

# SECURITY FOR SALE

## Challenges and Good Practices in Regulating Private Military and Security Companies in Latin America

Sarah Kinoshian and James Bosworth

Just before midnight on March 2, 2016, assassins broke into Berta Cáceres' home and murdered her in her bedroom. Cáceres was an indigenous leader in a peaceful campaign against the Agua Zarca dam on a river considered sacred by the indigenous Lenca community of Honduras.

In the months leading up to her death, Cáceres, along with the resistance movement she led, endured threats, smear campaigns, physical assaults, sexual assaults and forced eviction. The recently-arrested executive president of the company building the dam, Desarrollos Energéticos SA,

(DESA), was a former military intelligence officer. On DESA's board sits a former justice minister and several members of one of the richest and most powerful families in Honduras.<sup>1</sup>

An international group of lawyers studying the case established "shareholders, executives, managers, and employees of Desarrollos Energéticos Sociedad Anónima (DESA); private security companies working for DESA; and public officials and State security agencies implemented different strategies to violate the right to prior, free and informed consultation of the Lenca indigenous people. The strategy was to control, neutralize and eliminate any opposition."<sup>2</sup> So far nine people have been arrested, four of whom have ties to the Honduran military.

Among many other issues, including high-level corruption, the Cáceres assassination is emblematic of many problems associated with the private sector security industry in Latin America.

The lines between current and retired military personnel and the private company were blurred. There was an interwoven network of current military, former military, private security, business elites and government officials. The dispute involved an energy project opposed by a local community, a context in which many of the worst Private Military and Security Company (PMSC) abuses occur across the region. The sustained use of surveillance, threats, and force

**The rapid rise of the private security industry is an inevitable byproduct of high levels of crime and violence in the region, but the proliferation of PMSCs brings a new set of challenges to citizen security in Latin America.**

## Foreword

We are pleased to present “Security for Sale: Challenges and Good Practices in Regulating Private Military and Security Companies in Latin America,” a new report by the Peter D. Bell Rule of Law Program at the Inter-American Dialogue.

This report, by Sarah Kinoshian and James Bosworth, explores the challenges associated with the proliferation of private military and security companies in Latin America. Bosworth has written about politics and security risks in Latin America for clients in the public and private sector for the past 17 years. He currently manages Hxagon, LLC, writes commentary at Bloggings by Boz, and serves as a non-resident senior associate at the Center for Strategic and International Studies (CSIS). Kinoshian is a Mexico-based journalist and former regional security policy expert at the Washington Office on Latin America (WOLA). She has reported from Colombia, Brazil, Honduras, Ecuador, Peru, the Philippines, and Cuba, and done additional fieldwork in Argentina, El Salvador, Guatemala, and Mexico.

The report is an important extension of the Dialogue’s longstanding work on citizen security as a key component of democratic governance. Despite being free of armed conflict between countries, Latin America remains the most violent region in the world, with 17 of the world’s 20 most violent cities and four of the five most violent countries. The 2017 Latinobarómetro survey found that 43 percent of Latin Americans live in fear of crime almost all the time, and citizen security regularly tops surveys of citizen concerns.

Much attention is rightly focused on the public policy response to violence in the region, from crime prevention strategies to law enforcement, judicial institutions, and prisons. Comparatively less attention is paid to the role of private military and security companies and their employees, whose numbers far outstrip those of police officers in the region.

It is perhaps unsurprising that a market for private security has emerged in response to crime and violence in Latin America. But the privatization of security comes at a cost. The Inter-American Development Bank estimates that, conservatively, crime costs Latin American and Caribbean countries 3 percent of GDP—twice the average cost in developed countries—of which 37 percent is private spending. This report highlights other challenges, including excessive use of force and arms trafficking by private military and security companies, as well as the broader “inequality of security” that results when citizen safety becomes a marketplace commodity rather than a public good.

The report looks closely at the regulatory and enforcement landscape as it applies to private military and security companies in Latin America, with particular reference to the Montreux Document, a compilation of relevant international legal obligations and good practices intended to promote respect for international humanitarian law and human rights through state regulation. While the Montreux Document applies most directly to situations of armed conflict, its existing obligations and good practices may also be instructive for post-conflict situations and for other, comparable situations, and hence—as the authors find—to the challenges involved with regulating private security in the region. The authors conclude with a series of recommendations for Latin American governments and multilateral organizations based on their analysis of the gaps in regulation and enforcement of private military and security companies in Latin America.

We are grateful to the authors for the thorough research and effort that went into this report. We also wish to thank the Dialogue’s Michael Camilleri and Ben Raderstorf for their work overseeing this project and preparing the final report for publication, as well as Bruno Binetti for translating the report into Spanish and Juliana Urrego for editing. Our thanks to the Ford Foundation for ongoing support of the Peter D. Bell Rule of Law Program. We are grateful to the International Committee of the Red Cross (ICRC) for advice and support throughout the development of this project.

