



International
Code of Conduct
Association

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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

Submission by the International Code of Conduct Association on the role of 'PMSCs' in humanitarian action

Distinguished Members of the Working Group,

Introduction

With this submission, the International Code of Conduct Association ("ICoCA" or the "Association") aims to support the preparation of your thematic report on the role of 'PMSCs' in humanitarian action. ICoCA welcomes the initiative of the Working Group to examine in detail the activities of private non-state actors in humanitarian settings, which includes the current practices and roles of humanitarian agencies in relation to the use and oversight of private security.

Through this submission, ICoCA wishes to underscore *i.a.* that improved human rights due diligence by humanitarian agencies is required in their selection and use of private security. Failure to address a number of the issues raised in this submission could result in negative repercussions on humanitarian action and impact local communities.

ICoCA is a non-profit multi-stakeholder organisation established in 2013 to implement and oversee the International Code of Conduct for Private Security Service Providers ("the Code"), an instrument that articulates standards for the private security industry by incorporating international human rights and humanitarian law norms. Through its core functions, ICoCA ensures that affiliate and member companies act in accordance with the Code and are subject to regular oversight.

Since the operationalisation of its functions in 2016, ICoCA has conducted field assessment and outreach missions in three different continents, bringing to the same table all those actors who share an interest in the responsible provision of security services, including private security clients and the communities where private security companies ("PSCs") operate. In 2019, the Association adopted clear strategic goals and objectives for the following five years and is confident that through *i.a.* multi-stakeholder engagement and meaningful cooperation with relevant actors, such as the Working Group, it will be able to achieve its mission to promote the responsible provision of security services and respect for human rights and national and international law in accordance with the Code.

In marking the 10th Anniversary of the Code at ICoCA's 2020 Annual General Assembly, it was recognised that the Code has become a primary reference document at the international level for the adoption of standards for the private security industry. In addition, it was underscored that the work of ICoCA builds on the United Nations Guiding Principles on Business and Human Rights ("UNGPs") and its "Protect, Respect and Remedy" framework to address adverse human rights impacts by private security companies.

ICoCA is aware that national regulatory frameworks are in many contexts still inadequate. It should be recalled that a *raison d'être* of the Association stems from the failure of State oversight and accountability mechanisms to hold PSCs accountable for their actions in complex and high-risk environments, contexts where humanitarian agencies operate.

Part of ICoCA's value proposition therefore includes the promotion of good practices, the reinforcement of government regulation and of international efforts to promote human rights and humanitarian law in relation to the use and operations of PSCs. Central to any drive by ICoCA to raise security standards are those entities and organisations, including humanitarian agencies, that rely on PSCs for their own security needs. Failure on their part to exercise greater due diligence and oversight could have serious negative consequences in those contexts where humanitarian action is needed.

Indeed, the industry has grown exponentially in the last quarter century, with the fastest growth occurring in countries with complex environments and a weak rule of law. It is in these environments that humanitarian aid is most needed, and the agencies administering that aid have an important role to play in the safe and effective provision of private security.

Important to the discussion and referenced throughout this submission is the 'Security to go' toolkit designed by the Global Interagency Security Forum (GISF) in collaboration with ICoCA. This toolkit acts as a guide for humanitarian aid organizations seeking to establish basic security and risk management systems. In particular, Module 14 provides a step-by-step guide for humanitarian agencies wishing to contract private security providers, detailing the risks and responsibilities that such agencies should consider at each stage of the tender process. A summary of Module 14 and a link to the full report is available in the Annex at the end of this document.

A. Clarifying the labelling of actors and the use of the term "PMSC"

In discussing the role of private security providers in humanitarian action, a preliminary clarification is needed to adequately identify the parties involved. The term "private military and security companies" ("PMSCs") conflates two distinctly separate groups of security providers. In using the term PMSCs, the Working Group and other interested parties risk confusing the discussion and blurring some of the key issues. In effect, whilst private military and security actors may appear similar on the surface, maintaining their distinction is critical when analysing the roles and responsibilities of security providers in humanitarian settings and in designing appropriate regulations and oversight mechanisms.

