in these two countries have hired thousands of employees, mostly poor and under-employed men from the developing world, often at wages only one tenth of the salary of Western contractors performing similar duties.⁷⁷ Workers recruited by Middle Eastern labour brokers hail from impoverished countries such as Bangladesh, Nepal and the Philippines; they do menial labour for PSCs, such as cooking, serving food and cleaning toilets.⁷⁸ Other

contractors, former combatants from countries such as Fiji and Uganda, and from all over Latin America, more typically take up dangerous physical protection and military support duties.⁷⁹ Guards from these countries are often preferred by US companies because they are familiar with US weapons and security procedures, having been trained by American instructors during their military service.

Post-conflict reconstruction efforts in Afghanistan and Iraq largely account for the so called 'bubble', i.e. the unexpected inflation of business opportunities for PMSCs in the private security industry in recent years; and have opened up new directions for the development of the overall market. Due to the proximity to the post-conflict reconstruction effort, international PMSCs started to develop significant capacities in new areas such as SSR, DDR, development and disaster relief. With an imminent 'burst' of the bubble it can be assumed that these areas will become real growth areas for a specialised subset of the private security sector. This is therefore the time to create meaningful guidelines on gender issues for international PMSCs who are involved in these activities. These guidelines (both generic and context-specific) have to be developed in close cooperation with PMSCs and their industry associations such as the IPOA, the BAPSC, the PSCAI and the Private Security Companies Association in Afghanistan (PSCAA), as well as with government representatives and donor organisations. Only the inclusion of all stakeholders will guarantee the effective implementation, monitoring and enforcement of guidelines and standards.

Civilians, especially women, children and the elderly, are particularly vulnerable during conflicts and in their aftermath. Rates of GBV in the post-conflict period usually remain significant.⁸⁰ Thus, it is imperative that employees of PMSCs operating in a post-conflict environment be aware of and receive special training on the protection, special security needs, and human rights of women, girls and boys in conflict and post-conflict situations. Employees or contractors should also be given clear instructions on Codes of Conduct and zero tolerance policies, including as regards the sexual exploitation and abuse of vulnerable members of the host community and other PMSC employees. This sort of pre-deployment training already exists for many national armed forces engaging in international interventions, due to the mainstreaming of gender considerations in the UN peacekeeping and peacebuilding operations.⁸¹

Post-conflict situations also provide unparalleled opportunities for societal change where gender discrimination can be redressed and gender roles re-defined. Contractors, especially those involved in SSR activities, such as police and military training, should pay special attention to gender and human rights issues. These may include GBV, dealing with vulnerable members of society and supporting increased opportunities for women in the security sector. Liberia, for example, has adopted a 20% quota for women's inclusion in the police and armed forces,⁸² meaning that PMSCs working with the Liberian police or military need appropriate skills to work with new female recruits. PMSCs, where they provide significant services in the implementation of SSR activities, should be included in the planning of gender mainstreaming from the beginning.

In post-conflict countries, it is also vital to include the local private security sector in all SSR processes, to prevent the

emergence of an unaccountable and effectively parallel sector in competition with reformed state security provision. Such parallel structures would significantly increase the risk of human rights abuses, GBV and other crimes. The international community, donors and SSR providers therefore have to develop, ideally on a case-by-case basis, clear policies on the incorporation of gender issues in their SSR operations that affect local PSCs. Lessons learned and best practices then have to be collected and made available for other SSR operations. More specifically, in many post-conflict countries, demobilised former members of the military and security forces often find work in the police and private security industry (see Section 6.2). Female former combatants and former supporters of armed groups should be fully involved in DDR processes, including their possible entry into the private security industry as part of their reintegration and as a source of civilian employment.

