# Private Security Governance Observatory

The role of civil society organizations in promoting good governance of the private security sector

## Practical Guide

### Section 1

# The role of civil society organizations in promoting good governance of the private security sector

DCAF

a centre for security,
development and
the rule of law

**About the Observatory:**

The Private Security Governance Observatory is a network of African civil society organizations (CSOs) that seek to share knowledge and reinforce their organizational capacity to promote good governance of the private sector.

By raising awareness among CSO members, the Observatory aims to foster the exchange of ideas, experiences, information and good practices. Through its online platform, the Observatory provides tailor-made tools to support the role of CSOs in the oversight and accountability of the private security sector.

http://private-security-observatory.org/en

**About:**

The Geneva Centre for the Democratic Control of Armed Forces (DCAF) is dedicated to improving the security of states and their people within a framework of democratic governance, the rule of law, and respect for human rights. DCAF contributes to making peace and development more sustainable by assisting partner states, and international actors supporting these states, to improve the governance of their security sector through inclusive and participatory reforms. It creates innovative knowledge products, promotes norms and good practices, provides legal and policy advice and supports capacity-building of both state and non-state security sector stakeholders.

DCAF's Foundation Council comprises 62 member states, the Canton of Geneva and six permanent observers. Active in over 70 countries, DCAF is internationally recognized as one of the world's leading centres of excellence for security sector governance (SSG) and security sector reform (SSR). DCAF is guided by the principles of neutrality, impartiality, local ownership, inclusive participation, and gender equality.

For more information please visit www.dcaf.ch.

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# List of Acronyms

| | |
|---|---|
| **AU** | African Union |
| **CSO** | Civil society organization |
| **ECOWAS** | Economic Community of West African States |
| **DCAF** | Geneva Centre for the Democratic Control of Armed Forces |
| **ICoCA** | International Code of Conduct Association for Private Security Service Providers |
| **ICoC** | International Code of Conduct for Private Security Service Providers |
| **IHRL** | International human rights law |
| **IHL** | International humanitarian law |
| **IO** | International organization |
| **Montreux Document** | Montreux Document on Pertinent International Legal Obligations and Good Practices for States related to Operations of Private Military and Security Companies during Armed Conflict |
| **NHRI** | National human rights institution |
| **NAP** | National Plan for the Implementation of the United Nations Guiding Principles on Business and Human Rights |
| **NGO** | Non-governmental organization |
| **PMSC** | Private military and security company |
| **PSC** | Private security company |
| **Observatory** | Private Security Governance Observatory |
| **UN** | United Nations |
| **VPs** | Voluntary Principles on Security and Human Rights |

# Definitions

**Civil society organization (CSO):** Civil society organizations (CSOs) are defined in particular by their goal of contributing to collective wellbeing and to the promotion of a model of society based on values and rights. CSOs work for the defence of common goods, such as the protection of nature, the preservation of cultural heritage, peace, human security, access to rights for all and the operationalization of democratic governance founded on the rule of law. CSOs and their actions are part of a specific legal framework (specific to their country of origin). Beyond formally constituted CSOs, there are also other forms of representation of civilian populations and communities by groups of citizens who are not elected but involved in the interaction with populations and the public authorities, and which can be likened to CSOs.[1]

According to Art. 3 of the Statutes of the Economic, Social and Cultural Council of the African Union, 'CSOs include:

a) Social groups such as those representing women, children, the youth, the elderly and people with disability and special needs;

b) Professional groups such as associations of artists, engineers, health practitioners, social workers, media, teachers, sport associations, legal professionals, social scientists, academia, business organizations, national chambers of commerce, workers, employers, industry and agriculture as well as other private sector interest groups;

c) Non-governmental organizations (NGOs), community-based organizations (CBOs) and voluntary organizations;

d) Cultural organizations.'[2]

**Good governance of the private security sector:** Good governance of the private security sector is the application of the principles of good governance to the provision, management and oversight of security services delivered by private security companies.

These principles of good governance are accountability, transparency, the rule of law, participation, responsiveness, effectiveness and efficiency. Good governance means that the private security sector is able to deliver its services in an efficient and accountable manner, within a framework of civil and democratic oversight, and in accordance with the rule of law and human rights.[3]

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[1] Augustin Loada & Ornella Moderan, *Civil Society Involvement in Security Sector Reform and Governance,* DCAF, 2015, p. 3–6, available at: https://www.dcaf.ch/sites/default/files/publications/documents/SSR_toolkit-T6-EN-FINAL.pdf.

[2] See Art. 3 of the Statutes of the Economic, Social and Cultural Council of the African Union, available at: https://au.int/en/documents/30971/statutes-economic-social-and-cultural-council-au-ecosocc.

[3] This definition is adapted from the general principle of good governance as applied to the security sector, mentioned in particular in the African Union Policy Framework on Security Sector Reform, Section B.16 (h).

The regulation of private security companies (PSCs) refers to the technical activity at national, regional or international level to ensure that PSCs respect the principles of good governance of the private security sector.

**International human rights law (IHRL):** IHRL lays down obligations and duties for States to respect, to protect and to fulfil human rights. IHRL is a set of international rules established by treaty or custom on the basis of which individuals and groups can expect and/or claim certain behaviour or benefits from governments. A series of international human right treaties and other instruments give legal form to human rights.[4]

**International humanitarian law (IHL):** IHL is a branch of international law; which prescribes rules seeking to limit the effects of armed conflict and to protect people who are not or are no longer participating in hostilities. IHL restricts the means and methods of warfare. IHL applies in situations of armed conflict, whether international or non-international, as defined in IHL. IHL is contained in several treaties, including the four Geneva Conventions of 1949 and their Additional Protocols as well as in customary international law.[5]

**Private military and security company:** "PMSC" encompasses all companies which provide either military or security services or both, irrespective of how they describe themselves. Examples of military services that companies can provide (but are not limited to) include: material and technical support to armed forces, also strategic planning, intelligence, investigation, training activities with military implications, satellite surveillance, or other related activities. Security activities can include (but are not limited to) guarding and protection of persons and objects (whether armed or unarmed) and any kind of training activities with a security application.

**Private security company (PSC):** See PMSC. Some States and international organisations regulate the industry by referring to private security companies without reference to companies who provide military services. Other States have regimes that address PMSCs and PSCs separately. This Guide generally uses the term 'PSC' to refer to companies providing security services in general.

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[4]  The main universal legal instrument is the Universal Declaration of Human Rights, adopted by the United Nations General Assembly in 1948. Other universal treaties include the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and treaties relating to the prohibition of torture and other forms of cruel, inhuman or degrading treatment or punishment, to the elimination of racial discrimination and discrimination against women, or to the rights of the child. See also https://www.icrc.org/en/document/what-difference-between-ihl-and-human-rights-law.

[5]  For more information, see the ICRC database on IHL:
https://www.icrc.org/en/icrc-databases-international-humanitarian-law.

# About this Guide

Civil society organizations (CSOs) play a fundamental role in building democracies based on respect for the rule of law, meeting people's needs and demonstrating accountability and transparency to the population. As the private security sector grows in importance around the world, it is essential that engaged and capable CSOs are actively involved in ensuring good governance in this sector. The ability of CSOs to contribute to the good governance of the private security sector depends first and foremost on the context in which they operate. However, the lack of information on the private security sector, the lack of adequate tools to monitor their activities as well as national policies inadequately addressing the problematics of the sector are factors that may limit the ability of CSOs to address and to adequately and effectively meet the challenges of the sector. In addition, the absence of an enabling environment (lack of national political will, conflict situations, etc.) often hampers the capacity of CSOs to act effectively in this area. For CSOs to be able to play a more effective role in promoting and improving good private security governance, they need to be aware of issues relating to this sector and have access to a platform to meet and exchange experiences, challenges and good practices.

With this in mind, CSOs that are members of the Private Security Governance Observatory (the Observatory) recommended the organization of training and capacity-building activities to support consistent and long term work on good governance of the private security sector. This recommendation lies behind the development of this Practical Guide, which aims to support

## 👥 WHO IS THIS PRACTICAL GUIDE FOR?

The target audience of this Guide is primarily CSOs from all sectors that are engaged or willing to engage in the good governance of the private security sector. This Practical Guide has been developed by and for CSOs with the aim of offering a frame of reference to support their efforts. The topics covered in each section address needs identified by CSOs themselves and aim to provide CSOs, regardless of their level of skills and knowledge, with guidance on how to incorporate the promotion and improvement of good private security governance into their daily tasks.

This Practical Guide may also be useful to a broader set of actors interested in the topic of private security. It can thus serve as a reference and recommendation document for national human rights institutions (NHRIs), government officials, researchers, or actors within the private security sector.

The content of the Practical Guide may also be used to support training, for example during national, regional or local workshops.

CSOs in their crucial role of promoting and monitoring good governance of the private security sector. This Guide also aims to serve as a catalyst and promotional tool to network civil society at national, regional and international levels.

This Practical Guide focuses on improving the knowledge and capacity of CSOs in the governance of the private security sector; it aims, through a gradual process, to raise awareness of the issue of good governance of private security, to improve CSOs' knowledge of the sector, to foster their active role in order to promote and improve the governance of the sector and to resolve issues related to human rights abuses committed by PSCs.

## YOUR CONTRIBUTION

The Observatory relies on the active participation of its members and the exchange of experiences, knowledge and good practices. In this spirit, we would appreciate your comments and contributions – whether related to the content of the Practical Guide or to sharing experiences, knowledge and good practice within the Observatory network.

Please contact us via the online platform: **http://private-security-observatory.org/en**,

Or contact us at the following address: **info@privatesecurityobservatory.org**.

# Introduction

## Context

The landscape of the private security sector differs greatly from country to country. Nevertheless, across the African continent it has one main common feature: it is a thriving and expanding sector, which has become an important player in the provision of security. In many States in the region, this sector is also characterized by outdated, weak and ineffective legislative frameworks. This creates challenges in terms of security and the respect for human rights. Various recurrent challenges have been identified within private security companies (PSCs) in the region, including allegations of violations of human rights and international humanitarian law, a lack of transparency, inadequate staff training, abusive working conditions and non-transparent recruitment processes.