Humanitarian agencies almost exclusively contract private security companies, and not private military contractors. As such, for the purposes of this submission, ICoCA will focus principally on the use of private security in humanitarian action and the contracting of PSCs by humanitarian agencies.¹

B. Private security services provided to humanitarian agencies

With that distinction in mind, we turn to the several key roles that private security companies serve in their work with humanitarian agencies. The most common service provided by PSCs is static security, where armed and unarmed guards protect humanitarian agency staff and property. Protected properties can include office buildings, staff residences, hotels, compounds, and warehouses. The protection of warehouses is particularly important for humanitarian agencies in high risk environments. In a number of contexts, private security companies have been hired to manage security at migration centres, medical facilities and protection of civilian sites, including camps for internally displaced persons and refugees.

Beyond the protection of property, PSCs also provide mobile security, protection for individual or groups of staff members as they move throughout high-risk environments. To this end, PSCs may provide armoured vehicles and guards as well as advice on which routes or regions are safe to travel through. PSCs may also provide training to humanitarian agency staff and consulting services on subjects such as travel risk assessments, security management, hostile environment awareness and first aid.

In considering the role of PSCs, it is also important to examine where they should *not* be used. As detailed in 'Security to go', the decision to contract a PSC should not be made lightly, and humanitarian agencies should carefully assess the risks and examine alternative solutions before tendering any security, especially armed guards. PSCs providing static security or access control often constitute the first point of contact with external visitors and the host community, and their actions can impact the public image of the humanitarian agency. Deploying security, armed or unarmed, can foster a disconnect between the humanitarian agency and the local community, making the provision of aid more difficult. Should a humanitarian agency decide that private security is necessary to the success of its operation, it should ensure that the security staff are provided with an orientation on the humanitarian agency's values and standards, along with guidance on their interactions with agency staff and external parties.

¹ In general, most military contractors work alongside and for Governmental entities, including the armed forces and law enforcement agencies, usually in more traditional armed conflict and high-risk environments. The services they offer include training, logistic support, intelligence gathering, weapons maintenance and explosive ordinance disposal. Any analysis as to the impact of the activities of military contractors on humanitarian action would include an assessment of the nature of their contractual relationship, whether through their operations they directly participate in hostilities, the impact of their presence and activities on humanitarian action, and the consequences, positive or negative, on the humanitarian situation. Other matters to be considered would include the integration of the contractor into the regular armed forces of the State, if it is empowered to exercise governmental authority and whether it is acting on the instruction or direction and control of the State.

C. Concerns with humanitarian agencies' practices in the selection and use of PSCs

In the process of contracting a private security company, ICoCA has identified several key issues in the current procurement practices of certain humanitarian agencies that would require immediate attention.

Based on information gathered by the ICoCA, the procurement practices of a number of humanitarian agencies appear to fall short of international requirements and good practices. These deficiencies, unless addressed, can create serious human rights risks for the communities in which those agencies operate, and by extension to the operations and staff of the humanitarian agencies as well.

In those cases where humanitarian agencies have decided to contract PSCs for their in-country security needs, a recurring problem is their prioritization of cost above all else over quality in the selection of PSPs. Based on information obtained from PSCs as well as humanitarian agencies, local and international, it appears that in many contexts insufficient consideration is given to the development of adequate budgets to manage security requirements of humanitarian agencies.

Despite some humanitarian organizations purporting to have thorough and human-rights compliant tender processes, ICoCA's examination of a sample of the sector to date has found that cost is the supreme, and often only, motivating factor in humanitarian agencies' tender processes. When the entire process is decided on cost, important considerations such as human rights become obsolete. Tender processes which focus entirely on cost will naturally lead to underfunded, and undertrained security providers.

In essence, when humanitarian agencies apportion limited and insufficient budgets to security, the PSCs will have reduced resources to fulfil the security contracts. The knock-on effect is that local guards may be paid very low wages, will be required to work longer hours and more shifts and may be poorly equipped and trained.

It has been reported to ICoCA that security guards are regularly required to work 12-hour shifts, which excludes the commute time to the work location. In many contexts, the working conditions of the security guards fall well below the minimum accorded to the staff of the hiring humanitarian agencies, and fail to meet local and international labour standards. This in turn begs the question whether the humanitarian agency meets all of its duty of care obligations, to staff, donors and contracted personnel.

A second main area of concern which has been reported to and previously identified by ICoCA relates to the transparency and rigour of local procurement processes and decisions by humanitarian agencies. This is particularly troubling in those complex environments where weak governance structures can foment and exacerbate corruption and corrupt practices.