This project was made possible through the financial support and partnership of the Federal Department of Foreign Affairs of Switzerland. The report builds on the work of the Swiss Government and the ICRC in launching the Montreux Document and promoting the adherence of private military and security companies to international norms. The report also benefited from prior work by the Geneva Centre for the Democratic Control of Armed Forces (DCAF) analyzing the applicability of the Montreux Document in Latin America, as well as from analysis published by DCAF and the United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean (UNLIREC) in the framework of their joint project to strengthen oversight and promote small arms control for the private security sector in Latin America and the Caribbean. We trust that this report will constitute a further contribution to the discussion, and we look forward as always to promoting a robust and informed debate on this important public policy issue.

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President  
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against the Lenca community—culminating with Cáceres' assassination— was excessive and politicized, clearly violating the rules of engagement for public and private security forces. Some of the individuals responsible for the murder were only arrested after significant international outcry, but most of the masterminds behind the killing remain free.

The Cáceres case highlights the challenges of the growing PMSC sector in Latin America. Even where adequate laws are on the books, lack of implementation and enforcement of regulations is a critical weakness in oversight of PMSCs in Latin America. The rapid rise of the industry is an inevitable byproduct of high levels of insecurity in the region, but the proliferation of PMSCs brings a new set of challenges to citizen security in Latin America.

## The Prevalence of Private Security in Latin America

Latin America is the world's most violent region. It contains 17 of the world's 20 most violent cities and four of the five most violent countries according to recent statistics.<sup>3</sup> The violence is so bad many of the region's countries have chosen to respond to the criminal violence with the armed forces. Nonetheless, none of Latin America's most violent countries are considered to be in a state of armed conflict.

This violence and insecurity, driven by government corruption, organized crime, illicit traffickers, street gangs and sometimes paramilitary groups linked to government forces, has sparked an enormous growth of the private security industry throughout the region. In Latin America and the Caribbean, over 16,000 Private Military and Security

Companies (PMSCs) employ an estimated 2.4 million people.<sup>4</sup> While private security guards outnumber police officers around the world, the gap is far larger in Latin America. In Brazil, the ratio is four to one, in Guatemala, five to one, and in Honduras there are almost seven private guards for every public officer.<sup>5</sup>

Some of these PMSCs contract with governments to provide training, equipment and services to the public security forces. Various foreign governments, most notably the United States, contract with PMSCs to provide assistance to the public security forces and combat criminals and terrorists in various Latin American countries.<sup>6,7,8</sup>

But the vast majority of PMSC work is done for the private sector, not local or foreign governments. The security guards at nearly every mall, bank and office building are the visible presence of this multi-billion dollar business. Contractors handle the executive protection for local business leaders and foreign executives who travel through the region. Less visibly, contractors also handle the security for rural properties, cargo transportation, and oil fields, pipelines, and other extractive and agribusiness industry projects.

## The Montreux Document: What is it and why does it matter for Latin America?

Every Latin American country has some regulation regarding PMSCs. In all cases, the laws on paper face challenges in implementation and enforcement. For many Latin American governments, stretched thin in a perpetual effort to combat

**“PMSCs are private business entities that provide military and/or security services, irrespective of how they describe themselves. Military and security services include, in particular, armed guarding and protection of persons and objects, such as convoys, buildings and other places; maintenance and operation of weapons systems; prisoner detention; and advice to or training of local forces and security personnel.”**

**- The Montreux Document**

crime and violence, regulating the private security industry has proven a low priority, making it relatively easy and low risk for PMSCs to circumvent national laws. This lack of oversight and enforcement has led to instances where corruption, human rights abuses and excessive use of force have gone unchecked.

The rapid growth of the PMSC industry and the problems associated with it are not confined to Latin America. Globally, the industry’s rise, particularly in conflict zones in the Middle East, South Asia and Africa, has led to efforts to provide greater guidance and regulation to the companies and the governments that contract and engage with them, as well as the territorial states in which companies are active and the home states of personnel.

The Montreux Document is a 2008 intergovernmental document that compiles pertinent international legal obligations and good practices designed to help states take national measures to meet their obligations related to private military and security companies. It is the result of an international process launched by the Government of Switzerland and the International Committee of the Red Cross (ICRC), intended to promote respect for international humanitarian law and human rights law. The first section of the Montreux Document recalls the legal obligations of states, PMSCs, and their personnel, especially in situations of armed conflict. The document’s second section provides good practices for the regulation of PMSCs operating both in areas of armed conflict and outside such areas, including in public security efforts and contracting for private security—as is most often the case in Latin America.

The Montreux Document focuses its recommendations on the obligations of Contracting States, Territorial States and

Home States. Contracting States are the states purchasing the services. Territorial States are where the private contractors operate. Home States are the location of the private company, but not necessarily the state where the contracted personnel originate.

For example, if the US government hires a French firm to help with security in Iraq, then the US is the Contracting State, Iraq is the Territorial State and France is the Home State. The PMSC environment in Latin America tends to operate differently. When a Latin American government hires a local security firm to operate in their country, it holds the role of all three actors (contracting, territorial and home). Foreign Contracting States tend to be an exception in the region, not a standard practice.