Challenges and opportunities for the integration of gender issues in post-conflict countries:

- PMSCs can be valuable players in any post-conflict reconstruction and SSR effort. They are almost always seen as 'ambassadors' of Western countries by host communities. Because PMSCs will respond to clients' demands, there is a real opportunity today to create standards and regulations that make PMSCs legitimate partners in overall operations. Clients and donors can, and should, insist on integrating gender issues in contracts with PMSCs.
- A post-conflict environment does not always provide legal clarity, but this does not mean that contractors operate in an environment of impunity. Improper sexual conduct, involvement in illegal prostitution or GBV must not be tolerated, either in regards to the host communities or other employees of PMSCs.
- In order to increase the effectiveness of their operations, PMSCs need to recruit more female staff for SSR work, such as police reform. This challenges PMSCs to ensure that their professional environment is one that is conducive to recruitment and retention of female staff.

6.2 Developing countries

Overall, developments in the private security market in developing countries are more staggering than in the developed world: the fastest growing markets are to be found in Africa, China, India and Latin America.⁸³

The developing world, and in particular Sub-Saharan Africa, has seen increasing privatisation of predominantly domestic security services, such as policing. Although the two phenomena of private security provision at the domestic and the international level need to be distinguished analytically in that they are caused by different circumstances,⁸⁴ they are both linked to structural changes in the social, economic, political, and strategic spheres that are truly global in nature.⁸⁵ In other words, processes of globalisation facilitate the conduct of business and the exchange of ideas across borders and thereby lead to the reproduction of models of controlling violence and dealing with security challenges. At the same time, both the demand and the supply of private security services are becoming increasingly globalised and 'commodified'.

In Africa, some of the reasons for the exponential growth of the private security market include: the downsizing of the armed forces after the Cold War; global processes of market liberalisation; the proliferation of arms and small weapons; and a general situation of insecurity.⁸⁶ One of the most important enabling factors for the emergence of private security forces is, supposedly, weak state capacity and the concomitant security vacuum in large parts of Africa.

Problems common to many African states are a pervasive sense of insecurity, a low level of trust in public security forces, general poverty and the exploitation of security guards through long working hours and extremely low salaries, thereby making them prone to involvement in criminal activity. Ameliorating the work conditions and salaries of local private security guards is likely to improve the socio-economic situation for a vulnerable sub-section of the workforce, namely, poor, uneducated men who, in many cases, have migrated to urban centres from rural areas.

In some countries, such as Angola and Sierra Leone, PSCs are the main labour market for former rebels and insurgents. The demobilisation of UNITA in Angola in 2002, for instance, made a cheap labour force with military skills available to emerging PSCs. 35,715 people are now employed by the 307 PSCs in the country. One of the main challenges in Angola is the continued use of unregistered 'weapons of war', such as AK-47s, by private security guards. This not only perpetuates a culture of war but also spurs involvement in criminal activities and human rights abuses, in particular in the diamond regions, by PSC staff. Recently, there have been initiatives to include PSCs in human rights training designed for the National Police Forces and provided by the UN Office of the High Commissioner for Human Rights (OHCHR) in Luanda. However, in the absence of systematic monitoring efforts, the long-term effects of the training are questionable.

In Sierra Leone, the private security sector is growing as well and provides employment opportunities for former combatants of the civil war that ended in 2002. In total, 3,000–5,000 people may be employed by PSCs today. Serious disputes exist over the arming of PSCs and the unequal treatment of foreign and local PSCs by the government. Both these issues, as well as the problem of exploitation of guards by local PSCs can only be resolved through the introduction of standards, regulation and oversight, which are currently absent.⁸⁷ It must be acknowledged, however that the challenges to the accountability of both local and international PMSCs operating in post-conflict environments are mainly due to weak structures which fail to ensure the rule of law.

Moreover, public and private security actors in African states are usually 'closely connected through increasingly networked security structures'.⁸⁸ Political leaders, state officials and military officers very often (co-)own PSCs; they may therefore have a personal interest in avoiding regulation or the prosecution of individual companies and/or contractors involved in human rights abuses and other crimes.

At the same time, international PMSCs sometimes avoid government regulation in the state where they are incorporated by claiming that they are held accountable by the local laws of whatever country they are operating in. While this may be technically true, the laws and enforcement capabilities of the host country are all too often inadequate.

Capps argues that 'if the locals do attempt to do something, the company pulls them out [of the country] because they'd rather not see their own employee get prosecuted. "It's bad for business".'⁸⁹ These challenges of accountability especially apply to PMSCs operating in post-conflict environments or in failed states, where institutions to ensure the rule of law are either inadequate or no longer functioning.