Where national authorities may not have the necessary political will, resources or knowledge to address these issues, CSOs have a particularly important role to play in helping to bridge
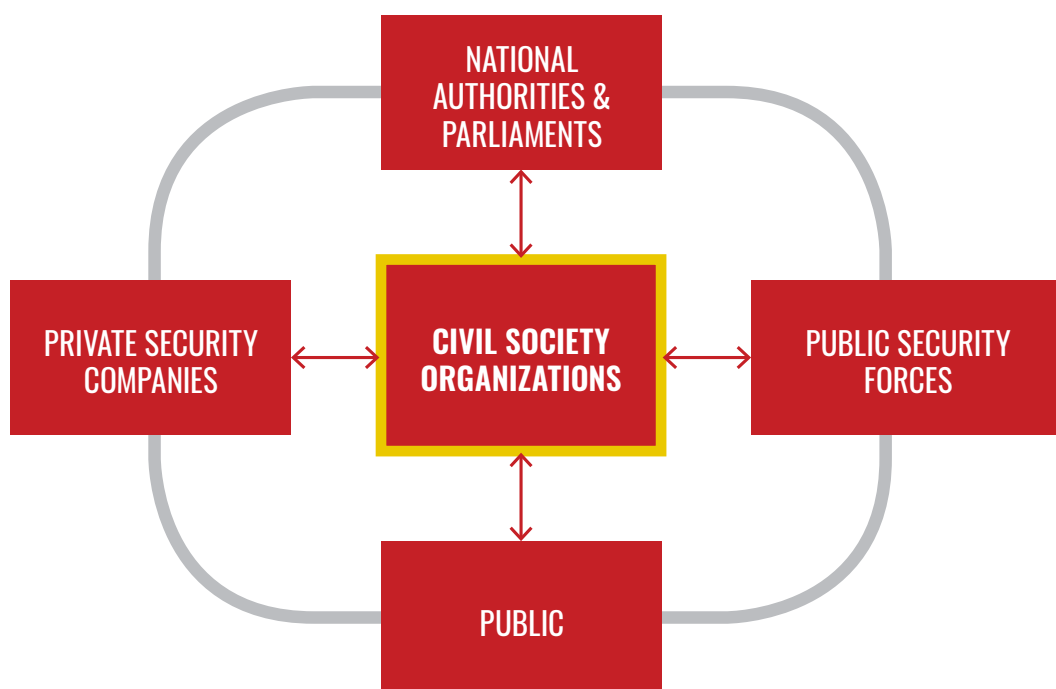


**Graphic 1:** A multitude of actors play or can play a role in the good governance of the security sector. Through the different roles that they are likely to assume in this domain, CSOs may be brought to interact with each of these actors.

these gaps and to ensure good governance of the private security sector. When equipped with the ability to interact with all relevant actors or to facilitate their interactions – whether as human rights defenders, as the voice of the community likely to engage dialogue with various stakeholders, or as spokespeople between the various stakeholder groups, CSOs become a key player.

By incorporating the thematic of private security into their activities, CSOs can build on existing relationships and expertise to assume a fundamental role in the good governance of this sector, for example through advocacy vis-à-vis the various actors, through human rights and community support projects or by condemning violations through various means such as the publication of press releases, reports or open letters.

**This Practical Guide aims to fill the gaps in the knowledge and skills of CSOs in order to enable them to fully realize their potential and to take an active role in promoting and improving good governance of the private security sector. This tool provides advice and guidance to strengthen CSOs' knowledge in this area and consolidate their ability to act without delay.**

# Structure of the Practical Guide

The Practical Guide provides CSOs with two main sections to strengthen their capacity to promote and improve good governance of the private security sector:

**Section 1: Knowledge building (existing resources, development of the analysis);**

**Section 2: Putting knowledge into action (awareness raising and contribution to national policies, monitoring, complaint management and victim support).**

The first section, 'Knowledge building', provides a general point of departure. This section facilitates the building of a strong knowledge base and an understanding of the sector and its regulations. The building of knowledge is thus an end in itself as well as an important step towards deepening the involvement of CSOs in the good governance of the private security sector.

The second section, 'Putting knowledge into action', puts forward concrete actions that can be undertaken by CSOs to facilitate good governance of the private security sector. It is divided into three main types of activities, each of which will be the subject of guidance: awareness raising and contribution to national policies; monitoring; and handling of complaints and victim support. **This second section will be developed after finalization of the first section**.

## Practical Guide

Role of CSOs in the good governance of the private security sector

↓

### Section 1: Knowledge building

Enables CSOs to contribute to the good governance of the private security sector

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### Section 2: Putting knowledge into action

- Awareness raising and contribution to national policies
- Monitoring
- Complaint management and victim support
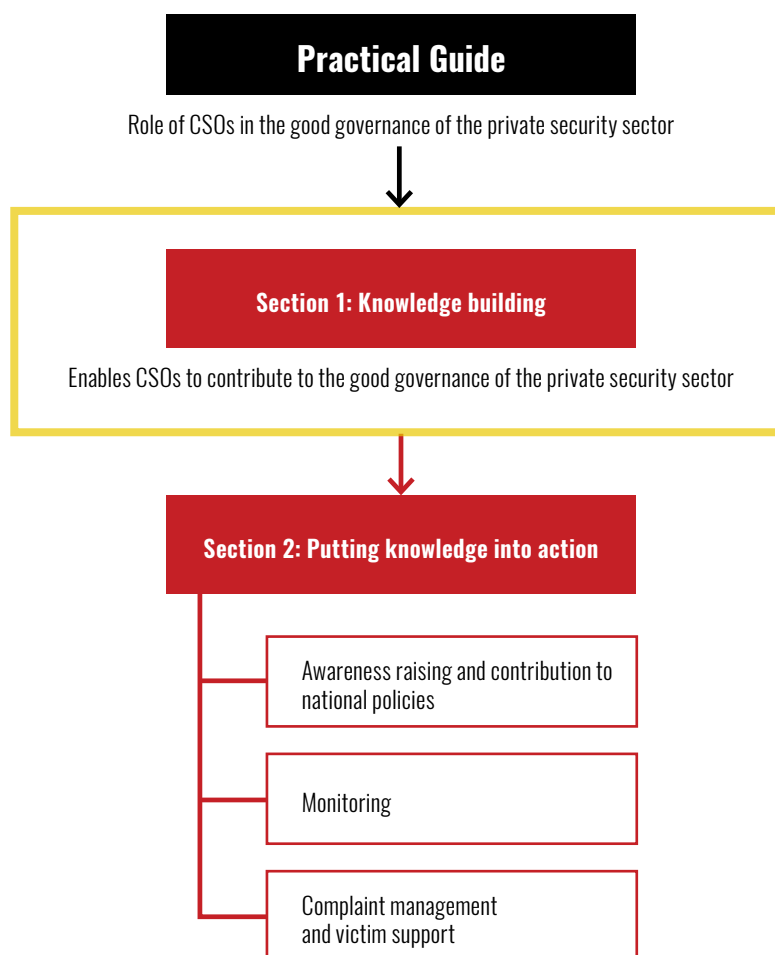
**Graphic 2:** Structure of the Guide.

# Objectives of the Practical Guide

This Guide has the following objectives:

**1.** To raise awareness of issues relating to good governance of the private security sector, as well as the potential of CSOs to take concrete actions in this area;

**2.** To reinforce the core competencies of CSOs and other actors by providing straightforward advice and guidance. Each section of the Practical Guide specifically aims to strengthen a proactive role or type of action that can be undertaken by CSOs.

> Deepen and share knowledge and experience related to the good governance of the private security sector and contribute to addressing the lack of reliable and systematic data on the sector and its impact;

> Help raise awareness and engage stakeholders (including national authorities, the industry, the public and other relevant actors);

> Contribute to monitoring of the industry;

> Contribute to addressing the absence of mechanisms to file and handle complaints about allegations of human rights abuses relating to the private security sector, or to supplementing existing mechanisms.

# SECTION 1

## Knowledge building

# SECTION 1. KNOWLEDGE BUILDING

**Practical Guide**

Role of CSOs in the good governance
of the private security sector

A common challenge for the private security sector
across Africa: Lack of research and analysis

**Section 1: Knowledge building**

**A. Existing resources**
1. International regulations and initiatives
2. Regional regulations and initiatives
3. National legislative frameworks and contexts

Enables CSOs to contribute to the good governance of
the private security sector

Report
or other
dissemination
medium;
Contribution to the
Observatory

**B. Development of the analysis**
1. Methodology
2. Checklist

**Section 2: Putting knowledge into action**

Awareness raising and contribution
to national policies

Monitoring

Complaint management
and victim support

**Graphic 3:** Position and structure of Section 1 of the Practical Guide.

Fundamental questions about the nature and scope of the private security sector remain unanswered in Africa. In many contexts, the specific characteristics of this sector are unknown and it is sometimes difficult to know:

- What services do private security companies offer?

- What are the legal bases regulating this sector?

- Who is responsible for the oversight and accountability of the sector?

Indeed, in many States, the security sector in general is surrounded by traditions of secrecy; this is particularly evident in the private security sector, which is often characterized by a

lack of transparency. This opacity has resulted in a lack of understanding of the nature of the industry which is governed by outdated and inadequate laws and regulations.

There are several entry points through which CSOs can contribute concretely and effectively to the good governance of the private security sector. The potential contributions of CSOs depend on the national context as well as the specific capacities and areas of expertise of each organization. While taking into account that specific strategies must be defined according to the needs and resources of each particular case, this Practical Guide has identified three main lines of action that capture the potential contributions of:

a. **Awareness raising and contribution to national policies;**

b. **Monitoring;**

c. **Complaint management and victim support.**

These three categories will be examined successively and in detail in the second part of the Practical Guide 'Putting knowledge into action'. These three categories all have a common point of departure: they require CSOs to first acquire a sound knowledge of the private security sector:

- its context,

- its characteristics,

- its legal and regulatory framework,

- its challenges and its problems.

