

# Gender and Private Security Regulation

This Policy Brief explains why integrating a gender perspective is important to the regulation of private military and security companies (PMSCs) and provides guidance to States on doing so in national legislation, contracting and procurement policies, as well as certification, oversight and accountability frameworks for PMSCs.

The Policy Brief:

- ◆ outlines what PMSCs are and the role of States in their regulation
- ◆ explains why a gender perspective is needed for effective regulation of PMSCs
- ◆ presents a range of priorities and entry points for States to integrate a gender perspective in regulation of PMSCs.

This Policy Brief is aimed at legislators and policy-makers who seek to strengthen their national regulatory frameworks for the PMSC industry. It is also intended to support ministries and other statutory offices responsible for contracting, procurement and certification, as well as oversight and accountability of PMSCs. This Brief will also be useful for civil society actors monitoring the impacts of PMSCs' operations, including human rights defenders and groups working to achieve the goals of the Women, Peace and Security Agenda. Moreover, this Policy Brief can be used by PMSCs themselves to check and improve their policies and procedures related to gender equality.

Since the 1990s, there has been significant growth in the outsourcing of State security functions to PMSCs, creating an industry valued at over US\$244 billion per year.<sup>1</sup> In many respects, this has reinforced and complemented State security. However, some PMSCs and their personnel have engaged in criminal conduct and abuse of human rights. Such conduct has been recorded in communities within which PMSCs operate, for example sexual violence against women and men by personnel assigned to extractive mining sites;<sup>2</sup> intimidation, harassment and murder of human rights defenders;<sup>3</sup> and involvement of PMSC personnel in human trafficking.<sup>4</sup> Misconduct and abuse within PMSCs, including mistreatment and sexual harassment by managers, have also been recorded.<sup>5</sup> Where abuse occurs, companies and their personnel are often not held accountable, leading to a perception of impunity regarding the industry.<sup>6</sup> Gender is an important dimension in understanding and addressing such conduct by PMSCs and their personnel, and human rights violations as an effect of PMSCs' operations, because women, men, girls and boys are differently vulnerable to and affected by them.

Inadequate regulation of PMSCs can contribute to abuses, to violations of international human rights law and international humanitarian law, and to ineffective oversight, thus to a lack of accountability. We see this where there are weak or arbitrary processes for selection and vetting of PMSC personnel; inadequate training requirements; ambivalent rules on the use of force; or disordered certification, monitoring and accountability of companies. Each of these elements of

PMSCs' regulation should be considered with a gender perspective to ensure that regulation addresses the experiences and concerns of both men and women. The UN Committee overseeing the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) has highlighted the duty of States to regulate the activities of non-State actors operating extraterritorially, specifically referring to the operations of PMSCs and the impact that they have on women and girls.<sup>7</sup> Yet, there is little guidance for States for including a gender perspective when regulating the PMSC industry. Moreover, there is little guidance for States on regulating the labour practices of the PMSC industry, in particular regarding discrimination on the basis of sex, or on the basis of sexual orientation or gender identity or expression.\*

This Policy Brief presents an approach for States to integrate a gender perspective in all aspects of their obligations and authority in regulating and overseeing PMSCs, as well as in holding them accountable for their operations. The recommendations included in this Policy Brief are non-prescriptive and do not present a “one-size-fits-all” approach. Integrating a gender perspective in the regulation of PMSCs alone cannot remedy all of the challenges faced by States and companies in the industry. Rather, this Policy Brief complements a range of tools developed to support States in strengthening their regulatory framework for PMSCs – tools which themselves should be used with a gender perspective.

## PMSCs and their regulation<sup>^</sup>

PMSCs are private business entities that provide military and/or security services, irrespective of how they describe themselves. The term “PMSC” includes a spectrum of companies with a broad range of functions: from domestic unarmed security guard companies to international military support-service contractors. PMSCs operate in peacetime, situations of armed violence, complex environments where State oversight is weak, as well as in armed conflict environments. Clients of PMSCs may include States, private individuals, large (multinational) corporations, such as oil and gas companies, and humanitarian organizations.

The services provided by PMSCs include unarmed and armed guarding; protection of persons and of objects such as critical infrastructure, oil and gas extractive operations, businesses, convoys and other infrastructure or locations; investigation and intelligence gathering; maintenance and operation of weapons systems; prisoner detention and transport; advice to or training of local forces and security personnel; and logistical or risk-advisory support to regular armed forces.<sup>8</sup> The military and security services provided by PMSCs are significantly diverse due to their clients and the nature of activities they perform. By consequence, any negative impacts that occur because of PMSCs will necessarily differ depending on the nature of their operations. For example, a company offering high-tech electronic surveillance services may have an impact that is less visible than a company providing security to a detention centre. This means that there will be many ways to address these issues.

Security sector governance (SSG) is a key factor for the promotion of peace and stability both at national and at regional levels. It is important to note that the privatization and outsourcing of security have significant consequences for an effective, democratically accountable security sector and its opportunities for reform. Therefore, good governance of the private security sector becomes essential insofar as it translates into the application of key principles of SSG/R, which encompass respect for human rights, including gender equality, abidance by the rule of law, democratic control and accountability, representativeness, effectiveness and efficiency. If PMSCs are not governed by these principles and held accountable to them, States will not only fail operationally and suffer credibility blows but will not comply with international legal frameworks.

States have different roles as regulators of the private security and military industry. States may act as *Contracting States* (States who hire or contract PMSCs), *Territorial States* (States on whose territory PMSCs operate) and *Home States* (where PMSCs are headquartered). Any State may be acting in one or all of these roles at any given time.

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\* As yet, there is little data available on how inclusive PMSCs are for LGBTI people, or how LGBTI people might be distinctly impacted by PMSCs' activities. The particular security threats and barriers often faced by LGBTI people are, however, discussed in other parts of the *Gender and Security Toolkit*, most prominently in Tool 1 on “Security Sector Governance, Security Sector Reform and Gender”, Tool 2 on “Policing and Gender”, Tool 4 on “Justice and Gender”, Tool 5 on “Places of Deprivation of Liberty and Gender”, and Tool 14 on “Intelligence and Gender”.

<sup>^</sup> For more general guidance on regulation of PMSCs, see the toolkits and handbooks listed as Additional Resources at the end of this Brief, and the DCAF Business and Security Hub Website, [www.businessandsecurity.dcaf.ch](http://www.businessandsecurity.dcaf.ch).