Although only four countries in Latin America have officially expressed their support for it—Uruguay, Ecuador, Chile, and Costa Rica—the Montreux Document provides an important framework through which Latin American PMSC regulations and their application can be considered and evaluated. Specifically, the good practices section of the Document contains detailed guidelines on issues such as the criteria and procedures for authorization of PMSCs, regulation of their possession of weapons, monitoring of their compliance with applicable regulations, training of PMSC personnel, and accountability for PMSC misconduct. Given the realities of PMSCs in Latin America, this study will focus mainly on the applicability of these good practices to PMSCs operating in their Home States.<sup>9</sup>

A 2017 research study<sup>10</sup> by DCAF outlined eight non-official and non-exhaustive indicators to reflect on Montreux Document implementation.

ROLES & RESPONSIBILITIES	PROCESSES, SYSTEMS, AND PROCEDURES	MONITORING & ACCOUNTABILITY
<ol style="list-style-type: none"> <li>1. Specific legislation on PMSCs (provisions and licensing and registration)</li> <li>2. Determination of services: distinction between private and public security service provision</li> <li>3. Extra-territorial jurisdiction of the law</li> </ol>	<ol style="list-style-type: none"> <li>4. Required identification of personnel and means of transport. Prohibition of active-duty public security from working in PMSCs</li> <li>5. Firearms and weapons licencing and registration for PMSCs</li> <li>6. Dedicated policy on the use of force and firearms by PMSC personnel</li> </ol>	<ol style="list-style-type: none"> <li>7. Monitoring of PMSCs</li> <li>8. Suspension and/or revocation of license, registration, or contract in case of misconduct</li> </ol>

On paper, countries in Latin America tend to meet five or six of these requirements. Legislation in nearly every country in the region meets the indicators for having processes, systems and procedures in place. Private security firms require a license and guidelines regulate the personnel they can hire, the weapons they can carry, the operations they can perform and the liabilities they face if they act against the law. This legislative framework is a sign of progress over the past 15-20 years.

Private companies that contract with PMSCs to provide security, even if those companies do not face the same specific obligations as states under international law, should follow the Montreux Document's good practices regarding using licensed and authorized security providers and avoiding those who have engaged in abuses. Further, Territorial States should regulate PMSCs working for the private sector as they would PMSCs working for Contracting States under the Montreux Document's framework.

## Private Security in Latin America: Key issues and challenges

Where many countries fall short with regards to private security, including several of the largest countries in the region, is the implementation of their laws. In countries where impunity reigns, no matter the model of private security regulation, firms are not adequately monitored or held to account in cases of violations, crime and corruption. While certain countries have more strict, specific and comprehensive guidelines than others, enforcement shortcomings are a common thread throughout much of the hemisphere and present another set of challenges to Latin America's security landscape.

### *Regulating the rapid growth of the industry*

As violent crime has risen in Latin America, so has demand for companies that can provide security for businesses and services for public sector security forces. As with violent crime, the sudden rise in PMSC firms caught much of the region off guard, with many countries having few or outdated regulations to manage the growth of the

industry as well as weak regulatory bodies to enforce those regulations.

In Mexico for example, as of 2017, 3,977 private security companies had registered with the government. A 2016 estimate by the Consejo Nacional de Seguridad Privada (CNSP) said the formal PMSC industry in Mexico was worth nearly US\$1.5 billion. That number was 180% higher than in 2012 and growing every year, even without accounting for the private security firms operating in the informal sector.<sup>11</sup> In addition, several large Mexican and international companies have internal security divisions that conduct significant security operations including guarding facilities and executive protection. These subdivisions of companies do not generally qualify as PMSCs under national law because their security role is secondary to the company's primary function and they do not contract their services to other companies or governments. That said, many of these units fall under PMSC regulations regarding training, background checks, carrying and using weapons.

Mexico's private security firms must register with the federal government through the Dirección General de Seguridad Privada<sup>12</sup> under the Secretaría de Gobernación. That unit maintains a list of authorized and sanctioned security providers. Each state has its own regulations and requirements for registration and many municipalities also regulate private security services, creating a complex system that can be difficult for firms to navigate.

Brazil has approximately 650,000 private security personnel. According to a 2015 study by Fenavist, the industry is worth over 45 billion reais (almost \$14 billion dollars) per year.<sup>13</sup> As with other countries in the hemisphere, the private security industry in Brazil has grown substantially larger as Brazil's violence has increased in recent years in many of its major cities. The industry also significantly increased with the demand created by the 2014 World Cup and 2016 Olympics being held in the country.

Brazil's regulations on private security are decentralized. While the Ministry of Justice regulates the industry at the national level, many of the rules are enacted at the state level and enforcement of those rules falls to state and local officials.

Decades of violence have built up Colombia's private security industry. In response, the government has enacted specific regulations that focus on private security, but also separate the day-to-day actions of bodyguards and security guards from those that engage in the conflict. Many of the

current regulations date back to a 1994 law, though that legislation has been amended multiple times, most recently in 2012.

In Colombia, the licensing of private security is done through an office at the Ministry of Defense, the Superintendencia de Vigilancia y de Seguridad Privada (SVSP).<sup>14</sup> While placing private security guards under the regulatory authority of the Defense Ministry would be an odd and overly militarized choice in most countries, Colombia's police are also a branch of the defense ministry. After reforms during the 2000's, Colombia's training requirements include a heavy emphasis on human rights relative to other countries, a response to the very legitimate concerns over abuses by paramilitary actors. All Colombian private security operators and owners must be Colombian nationals. Companies, not individual guards, must be the owners of weapons used by the firms.