**This knowledge can feed into and guide the advocacy activities undertaken by some CSOs; it can also be used directly in engagement with a range of actors (government, other CSOs, private security sector actors) or serve as a basis for contributions to discussions and debates on national policies relating to private security.**

Indeed, without a sound knowledge of the sector, based on reliable sources, it is impossible to identify the issues relating to the sector, then to respond adequately and effectively through concrete actions. This is why the first section of this Practical Guide is focused on knowledge building: in this section, CSOs are encouraged and empowered to undertake research that will allow them to acquire a sound understanding of the profile, dynamics, different actors and legislative and regulatory framework relating to the private security sector at the national level.

It is important to take into account the security landscape as a whole: PSCs are not isolated actors, but an integral part of the broad spectrum of security actors within society at large. For example, the effectiveness and perceptions of the police may have a direct influence on the role, importance and demand for private security services. Across Africa, the private

security sector increasingly presents a complex profile, involving a multitude of both formal and informal actors. This includes not only those PSCs operating officially – i.e. PSCs registered with the authorities – but also community security groups, security personnel recruited by large multinationals (such as, for example, extractive companies' security units), or informal security actors. Each of these groups present specific challenges and issues. Unregulated informal actors play a significant security role in many contexts; multinational firms for example often recruit security personnel from abroad, who may lack cultural sensitivity and have difficulty integrating into and acclimatizing to local customs. This practical guide focuses specifically on the PSC sector.

# Existing resources

# A. EXISTING RESOURCES

There is already a wealth of existing resources and information available, whether at international, regional or national level to support efforts to promote good private security governance. As part of the process of consolidating knowledge, it is important that CSOs have access to existing documents and information. Divided into two parts, this section provides an overview of the resources available and offers avenues for further research:

■    The first part introduces the most influential **regulations and international initiatives** and explains how this can be useful for CSOs.
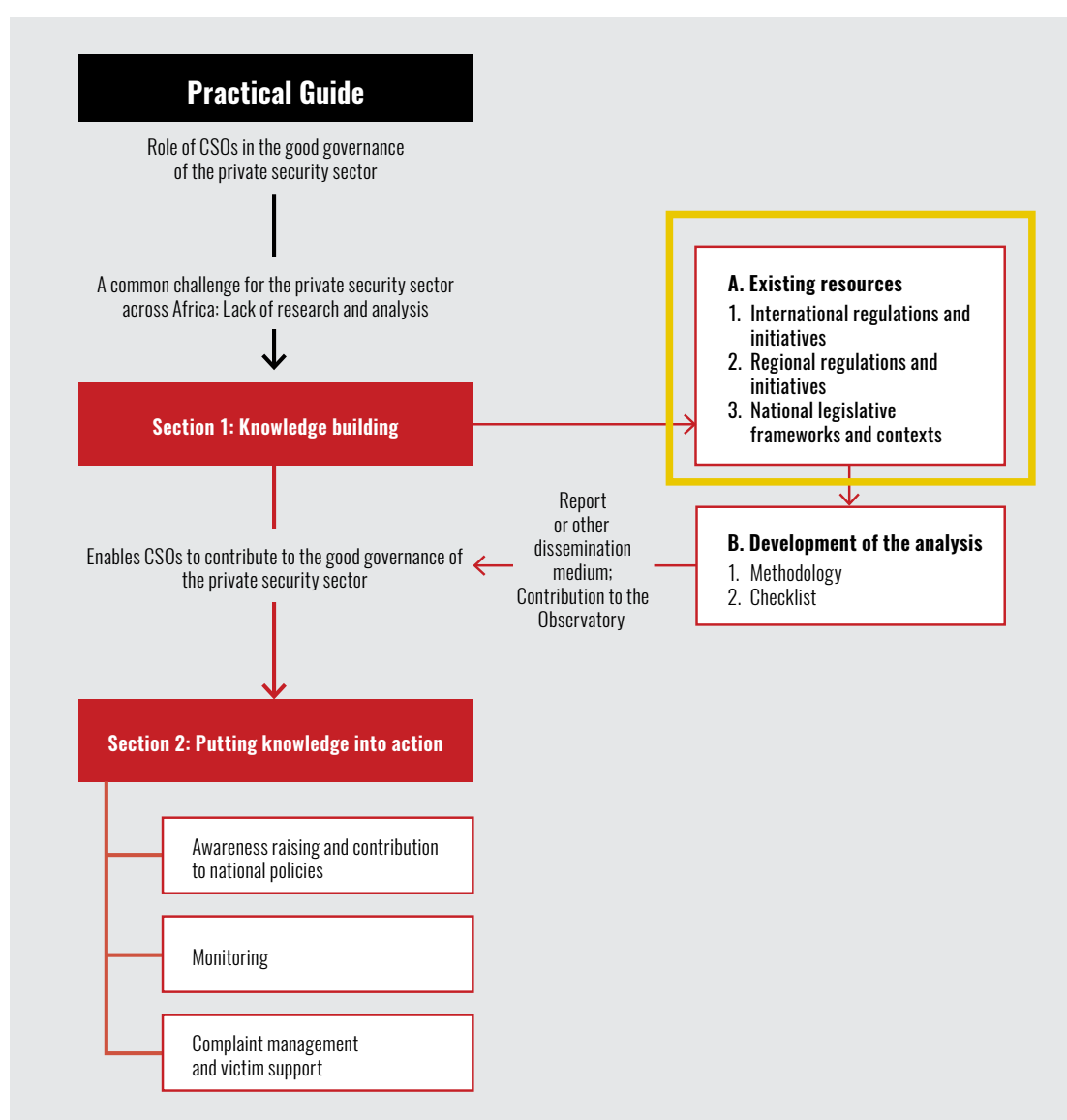


**Graphic 4 :** Situation de la section A. Ressources existantes au sein du Guide pratique (TRANSLATION)

- The second part **identifies regional initiatives relating to private security**.

- Finally, the third part provides an **introduction to national approaches** by highlighting gaps and by focusing on how to identify what knowledge is available and how to leverage it.

# 1. International regulations and initiatives

At the international level, the impact of the activities of private security actors has been brought to public attention following human rights violations involving PSCs operating in conflict zones,[6] which have highlighted the fact that these actors seemed to operate in a legal and regulatory vacuum.

These incidents underlined **the need to clarify applicable international legal standards and to promote good practice**. This dynamic has given impetus to the implementation of two complementary and innovative international initiatives: the Montreux Document and the International Code of Conduct for Private Security Service Providers (ICoC). These initiatives, presented below, set out legal obligations and propose good practices for States and the private security sector respectively. Human rights concerns are also at the heart of a multi-stakeholder initiative, the Voluntary Principles on Security and Human Rights (VPs). The VPs focus on a significant constituency of PSC clients – extractive industries.

The criteria and good practices relating to the conduct of private security providers are formulated in the context of the discussion surrounding business and human rights, codified in the United Nations Guiding Principles on Business and Human Rights (UNGPs). Initiatives have also emerged at the United Nations to address this problematic, in particular the Draft Convention on Private Military and Security Companies.

These international regulations and initiatives set out legal obligations and put forward good practices for States, the private security sector and the extractive industries sector respectively. Although these normative developments have so far not always been accompanied by effective implementation on the ground,[7] they provide CSOs and other actors with an international frame of reference to support the adoption of effective regulation of the private security sector and to promote its good governance, in compliance with international humanitarian law and human rights. These international regulations and initiatives also constitute a multi-stakeholder approach that provide an important opportunity for CSOs to work with other actors (both public and private) to generate positive synergies at national, regional and international levels.

The most influential international regulations and initiatives in private security sector governance are presented below. For each of them, the Guide briefly introduces the content of these standards, then explains how they are directly relevant for CSOs and other actors, and finally provides links to documents as well as avenues for further research.

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[6]  See, for example, the September 2007 security incident in Nissour Square, Iraq. For the African context, see note 12.

[7]  See Pedro Rosa Mendes, *Business and Security Sector Reform: The Case for Corporate Security Responsibility*, DCAF, 2015.
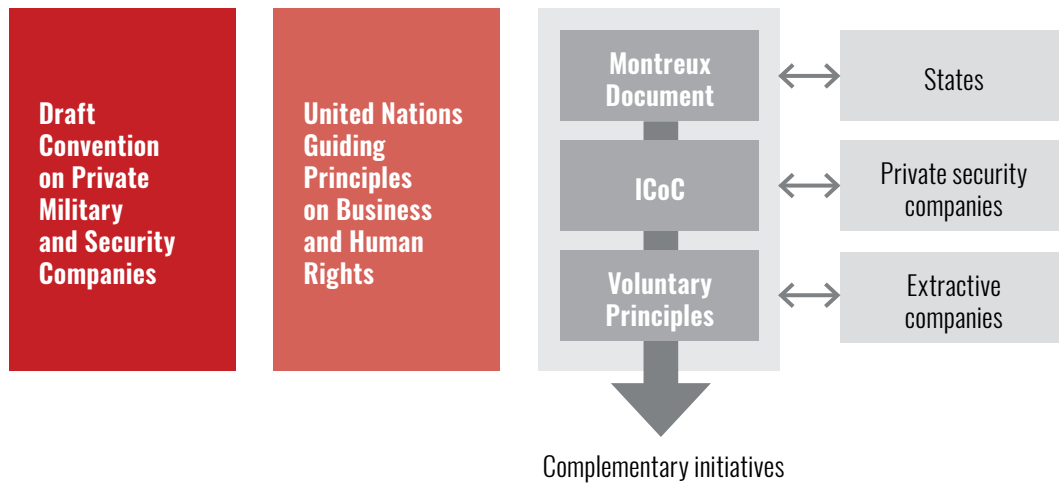
**Graphic 5:** Relations between the different international regulations and initiatives.

## a. The Montreux Document on Private Military and Security Companies (Montreux Document)

### 💼 CONTENT

The Montreux Document was adopted in 2008 by 17 States and is the result of a joint initiative by Switzerland and the International Committee of the Red Cross (ICRC). By July 2017, it was supported by 54 States and 3 international organizations. It is the first international document to reiterate States' obligations under international law, in particular IHRL and IHL, with regard to the activities of PMSCs. Without taking a position on the legitimacy of PMSCs, the Montreux Document recalls existing international legal obligations and presents a set of good practices to guide States to take steps at national level to implement their obligations. It is not a legally binding treaty and does not create new legal obligations.