## Understanding “a gender perspective” on PMSCs

*Integrating a gender perspective means* seeing or analysing the impact of gender roles, gender stereotypes and gendered power structures in society and in institutions. By “gender” is meant the roles, behaviours, activities, attributes and norms that a given society, at a given time, considers appropriate for men and women. Integrating a gender perspective enables one to make women’s as well as men’s concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes, so that women and men benefit equally, and inequality is not perpetuated.<sup>9</sup> It is a strategy by which to achieve *gender equality*, which can be understood as “the absence of discrimination on the basis of a person’s sex in opportunities, the allocation of resources or benefits, or in access to services.”<sup>10</sup> A gender perspective should also recognize that how a person’s gender affects their opportunities is shaped by factors such as their ethnicity, religion, age, social class, sexual orientation, gender identity and expression, marital status, race, ethnicity and disability.\*

Integrating a gender perspective in the regulation of PMSCs means both *analysing the potential and actual impact of PMSCs’ operations* on different groups of men, women, boys and girls, and also *making women’s as well as men’s concerns and experiences* an integral dimension of the design, implementation, monitoring and evaluation of private security regulation.

The activities of PMSCs and their personnel affect various parts of communities differently. Women and girls, in particular, face discrimination and barriers to seeking effective remedies.<sup>11</sup> Sexual violence, and other forms of gender-based violence (GBV), disproportionately affect women and girls.<sup>^</sup> Abuse by security guards in the extractive industry was identified by the UN in multi-stakeholder consultations as a significant challenge.<sup>12</sup> The risk of firearms being used in domestic violence murders is increased where private security personnel are authorised to carry small arms and light weapons. In Israel, one study found that the increasing rate of female homicide was partially caused by firearms owned by intimate partners who were private security personnel.<sup>13</sup> In South Africa, a study revealed that easy access to firearms was a risk factor for intimate partner femicide among security forces, which included private security personnel.<sup>14</sup>

Women and men also face inequality in opportunities to work within PMSCs. While reliable data about the number of women working in the PMSC industry globally is scarce, evidence suggests that women routinely experience discrimination, are overwhelmingly employed in marginal roles, are overlooked or disregarded in company policies, and have limited access to managerial roles.<sup>15</sup> In many European countries, women represent a mere 20 per cent of PMSC personnel.<sup>16</sup> In South Africa, in a case where 28 female security guards were dismissed by their employer under the guise of the client’s operational requirements, the Labour Court found that women had been dismissed solely on the basis of their gender.<sup>17</sup> Where employed by international PMSCs as “Third Country Nationals” or “Local Nationals”, women are often assigned only to clerical work, cleaning and cooking.<sup>18</sup>

Nonetheless, in many countries, the private security industry is seen as an important source of employment for young graduates, including for young women.<sup>19</sup> In some, the number of women in the private security industry has increased; in Trinidad and Tobago, for example, 70 per cent of private security officers are reportedly female, with clients like medical centres and schools preferring to hire women as guards.<sup>20</sup> Experience from the State security sector testifies to the fact that a more diverse workforce is more effective, and that women can bring particular skills to security work.\*\*

## Integrating a gender perspective is good for the private security industry

Integrating a gender perspective into the regulation of PMSCs is a win-win for both the industry and governments. Companies implementing positive changes in policies and institutional (or workplace) culture are better able to retain a diverse and inclusive workforce. In the long term, this significantly supports companies in managing the cost of their personnel and human resource procedures. Policies with strong consideration of the gendered needs of personnel can

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\* For broader guidance on integrating a gender perspective in the security and justice sector, including the concepts of gender and intersectional discrimination, read Tool 1 on “Security Sector Governance, Security Sector Reform and Gender”.

<sup>^</sup> The phrase “gender-based violence” (GBV) is an umbrella term for any harmful act that is perpetrated against a person’s will and is based on socially ascribed (gender) differences between females and males. The nature and extent of specific types of GBV vary across cultures, countries and regions. Examples include sexual violence; trafficking for sexual exploitation; domestic violence; forced/early marriage; harmful traditional practices such as female genital mutilation; honour killings; widow inheritance; and homophobic and transphobic violence.

\*\* Evidence and examples are presented throughout the *Gender and Security Toolkit*; see, in particular, Tool 2 on “Policing and Gender”.

contribute to more satisfied employees, limiting absenteeism or staff turnover. Companies' reputations can also benefit directly, with PMSCs marketing themselves as upholding the highest standards in corporate social responsibility and avoiding the negative reputational damage of association with misconduct (see Box 1). Meanwhile, governments are able to increase professionalism in the industry and prevent abuses.

Currently, in many PMSCs there is a need for more systematic and mainstreamed gender training for management and staff, gender-responsive policies, gender-sensitive occupational health and safety regulations, and other policies that support women and men in balancing work and family life.<sup>21</sup> States are responsible for implementing and enforcing regulation, including labour legislation, to ensure that all employees of PMSCs, men and women, are protected from discriminatory practices and behaviours. Integrating a gender perspective in the development, implementation and monitoring of regulation, as well as in oversight, can assist in upholding this responsibility.

### Box 1: The economic impacts of GBV

In addition to its well-known enormous physical, psychological, emotional and social impact, GBV has negative economic impacts on broader communities. Efforts to quantify the financial costs of GBV illustrate the long-term costs of lost output and decreased productivity of employees, lower earnings, and of services provided to victims. In Nicaragua and Chile, intimate partner violence is estimated to have cost the economy 1.6 per cent and 2.0 per cent of GDP respectively, US\$29.5 million and US\$1.56 billion (Morrison & Orlando, 1999). In Peru, companies lose the equivalent of 3.7 per cent of GDP, more than US\$6.7 billion a year, in productivity due to violence against women (Vara-Horna, 2014).

Additional economic impacts of GBV flow from financial and reputational damage to clients. The former Special Representative for Business and Human Rights John Ruggie has drawn attention to the cost of unresolved community-company conflicts. He described abuses by security providers as "lose-lose-lose situations" – where human rights are adversely impacted, serious corporate value erosion occurs, and companies face legal proceedings (Ruggie, 2010). The direct and indirect costs to the economy and States involved can be significant. In Papua New Guinea, for example, one mining company contracted private security guards with military and police backgrounds. Between 2005 and 2010, the personnel committed violent attacks on communities, including acts of sexual abuse and murders of men and women. More than 940 claims of human rights abuses were filed against the company (Human Rights Watch, 2011). Furthermore, Canada, as the Home State of the mining company, was heavily criticized by industry watchdogs for systemic failures to regulate the overseas activities of its companies (Albin-Lackey, 2011).