Guatemala has an estimated 80,000 to 200,000 private security personnel.<sup>15</sup> There are 184 registered firms, according to the agency monitoring the sector<sup>16</sup>, and an unknown, but substantial number of unregistered companies. After the country's civil war in 1996, the industry swelled after a drawdown of nearly two thirds of the country's military and continued to grow over the next two decades in response to the increasing strength of criminal groups in rural areas and gangs in urban centers.

In 2010 the government passed new regulations focusing on private security and moving oversight out from under the police to Guatemala's oversight Office of Private Security Services (DIGESSP).<sup>17</sup> The law requires companies to register with DIGESSP, obtain licenses for different services from bodyguards to intelligence, renew those licenses every three to four years depending on the classification, and ensure all firearms are marked and registered. All personnel must also meet basic education requirements and receive the DIGESSP-approved training which includes firearms instruction and focuses on use of force and human rights. Private security operators are required to cooperate with police and other members of the security sector when requested.

Honduras' private security industry has swelled over the past decade, from 116 registered companies in 2007, to over 700 by 2013,<sup>18</sup> to 1,038 in 2017.<sup>19</sup> There are also several hundred unregistered security firms. Unlike its neighbors, this rise did not come in the wake of a drawdown from a civil war, but grew with increasingly high levels of violence, particularly after a 2009 military coup.

The current laws on the books in Honduras are not as strong or specific as many other countries in the region, including Guatemala's. As part of a new police reform bill moving through Congress, Honduras is currently rewriting its legislation governing private security. The new guidelines create an independent oversight body to monitor and regulate licensing, establish requirements for private security guards such as basic levels of education, polygraph, psychological and other types of testing, and require a training course with a heavy human rights component. While this new legislation represents a major step forward for private security regulation, its efficacy will be determined by the resources, political will, and infrastructure created to implement it across the sector -- not just the actors who the government selects.

The private security industry is extremely opaque. But for countries to reign in PMSCs, they need to ensure that the cost of not complying with regulations is higher than the cost of complying. This includes the most basic task of registration.

### *Unregistered companies and compliance with regulations*

Though every country in Latin America has provisions for licensing and registration of private security businesses, the existence and growth of unlicensed businesses and personnel is a key challenge in many countries. Because there is little consequence for not registering and the cost of doing so is often financially high, there is a lack of incentive for companies to register with states, which makes estimating the size of the private sector and monitoring its actions nearly impossible.

In Mexico, nearly 8,000 companies are believed to be providing private security services without having registered with the government. That is approximately double the number of legally registered companies. Several hundred thousand individuals provide unregistered guard or security services. According to a separate study by Mexico's National Council of Private Security, over 80% of the country's private firms work outside of government regulations.<sup>20</sup> Known locally as "patitos," these unregistered services are officially illegal and exist in the gray and black market.

In Guatemala City, an estimated 30% of private security firms are illegal.<sup>21</sup> Each company, despite its size, must pay

## From the Montreux Document's Good Practices for Territorial States:

### II. Authorization to provide military and security services

25. To require PMSCs to obtain an authorization to provide military and security services in their territory ("authorization"), including by requiring:

- a) PMSCs to obtain an operating license valid for a limited and renewable period ("corporate operating license"), or for specific services ("specific operating license"), taking into account the fulfilment of the quality criteria set out in good practices 31 to 38; and/or;
- b) individuals to register or obtain a license in order to carry out military or security services for PMSCs.

### VII. Monitoring compliance and ensuring accountability

46. To monitor compliance with the terms of the authorization, in particular:

- a) establish or designate an adequately resourced monitoring authority;
- b) ensure that the civilian population is informed about the rules of conduct by which PMSC have to abide and available complaint mechanisms;
- c) requesting local authorities to report on misconduct by PMSCs or their personnel;
- d) investigate reports of wrongdoing.

for each separate type of license, a license for each guard, and a license for each weapon. There are several reasons why a company may not register a guard, one being that many private security personnel only work part of the year, so employers do not want to purchase a whole separate license just for that worker.

There are several hundred unlicensed security companies in Honduras on top of the 700 registered private security companies. According to police, one of the biggest

problems is the failure to report new personnel, which allows companies to not disclose the criminal history of their employees and avoid taxes and licensing fees.<sup>22</sup>

In Colombia, some initial missteps with the 1994 private security reforms led to an unexpected legacy of illegal groups. For example, the reforms legalized Convivir groups, citizen militias to provide security. Hundreds of those Convivir groups, however, ended up engaging in extortion rackets related to their formal security roles.<sup>23</sup> Some overlapped with the country's paramilitary organizations, which also often call themselves "self-defense" forces. Additional reforms in the late 1990's were supposed to ban the Convivir practice, but the presence of illicit "private security" organizations engaging in extortion continues to exist today in urban and rural areas of Colombia.