The Montreux Document was designed to promote respect for international humanitarian law and human rights when PMSCs operate in the context of armed conflict. Nevertheless, existing obligations and good practices can also inform post-conflict situations and other comparable situations. The Montreux Document is based on existing provisions in international humanitarian law and human rights law: this means that any State – whether a party to the Montreux Document or not – is required to implement these provisions.

### 🏛 RELEVANCE FOR CSOs

While the Montreux Document is primarily addressed at States, the good practice in implementing existing international legal obligations that it proposes can help CSOs work with governments in setting up effective monitoring and oversight of PMSCs.

The good practices of the Montreux Document deal with concrete issues such as licensing processes, selection criteria or contractual arrangements and allow CSOs to suggest to States a number of effective methods for controlling the activities of PMSCs with which they come into contact.

The Montreux Document also provides CSOs with a benchmark for comparison to identify potential gaps in national PMSC legislation. The Montreux Document can thus serve as a guide for CSO activities in raising awareness and contributing to national policies.

For example, Good Practice 10 of the Montreux Document recommends that PMSC personnel receive adequate training 'to respect relevant national law, international humanitarian law and human rights law' and that training be tailored

to the general mandate of PMSCs and to the mandate specifically assigned to their personnel, citing as example themes:

- **'Rules on the use of force and firearms;**

- **International humanitarian law and human rights law;**

- **Religious, gender and cultural issues, and respect for the local population;**

- **Handling complaints by the civilian population, in particular by transmitting them to the appropriate authority;**

- **Measures against bribery, corruption, and other crimes.'**

CSOs can build on this good practice to make specific recommendations in a process of revising the national legislative framework.

## 🔍 DOCUMENTS

The Montreux Document is available online:
http://www.mdforum.ch/en/montreux-document.

For further information see: http://www.mdforum.ch/en/resources.

## b. The International Code of Conduct for Private Security Service Providers (ICoC)

### 💼 CONTENT

Based on similar foundations to the Montreux Document and in keeping with the United Nations Guiding Principles on Business and Human Rights (see below), the ICoC is aimed directly at private security companies. Its signatories 'commit to the responsible provision of Security Services so as to support the rule of law, respect the human rights of all persons, and protect the interests of their clients.'[8] The ICoC applies primarily to security services delivered in complex environments. Nevertheless, the standards and recommendations are also valid other context.[9]

Its governing body, the International Code of Conduct Association (ICoCA), is a multi-stakeholder initiative consisting of three pillars representing States, PSCs and CSOs. All members (i.e. States, private security companies and civil society organizations) participate in the ICoCA General Assembly and have equal representation on the Steering Committee, the executive decision-making body of the Association, which comprises 12 elected members.

The Association aims to promote, direct and supervise the implementation of the International Code of Conduct for Private Security Service Providers through:

- **Certification of member companies to ICoC standards;**

- **The reporting system and the monitoring and evaluation of the compliance of the performances of member companies with the ICoC; and**

- **Management of complaints about alleged violations of the ICoC.**

### ✕ RELEVANCE FOR CSOs

The ICoC principles can help CSOs in their interactions with businesses, to encourage them to provide security services in a responsible manner that respects the rule of law and the human rights of all individuals and at the same time protects the interests of their clients. The ICoC aims to define a common set of principles for PSCs and to lay the groundwork for translating these principles into standards and mechanisms of governance and oversight: these principles can guide CSO advocacy activities.

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[8]  International Code of Conduct for Private Security Providers, Preamble, Lit. 3.
[9]  To view the list of ICoCA members, see: https://icoca.ch/en/membership.

The ICoCA also provides inspiration and support to CSOs in their role of monitoring and managing complaints and supporting victims. CSOs are encouraged to contact the ICoCA in case of alleged complaints and also to become a member. The members of the ICoC recognize that it is intended to improve governance, compliance with standards and the accountability of private security. Member companies are committed to working together to achieve a process of compliance with all its provisions by other members (States, businesses and other stakeholders such as CSOs).

With respect to the ICoCA's reporting, monitoring and evaluation ('performance assessment') functions, CSO members of the ICoCA are essential sources of information on the ground to verify or provide data on compliance with ICoC principles in operations conducted by PSCs. Regarding the ICoCA's function of examining complaints, CSOs can provide valuable information on existing complaints, or themselves file new complaints to the ICoCA to ensure fair and equitable remedies.

## 🔍 DOCUMENTS

The ICoC is available online:
https://icoca.ch/sites/all/themes/icoca/assets/icoc_english3.pdf.

CSOs are encouraged to become members of the ICoCA[10] by contacting the Association directly (info@icoca.ch).

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[10] The details of the conditions to become a member are accessible at:
https://icoca.ch/sites/default/files/uploads/Association%20Membership%20Requirements.pdf.

## c. Voluntary Principles on Security and Human Rights (VPs)

### 💼 CONTENT

The Voluntary Principles on Security and Human Rights (VPs), established in 2000, is a multi-stakeholder initiative involving States, companies and non-governmental organizations. These Principles are specifically designed to guide extractive companies in maintaining the safety and security of their operations in an operational framework that ensures respect for human rights and fundamental freedoms. More specifically, the VPs guide companies in carrying out a human rights risk assessment as part of their engagement with public and private security providers, to ensure that human rights are respected during operations to protect business facilities and premises.

In this framework, the VPs deal with the interactions between extractive companies and private security providers. The VPs note that it may be necessary to engage private security providers to complement the services provided by public security forces and put forward a series of principles to guide the behaviour of private security actors.

### ⚙ RELEVANCE FOR CSOs

The VPs are particularly relevant in the African context, given the scale of extractive operations carried out by international actors.

The VPs formulate a series of voluntary principles that guide the behaviour of private security actors and provide practical guidelines to help extractive companies effectively manage the risks associated with their projects. In addressing PSCs, the VPs recommend that private security services be maintained at a high level of technical and professional competence, particularly with regard to the use of force and firearms. In addition, the VPs recommend that companies using private security providers include these principles in the contractual arrangements contained in agreements with private security providers and ensure that private security personnel are adequately trained.

In parallel, the VP initiative also provides a platform for mutual learning, joint problem solving and a framework for building the capacity of key actors – including CSOs.

In particular, CSOs can commit to support the VPs and can benefit from these standards at two levels. At the international level, CSOs can join this initiative in order to guide it and share experiences, concerns and good practices with other CSOs, governments and member companies. Please find additional information as well as the application framework under: http://www.voluntaryprinciples.org/for-ngos/.

At the national level, CSOs can establish or join a working group on the VPs: this is a multi-stakeholder group that focuses on the implementation of the VPs depending on their national context. VP working groups currently exist in Colombia, the Democratic Republic of Congo (DRC), Ghana, Myanmar, Nigeria and Peru. As part of a working group, CSOs can contribute to activities relating to human rights at the local and/or national level. Please find below additional information on the development of the model used by the Peruvian working group: http://securityhumanrightshub.org/content/toolkit.

The Nigerian organization Lite-Africa is as an example of the implementation of the VPs. Lite-Africa has been a member of the VPs since 2006 and, since then, has been working on the integration of human rights into extractive operations. Their activities in this context have included the completion of a training programme for Chevron Nigeria Ltd's security personnel, from which over 1,500 operational staff benefited. The training has helped to reduce tensions between the company and local communities, but also resulted in a reduction in security breaches at the company's facilities.[11]

### 🔍 DOCUMENTS

Voluntary Principles on Security and Human Rights (VPs):

http://www.voluntaryprinciples.org/.

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[11] For more information on Lite-Africa's activities in relation to the VPs, see their Basic Reader, available at: http://www.lite-africa.org/basic_reader%20_update.pdf.

## d. Other international initiatives

> **💼 CONTENT**
>
> Other documents and international standards or initiatives also deal with good governance of the private security sector, including:
>
> **The United Nations Guiding Principles on Business and Human Rights (UNGPs)**
>
> The United Nations has recognized that commercial activities can have negative human rights impacts and in 2005 created a 'Working Group on the issue of human rights and transnational corporations and other business enterprises'. In 2008, this mandate culminated in the development of the 'Protect, Respect and Remedy' reference framework and its implementation framework: the United Nations Guiding Principles on Business and Human Rights (UNGPs), adopted in 2011.[12] These principles are applicable to all branches of commercial activity, and thus also apply to the private security sector.
>
> The 'Protect, Respect and Remedy' reference framework is based on three pillars:
>
> 1. The existing obligations of States to respect, protect and implement human rights and fundamental freedoms;
>
> 2. The role of companies as specialized bodies in society performing particular functions, required to comply with all applicable laws and to respect human rights;
>
> 3. The need for rights and obligations to be accompanied by appropriate and effective remedies in case of violations.
>
> **Draft Convention on Private Military and Security Companies**
>
> In 2005, the Human Rights Council set up a 'Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination'. In 2010, this group submitted a Draft Convention to regulate the activities of private military and security companies. Through Resolution 15/16, the United Nations Human Rights Council also established an open-ended intergovernmental working group to examine the possibility of developing an international regulatory framework for the regulation, supervision and oversight of the activities of private military and security companies, complementing the Draft Convention and considering the possibility of developing an international regulatory framework. Negotiations on the content and existence of this Convention are still ongoing.

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[12] Document accessible at:
http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

## ⚙ RELEVANCE FOR CSOs

The UNGPs are the overarching global framework that guides the behaviour of governments as well as corporations in terms of respecting human rights. The Draft Convention proposes international standards and its components can be used as good practice. These documents provide CSOs with a solid baseline reference and an anchor for their activities.

In particular, the UNGPs, which are internationally recognized by States and companies, provide CSOs with a framework for dealing with corporate responsibility, including PSCs, and to justify the requirement that commercial behaviour respects human rights. The UNGPs can help CSOs remind PSCs of their responsibility to respect internationally recognized human rights, ensure that they are held accountable for human rights abuses and encourage them to improve their behaviour. By providing national and international authorities with specific information on the implementation of the UNGPs, CSOs also contribute to improving the reference framework on business and human rights.