*Sources: A. Morrison and M.B. Orlando (1999) "Social and economic costs of domestic violence: Chile and Nicaragua", in A. Morrison and M.L. Biehl (eds) "Too Close to Home. Domestic Violence in the Americas"; Washington, DC: Inter-American Development Bank: pp. 51–80; UN Human Rights Council, John Ruggie (2010) "Report of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises", A/HRC/14/27, 9 April 2010; A.A. Vara-Horna (2014) "Violence against women and its financial consequences for business in Peru", Lima: University of San Martin de Porres; Human Rights Watch (2011) "Gold's costly dividend: Human rights impacts of Papua New Guinea's Porgera gold mine", February 2011; C. Albin-Lackey (2011) "Papua New Guinea : Serious abuses at Barrick gold mine: Systemic failures underscore need for Canadian government regulation", Human Rights Watch, 1 February 2011.*

## National, regional and international legal frameworks for gender equality apply to State regulation of PMSCs

Gender equality embodies the idea that human rights cannot be achieved without guaranteeing that women enjoy full and equal rights, and equal access to responsibilities and opportunities. In most countries, women's rights to equality and/or non-discrimination are guaranteed under the constitution. Numerous international and regional human rights conventions, commitments and norms require States to promote gender equality and prevent gender-based discrimination.\* Key amongst these is CEDAW. As highlighted earlier in this Policy Brief, the CEDAW Committee has directed States to regulate PMSCs' operations with regard to the impact they have on women and girls.<sup>22</sup>

\* For a more detailed discussion of international law frameworks concerning gender equality and security, refer to Tool 4 on "Justice and Gender" and the compendium of international and regional legal instruments published online as part of this Toolkit.

International human rights law does not impose direct legal obligations on companies such as PMSCs. But, as articulated in the Montreux Document, States must implement their obligations under international human rights law to regulate PMSCs, including as regards to unlawful discrimination and sexual offences.\* Moreover, the United Nations Guiding Principles on Business and Human Rights of 2011 recognizes that business enterprises have responsibilities to respect human rights by not causing or contributing to adverse human rights impacts, and to address such impacts when they occur.^

### Industry good practice demands a gender perspective

Standards of good practice within the private security industry, such as the International Code of Conduct for Private Security Service Providers (ICoC), outline requirements or principles to protect human rights and prevent all forms of GBV, including sexual harassment, and sexual exploitation and abuse (SEA). “Sexual exploitation” by private security personnel refers to actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes. It includes prostitution and other forms of exchanging money, employment, goods, services and other assistance for sex with women, men, boys or girls within the local population.<sup>23</sup>

The ICoC requires private security companies to:

- 1) prevent the engagement of their personnel in SEA (including prostitution) or GBV (including rape, sexual harassment, or any other form of sexual abuse or violence);
- 2) ensure that they or their personnel do not benefit from SEA, including prostitution, or GBV;
- 3) remain vigilant for all instances of SEA or GBV; and
- 4) report instances of SEA or GBV to competent authorities.

### How can States integrate a gender perspective in the regulation of PMSCs?

The effective regulation of PMSCs largely depends upon the capacities of national authorities. National authorities and lawmakers are at the forefront of addressing questions about how the State should monitor and oversee the activities of PMSCs, and how the State should respond to human rights violations – including SEA and GBV – when they occur. Parliaments and National Human Rights Institutions with relevant oversight roles, are in a unique position to ensure that democratic regulation and oversight are established and maintained to achieve transparency and accountability of the private security industry.\*\*

This section sets out a number of strategies to integrate a gender perspective in the regulation of PMSCs, focusing on the regulatory process, the gender capacity of regulatory bodies, licensing and contracting requirements, and oversight and monitoring.

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\* The *Montreux Document* is an intergovernmental initiative that brings together the obligations of States under international human rights law and international humanitarian law with regard to PMSCs. It also promotes good practices on human rights (including gender equality) for States in establishing national legislation, regulation and oversight, and accountability mechanisms to regulate the operations of PMSCs during armed conflict. The *Montreux Document* lists a number of good practices related to vetting of PMSC personnel for past misconduct, training of PMSC personnel, and ensuring PMSCs prevent unlawful discrimination in employment.

^ The *United Nations Guiding Principles on Business and Human Rights* is a set of 31 principles directed at States and companies on their duties and responsibilities to protect and respect human rights in the context of business activities and to ensure access to an effective remedy for individuals and groups affected by such activities. The Guiding Principles follow the “Protect, Respect, Remedy” framework. The “obligation to respect” means that States must refrain from interfering with or curtailing the enjoyment of human rights. The “obligation to protect” requires States to protect individuals and groups against human rights abuses. The “obligation to fulfil” means that States must take positive action to facilitate the enjoyment of basic human rights.

\*\* For more guidance on integrating gender in parliamentary oversight of the security sector, see Tool 7 on “Parliamentary Oversight of the Security Sector and Gender”.