The presence of illegal security groups increased and became more complex once again following the demobilization of the paramilitary umbrella group AUC of the mid-2000's. Many former fighters had few skills to reintegrate into society but did have experience and some limited training that would allow them to become unregistered private security personnel. In addition to "legitimate" but unregistered security personnel, some former combatants used their previous criminal networks to turn extortion and protection rackets disguised as private security companies into an important profit stream. It is likely that many fighters demobilizing from the FARC guerrillas in the new peace process will also look to unregistered or illegal PMSC operations for work if other reintegration opportunities are not provided.

But it is not just in Colombia that people with backgrounds in security enter into the private, often informal, sector. Across the region, current and former military and police staff private security roles, despite laws in most countries banning the practice.

### *Moonlighting, public-private overlaps, and ties to the underworld*

The Montreux Document calls for States to require, as a criteria for authorization, that PMSC's conduct comprehensive background checks of their personnel, particularly regarding prior criminal convictions or dishonorable discharge from any prior service in the armed or security forces.<sup>24</sup> The Montreux Document also calls for the roles of public and private security forces to be

differentiated. Specifically, the document calls for PMSC personnel to wear insignia that “allow for a clear distinction between a PMSC’s personnel and the public authorities in the State where the PMSC operates.”<sup>25</sup> This becomes more problematic when the personnel of PMSC and public security forces overlap.

In Brazil, off-duty police and military are known to sometimes work for both registered and unregistered PMSCs, though doing so usually violates regulations. The actions of off-duty police officers acting in a private or semi-private role has created the perception and the reality that the Brazilian police at times use their off-duty forces to eliminate criminals rather than arrest them. The numbers of killings by off-duty police officers, some working as private security, has increased steadily in recent years. A majority of those cases are not seriously investigated or prosecuted. In turn, an increasing number of off-duty police officers have been killed by criminal groups in revenge.

But overlap from private security into public security is not singular to Brazil, nor is the role of private security acting in a vigilante or hitman-like role -- there are examples from most countries dealing with high homicide rates driven by gangs, corruption and traffickers. For instance in El Salvador, where active members of the military are allowed to work with or own private security firms,<sup>26</sup> the attorney general has called for the sector’s participation in domestic security more broadly.<sup>27</sup> In Guatemala, private security firms have been tied to extrajudicial killings and been linked with Clandestine Security Apparatuses (Cuerpos Ilegales y Aparatos Clandestinos de Seguridad – CIACS).<sup>28</sup> In Honduras, many private security firms are “suspected fronts for organized crime groups.”<sup>29</sup> According to the country’s Attorney General, the Valle Valle group, a notorious drug clan, used its own private security firm to purchase weapons.<sup>30</sup>

Colombia, whose security landscape is shaped by its recently-ended armed conflict, allows the military to be hired as a contractor to provide security for major infrastructure projects. Additionally, protection of Colombia’s oil fields and pipelines has often been treated as a national security concern, leading to public security efforts directly benefiting specific private sector companies.

These kinds of overlap, whether lawful or illegal, present a potential obstacle to accountability when government personnel, or those acting in operations within the interests of the government, are involved in cases of corruption or abuses.

### *Inequality of security & the security arms race*

The private security industry also drives an inequality of security. Wealthy businesses and individuals spend on their individual security while often paying little in taxes that would fund the collective security that would benefit society at large. Meanwhile, the industry takes qualified personnel from government security forces, leaving them understaffed and forced to hire and train less experienced personnel.

The growth of private security has also created a type of arms race. No company wants to be the least protected. The wealthy person without a bodyguard is the most likely target for kidnapping. Criminals who want to target wealthy companies or individuals are forced to increase their own firepower and capabilities, making them that much more dangerous when they engage against local police forces or civilians.

Unlike funding better public security services, private security does not address impunity, one of the root causes for the epidemic of violence in Latin America. The perpetrators of a vast majority of homicides and other violent crimes are never prosecuted, convicted and jailed. Still, the prison systems are overburdened, failing to rehabilitate criminal actors and too often serving as organization and training centers for the region’s most violent groups. Impunity and failed government policies have led to the perpetuation of cycles of violence. Security contractors for the private sector provide protection to those who pay for it, but do not help investigate crimes, arrest criminals or rehabilitate them, nor should they. But the billions of dollars spent on private security do little to address the underlying drivers of crime and violence. By allowing elites to buy their way out of their countries’ insecurity—or at least giving them the impression they can—the proliferation of PMSCs may dampen the political incentives and government resources necessary to strengthen public security forces and judicial institutions.

### *Arms trafficking and the private security sector*

While all countries in Latin America have guidelines that require licensing and registration as the Montreux Document directs, the on-the-ground reality is that many countries lack the political will, and by extension, the infrastructure, to enforce existing arms laws.

### From the Montreux Document's Good Practices for Territorial States:

44. To have in place appropriate rules on the possession of weapons by PMSCs and their personnel, such as:

- a) limiting the types and quantity of weapons and ammunition that a PMSC may import, possess or acquire;
- b) requiring the registration of weapons, including their serial number and calibre, and ammunition, with a competent authority;
- c) requiring PMSC personnel to obtain an authorization to carry weapons that is shown upon demand;
- d) limiting the number of employees allowed to carry weapons in a specific context or area;
- e) requiring the storage of weapons and ammunition in a secure and safe facility when personnel are off duty;
- f) requiring that PMSC personnel carry authorized weapons only while on duty;
- g) controlling the further possession and use of weapons and ammunition after an assignment is completed, including return to point of origin or other proper disposal of weapons and ammunition.