ICoCA has engaged with a number of humanitarian agencies to strengthen their PSC procurement process, and to advise on how to ensure that in the selection and contracting of their PSPs all relevant international standards are being met. ICoCA also recognises that a number of humanitarian agencies have developed key policies, guidelines and model contracts to guide procurement processes and decisions. There nonetheless remain important concerns.

Major shortcomings in local tender processes have been cited and need to be addressed urgently. Humanitarian agencies have been accused of not systematically conducting adequate due diligence on the security companies they contract. Some agencies require security providers to fill out long questionnaires that provide the appearance of due diligence, only for the agency to select a company that fails to meet its own tender criteria.

Allegations have been reported of bribes being sought and paid during tender processes and that companies, without legal right to operate within the country, have nevertheless been awarded major contracts. Further, many humanitarian agencies reportedly provide misleading, little, or no information to security companies post-tender on the specific reasons for selecting one company over another. It has been alleged that even certain well-regarded international organizations obscure their selection process, offering little visibility or transparency as to how final decisions are taken in the selection of the PSC.

It has been brought to the attention of ICoCA that, in a number of contexts, humanitarian agencies themselves are impacted by the alleged corrupt influences present in situ. There is a strong incentive among corrupt security companies to lie or bribe their way into the lucrative humanitarian agency contracts, and the apparent lack of due diligence does little to keep them in check. Some security companies report being awarded major humanitarian agency contracts, only for the offer to be withdrawn days later and given to a cheaper, less reputable provider through an apparently corrupt process.

Any confirmed or perceived corrupt practices in the awarding of private security contracts are not only concerning in themselves, but also pose serious human rights risks to the humanitarian agencies and the local communities within which they operate. There can often be a disconnect between an organisation's policies, which may be determined centrally at HQ level, and are supposed to be applied throughout the organisation, and the actual practice in country. While procurement safeguarding policies to ensure human rights due diligence may have been put in place at HQ, procurement practices on the ground, often do not adhere to these policies.

Finally, as relates to certain contracting practices, whilst well intentioned, may have the inadvertent effect of acting as a hindrance in the procurement of private security. For instance, some agencies may require past performance on another contract of theirs. This requirement has its merits, but could stifle innovation and limit the awarding of contracts by the respective humanitarian agency to a very small number of security providers, creating a captive market.

Also, certain contracts issued by humanitarian agencies reportedly require as high as 10% of the contract price to be set aside as a performance bond. In the same vein as the past performance requirement, this requirement can in fact severely limit the diversity of tenders that the relevant humanitarian agency can consider. The bond acts as a barrier to entry, and only security companies that can afford to provide large amounts of money up front can reasonably be expected to take on these contracts. Even for those companies, such a large bond disrupts the security company's budget and makes it more difficult for them to operate a human rights compliant contract.

Conclusion

Humanitarian agencies tend to hire local rather than international security companies. In those contexts marked by weak governance, ongoing hostilities and violence, and where communities are in need of humanitarian assistance, a heightened level of due diligence is urgently required by humanitarian agencies in their selection and contracting of their security providers.

Failure by humanitarian agencies to exercise the required level of due diligence not only creates additional security risks for the agency itself, but can worsen existing tensions in local communities and undermine any socio-economic benefits derived from contracting a local security company. This is notable in those contexts where certain security companies are staffed with former members of the national military and security forces. This can create a level of distrust with local communities and those needing assistance from the humanitarian agencies which are using these security companies.

If the delivery of humanitarian aid is to be seen as impartial and needs based, humanitarian agencies must avoid any situation which could jeopardize this.

By contracting security companies without meeting all due diligence requirements, in apportioning insufficient funding to security, and by not having a zero-tolerance policy on corruption, humanitarian agencies risk exacerbating the humanitarian situation and increasing risks to their staff and beneficiaries alike.

Recommendations

Based on the above issues, ICoCA submits that the Working Group should consider adopting the following recommendations:

For humanitarian agencies hiring private security:

1. Humanitarian agencies should commit to greater transparency and an open dialogue on issues related to the operations and the use of private security companies, notably through:
 - a. More transparency on the specific criteria they are using to select a security company.
 - b. More transparency by providing a post-tender report to security companies on why they specifically were not chosen for the contract.
2. Humanitarian agencies operating in high-risk environments should develop robust procurement guidelines and suppliers' codes which integrate and reference human rights and humanitarian law standards related to the activities of security providers.
3. Humanitarian agencies should strengthen existing and develop new guidelines and procedures for the selection and contracting of security providers; humanitarian agencies can be guided by 'Security to go', the procurement tool developed jointly by ICoCA and GISF.