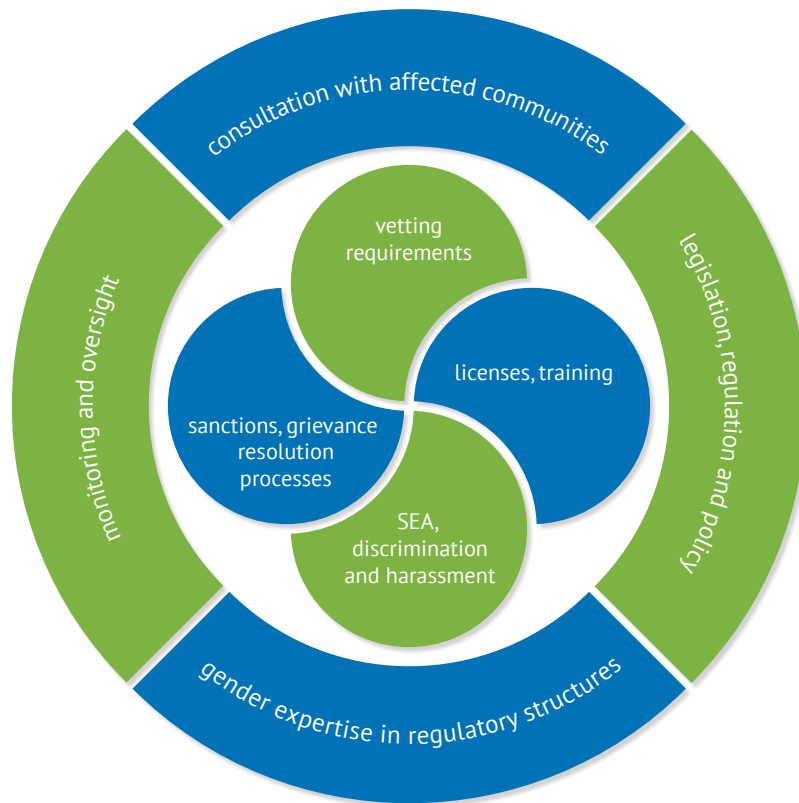


Figure 1: Strategies to integrate a gender perspective in the regulation of PMSCs

### Regulate PMSCs in a consultative manner

Non-regulation or under-regulation of PMSCs and their personnel can result in higher risks of abuses of human rights, including SEA and GBV.<sup>24</sup> Similarly, large numbers of illegal or unlicensed PMSCs create challenges for governments in monitoring the industry and ensuring accountability.

During the drafting stages of laws, regulations and policies related to PMSCs, integrating a gender perspective from the outset is critical. To do so, national authorities should use a consultative approach in mapping the industry and in conducting needs, risk and impact assessments that take into account the services and characteristics of the PMSC industry from a gender perspective. These mapping processes are essential in ensuring that legislation is targeted to the characteristics of the industry and fit for purpose. Such an approach implies that assessments answer, as a minimum, two questions: 1) how does the proposed law (or regulation) protect different groups of people in different contexts from violence, exploitation and abuse? 2) how does the proposed law (or regulation) contribute to the elimination of existing inequalities internally within the PMSC industry and promote gender equality – in terms of people’s participation, in the distribution of resources, benefits, tasks and responsibilities?<sup>25</sup>

To ensure that legislation and policies are responsive to the operational realities of the industry, it is important that States gather and share information on the industry and exchange good practices. One particular challenge for States relates to the lack of understanding of the services provided by PMSCs, as well as the scope and characteristics of the industry. An overview on the type of services and the regulation of PMSCs is missing in many regions, which has direct implications on regulatory and monitoring frameworks. Regulations will vary for Contracting, Home and Territorial States in terms of selecting, contracting and authorizing PMSCs, as well as for the training and vetting of personnel and should be adapted to the specific local context. For example, in the OSCE region, participating States do have a mandatory annual exchange of information agreed on in the *OSCE Code of Conduct on Politico-Military Aspects of Security*, which includes a voluntary part on PMSCs. States could include further details on the gender dimension of the industry, including numbers of female PMSC personnel.

On this basis, it is essential that voices of women and women's organizations are taken seriously in the development of legislation (or regulation). All stakeholder consultations should include a diverse range of perspectives and expertise, notably those representing affected stakeholders, including civil society organizations and women's organizations, as well as other gender experts, GBV-prevention advocates, and interest groups representing other marginalized groups. To ensure a holistic perspective, national authorities should also consult PMSC personnel and trade unions, industry associations, PMSCs themselves, and clients. In conducting the needs, impact, or risk assessment, gender analysis should be used to assess how men, women, boys and girls will be impacted differently by the new legislation.\*

PMSCs should, likewise, ensure that the perspectives of both women and men are part of the planning and consultation phase of any operation, by consulting women's organizations, human rights defenders, and unions during needs/impact/risk assessments.<sup>4</sup>

Women wishing to attend consultations may be faced with multiple practical challenges to participation: from gaining family consent to attend, to managing caring responsibilities, domestic expectations, or the finances required for transport. Feedback from a number of women and women's organizations in fragile and conflict-affected States has described such consultations as often being tokenistic and disempowering.<sup>26</sup> In many contexts, private security excludes and marginalizes women and women's organizations from decision-making and consultation on issues that affect them directly. In Papua New Guinea, a mining company was criticized for not adequately consulting women in their decisions on grievances and remedy for abuses committed by PMSC personnel.<sup>27</sup> In one community in Kenya, women were completely excluded from the discussion around the natural resource mining site in favour of a traditional male council.<sup>28</sup>

### Establish a national PMSC regulatory authority with gender expertise\*\*

The regulation of PMSCs should be assigned to a dedicated national regulatory authority empowered with sufficient resources and expertise, including expertise in gender and prevention of SEA and GBV. The mandate of national regulatory authorities should principally include the registration, licensing, control, oversight and administrative sanctioning of PMSCs. These regulatory agencies should monitor PMSCs' adherence to international human rights obligations, including the responsibility to prevent GBV and gender-based discrimination within their workforce, and the responsibility to prevent SEA, GBV or other abuses of local communities.

States must ensure that these regulatory bodies or agencies have the appropriate level of authority and independence from industry, as well as the financial and human resources, training and infrastructure required to fulfil their mandate.

States can build the institutional capacity of authorities to integrate a gender perspective in the regulation of PMSCs by:

- ◆ publicly committing the authority to a gender responsive approach, which includes diversity in hiring, and non-discrimination through, for example, adherence to a code of conduct concerning equality and diversity. In Kenya, for example, the private security regulatory authority is required to "afford adequate and equal opportunities for appointment and advancement at all levels, of men and women, members of all ethnic groups and persons with disabilities" in its hiring;<sup>29</sup>
- ◆ undertaking a strategic planning process, drawing upon research and consultations with women's civil society organizations and gender experts, to ensure that diverse women's as well as men's concerns and experiences are taken into account in the regulatory authority's functions of regulation, monitoring and oversight of PMSCs;

\* Tool 15 on "Design and Monitoring" presents gender analysis approaches, including gender analysis tools specifically developed for use in conflict-affected contexts.