### From the Montreux Document's Good Practices for Home States:

#### *IV. Criteria for granting an authorization*

62. To take into account whether the PMSC maintains accurate and up-to-date personnel and property records, in particular, with regard to weapons and ammunition, available for inspection on demand by competent authorities.

In the region, regulations on PMSC use of firearms goes beyond questions of who can carry a weapon and the rules of engagement. But despite guidelines dictating the training, licensing, usage and storage of firearms, the fact remains that the private security industry is a major supplier of weapons for criminal groups, particularly in the violent

Northern Triangle of Central America where there is no domestic firearms market.

PMSCs import thousands of weapons to Latin America each year and a significant portion of those imports are stolen, misdirected or lost by individual PMSC contractors. These arms make their way to the black market where criminals have their pick of firepower to then use against public security forces and the population. For example in El Salvador up to 40% of illegal weapons are connected to an estimated 460 private security firms, even though there is an arms registry for the sector.<sup>31</sup>

When the rules are poorly written or poorly enforced, PMSC companies provide an opportunity for criminal organizations to "launder" weapons from the white to the gray and then black markets. In 2015, 90 people, including two connected with a private security firm in San Salvador, were arrested as part of an arms trafficking network tied to the MS-13.<sup>32</sup> There have also been cases when PMSCs have sold or rented firearms to unauthorized users, such as unregistered PMSC or to criminals. When PMSCs have closed, they have sold their weapons off without proper documentation. In several countries, small arms held by PMSCs have altered or erased serial numbers, making them impossible to trace.<sup>33</sup> In Mexico, there are reports of criminal organizations starting private security firms in order to obtain access to otherwise prohibited firearms.<sup>34</sup>

Weapons also make PMSCs a target for organized crime. Guards will often be attacked for firearms or companies will be infiltrated by gang members looking for access to guns and ammunition.

Several countries lack the sufficient law enforcement infrastructure to adequately address firearms trafficking within the private security sector and more broadly, whether or not they have a national firearms industry. For example, in Honduras police said a team of 33 officers monitored over 700 private security companies that managed over 100,000 registered weapons.<sup>35</sup> The country also has no unit for arms trafficking investigations and according to prosecutors only investigate cases when linked to other crimes.<sup>36</sup>

Brazil is one of the few countries in the hemisphere with an arms manufacturing industry. A 2015 study from DCAF reported nearly 80% of the weapons on the black market are believed to come from the country's legal arms industry. In some cases, the companies export the weapons only to have them smuggled back in. In others, companies create a false paperwork trail to make the weapons appear exported

to private security companies in neighboring countries, only to have them sold on the local black market in Brazil.<sup>37</sup>

A Brazil Federal Police report from 2016 suggested private security firms in Rio de Janeiro had lost 17,600 weapons in the previous decade, about 30% of all the weapons those firms held.<sup>38</sup>

The problem of arms moving through the private security industry into the hands of criminals is largely due to a lack of enforcement of existing laws, not because new ones necessarily need to be created, although supporting legislation and better legal and law enforcement infrastructure in some cases could cut down on the prevalence of leakage.

In many countries, like Mexico and those of the Northern Triangle, active military or former members of the military handle all gun imports, registration and circulation. Given that former, and, in some instances, active, members of security forces make up a large portion of private security owners and personnel, there are close ties between the military, the arms industry, and the private security sector, which could serve as a disincentive to investigate instances of trafficking. But this interwoven network extends beyond the firearms industry.

### *Private security political influence and the PMSC industrial complex*

A large number of those working in the PMSC sector, particularly the managers and owners of companies, are former members of the military and police.<sup>39</sup> This means there are often close-knit ties between private security firms, the government, and security forces, creating several problems. In some instances private security and state security have colluded to engage in criminal activity. In others, personal and financial ties, including through corruption, can create obstacles to the effective investigation of wrongdoing by PMSCs. The connections can also lead to favoritism in contracting and allow the private security sector to shape its own oversight through political influence.

In Guatemala for example, the private security law and its implementation have proven susceptible to political pressure. Unhappy with the high fees and requirements, in 2015 the Private Security Companies Union and the powerful lobby it funds managed to nearly gut the

guidelines. While they were unable to change the letter of the law, the group was able to pressure then-president Otto Perez Molina into firing the head of the monitoring body, Patricia Monge, who had cracked down on private security operators working illegally. Under her watch, in 2015 DIGESSP moved to shut down 40 unregistered private firms, which alone employed 5,000 guards and had over 8,500 firearms.<sup>40</sup>

Pressure like this – from attempts to influence policy and oversight to deals exchanged for looking the other way in cases of wrongdoing – can be seen in most countries, especially those with a powerful local security firm sector.

### *Excessive force, particularly in the extractive industry*

Some of the biggest markets for private security in Latin America are extractive industries, natural resource projects and agribusiness. Many times these projects take place in rural areas afflicted by the presence of criminal organizations looking to cash in by looting, extortion, or some combination of the two. From Mexico to Chile, companies and corporations in search of gold, water, oil, coal, gas, iron, timber and other lucrative exports hire armed guards to protect their investments.