As part of their responsibility for the dissemination and implementation of the UNGPs, States are also encouraged to adopt and implement national action plans (NAPs) for the implementation of the United Nations Guiding Principles on Business and Human Rights. CSOs can provide valuable support to States, both in the process of developing and implementing NAPs, and in particular can provide the necessary knowledge for the UNGPs to be locally appropriated and adapted to the national context. In some countries, such as Ghana, India, Nigeria and Tanzania, it is civil society organizations or national human rights institutions that have taken the first steps towards developing a NAP.[13]

## 🔍 DOCUMENTS

United Nations Guiding Principles on Business and Human Rights (UNGPs):
http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

Draft Convention on Private Military and Security Companies:
http://www2.ohchr.org/english/issues/mercenaries/docs/A.HRC.15.25.pdf.

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[13] For more information on the NAP, see:
http://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx.

# 2. Regional regulations and initiatives

The destabilizing role played by mercenaries during decolonization[14] led the Organization of African Unity (OAU) to adopt the Convention for the Elimination of Mercenarism in Africa in 1977.[15] This Convention adopts a definition of mercenarism (Art. 1.1 and 1.2), establishes mercenarism as a crime against peace and security in Africa (Art. 1.3), and excludes mercenaries from the status of combatant and prisoner of war (Art. 3). The Additional Protocol to the Geneva Conventions of 12 August 1949 on the protection of victims of international armed conflicts (Protocol I),[16] again adopted in 1977, also provides for the exclusion of mercenaries from the status of combatant or prisoner of war and adopted a similar definition of mercenarism.

It was in the early 1990s that the private security sector in Africa began to emerge as we know it today. This new sector was legally constituted; it has increasingly sophisticated means at its disposal and offers a wide range of services – both military and security. Nevertheless, the negative experiences and prejudices relating to mercenarism in the region have partly reverberated on the activities of PSCs. The use of their services sometimes gives rise to a certain degree of mistrust among the public, because some view these actors as 'modern' mercenaries, occasionally able to destabilize African States. This is particularly the case for foreign private military and security companies (PMSCs) that offer complex military services.[17] Unlike mercenarism, the activities of PMSCs have never been formally declared illegal by States. However, the expansion of PSCs is sometimes perceived as posing a risk in terms of the proliferation of small arms and light weapons. The African Union (AU) and the Economic Community of West African States (ECOWAS) recognize the importance of oversight over, and the accountability of, the private security sector. Some initiatives aiming to regulate this sector on the African continent have been implemented, either regionally or nationally, formally or informally, in the form of information sharing between governments.

Nevertheless, in Africa, regional initiatives on private security governance are still tentative. An overview of the main regional AU and ECOWAS initiatives relating to the private security sector is presented below.

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[14] Africa has long been a stage for mercenaries, sometimes called 'dogs of war' or 'soldiers of fortune', in the context of many struggles for independence in former colonies. In 1960, for example, during the attempted secession of the province of Katanga in the Congo, Moïse Tshombe called on French mercenaries, including the infamous Bob Denard, to face the Congolese army and the UN forces. Many other conflicts in the region have also seen the involvement of mercenary forces – as in the case of coups d'état in the Comoros, the Biafran war and the civil war in Angola. The intervention of mercenaries, perceived as instruments acting on behalf of undemocratic states and as agents of political violence, has been strongly condemned by many states, which has strongly encouraged states to adopt international instruments aimed at banning mercenarism. See Marie-Louise Tougas, *Droit international, sociétés militaires privées et conflit armé : entre incertitudes et responsabilités*, Éditions Bruylant, October 2012, Chapter IX.

[15] See the text of the Convention:
http://www.peaceau.org/uploads/convention-elimination-mercenariism-en.pdf.

[16] See the Protocol text: https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/TRA/470?OpenDocument&.

[17] PMSCs have often been involved in various conflicts on the African continent. This is the case, for example, of the South African PMSC Executive Outcomes (EO), mandated between 1993 and 1996 by the Angolan government to help fight rebel forces and then train government military troops. EO was also hired by the Sierra Leone government in 1995 to push back troops from the Revolutionary United Front, then to train a special unit of government forces. See Marie-Louise Tougas, *Droit international, sociétés militaires privées et conflit armé : entre incertitudes et responsabilités*, Éditions Bruylant, October 2012, Chapter X.

## African Union (AU):

The AU, as a continental organization, provides a dynamic forum for Member States to take coordinated positions on issues of common concern and to effectively advocate for Africa's interests. It plays a key role across the continent in promoting good governance of the security sector. It has issued a number of general references relating to the issue of the regulation of the private security sector, including the following:

- The **Principles and Guidelines on Human and Peoples' Rights while Countering Terrorism in Africa**, adopted by the African Commission on Human and Peoples' Rights. This document devotes an entire section (Part 8) to private security companies, and in particular their accountability, with reference to the Montreux Document.[18]

- In one **commentary on the right to life**,[19] the African Commission on Human and Peoples' Rights – the African Union body responsible for the protection of human rights – has stated the obligation of States to ensure that private military and security companies are responsible for their actions in cases of arbitrary deprivation of life – or involvement in such acts. The commentary also addresses transnational responsibility: States of origin must ensure accountability for any extraterritorial violation of the right to life, including violations of this right by their nationals or by companies domiciled in their territory or under their jurisdiction – or to which they have contributed.[20]

- At the **Third Annual High-Level Dialogue on Democracy, Human Rights and Governance in Africa**, held in October 2014, the AU invited States to invest more resources in the management, oversight and regulation of PSCs, whether domestic or foreign. The High-Level Conference called on the African Union Commission to work towards the adoption of a code of conduct containing standards and good practices for PSCs.[21]

- Finally, in its **Policy Framework on Security Sector Reform** published in 2014, the AU cites 'non-state security bodies: such as private security companies, informal, traditional and customary authorities and others, as may be decided by each Member State' as one of the components of the security sector. In this Policy Framework, the AU 'deplores the use of private military companies (PMCs) in security sector reform

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[18] Principles and Guidelines on Human and Peoples' Rights while Countering Terrorism in Africa, January 2016, available at:
http://www.achpr.org/files/special-mechanisms/human-rights-defenders/principles_and_guidelines_on_human_and_peoples_rights_while_countering_terrorism_in_africa.pdf.

[19] The African Charter on Human and Peoples' Rights, Art. 4.

[20] General Comment No. 3 on the African Charter on Human and Peoples' Rights: The Right to Life (Article 4), November 2015, available at:
http://www.achpr.org/files/instruments/general-comments-right-to-life/general_comment_no_3_english.pdf.

[21] DCAF, *Le Document de Montreux sur les entreprises militaires et de sécurité privées ; Rapport de la Conférence régionale en Afrique francophone et lusophone sur le Document de Montreux*, DCAF, Geneva, 2015, p. 31. However, the code of conduct does not yet seem to have been adopted.

activities in Africa either by the RECs [Regional Economic Communities], Member States or their international partners'. Where any of these parties decide to engage the services of PSCs, the Policy Framework states that they 'will conform to relevant international, regional and national frameworks regulating the activities of PSCs.'[22]

## The Economic Community of West African States (ECOWAS):

The principal objective of ECOWAS is to promote economic and political cooperation between States. Like the AU, ECOWAS has also covered the regulation of the private security sector in a number of general references that are presented below:

- The **ECOWAS Policy Framework for Security Sector Reform and Governance (SSRG)** 'recognizes that democratic governance and human security are at the core of the strategy, which aims at making security a regional public good and an essential service for citizens as well as a vital component in achieving sustainable development'.[23] In addition, in its Conflict Prevention Framework, ECOWAS refers to PSCs as part of the target groups of the 'security management'[24] component.

- The **ECOWAS Protocol on Democracy and Good Governance** addresses the training of PSCs: 'The armed forces, the police and other security agencies shall during their training receive instructions on the Constitution of their country, ECOWAS principles and regulations, human rights, humanitarian law and democratic principles.'[25]

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[22] African Union, Policy Framework on Security Sector Reform (SSR), African Union Commission, Addis Ababa, January 2013, § 20, p. 13, available at:
http://www.peaceau.org/uploads/au-policy-framework-on-security-sector-reform-ae-ssr.pdf.

[23] ECOWAS Policy Framework for Security Sector Reform and Governance (SSRG), preamble.

[24] ECOWAS Commission, ECOWAS Conflict Prevention (ECPF), Abuja, January 2008, p. 36.

[25] Art. 23, available at:
http://www.ohchr.org/EN/Issues/RuleOfLaw/CompilationDemocracy/Pages/ECOWASProtocol.aspx.

# 3. National legislative and regulatory frameworks and contexts

In almost all States, national legislative and regulatory frameworks take into account, in one way or another, the activities of the private security sector. Nevertheless, the nature and extent of the regulation of these activities varies radically from country to country. Some countries, such as Côte d'Ivoire, Kenya, Mali and South Africa have adopted detailed legislation and regulation specifically dealing with PSC operations, while other States, such as Gabon or Guinea, have not yet adopted a specific law, but regulate the activities of PSCs through other more general laws.

> **There is currently no universally accepted definition of 'private security activities', so each country has the task of defining in its own legislation what is meant by the concept of 'private security'.**

Côte d'Ivoire includes, for example, 'any company that carries out an activity of providing to natural or legal persons, permanently, exceptionally or discontinuously, services whose purpose is the security of movable or immovable property, as well as that of people'. This definition also includes companies providing 'ridesharing and transportation of funds, objects and valuable documents.'[26] South Africa, for its part, has adopted a definition listing the twelve types of activities or services considered to be 'security services'.[27] Similarly, there is no unified definition of the basic security functions of the State – a necessary concept for defining the types of functions that can be delegated – or not – to PSCs, and which subsequently makes it possible to define the role of PSCs in society. While some preconceived ideas limit PSCs to the tasks of guarding goods and people, it is clear that the African private security sector goes beyond these simple activities and has spread to many segments of the security sector. PSCs, for example, may be tasked with ensuring the security of essential infrastructures,

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[26] Côte d'Ivoire, Decree 2005-73 of 3 February 2005 regulating private security activities and the transportation of funds, Art. 2.