<sup>4</sup> Guides to doing so include the ICMM, IFC, IPIECA, ICRC (2012) *Voluntary Principles on Security and Human Rights Implementation Guidance Tools*; Oxfam and FIDH (2011) *Community-Based Human Rights Impact Assessment: The Getting it Right Tool*; and the Danish Institute for Human Rights online (2016) "Human rights impact assessment guidance and toolbox", <https://www.humanrights.dk/business/human-rights-impact-assessment-guidance-toolbox-material>; Box 6 in Tool 4, "Justice and Gender", also provides tips on conducting diverse and inclusive consultations.

\*\* For broader guidance on integrating a gender perspective in external oversight of security sector institutions, see the 2014 guidance note, *Integrating Gender into Oversight of the Security Sector by Ombuds Institutions and National Human Rights Institutions*, Geneva: DCAF, OSCE, and OSCE/ODIHR.

- ◆ ensuring dedicated funding and staffing. For instance, the regulatory authority should have focal points or a unit dedicated to gender in the PMSC industry, with ties to other gender focal points or gender units within government.\* The authority should also actively participate in and co-operate with other internal and external bodies focused on promoting gender equality, such as ministries of women's affairs, women's civil society organizations, etc.;
- ◆ providing mandatory gender training for all staff on international, regional and national women's rights and gender equality frameworks; GBV and SEA; gender analysis; standards of conduct in the workplace, etc.;
- ◆ implementing effective processes by which allegations of human rights violations, including SEA and GBV, against PMSCs or their personnel are reported to both police and prosecutorial bodies and the regulatory authority (discussed further below) and enabling criminal prosecution of serious human rights abuses including acts of sexual and gender-based violence;
- ◆ enacting policies of zero tolerance to violence and abuse towards acts perpetrated by PMSC personnel in all areas of operations; and
- ◆ ensuring the authority produces sex-disaggregated data on its activities in licensing, monitoring and regulation of the PMSC industry (discussed further below).

The following sections on licensing and procurement requirements include a number of good practices undertaken by national regulatory authorities, requiring PMSCs to integrate a gender perspective in their management and operations. For example, in Colombia, the national regulatory authority has developed a Social Responsibility Policy that requires private security companies not to participate in, encourage or try to benefit from national or international crimes, including GBV, trafficking in human beings or drug trafficking.<sup>30</sup>

### Integrate a gender perspective in the licensing requirements for PMSCs

**Company procedures on effective vetting of personnel.** The personnel profiles of PMSCs are extremely diverse, as the industry varies greatly across regions and national contexts. In many situations, PMSCs hire personnel with military or law enforcement backgrounds; in other cases, private security is seen as entry-level employment for individuals with basic levels of education.<sup>31</sup> To ensure high standards, PMSC licensing processes should require clear criteria for recruitment and vetting of personnel. In Kenya, for example, the 2016 private security regulation states that persons cannot register to provide private security services if they have been convicted of violent offences or dismissed from a public security service on grounds of misconduct.<sup>32</sup>

The International Code of Conduct for Private Security Service Providers' Association (ICoCA) obliges its Member Companies to carry out "due diligence in the selection of personnel, including verifiable vetting and ongoing performance review of their personnel".<sup>33</sup> The same commitment should apply to subcontractors providing security services. Criminal record checks should incorporate checking for domestic violence or human trafficking. Vetting procedures should be based on all available employment and governmental records, including, at minimum, review of the following:

- ◆ past records of personnel regarding their conduct, with particular attention to incidents of domestic violence, assault, or other serious crimes;
- ◆ past records of required training provided to personnel, with particular attention to human rights and gender training; and
- ◆ documentation demonstrating the lawful acquisition and use of equipment, especially firearms.<sup>34</sup>

**Required training for PMSC personnel.** Regulatory bodies should embed minimum training requirements in PMSCs' licensing and registration criteria, requiring in-service retraining on a regular basis. In Switzerland, for example, companies that fall under the *Federal Act on Private Security Services Provided Abroad* need to provide evidence that their staff have received sufficient training in international human rights law and international humanitarian law, including the prohibition of human trafficking, sexual exploitation/abuse and GBV.<sup>35</sup> In Kenya, the Private Security Regulatory Authority requires PMSCs to provide training to their staff that includes international and national law, cultural sensitivity and gender issues.<sup>36</sup>

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\* For more information on gender focal points and gender units, see Tool 2 on "Policing and Gender".



Training requirements should be established with a gender perspective, and include sessions on:

- ◆ national, regional and international legal and policy frameworks related to gender equality and security;
- ◆ standards of conduct for PMSC personnel, such as the ICoC or company-specific codes;
- ◆ prohibition and prevention of SEA, GBV and other human rights violations;
- ◆ the company's obligations, internal policies and procedures for reporting SEA, GBV and other human rights violations;
- ◆ the obligation of companies and their staff to comply with national authorities in the case of criminal investigations; and
- ◆ workplace culture that promotes gender equality and anti-discrimination, including examples and types of discrimination and harassment.

Specialized training should be provided for managers that underlines the specific roles that they play in terms of PMSCs' due diligence with regard to human rights abuses, human trafficking, SEA and GBV. Personnel operating abroad should receive specific information about the location of operations, such as the legal framework, cultural codes, gender roles or traditional values of local communities.

States should set out the curricula for training programmes and task a national entity with the design and oversight of mandatory training for PMSC managers and personnel. An independent, impartial and accredited training institute or national entity should carry out the training. Where training is provided by companies in-house, it should follow an accredited curriculum and be monitored by the regulatory authority.

In Canada, procurement and contracts favour vendors that include human rights awareness and training, including gender, as an integral part of their corporate mandate and/or mission statement. Evaluation requirements for PMSCs bidding for the contracts will also favour the company's commitment to human rights, when human rights training is provided by "recognized organizations."<sup>37</sup>

**Required policies and procedures on SEA, GBV and discrimination.** Regulatory bodies should ensure that PMSCs submit documentation demonstrating that they have developed effective internal policies and procedures on SEA, discrimination and harassment. State authorities should monitor and check that PMSCs are actively enforcing these procedures, in a non-discriminatory manner. The policies and procedures should demonstrate that the company makes all efforts to prevent and address risks of human rights abuses of people in the communities where they operate.<sup>38</sup>

PMSCs' internal policy framework should, at minimum, address the following.