Often, there are also local populations protesting these activities, and at times they have been met with violence. Lack of political will to hold companies and their contracted security providers to account has led to multiple cases in which private security personnel have clashed with local populations and activists, resulting in killings that remain in impunity.

As noted above, there is often a close-knit network between business, private security, the military and the government. This network often offers protection to the elite when tensions rise between environmental activists and local populations and landholders and business owners. There are multiple examples for nearly every country in the region, but in Honduras this relationship has been highlighted in human rights abuse cases in recent years and particularly evident in the extractive industry. As Sarah Chayes notes in her landmark study of corrupt networks in Honduras, “private security companies, employed to protect dams or palm plantations, may attack protesters side-by-side with the police or armed forces, or alone.”<sup>41</sup>

## From the Montreux Document's Good Practices for Territorial States:

### *IV. Criteria for granting an authorization*

35. To take into account that the PMSC's personnel are sufficiently trained, both prior to any deployment and on an ongoing basis, to respect relevant national law, international humanitarian law and human rights law; and to establish goals to facilitate uniformity and standardization of training requirements. Training could include general and task- and context-specific topics, preparing personnel for performance under the specific contract and in the specific environment, such as:

- a) rules on the use of force and weapons;
- b) international humanitarian law and human rights law;
- c) religious, gender, and cultural issues, and respect for the local population;
- d) complaints handling;
- e) measures against bribery, corruption, and other crimes.

Territorial States consider continuously reassessing the level of training by, for example, requiring regular reporting on the part of PMSCs.

### *VI. Rules on the provision of services by PMSCs and their personnel*

43. To have in place appropriate rules on the use of force and firearms by PMSCs and their personnel, such as:

- a) using force and firearms only when necessary in self-defence or defence of third persons;
- b) immediately reporting to and cooperation with competent authorities in the case of use of force and firearms.

Since a military coup d'état forced out president Manuel Zelaya in 2009, Honduras has become one of the most dangerous countries in the world for environmental activists, with at least 123 land and environmental activists

killed.<sup>42</sup> Private security personnel have been implicated in several of these cases.

Home to many of Honduras' natural resources and in turn mega-projects, the Bajo Aguán region has been particularly deadly for environmental activists. There, private security and security forces often work together to repress protests and land activists. In 2013 the United Nations Working Group on the use of mercenaries urged greater oversight of private security firms in Honduras and expressed "concern about the alleged involvement in human rights violations of private security companies hired by landowners, including killings, disappearances, forced evictions and sexual violence against representatives of farmers' associations in the Bajo Aguán region."<sup>43</sup>

This problem is not limited to Honduras. Latin America is the most dangerous region in the world for environmental defenders.<sup>44</sup> All over the region, in Brazil, Mexico, Peru, Guatemala, Colombia and elsewhere, traffickers, gangs, security forces, militias and private security firms – the lines between which often blur – have been found to kill, assault and threaten indigenous rights defenders and environmental activists. After Brazil, Colombia is the second-deadliest place for environmental defenders, registering 95 deaths between 2015 and 2017.<sup>45</sup> Along with criminal groups, the private security sector and the military have been implicated in these killings.

The Montreux Document indicates that States should require, as a condition for authorization, that PMSCs train their personnel on human rights law and rules on the use of force. These good practices complement other frameworks, such as the Voluntary Principles on Security and Human Rights, designed to guide companies in the extractive sector in maintaining the safety and security of their operations within an operational framework that encourages respect for human rights.

### *Regulating Latin American security personnel abroad*

Although the Montreux Document is most relevant for Latin American states in domestic regulations, the document also establishes clear legal obligations and best practices for countries as Home States. In recent years, foreign governments and private contractors have recruited and hired Latin American citizens to engage in private military and security operations abroad. Latin American citizens

**From the Montreux Document’s Pertinent International Legal Obligations relating to Private Military and Security Companies:**

16. Home States have an obligation to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, grave breaches of the Geneva Conventions and, where applicable, Additional Protocol I, and have an obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches and bring such persons, regardless of their nationality, before their own courts. They may also, if they prefer, and in accordance with the provisions of their own legislation, hand such persons over for trial to another State concerned, provided such State has made out a prima facie case, or to an international criminal tribunal.

20. All other States have an obligation to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, grave breaches of the Geneva Conventions and, where applicable, Additional Protocol I, and have an obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches and bring such persons, regardless of their nationality, before their own courts. They may also, if they prefer, and in accordance with the provisions of their own legislation, hand such persons over for trial to another State concerned, provided such State has made out a prima facie case, or to an international criminal tribunal.

21. All other States also have an obligation to investigate and, as required by international law, or otherwise as appropriate, prosecute, extradite or surrender persons suspected of having committed other crimes under international law, such as torture or hostage taking, in accordance with their obligations under international law. Such prosecutions are to be carried out in accordance with international law providing for fair trial, mindful that sanctions be commensurate with the gravity of the crime

**From the Montreux Document’s Good Practices for Home States:**

71. To provide for criminal jurisdiction in their national legislation over crimes under international law and their national law committed by PMSCs and their personnel and, in addition, consider establishing:

- a) corporate criminal responsibility for crimes committed by the PMSC, consistent with the Home State’s national legal system;
- b) criminal jurisdiction over serious crimes committed by PMSC personnel abroad.