Challenges and opportunities for the integration of gender issues in developing countries:

- As PSCs in the developing world are increasingly providing security in public and private spaces, the lax control of registered arms is a growing concern and may increase the risk of GBV.
- Local PSCs in developing countries, as well as international PMSCs, tend to recruit their most vulnerable and lowest paid employees from marginalised groups in the developing world. These employees are often poor, uneducated, rural men, many of them former soldiers, who have been improperly demobilised and reintegrated into their societies. Enormous challenges flow from these practices and must be addressed by donors, governments and companies alike. However, with fairer wages and better benefits (in comparison to their colleagues from the developed world), greater gains towards employment equity could be achieved.

6.3 Transitional countries

The dynamics behind the emergence of private security companies are different again in transitional countries in Central and Eastern Europe and Russia. The often inflated security sector during the Communist era was radically downgraded after the end of the Cold War and left hundreds of thousands of security personnel without jobs. At the same time, the security situation deteriorated and crime rates rose, which prompted some of them to form legitimate private security businesses and others to operate at the margins of legality.

Most importantly, however, the private security sector in countries of the former Soviet Union cannot be understood through a 'Western' perspective of the public-private divide. On the contrary, the interests of state officials and PSCs are often inseparable and it would be more appropriate to speak about the 'commercialisation' rather than the 'privatisation' of security.⁹⁰ The private security sector in the Commonwealth of Independent States, and in particular in Georgia, Russia and Ukraine, is of significant concern because of insufficient or ineffective regulation and clashes of interest between various actors in the field. As Hiscock notes, 'perhaps the greatest concern is that private security governance does not appear to be regarded as an important issue. If there are few mechanisms for either parliament or the public to exercise democratic control over the sector, this is due in large part to a lingering Soviet attitude that the security sector as a whole is a matter for the state alone'. So far, PSCs are not part of any SSR efforts and data on the size and the activities of the private security sector are practically absent.⁹¹

In Russia, there is also the more recent phenomenon of authorised armed security units protecting and defending the country's two biggest energy monopolies, Gazprom and

the oil pipeline company Transneft. Under the deal, 'both companies will for the first time be allowed to employ their own armed operatives instead of contracting outside security firms. Their armed units will also have access to more weapons and freedom to use them than other private security companies'.⁹²

Against this background it becomes clear that reforming the private security sector in several countries of the former Eastern block constitutes a particular challenge. Corruption, organised crime, and weak state capacity have so far prevented the introduction of effective oversight. At the same time, however, the private security sector is a growth sector. In Bulgaria, for instance, about nine percent of the male workforce is now employed to perform private security-related jobs; yet the country's private security sector seems to be the most criminalised among the countries in the region.⁹³

Research suggests that best practice from developed countries cannot easily be introduced in the private security industry of transitional states. Rather, PSCs have to be made part and parcel of a comprehensive SSR process that addresses the challenges stemming from high levels of organised crime, an ineffective judiciary and overall poor state capacity.⁹⁴ Effective intervention by the state in terms of regulation and legislation may be more urgent here than in other parts of the world.

Challenges and opportunities for the integration of gender issues in transitional countries:

- The most challenging aspects of private security activity in transitional countries are control and oversight. These tend to tie in with gender-related issues as the lack of oversight can create a climate of impunity which enables GBV and discrimination.

6.4 Developed countries

In the developed world, the rise of private security services in the past twenty years can be attributed to several simultaneous trends. The most important one is probably the move away from the Keynesian welfare state towards neo-liberal economic policies from the 1970s onwards. Together with more recent phenomena such as the adoption of New Public Management practices it brought about an increasing role for the private sector in formerly state-run and state-controlled areas. At the same time, Western societies have become increasingly risk-aware and risk-adverse, and public security forces are not always seen as countering risks and threats appropriately.