- ◆ Policies and mechanisms to prevent and address SEA and GBV, including sexual harassment: PMSCs should demonstrate a code of conduct and/or code of ethics that specifically prohibits SEA and GBV against members of local communities and staff. It should make clear that SEA and GBV constitute human rights abuses and, when perpetrated under certain circumstances, may constitute a crime under national law and/or violate international criminal law. Such codes should be supported through training and visibly championed by leadership.\*
- ◆ Non-discriminatory working conditions for PMSC personnel: PMSCs should demonstrate fair and non-discriminatory working conditions through their human resource policies and procedures. These should address, at minimum: working hours and flexibility to facilitate balance between working and caring obligations; paid parental leave; adapted duties for pregnant or nursing women; and provision for leave in the event of sickness of a dependent. Uniforms and infrastructure should also ensure non-discrimination, including having culturally appropriate changing and bathroom facilities for men and women.<sup>^</sup>

\* "The guidelines on preventing and addressing sexual exploitation and abuse" developed by the ICoC Association provide more detail to support PMSCs in establishing policies and reporting mechanisms for SEA and GBV. These are available on the ICoCA website, <https://www.icoca.ch>.

<sup>^</sup> Guidance on creating non-discriminatory and inclusive working conditions within the security sector are discussed throughout the *Gender and Security Toolkit*; see, in particular, Tool 1 on "Security Sector Governance, Security Sector Reform and Gender" and Tool 2 on "Policing and Gender".

- ◆ Safety and security of all personnel at work, with regard to risks of GBV: PMSCs should take preventative and protective measures through infrastructure, such as lighting, lockable toilets and changing rooms; communications systems; and rostering. It may, for example, be appropriate to require that PMSC personnel never work alone at night; or that women are always assigned in pairs.

Complaints processes for discrimination, SEA or GBV within or by PMSCs are discussed below.

### Integrate a gender perspective in procurement and contracting of PMSCs' services

A comprehensive contracting process that evaluates PMSCs' respect for human rights can ensure that PMSCs are incentivized towards good behaviour.\* It is important to remember the important roles of States as clients and contracting entities of PMSCs: governments are often the largest single purchasers of security-related services.

State and non-State clients of PMSCs should first integrate a gender perspective in the bidding process and selection of potential contractors. As part of human rights due diligence, this means that gender issues must be taken into account when developing the request for proposals or tender procedure; when evaluating, screening, and selecting potential contractors; and in awarding the contract. Processes should require that companies are *inter alia* screening employees for past history of violence, including domestic violence; providing adequate training on human rights and gender; and have appropriate policies in place concerning SEA, GBV and discrimination (as discussed in the foregoing section) and have effective mechanisms to handle complaints (discussed below). For example, in Canada, contracts with both the Department of National Defence and Global Affairs Canada advise that training related to human rights law, cultural awareness, gender, as well as religious issues is compulsory for PMSC personnel.<sup>39</sup> Contract award criteria should be based not only on competitive pricing, but, rather, include good practice standards.

When selecting a PMSC, the client should require the submission of:

- ◆ records or documentation demonstrating audits carried out into the internal conduct of the company, its management and personnel, with particular attention to SEA, discriminatory behaviour in recruitment, discriminatory human resource policies and practices, and sexual and gender-based harassment;
- ◆ documentation demonstrating the existence of gender-responsive ethics policies, which take into account the differentiated impact of these policies for men, women, girls and boys;
- ◆ documentation demonstrating safe and healthy working conditions for personnel, adapted to the specific needs of men and women; and
- ◆ documentation that demonstrates how firearms and weapons are properly acquired, used and stored, including when PMSC personnel are off-duty.

When drafting the contract itself, the client should ensure that contracts integrate or require the following.

- ◆ Requirements to respect all rights and obligations related to SEA, GBV, international human rights law and international humanitarian law, as well as applicable national laws.
- ◆ Clearly delineated roles, duties and responsibilities for the PMSC; clear statement of the context in which the PMSC operates; and clear definition of the limits of the PMSC's duties. The activities contracted to private security personnel should not negatively impact the community – considered with reference to the particular vulnerabilities of women, girls, men and boys.
- ◆ Clear accountability and sanction processes in case the PMSC does not comply with the contract.
- ◆ Internal codes of conduct and/or code of ethics in accordance with national and international legal frameworks.<sup>40</sup> The code of conduct should demonstrate that it takes into account the different negative impacts that misconduct may have on women and men. It should also stipulate restrictions and guidelines related to the use of force.
- ◆ Requirements to report all allegations of violations of human rights, including GBV, SEA, or human trafficking to the competent national authorities and to the States concerned, as outlined below.

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\* For more guidance on contracting, see Swiss Confederation and ICRC (2009) *The Montreux Document* and DCAF's (2017) *A Contract Guidance Tool for Private Military and Security Services: Promoting Accountability and Respect for Human Rights and International Humanitarian Law*, which provides a blueprint for national regulation of these processes.

## Ensure effective grievance (complaints) mechanisms, paying attention to SEA and GBV\*

Regulatory bodies should develop robust procedures and mechanisms to receive and monitor complaints against PMSCs, to investigate problems, and to ensure accountability where there are abuses. Regulatory bodies should also require that PMSCs have and implement trusted and effective grievance mechanisms, both for complaints by staff and complaints from communities.

Good practices to ensure that PMSCs' grievance mechanisms integrate a gender perspective include the following.

- ◆ PMSCs should have an effective complaints process by which their personnel can report any form of workplace misconduct, including sexual or gender-related discrimination, harassment or assault. In cases of sexual or gender-related discrimination, harassment or assault, there should be special mechanisms to ensure a survivor-centred approach that protects complainants from retaliation, ensures their confidentiality, and provides access to medical, psychosocial and legal support.
- ◆ PMSCs should have an effective complaints process by which any member of the community can make a complaint concerning the conduct of PMSCs or their personnel (even where individual staff cannot be identified by name). Measures should be in place to ensure that the grievance mechanism is known about and accessible to all, men, women, boys and girls from all parts of the community, with due regard to language and literacy. There should be various ways to make a complaint, for example, online, through a free hotline, allowing advocates to report allegations on behalf of victims, and accepting anonymous complaints.
- ◆ There should be robust measures to protect complainants' confidentiality and to protect them and their families from acts of retaliation (whether by the PMSC concerned or its personnel or others), including protection of their livelihood.
- ◆ Key staff involved in grievance procedures should be appropriately trained, including in handling complaints of GBV or SEA in a survivor-centred manner.
- ◆ In all cases, whatever actions are taken should be well documented as part of the case and in the internal documentation of the PMSC and the State client.
- ◆ While adopting a victim/survivor centred approach and ensuring protection of complainants against retaliation (see above), management of PMSCs should implement measures to ensure that allegations of SEA, GBV or of (other) possible criminal conduct are reported to the competent national authorities of all State(s) concerned – Contracting States, Territorial States and Home States. In such cases, PMSCs' internal grievance mechanisms must fully co-operate with national criminal investigations (such as police, prosecutors and judges) and/or other mechanisms for reporting allegations of improper and/or illegal conduct (such as National Human Rights Institutions or ombuds institutions).
- ◆ In other cases, where remedies are being determined by the PMSC itself, in national contexts where GBV or SEA are not adequately prohibited the PMSC should maintain sanctions and/or disciplinary action regarding GBV and SEA commensurate to international human rights standards. Consideration should be given to determining remedies in consultation with the victim, as well as their family or community (where appropriate and relevant).