[27] South Africa, Law 56 of 2001, Art. 1: "'security service' means one or more of the following services or activities:
 a) protecting or safeguarding a person or property in any manner;
 b) giving advice on the protection or safeguarding of a person or property, on any other type of security service section, or on the use of security equipment;
 c) providing a reactive or response service in connection w safeguarding of a person or property in any manner;
 d) providing a service aimed at ensuring order and safety on the premises used for sporting, recreational, entertainment or similar purposes;
 e) manufacturing, importing, distributing or advertising of monitoring devices contemplated in section 1 of the In Prohibition Act, 1992 (Act 127 of 1992);
 f) performing the functions of a private investigator;
 g) providing security training or instruction to or prospective security service provider;
 h) installing, servicing or repairing security equipment;
 i) monitoring signals or transmissions from electronic security;
 j) performing the functions of a locksmith;
 k) making a person or the services of a person available, whether directly or indirectly, for the rendering of any service referred to in paragraphs (a) to (j) and (l), to another person;
 l) managing, controlling or supervising the renderin services referred to in paragraphs (a) to (j); creating the impression, in any manner, that on services in paragraphs (a) to (l) are rendered.

taking charge of the training of all or part of the public forces (police and/or army), or ensuring the management of prisons. It is therefore crucial that national laws adequately and comprehensively regulate the private security sector, and that they precisely define which activities and services can – or cannot – be delegated to PSCs.

Nevertheless, in many national contexts legislation and regulation are outdated, inadequate or insufficient. The private security sector in Africa has indeed grown very fast and has shown great adaptability to meet security demands, especially in terms of technology (CCTV, high-tech equipment, etc.), and to face up to new threats that the security and defence forces are not able to manage (terrorism, organized crime, etc.). At the same time, however, the legal and regulatory framework regulating the activities of these private security services has remained in many cases weak and inadequate, with lawmakers often being overtaken by the rapid development of this sector.

Due to the wide disparities between the different national legislative and regulatory frameworks in Africa, it is impossible to gain an overall picture of national laws, regulations and contexts relating to private security. For example, some countries have already begun adopting a legislative framework tailored to private security sector developments in their national context: this is the case of Kenya, which adopted a new law on private security in 2016,[28] whereas other countries, as mentioned above, have not yet provided a specific legislative framework for PSCs, or have regulations that are too old to take into account technological advances and recent contextual developments.

**Given these wide disparities, it is important to consider each national or regional context on a case-by-case basis in order to be able to first identify the particular challenges posed by the private security sector in each specific context and, second, determine how to respond effectively and adequately to these challenges – in order to enhance good governance of the private security sector.**

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[28] Kenya, Private Security Regulation Act, No. 13 of 2016.

# Development of the analysis

# B. DEVELOPMENT OF THE ANALYSIS

This section offers CSOs a framework that supports consolidation of knowledge of the private security sector.

The knowledge acquired during this research can later be used as a basis for the writing of a report or other written material allowing a wide dissemination of the knowledge acquired by CSOs.[29] The results can simply be shared (email, conferences, meetings, etc.), or serve as a direct source to reinforce the activities of CSOs – for example, advocacy or awareness-raising
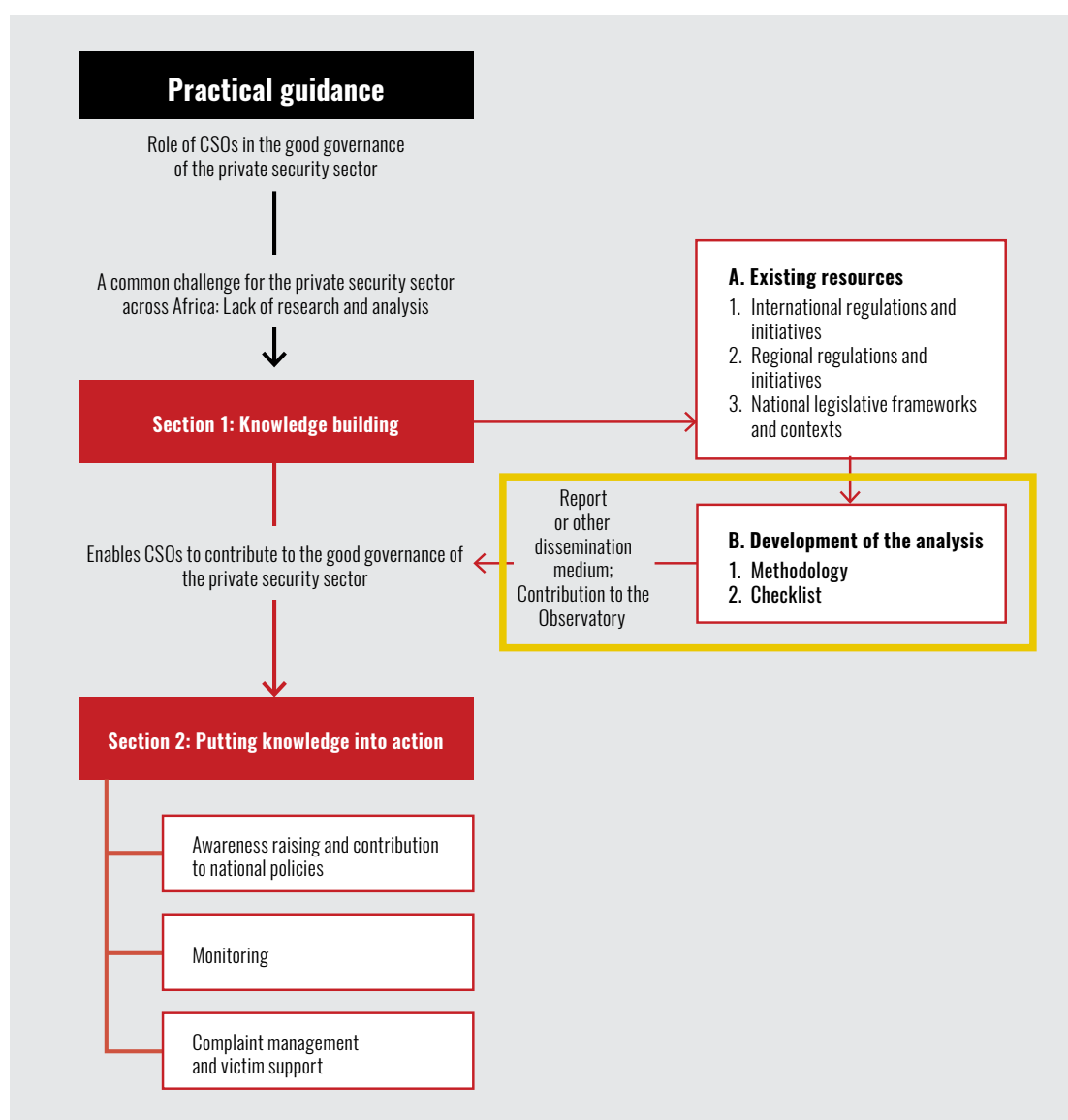


**Graphic 6:** Position of 'Section B: Development of the analysis' within the Practical Guide.

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29  For an example of a report allowing for wide dissemination of in-depth research, see Alan Bryden, *Privatisation of Security in Africa: Challenges and Lessons from Côte d'Ivoire, Mali and Senegal*, DCAF, 2016, available at: https://issat.dcaf.ch/Learn/Resource-Library/Policy-and-Research-Papers/The-Privatisation-of-security-in-Africa-Challenges-and-lessons-from-Cote-d-Ivoire-Mali-and-Senegal; for another example in a simpler format, see the country profiles published on the Observatory's online platform: http://private-security-observatory.org/en/node/119.

activities – or to make recommendations to the various actors involved (governments, private security sector, etc.). This information can also be of interest to and useful for other actors, such as the media or national human rights institutions (NHRIs). In addition, the knowledge and experience gained can be published, disseminated and shared via the Observatory's online platform.

This section first provides advice to CSOs on the methodology to be adopted to enable them to optimize their role in the governance of the private security sector. Secondly, it offers a checklist composed of research questions that allow the user to develop an in-depth contextual analysis of the national private security sector and to highlight any issues related to the delivery, management and oversight of its activities. This checklist is based on the following structure:

**STEP**
**1**

**Step 1. National context and key characteristics of the private security sector**

This first section puts the private security sector into context: Do we know the extent or importance of the sector, or how it is evolving? What factors have influenced how it is evolving? Are there any particularities specific to the private security sector in the country in question?

*Example: Overview of the private security sector in Guinea. Political tensions continue to create security risks in Guinea, against a backdrop of worsening terrorist threats. Guinea also has significant mining potential, which is attracting a growing number of very large-scale projects. As a result, the security requirements are ever greater, which has led to a rapid expansion of the private security sector. The inadequate number of public security services has also encouraged the development of the private security sector in Guinea.*

**STEP**
**2**

### Step 2. Legal and regulatory framework

This second part aims to clarify the main national legislative and regulatory sources relating to private security, as well as their essential characteristics.

*Example: National regulation of the private security sector in Senegal. Law No. 032-2003 on internal security defines the basis of the area of competence of private security companies: the latter can exercise security activities only in the field of the protection of persons and property and are subject to the obtention of a permit from the Minister of Security. Decree No. 2009-343 lays down the procedures for the activities of private security firms, while Decree No. 97-534 lays down the procedures for the activities of private investigation companies, which specify in particular the conditions for obtaining a permit to carry weapons and train personnel. Order No. 2011-0194 sets the conditions for the opening of private security training establishments.*

**STEP**
**3**

### Step 3. Challenges

This last section provides an overview of the main challenges, both regulatory and operational, highlighted by the research as well as an overview of the good practices identified in the country in question. Good practices are generally based on provisions or behaviours that reflect the good practices listed in the Montreux Document or the provisions of the ICoC or the VPs – or which confer additional guarantees and protections.

