

# **National and regional implementation of the norms and good practices stemming from the Montreux Document, the International Code of Conduct for Private Security Service Providers (ICoC), and others, via DCAF's advisory work in Latin America and the Caribbean**

The present document is one of DCAF's contributions to the 5<sup>th</sup> session of the *Open-ended IGWG to consider the possibility of elaborating an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies*, held in Geneva from 12 to 16 December 2016.

The document is intended to provide an overview over how in Latin America and the Caribbean, DCAF supports the national and regional implementation of the norms and good practices stemming from the Montreux Document, the International Code of Conduct for Private Security Service Providers (ICoC), and others. The document reflects DCAF's regional work focus on private security governance in-country; this focus should not be construed as a policy decision, but rather be seen as responding to several realities on the ground:

- A significantly larger number of private security companies as compared to private military companies;
- Companies largely operating territorially;
- Existing legislation and regulatory bodies on private security and hence demand from national stakeholders on said topic, as opposed to private military companies.

## **Private security in LAC in numbers<sup>1</sup>**

- 16,174 private security companies with 2'450,786 private security guards in 30 countries;
- 660'527 weapons registered to PSC in 17 countries.

## **Challenges with regards to private security governance in LAC<sup>2</sup>**

There is a continuous need for good governance of the private security industry, notably with regards to its day-to-day regulation. Looking across the region, a number of important challenges can be identified:

- **Lack of specific and complete legal frameworks:** the national legal frameworks regulating PSS do not always adequately respond to the regulatory needs of a growing and evolving industry. In particular, national frameworks on small arms management and use by PSCs can be outdated, weak, or contain gaps.
- **Informal private security markets:** a significant proportion of PSS are delivered without the required licenses to operate. Large grey markets exist within the industry in the LAC region, meaning that companies and their staff are not on the radar of control and oversight mechanisms. This notably translates into insufficiencies in staff training, small arms stockpile management and oversight. Informal PSC guards may be particularly unprepared to deal with complex situations, thus resulting in higher

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<sup>1</sup> Source: *Armed Private Security in Latin America and the Caribbean: Oversight and Accountability in an Evolving Context. Baseline Study*. UNLIREC and DCAF, 2016.

<sup>2</sup> Ibid.

risks for Human Rights abuses. Weapons are also more likely to be stolen or used for illegal purposes if informality remains high.

- **Absence of a whole-of-government approach to regulation and oversight:** the implementation of the legal and policy framework would be enhanced by more effective coordination between the different branches of the government responsible for private security regulation and small arms control. Government agencies are often allocated insufficient resources to secure proper implementation and monitoring of compliance (lack of personnel with adequate training). This also applies to safeguards that would prevent potential conflicts of interest that sometimes arise between regulators and the companies they are mandated to regulate.
- **Training requirements for PSCs and their personnel:** not all countries in the region have tailored training curricula and clear provisions aimed at PSC personnel. Even when these training programmes do exist, regulatory authorities are not able to oversee and monitor this training.
- **Physical security and weapons management of PSCs:** depending on their size, PSCs lack trained personnel and standardized procedures for the effective management and control of small arms and ammunition. Small arms' storage, possession and use by PSC guards deserve special attention. Illegal and undocumented sales and rental of PSC small arms, as well as irregular weapons documentation often facilitate the illicit circulation of and trafficking in small arms. Moreover, inventory loss and leakage, as well as stockpile theft and robbery lead to small arms diversion and PSC' weapons ending up in the wrong hands. The use of force and small arms used by PSC personnel on duty, off duty or outside mandated tasks, as well as the unintentional use of force against third parties represent serious challenges to citizen security and the rule of law. PSC personnel may also cause accidental shootings due to inappropriate weapons training and handling. Likewise, PSC guards are targets of criminal and violent activities, such as armed attacks and theft of their service weapons.

### **DCAF activities to strengthen private security governance**

DCAF has on-going legislative and regulatory advisory processes in Costa Rica, El Salvador, and Peru, with a scheduled extension to Guatemala and outreach to other countries<sup>3</sup>. These processes involve:

- Providing expertise for the formulation of new private security legislation as well as engaging more broadly with security sector management and oversight bodies.
- Helping to structure the audit, certification, and monitoring of private security companies by national regulators. This includes supporting national regulators to discuss with government entities responsible for public procurement entities, how to integrate economic incentives for certified companies into public procurement processes.
- Assisting private security industry associations in fostering self-regulation.

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<sup>3</sup> Most of DCAF's activities in the region are carried out in a joint project with the UN Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean (UNLIREC). The project is highly innovative operational partnership between DCAF and UNLIREC which draws on expertise as well as relevant norms, standards and good practices from both the disarmament and security sector reform communities to promote shared security and development goals.

In its work, DCAF relies on the norms and good practices contained in MD and the ICoC. In this regard, the Legislative Guidance Tool – developed as technical secretariat of the MDF – has been well-received by partners. DCAF also relies on its more general, systemic expertise with regards to good governance of the security sector, notably when it comes to the functioning of control and oversight mechanisms (be it with regards to the Executive, the Legislative, the judiciary, civil society, and private companies).

### **Lessons learnt on how to strengthen the *effective* implementation of international norms and good practices**

The key challenge for good private security governance in LAC is at the national level, under 3 aspects: regulation; rule of law; and procurement. The national level is the setting where international norms and good practices – be they binding or not – are incorporated into national legislation and regulation, thereby becoming part of the binding national legal framework and thus enforceable within the national judicial system. For national legislation and regulation to be enforced and thus foster respect for Human Rights, key public institutions – the regulator, the judiciary, prosecutors – need to be able to carry out their mandates, and victims of abuses require easy and safe access to the justice system as well to additional non-legal remedy procedures. Finally, sound public procurement policies can level the playing field and create the economic incentive for companies to strengthen their implementation of international norms and good practices. DCAF has worked or is about to initiate work on all of the aforementioned aspects.

On a final note, the existence of international norms and good practices such as the Montreux Document (MD) and the International Code of Conduct for Private Security Service Providers (ICoC) helps to sensitise national stakeholders for the need of good private security governance, and incentivizes them to strengthen national legislation and regulation. In this regard, the different international norms and good practices are not exclusive; to the opposite, they need to be considered as mutually reinforcing.

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