Women are making the most inroads in the private security industry in developed countries. Although the literature about gender issues and privatised security is very limited, sociological research suggests that women suffer from a kind of re-segregation and marginalisation within companies due to gender stereotypes about their social, physical and technical abilities. One study on gender issues in the domestic private security industry in Canada found that gender segregation did not necessarily occur based on companies' recruitment and employment policies; rather, it seemed to be a result of the locations where operations were taking place, as well as the specific demands of the

clients. Employers tended to refuse to send female guards to dangerous sites and preferred to create teams where many other women were present.⁹⁵ Moreover, female security guards were only assigned to patrol high-risk sites if partnered with a male colleague. Women also tended to be placed on day shifts to 'avoid difficulties'.⁹⁶

On the other hand, although there is still resistance to women engaging in uniform-related or physical security work there are opportunities for them in areas such as covert security operations.⁹⁷ This suggests that gender roles and stereotyping need to be examined in greater depth to assist in the de-segregation of work assignments and in the promotion of female employment in the private security industry.

Another important issue for the private security sector in developed countries is the link between private security activity and policies and regulations on firearms. As the researcher Rela Mazali has noted on the situation in Israel, there are worrying links between the occurrence of domestic violence and murder of women by their intimate partners and firearms licensed to private security officers.⁹⁸ Guards working for a rising number of private policing firms, despite rules on safe gun storage, tend to take their guns home. A lack of monitoring by the companies, police and the municipality is resulting in the improper use of these registered weapons in the private sphere, including the abuse and murder of women.

Challenges and opportunities for the integration of gender issues in developed countries:

- The re-segregation and the marginalisation of female staff within the security industry have to be overcome, and countered by the targeted recruitment and promotion of women within PMSCs. The commercial advantages and operational benefits of hiring female staff should be considered more seriously.

7

Key recommendations

1. **Regulation:** Governments and PMSCs should develop – and where relevant strengthen – statutory regulation and self-regulation of PMSCs, both at national and international levels.
2. **Monitoring and reporting of gender-based violence:** Governments and PMSCs should develop, both at national and international levels, monitoring and reporting mechanisms to address both the threat and the occurrence of sexual and physical violence associated with private security personnel, especially those tasked with post-conflict protection.
3. **Contracts and quality control:** Clients of PMSCs should incorporate ongoing quality control measures and existing United Nations and donor standards on gender mainstreaming and respect for international humanitarian law and international human rights law into contracts signed with PMSCs.
4. **Industry standards on gender issues:** Civil society, industry associations, governments, international organisations and PMSCs should develop and implement policies and standards on a variety of issues concerned with the integration of gender in PMSCs, such as vetting of employees, hiring and staffing practices, sexual harassment and abuse policies, complaint procedures and gender training.
5. **PMSCs' codes, policies and procedures:** PMSCs should develop clear Codes of Conduct and zero tolerance policies on sexual misconduct and exploitation. These should be communicated clearly to employees and contractors before deployment, and be part of their own conditions of employment.
6. **Recruiting and retaining more women:** PMSCs should develop plans of action to recruit and retain more women, and to make their work environment supportive of both male and female staff.
7. **Vetting and training:** PMSCs should improve vetting standards for private security personnel, to ensure those who have committed human rights violations or gender-based violent crimes are excluded.
8. **Gender training:** PMSCs should implement gender training for all personnel, to build their capacity to integrate gender issues into operations.
9. **Research:** The academic community should engage in more empirical research on the private security industry, in particular in host countries. This should include the disaggregated impacts of private security on men and women, and research on the operations and the performance of PMSCs involved in SSR.

8 Additional resources

Useful websites

ICRC, *Privatisation of War*,
<http://www.icrc.org/web/eng/siteeng0.nsf/html/privatisation-war>

Swiss Federal Department of Foreign Affairs, *Private Security Companies*,
<http://www.eda.admin.ch/eda/en/home/topics/intla/humlaw/pse.html>

Practical guides and handbooks

DPKO, *Gender Resource Package for Peacekeeping Operations* (DPKO: New York) 2004.
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Avant, D., *Opportunistic Peacebuilders? International Organizations, Private Military Training and State-building after War* (Research Partnership on Post-war State-building: Washington DC) 2006. http://state-building.org/resources/Avant_RPPS_October2006.pdf

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