*Example: Challenges and good practices in Mali.*

— *The existing coordination between PSCs and the public forces is seen by the population as generating a positive synergy.*

— *Inadequate, insufficient and unequal training of PSC personnel presents a considerable challenge because the officers' lack of knowledge, particularly in the area of human rights and the use of force, can lead to inappropriate and inadequate behaviours and entail human rights violations. Indeed, while the law determines certain minimum training requirements for PSC personnel, each PSC is responsible for applying them. Since the training is not subject to any oversight by the authorities, the legal criteria are very unevenly applied.*

— *The working conditions of PSC personnel appear to be very unequal and often do not meet minimum legal standards, including minimum pay, insurance and hours of work.*

**STEP**
**4**

## Step 4. Findings and recommendations

This process of knowledge building offers a frame of reference that can be adapted depending on the needs and resources of the CSO conducting this type of research. As we have seen above, the methods for conveying and sharing research results are very varied.

*Example: Legal reform process in Liberia. The government of Liberia and the United Nations Mission in Liberia, together with civil society and private security sector actors, decided to work together to draft a proposal for a new legislative framework for the private security industry. Before starting the drafting process, a study of the private security industry in Liberia was conducted by civil society actors with expertise in the field. The proposed law was drafted on the basis of the findings and recommendations of this study.*

## COUNTRY PROFILES

In order to provide a database of information that is available and easily accessible to all, the Observatory's online platform compiles profiles of CSO member countries. These country profiles provide a brief overview, based initially on an evaluation of information available to the general public. The goal is to provide an easy-to-access database to enable CSOs to launch a research and to suggest avenues for deeper reflection on the topics in question. These country profiles are available at the following address:

**http://private-security-observatory.org/en/node/119**

We rely on contributions to complete, correct or clarify these country profiles.

Contributions will be particularly appreciated in order to better identify challenges and good practices:

■ What are your experiences?

■ Do you have any examples or practical cases to share?

# 1. Methodology

The governance of the private security sector is a sensitive issue, which must be approached with caution. Some actors are not always inclined to respond directly to certain requests for information or questions, or in certain circumstances may perceive them as threats. This section deals with methodology and provides practical guidance to help determine how to perform research: Which tools and sources should be used? Which actors should be contacted? What should be taken into consideration? What are the specific features of the topic of private security?

## Sources to take into account

Given the sensitivity of the topic, it is necessary to adopt an appropriate research methodology to gain a better understanding of the reality of the private security sector at the national level. For this purpose, it is preferable to combine documentary research with interviews and field surveys. In order to be able to draw up an exhaustive overview of the situation, four types of sources must be taken into account and compared:

- **Legal texts and other regulations**.

- **Academic literature and official sources**. Academic articles, public policies, the archives of government institutions and even the case law of the courts. Statistics and other reports from available official sources are also valuable sources of reliable information.

- **Media and other similar sources**. The media and other sources in the public domain (newspapers, radios stations, social media, etc.) can also provide a key source of information: this is a matter of examining the archives of various media or organizations, including local media, as well as public debates or similar sources.

## HOW THE OBSERVATORY CAN HELP

The Observatory is available to support the work of civil society:

- Have you identified the need to better understand the challenges surrounding the private security sector?
- How could such research be useful?
- Who would the target audience be? Which actors does the research aim to influence?
- What would be the potential for disseminating the findings of this research and in what form?
- Have you identified opportunities in your region that could serve as a forum for sharing and disseminating your knowledge of the private security sector?

Contact the Observatory to discuss these opportunities at the following address: **info@privatesecurityobservatory.org**.

- **Interviews and surveys**. At the same time, it is necessary to conduct interviews and surveys with a variety of actors in order to gain a practical and up-to-date view of the situation on the ground. The various actors directly involved in private security are sometimes the only ones who can provide an accurate view of the realities on the ground. Comparing various experiences provides valuable information and it is important to have access to as wide a range of actors as possible: the people and communities affected by the private security sector, PSC personnel, owners, clients, industry associations, government agents responsible for the sector, national human rights institutions, etc.

It should be born in mind that some aspects of private security may be sensitive. It is therefore important to adapt the format and the formulation of the requests depending on the actors and contexts. For example, it is possible, depending on the case in question, to use questionnaires, face-to-face or telephone interviews, or group discussions with various actors.

Taking into account as many different sources as possible makes it possible to identify in a nuanced way information and challenges relating to the private security sector – such as, for example, the way in which this sector is viewed by the different actors, or the degree of confidence it inspires. triangulating sources and actors involved makes it possible to gain a multi-stakeholder view, which is essential for the construction of an objective and comprehensive overview of the sector. This type of research also allows for deeper analysis beyond mere factual findings.

## HOW THE OBSERVATORY CAN HELP

The Observatory remains on hand to assist individual thinking on the realization of a process of knowledge building. Do not hesitate to contact the Observatory to discuss possibilities and appropriate solutions reflecting your situation, your resources and the particular needs of your organization.

Contact the Observatory at the following address: **info@privatesecurityobservatory.org**.

## Procedural notes on research work

- **Who can perform documentary research of this kind?** The profile of the person – or orgnaisations – conducting the research may also be of strategic importance, particularly in a context where it may be necessary to address sensitive and potentially conflicting topics. The profile of the researcher(s) must ensure the credibility and objectivity of their findings and facilitate their acceptance. This person must also have the necessary expertise to lead the process. It is therefore important that the researcher has both the neutrality and the expertise required, in order to be able to engage in frank and open discussions with the various actors.

- **What are the costs and time required for such research?** Each CSO has different resources – in terms of budget or staffing. Research work must therefore be adapted to the concrete needs of the organization and its resources. The field of research may, for example, be initially reduced to the concrete issues that the organization wishes to address. The research, its drafting and its dissemination can also be tailored to the means available (this can range, depending on the case, from a comprehensive publication available in print and digital formats to a simple information sheet that can, for example, be distributed by email).

### HOW THE OBSERVATORY CAN HELP

The Observatory remains on hand to facilitate access to these various sources or contacts.

The Observatory can, for example, provide letters of introduction in the name of the Observatory, or assist in the production of necessary materials (compilation of questionnaires, presentation materials, etc.).

Contact the Observatory at the following address: **info@privatesecurityobservatory.org**.

# FACTORS TO CONSIDER

Private security sector has its own specificities. Below you will find factors to take into account in order to grasp the particularities of this sector through research, and thus be able to acquire an objective and comprehensive view of this problem.

■ **Time.** Private security is a dynamic sector that is changing rapidly. It is therefore important to pay particular attention to whether sources are current: in a constantly developing context, even recent data can very quickly become obsolete.

■ **Complexity.** The topic of private security is sensitive and complex and it involves a large number of very diverse actors. In order to gain an impartial and exhaustive view of the topic, it is imperative to take into account the experiences of the different actors involved: the authorities, PSCs, personnel and clients as well as the people and communities affected by the activities of PSCs.

■ **Legal and regulatory framework/implementation dichotomy.** An up-to-date and adequate legal and regulatory framework for the private security sector does not always translate into the implementation of its provisions. Similarly, good practices may be applied despite the absence of an adequate national legislative or regulatory framework. It is therefore essential to address private security in terms of its regulatory aspect, namely reviewing national policies and the legal and regulatory framework, as well as their implementation on the ground.

■ **Terminology/language.** The terminology and language adopted for this type of research must be objective: the stated facts must be based on credible sources and must not contain value judgements. The final part of the research (i.e. the findings and recommendations) should lead to recommendations – which can, at a later stage, be used to raise awareness and contribute to national policymaking.

# 2. Checklist

The following checklist provides CSOs with some guiding questions in order to develop an in-depth contextual analysis of the private security sector for a given region or country, highlighting potential issues with respect to the delivery, management and oversight of its activities. This checklist is based on the following structure:

**Step 1. National context and key characteristics of the private security sector**

**Step 2. Legal and regulatory framework**

**Step 3. Challenges**

**Step 4. Findings and recommendations**

This checklist offers a guiding thread for research work, highlighting the important aspects to be analysed, as identified by past experience. Not all questions are relevant in all circumstances; similarly, additional topics may arise, depending on the context. This checklist is not meant to be exhaustive: it must be considered in a flexible way and tailored to each particular case.

**STEP**
**1**

# National context and key characteristics of the private security sector

Before examining the legal and regulatory framework, this section seeks to objectively portray the characteristics of the private security sector in a given national context. This section is mainly informed by reliable statistical data, the results of the interviews and surveys conducted, as well as by the historical context. It examines the CAUSES and MODALITIES of the development of the private security sector.

## Guiding questions:

### HISTORY AND SIZE OF THE SECTOR

☐ What are the causes or events that have given rise to specific requests or needs in terms of private security (such as new terrorist threats, post-conflict situations or political instabilities)?

☐ Is there a correlation between the capabilities of public security forces and the demand for private security?

☐ What is the perception of private and public security? (for example, in terms of trust and competence or, on the contrary, in terms of corruption or inefficiency)

☐ Size of the sector: How many PSCs are operating in the country? How many of them have permits?

☐ Is there a 'private security black market'? If so, why?

### PROFILE AND EVOLUTION

☐ What is the typical profile of PSCs (number of staff, localized or national operations, monopoly, etc.)?

☐ What is the geographical distribution of PSCs?

☐ Is there a difference between the presence of PSCs in urban or rural areas?

☐ Who are the main clients of PSCs?

☐ What types of services do they typically provide?

☐ What is their relationship with the public forces?

☐ Who are the owners of PSCs?

☐ Are there links between PSC owners and political parties and decision-makers?

## PSC PERSONNEL

☐ What are the usual origins, backgrounds and level of training of PSC operational personnel?

☐ Is there a link between PSCs and a disarmament, demobilization and reintegration (DDR) process?

☐ Are there issues linking PSC staff (operational, administrative, management, owners) and criminality or organized crime?

☐ What are the reported working conditions?

☐ Do employers respect obligations relating to social security, wages and pensions?

☐ How is the profession viewed? (by staff, the public at large and the public security forces)

☐ What is the average staff turnover in the sector?

## WEAPONS AND FIREARMS

☐ Are there any statistics on the number of weapons and firearms registered in the name of PSCs?

☐ Where do these weapons originate from? Are there issues to do with arms trafficking or a black market?