States should ensure judicial and non-judicial grievance mechanisms are in place so that victims/survivors, whether PMSC personnel or from communities, can report allegations of improper and/or illegal conduct to the national authorities directly. Additionally, national regulatory structures for PMSCs should ensure that serious sanctions are in place for any acts of SEA, GBV or other serious misconduct committed by the PMSC, as well as for any failure to co-operate with national criminal or other official investigations. Criminal or civil sanctions administered through the justice system should be supplemented with administrative sanctions, such as suspension of licences, registration or contracts.

In addition to the regulatory authorities of Contracting States requiring grievance mechanisms, Territorial States and Home States should require complaints mechanisms from clients of PMSCs. For example, large mining companies that are part of the extractive industry are clients of PMSCs. Territorial States (the countries in which the mining takes place) should

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\* For further guidance on gender-responsive complaints mechanisms and external oversight of them, see DCAF's (2015) *Handbook on Gender and Complaints Mechanisms*, Geneva: DCAF.

See also the ICoC Association and DCAF's *Interpretative Guidance: Developing and Operating Fair and Accessible Company Grievance Mechanisms that Offer Effective Remedies*, Geneva: ICoCA.

require the client company to have a responsive, impartial and transparent grievance mechanism as well.<sup>41</sup> Additionally, the Home States (the national authorities where the client company is headquartered) should also require a grievance mechanism from the client.<sup>42</sup> This will ensure that in every direction of government oversight, the State requires effective internal accountability mechanisms from PMSCs.

### Integrate a gender perspective in the State oversight and monitoring of PMSCs

In general, effective monitoring and accountability mechanisms, including effective grievance resolution pathways, remain some of the biggest challenges across nearly all States' national regulatory frameworks for PMSCs.<sup>43</sup> The capacity of national regulatory authorities and procurement/contracting offices to monitor GBV and SEA perpetrated by PMSC staff is often weak or non-existent. When monitoring does occur, it often does not incorporate the overall compliance with national and international law and instead consists of only narrow licensing requirements. In some countries of extensive PMSC operations, national criminal and civil justice systems are weak or lack resources to effectively respond to GBV cases committed by PMSC personnel. In other countries, where governance is weak and the risk of corruption is high, oversight and accountability mechanisms are virtually non-existent. Finally, the transnational nature of many large companies and the challenges related to overlapping jurisdictions between Home, Territorial and Contracting States often lead to a perception of an accountability vacuum.<sup>44</sup>

**National regulatory authority.** States should ensure the mandate of the regulatory authority includes effective oversight procedures and monitoring systems that integrate a gender perspective. A national regulatory authority is the first step in ensuring the compliance of PMSCs with the requirements for licences, authorisations, and registrations. The relevant procurement and contracting entity can also monitor the compliance of PMSCs with licence and contractual terms. All procedures and requirements for monitoring activities conducted by regulatory agencies should be public, accessible, and transparent as far as appropriate.

In addition to the measures listed on page 7 to build regulatory authorities' institutional capacity to integrate a gender perspective, effective oversight and accountability processes that integrate a gender perspective should include the following elements.

- ◆ A monitoring and oversight framework established and developed in consultation with a diverse cross section of the population, men and women, that includes specific roles for civil society.
- ◆ All data collected being, at minimum, sex-disaggregated; as well as disaggregated by other relevant markers/categories. For example, when undertaking monitoring of complaints, data should be sex-disaggregated for the complainant, alleged perpetrator and victim, and the grounds for the discrimination or violation.\*
- ◆ Data related to internal investigations is publicly available, with due regard for parties' confidentiality.<sup>45</sup> For example, aggregate numbers of GBV and SEA complaints filed and how they were resolved, including the transfer of criminal cases to competent national authorities.
- ◆ Data related to criminal investigations conducted in relation to PMSCs is publicly available, including the status of the case, the nature/quality of the PMSC's co-operation in those cases, as well as the result/judgment.

**Parliamentary committees and ombuds institutions.** As part of a State's oversight framework to ensure accountability of PMSCs, national legislation can establish ombuds institutions and ensure their capacity to oversee the PMSC industry. Ombuds institutions could have independent oversight of the national regulatory authority. Legislation can also require parliament to form a special committee to oversee the work of the national regulatory agency. This would be another way to ensure that PMSCs are operating according to the domestic and international legal framework on human rights. Regulatory agencies would then be required to report regularly to the parliamentary committee, including on gender issues. Even without a specific committee dedicated to PMSC operations, other parliamentary committees can oversee PMSC operations and hold PMSCs to account. For example, the South Africa Parliament Portfolio Committee on Higher Education and Training summoned PMSCs to appear before parliament to account for their actions in the shooting death of a student during campus protests at Durban University of Technology on 5 February 2019.<sup>46</sup> The *Montreux Document*

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\* Tool 15 on "Design and Monitoring" describes how to disaggregate data by sex and other relevant characteristics.

also promotes public oversight by parliamentary bodies. Members (and/or staffers) of parliamentary committees should receive training on human rights, gender, and the international and national legal framework on gender. The committee should also have an inclusive and consultative process with civil society, including women's organizations, to oversee and monitor PMSC operations.\*

On a regional level, the European Parliament's Committee on Foreign Affairs has taken an active role in monitoring the impacts of regulation of PMSCs in the European Union. Recently, the Committee released a motion for a resolution, which among other things highlighted "the importance of regular independent monitoring, including through randomized field visits, to ensure oversight and put an immediate end to abuse".<sup>47</sup> Regional organizations thus also have a key role to play in monitoring the industry.