4. Humanitarian agencies should develop strong in-house compliance mechanisms to ensure that all relevant international standards and local regulatory and licensing requirements are respected in the selection process and contracting of private security providers.
5. Humanitarian agencies hiring third-party procurement officers need to conduct more due diligence in who they hire, and demand transparency from the procurement officer on the specific candidates for a private security contract and why they recommend one over another.
6. In the case of international humanitarian agencies with headquarter and international operations, such compliance mechanisms must extend to the oversight and verification of local procurement decisions.
7. If procurement decisions by international humanitarian agencies are made off-site or in a country other than the one where the security providers will be stationed, humanitarian agencies should develop a robust oversight mechanism so that those with decision-making authority are able to track the delivery of the contract.
8. In the development of their operational budgets, humanitarian aid agencies should commit adequate levels of funding to meet in country security needs. Such funding should enable the management teams to be able to select only those security companies that can demonstrate compliance with international standards, human rights and humanitarian law.

For Governments and Donors:

1. Governments should adopt a zero-tolerance policy on corruption in the selection and contract of security providers.
2. Governments, as donors, should integrate mandatory human rights due diligence as part of their funding requirements to ensure that humanitarian agencies mitigate and manage all risks associated to the selection of security providers.
3. Governments and donors should allocate greater budget flexibility for humanitarian agencies hiring private security, allowing those agencies to select a more reputable and human rights compliant security provider.

On behalf of the International Code of Conduct Association,



Jamie A. Williamson,
ICoCA Executive Director
j.williamson@icoca.ch

Annex – Summary of Security-to-go Module by GISF and ICoCA

The complete toolkit is available at: <https://gisf.ngo/resource/security-to-go/>

Step 1: Determine the organization’s needs for a private security provider.

The decision to use private security should not be made lightly, and armed services should only be used as a last resort when no alternative solution is available. Humanitarian agencies should carefully assess the risks associated with contracting private security and should have clear internal policies on the use of private security providers that are approved by the highest levels of management and reference external documents such as the International Code of Conduct for Private Security Providers.

Step 2: Develop strong procurement processes.

Once the decision is made to contract private security, humanitarian agencies should ensure that they have a robust procurement process in place. Procurement processes should be conducted by a member of the organization, or if necessary, an external consultant, with relevant expertise in the field of private security. Agencies should prepare a Request for Proposals tailored to their needs with a clear budget, deliverables, selection criteria and scoring system, deadlines, and instructions for proposal submissions. Agencies should also have an in-house process for reviewing and selecting proposals. Once a proposal is selected, agencies should establish clear contractual terms, including key performance indicators, regular reviews, and termination clauses.

Step 3: Due diligence in selecting a provider.

Humanitarian agencies should have strong due diligence criteria and selection processes based on objective and verifiable criteria. The selection process should cross-check diverse sources of information to verify that any information provided by the private security provider is accurate. This should include: checking all certificates and licenses, researching open source information about the company, and contacting ICoCA and other stakeholders, such as the security provider’s clients, to understand their experiences working with the provider. Specific criteria for selecting a private security provider are available in the full Security-to-go report.

Step 4: Monitoring of the Private Security Provider’s performance

Humanitarian agencies should establish clear terms in the contract, as well as a monitoring framework to oversee contract delivery at regular time intervals. The contract itself should include, among other terms, information on the specific services provided, expectations for standards of conduct, grievance procedures, rules for termination in the case of misconduct, specific rules on the use of force, and rules outlining where liability lies in the event of an incident involving the security provider. The humanitarian agency’s monitoring framework should be similarly robust, including regular meetings to discuss the status of the contract delivery, discussion of incidents or complaints received, routine training of company personnel on the standards of the humanitarian agency, and a clear explanation of the grievance mechanisms in place for staff, clients, and subcontractors.

Step 5: Relationship with the company and security guards

Private security providers should be aware that their conduct reflects the organization they are protecting. When providing static security or access control, security personnel often constitute the first point of contact with external visitors and the host community, and their actions can impact the image of the humanitarian agency. As such, private security staff should be provided with an orientation on the humanitarian agency's values and standards, along with guidance on their interaction with agency staff and external parties. Agency staff should also be educated on the roles and responsibilities of the security personnel, and should understand and be trained to respond to security and safety incidents.