☐ Are there other issues (such as, for example, the theft of weapons) relating to the use, acquisition or storage of weapons and firearms?

**STEP**
**2**

# Legal and regulatory framework

This section provides a comprehensive overview of the national legal and regulatory framework for the private security sector in the country under study. The structure put forward in this section is based on international standards and good practices.

## Guiding questions:

### APPLICABLE LAWS AND GENERAL PROVISIONS

☐ What laws and regulations apply? In addition to laws dealing specifically with private security, mention should also be made of regulations or other laws that may also contain relevant provisions, such as, for example, the laws on firearms, the law on public procurement, employment law or criminal law.

☐ Have regulations and other secondary legislative texts necessary for the implementation of legislation been adopted?

☐ Is the issue of private security dealt with in other policy documents (national security strategies, peace agreements, parliamentary debates, etc.)?

☐ Which international laws and standards are applicable?

☐ Is the State party to the Montreux Document or another international initiative? Have PSCs joined the ICoC?

☐ Are national texts complying with international and regional standards?

### FIELDS OF APPLICATION

☐ Is there a definition of private security and PSC activities? Which private security services are authorized or prohibited?

☐ Is the relationship with the public forces defined by law? (for example, duty of cooperation, information sharing, etc.)

☐ Is it forbidden for law enforcement personnel to be recruited outside their working hours as private security personnel?

☐ What is the territorial application of the law? Does the law provide for extraterritorial application, where appropriate?

## RESPONSIBLE AUTHORITY

- ☐ Who is responsible for regulation, oversight and monitoring of the private security sector?

- ☐ Does the responsible authority have a certain degree of independence in its functions? How is it financed?

- ☐ Does the responsible authority have sufficient capacity – in terms of knowledge, staff and budget? Indications of possible delays with files (for example, in the allocation of licences) can contribute to assessing the capacity of the responsible authority.

## LICENSING AND REGISTRATION

- ☐ Is there an authorization or licensing process for PSCs? Describe the process in detail, particularly taking into account the following aspects:

  — Business requirements;

  — Personnel requirements;

  — Requirements in terms of staff training;

  — Requirements for the licensing of the use of weapons and firearms;

  — What policies apply in terms of the use of force by PSCs?

  — Has the PSC adopted a code of conduct? Is there a standard code of conduct issued by the regulator or the sector?

  — What is the validity period of a licence? Does the law contain provisions for its renewal, suspension or cancellation?

- ☐ Is there an official register of PSCs? If so, what information does it contain?

- ☐ Is it made known to the public?

## PROVISIONS RELATING TO PERSONNEL

- ☐ What are the requirements in terms of staff training?

  — Is there mandatory training defined by law?

  — Does PSC staff training include notions of:

    • Human rights and international humanitarian law

    • Use of force

    • Use of weapons and firearms (if applicable)

    • Complementary training specific to particular functions

    • Do PSCs have requirements for selecting their personnel? (for example, staff background, psychological testing, nationality, etc.)

- ☐ What are the guarantees in terms of safe and healthy working conditions?

- ☐ What are the guarantees in terms of compliance with employment law?

## WEAPONS, FIREARMS AND EQUIPMENT

☐ Are PSCs allowed to use firearms or other weapons or equipment? Subject to what conditions? What is the legislative basis for these?

☐ Does the law provide specific provisions for the acquisition of firearms, other weapons or equipment by PSCs?

☐ Does the law provide for specific provisions regarding the possession, storage and movement of firearms, other weapons or equipment by PSCs?

☐ What are the training requirements for PSC staff carrying firearms, other weapons or equipment?

☐ Is there a specific policy relating to the use of force by PSCs?

## PUBLIC PROCUREMENT

☐ Does the law contain provisions on the granting of private security contracts by the State?

☐ If so, what are the criteria? If not, are there general criteria for awarding public contracts?

☐ Are the contracting processes and the contracts themselves made public?

☐ Are reports of accidents, mistakes, complaints or sanctions made public?

## LIABILITY AND SANCTIONS

☐ Is the civil and criminal liability of PSCs and their personnel clearly defined?

☐ Are systematic penalties provided for in case of violations of legal provisions?

☐ Does the law require PSCs to have civil liability insurance?

**STEP**
**3**

# Challenges

Parallel analysis of the main findings of the analysis of the context and the key characteristics of the private security sector (Section A) and its legal and regulatory framework (Section B) provides the main basis for identifying the challenges surrounding this sector in the country under study. Other challenges can be revealed by further analysis of information or directly through research and interviews.

In order to identify these challenges, it is important to take into account international standards and good practices and to compare them with the national legal and regulatory framework.

The classification of these challenges depends on the context, nature, type and number of challenges identified. Here are three options for classifying possible challenges:

**OPTION 1: BY TYPE OF CHALLENGE (ACCORDING TO THE FINDINGS OF THE ANALYSES)**

For example:

- **Governance challenges**

  — Legal, regulatory and policy framework (e.g. gaps in the regulatory framework)

  — Authority (e.g. absence of a responsible authority, lack of resources)

  — Implementation of the regulatory framework (e.g. existence of a black market, unfair public procurement practices)

- **Operational challenges**

  — Incidents during PSC operations

  — Use of force, weapons and equipment

  — Service quality

- **Other.**

## OPTION 2: BY ACTOR

**List the challenges from the perspective of the actors involved, such as:**

- Lawmakers

- Responsible authority

- Private security companies

- Clients

- Civil society/communities

- Other.

## OPTION 3: ACCORDING TO THE STRUCTURE OF THE OBSERVATIONS, AS UPDATED DURING THE RESEARCH

- The questions analysed in Chapters 1 and 2 can serve as a checklist for the individual identification of challenges. It may, however, be necessary to subcategorize the challenges thus identified and to distinguish between the challenges linked to an incomplete or inadequate legal or regulatory framework, those related to the poor implementation of the legal or regulatory framework – and those arising from a combination of these two factors.

**STEP**
# 4

# Findings and recommendations

This section first presents a brief summary of the research findings and then makes recommendations relating to these findings. It is important that the recommendations take into account international standards and good practices and that they are formulated in a specific and practical way correlated with the national context.

Depending on the number of recommendations, a classification may also be necessary: this usually follows the structure chosen for the identification of challenges. A classification by type of recipient is sometimes also appropriate: the recommendations addressed to actors in the sector will not be the same as those targeting policymakers, clients or other types of actors.

## OPTION 1: RECOMMENDATIONS BY TYPE OF ACTOR

For example:

- Recommendations to legislators

- Recommendations to the responsible authority

- Recommendations to clients

- Recommendations to civil society/communities/the public

- Recommendations to private security companies

- Other

## OPTION 2: RECOMMENDATIONS BY TYPE OF CHALLENGE

For example:

- Recommendations on the legislative and regulatory framework

- Recommendations on the implementation of the legislative and regulatory framework

- Recommendations relating to the responsible authority

- Recommendations on the use of force

- Other

The formulation of recommendations, whether made public or not, offers a list of ready-to-use messages and thus directly facilitates the organization of information-sharing and advocacy activities that the CSO would wish to undertake following this research work.

# Conclusion

# CONCLUSION

By engaging in the process described in this section, CSOs can help fill important knowledge gaps, identifying and assessing ways to address ineffective or inadequate governance of the private security sector. By developing in-depth contextual analyses, CSOs acquire tools to address broader issues related to the delivery, management and oversight of security services, and to determine how to effectively and sustainably address the challenges of private security governance.

**This research is a first step in supporting the particularly important role that CSOs can play in promoting good governance of the private security sector. It helps to identify and catalyse the initiatives and actions needed to understand the issues and meet the challenges identified. When consolidated by CSOs, reliable and systematic analysis can serve as a means to showcase the expertise of civil society.**

**This analysis can help, through a process of awareness raising and dissemination of the results, establish relations with the various actors involved (such as national authorities, companies, the population affected by private security activities, or other partners such as NHRIs), and to define their future actions in order to promote good governance of the private security sector.**

In order to enable CSOs to play an effective role in promoting and improving good governance of the sector, this first section of the Practical Guide promotes an approach focused on improving CSOs' knowledge. This can foster an active role in promoting and improving governance of the sector as well as in resolving issues related to human rights violations by PSCs.

## SECTION 2 OF THE PRACTICAL GUIDE: PUTTING KNOWLEDGE INTO ACTION

Section 2 of the Practical Guide will deal with the concrete actions that can be undertaken by CSOs to facilitate good governance of the private security sector. It will be developed on the basis of the knowledge acquired and the findings outlined during the process developed by the first section.

To develop Section 2, the Observatory is counting on you to send us your recommendations and suggestions, to share good practices and your experiences and tell us about your specific needs, in particular in terms of the three main types of activities identified:

■ **Awareness raising and contribution to national policies;**

■ **Monitoring ;**

■ **Complaint management and victim support.**

Contact the Observatory at the following address: **info@privatesecurityobservatory.org**.

# The role of civil society organizations in promoting good governance of the private security sector

## Practical Guide

The private security industry has become an important player in the provision of security in Africa. Despite this fundamental change in the security landscape, issues of private security are rarely addressed adequately: the sector is often characterized by inadequate governance and weak oversight. This lack of transparency and accountability poses risks to the security of the State and its people.

**Civil society organisations (CSOs)** have a key role to play to **bridge these gaps and to create the conditions for sustainable change** in order to improve private security governance. This Practical Guide identifies roles CSO can undertake, integrating the private security thematic into the framework of their activities:

- **Knowledge Building**

- **Putting Knowledge into Action:**
    - **Awareness raising and contribution to national policies**
    - **Monitoring**
    - **Complaint management and victim support**

For each of these identified roles, the Practical Guide offers **concrete step-by-step guidance** to support CSOs to engage within a multistakeholder approach to promote oversight and accountability of the private security sector.

This first section is dedicated to **Knowledge Building**: it supports CSOs to build a solid knowledge base and to develop a systematic understanding of the sector and its legal and regulatory framework. This is a fundamental prerequisite for **Putting Knowledge into Action**, playing a concrete role for awareness raising, contributing to national policies, monitoring as well as the management of complaints and victim support.

**Private Security Governance Observatory**