**Civil society and multi-stakeholder mechanisms.**<sup>^</sup> Civil society, including women's organizations, human rights defenders and other community associations, should be consulted by national regulatory bodies and in parliamentary oversight processes, including as part of the design of monitoring mechanisms and carrying out monitoring functions.

Depending on the context, where it is appropriate and safe, one option may be for civil society to contribute to developing an independent rating system on PMSCs. This system could establish a public list of companies that operate in line with international standards. Such a rating system would require PMSCs to be more transparent regarding their operations, their internal policies and behaviours, their actions to uphold respect of national and international laws, their commitment to human rights and gender, as well as to ensure quality in the content of the training provided to staff.<sup>48</sup>

In one example of a civil society monitoring network in sub-Saharan Africa, the Private Security Governance Observatory is a platform that seeks to support and enhance the organizational capacity of civil society in the effective oversight of the PMSC industry. Composed of more than 77 civil society organizations, including women's rights organizations, across 18 countries, the Observatory has built a strong network that engages in multi-stakeholder dialogues with governments and industry.<sup>49</sup> Such an inclusive consultation and monitoring mechanism seeks to empower and enable civil society in maintaining oversight of PMSCs, in particular in ensuring that PMSCs respect the rights of women, men, girls and boys. While it is important that national authorities include civil society organizations in the monitoring of PMSCs, it is also important for States to recognize, respect and ensure the safety and security of civil society in participating in these processes (see Box 2).

### Box 2: Dangers and risks faced by civil society in oversight of the PMSC industry

Many extractive companies hire PMSCs or integrate PMSC personnel as in-house security. Other companies subcontract public security/law enforcement forces (e.g. police services), creating situations where public security is assigned to large oil, gas and mining company operations. However, without adequate oversight and regulation of these security contractors, the risks of human rights abuses are significant.

In these situations, there have been a number of examples where security personnel have violently targeted human rights activists who oppose extractive projects. Human rights defenders, in particular women, are at risk of violence and human rights abuses, from threats and harassment to sexual assault and other serious acts of violence. In Peru, a local environmental organization was subjected to surveillance and intimidation by a PMSC hired by the extractive corporation (Barcia, 2017). In Honduras, a prominent female human rights defender was murdered following a long battle to stop the construction of an internationally financed hydroelectric dam on land considered sacred by indigenous peoples. Seven men were convicted of her killing, including the energy company's in-house security staff (Lakhani, 2018).

*Sources: Inmaculada Barcia (2017) "Women human rights defenders confronting extractive industries: An overview of critical risks and human rights obligations", Association for Women's Rights in Development (AWID) and Women Human Rights Defenders International Coalition (WHRD); Nina Lakhani (2018) "Berta Caceres: seven men convicted of murdering Honduran environmentalist", The Guardian, 30 November, [www.theguardian.com/world/2018/nov/29/bertha-caceres-seven-men-convicted-conspiracy-murder-honduras?CMP=share\\_btn\\_link](http://www.theguardian.com/world/2018/nov/29/bertha-caceres-seven-men-convicted-conspiracy-murder-honduras?CMP=share_btn_link) (accessed 15 October 2019).*

\* For broader guidance on integrating gender in parliamentary oversight of the security sector, see Tool 7 on "Parliamentary Oversight of the Security Sector and Gender".

<sup>^</sup> The involvement of civil society in security sector oversight and governance is explored in Tool 9 of the 2008 DCAF, OSCE/ODIHR, UN-INSTRAW *Gender and Security Sector Reform Toolkit*, "Civil Society Oversight of the Security Sector and Gender".

As an added layer of multi-stakeholder oversight and accountability, States can require PMSCs to be members of recognized multi-stakeholder associations, such as the ICoCA. States could require that companies demonstrate membership in good standing for licensing or in order to obtain contracts.

## Conclusion

PMSCs must take all measures possible to ensure that their staff do not engage in human rights violations, including GBV and SEA, and to ensure non-discriminatory labour policies. Integrating a gender perspective in internal policies and procedures and in the conduct of their operations is necessary to achieve this.

States, whether they are Home, Territorial, or Contracting States, have a duty to implement international human rights law and international humanitarian law, ensuring protection of people from any harmful impacts by private businesses. It is important that States undertake a clear mapping and research of the type and scope of services provided by PMSCs to ensure that gender-specific measures can be effectively introduced. States can make better use of national regulatory frameworks to incentivize the PMSC industry through regulations, contracting and procurement requirements, thereby ensuring that companies are transparent, accountable, and operate according to international good practice and national law. States can also use their convening powers to bring together State and non-State actors, including civil society and multi-stakeholder mechanisms, to create a multi-layered concerted effort to set a high standard for PMSCs, and drive out illegitimate, sub-standard or unlawful elements of the industry. If States take on this responsibility, with the required resources, political will, and consistency, this will have a positive impact on safeguarding the security of men, women, boys and girls and contribute to good governance of the provision of security.

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#### **Acknowledgements**

DCAF, OSCE/ODIHR and UN Women would like to thank Jason Charles (Innovative Security Technologies), Maya Eichler, Maria Matui (Women's Action Towards Economic Development), Alice McGrath-Crêgut, Folade Mutota (Women's Institute for Alternative Development), Saskia Stachowitsch, Nelleke van Amstel and the International Code of Conduct Association for their advice in developing this Policy Brief. The authors moreover thank Marta Ghittoni and Léa Lehouck for research support, and Alan Bryden, Jean-Michel Rousseau and Anna-Lena Schluchter (DCAF); Graziella Pavone and colleagues at OSCE/ODIHR; and Brad Orchard and colleagues at UN Women for their input.

DCAF acknowledges the support of Switzerland, Sweden and UK DfID in the production of this Policy Brief.

ISBN: 92-9222-483-2

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Cite as: DCAF, OSCE/ODIHR and UN Women (2019) "Gender and Private Security Regulation", in *Gender and Security Toolkit*, Geneva: DCAF, OSCE/ODIHR, UN Women.

This Toolkit was published with the support of the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR). Its content does not necessarily reflect the policy and position of OSCE/ODIHR.