72. To provide for non-criminal accountability mechanisms for improper and unlawful conduct of PMSCs and their personnel, including:

- a) providing for civil liability;
- b) otherwise requiring PMSCs to provide reparation to those harmed by the misconduct of PMSCs and their personnel.

traveling abroad to work as contractors in armed conflict situations fall under the Montreux Document, which recalls the legal obligations of states toward PMSCs operating in such environments, even when the companies that hire these personnel for work abroad are not legally based in Latin America.

US contractors operating in Iraq and Afghanistan have used Latin Americans in both security and non-combat roles. The government of the UAE has built up its private military structures to engage in operations in Yemen. The recruits are often current or former Latin American military officers who see an opportunity to be paid well for the skills they obtained while in public service.

With improved security and the drawdown of its conflicts, Colombia has been a leader in exporting its security-related training and US-trained military and police, armored cars and weapons. Colombians have trained and provided services to security forces in the Northern Triangle of Central America as well as provided security services to conflict areas in the Middle East and Northern Africa. Of particular concern, hundreds of Colombians have been deployed to Yemen by the UAE.<sup>46</sup> El Salvador, Honduras, Nicaragua, Chile and Peru have also exported significant numbers of private security personnel.

The Montreux Document references the legal obligations of Home States—that is, the State where a PMSC is incorporated—as well as “All other States,” which could include the State of nationality of PMSC personnel operating abroad. One area where most Latin American states fall short of the Montreux Document’s aims is the extra-territorial jurisdiction of the law. The legislative environment for the region acting as a source for PMSC personnel is relatively undefined in most countries. As a result, governments rarely share information about potential abuses or prosecute those who commit human rights violations abroad. Additionally, there are few information sharing initiatives that would prevent personnel who commit abuses abroad from returning to private security services once back in their home country.

### *Emerging Issues*

The explosive growth of the private security industry in Latin America has left nearly all governments behind in terms of implementing and enforcing regulations. Even as they now try to catch up, they must also contend with emerging

issues in this space as the PMSC industry continues to evolve.

In addition to companies that offer more traditional security services, PMSCs also include a range of private intelligence and technology firms who provide support and assistance to governments and their security forces. As one example, controversy over the Pegasus software in Mexico demonstrates the challenges of monitoring and regulating PMSCs and the technology they create. The software, developed by an Israeli purveyor of surveillance technology, was deployed in Mexico with the understanding that it would only be used for security purposes by the government entities that purchased the software. The use of Pegasus to spy on political opponents, media outlets and civil society was a violation of the terms of the agreement, not to mention the human rights of those inappropriately targeted by the spying.<sup>47</sup> Additionally, the Mexican firm that facilitated the contract was accused of engaging in corruption.

A dramatic increase in cybersecurity contractors for military and police forces includes some that engage in espionage and offensive cyber operations. This is the lesson of Pegasus in Mexico and Hacking Team in Ecuador. Similarly, PMSCs are likely to emerge and grow in the coming decade that focus on closed circuit camera installation and monitoring as well as facial recognition software. The human rights implications of this technology are already questioned, but placing these tasks under a private contractor adds additional concerns.<sup>48</sup>

Though intended for physical private security firms, the Montreux Document provides a framework to regulate cyber contractors in the security realm. There should be licenses and registration of the firms involved. Personnel require training and must abide by the rules of engagement and respect the human rights of others. Tools that can be used offensively as weapons should be monitored and regulated (some countries have export licenses on computer hardware and software that can be used as weapons).

Many countries in the region have also purchased drones for surveillance and operations, but regulations in all sectors are behind the technology. The fact these devices can be piloted by contractors across borders will become an issue at some point. While most countries have regulations about foreign contractors who may carry or use weapons, there is little precedent for a foreign contractor operating a weapon from abroad.

# CONCLUSIONS AND RECOMMENDATIONS

The elevated, and in some cases epidemic, criminal violence that afflicts much of Latin America has given rise to a booming private security industry. For Latin American citizens who can afford it, security is for sale. This is both unsurprising and understandable, but it raises important public policy questions, especially when private military and security companies themselves contribute to violence by trafficking in weapons or attacking citizens who stand in the way of their clients' interests. While countries in Latin America generally have legal frameworks in place to govern the activities of such companies, they often lack the infrastructure to enforce the rules or hold private military and security companies accountable when they break them. The result, in the most troubling cases, is that these companies become private militias accountable first and foremost to their benefactor rather than the rule of law.

Private military and security companies are certain to remain a prominent component of the security architecture in Latin America for the foreseeable future. As a result, governments in the region should take a strong interest in ensuring they are properly vetted, trained, supervised and held accountable for wrongdoing—whether deliberate or chronically negligent. The Montreux Document, a compilation of relevant international legal obligations and good practices, provides a useful framework for addressing many of the existing gaps in regulation and enforcement of the activities of PMSCs in Latin America.

Based on the relevant Montreux Document provisions and the conclusions of this report, we offer the following recommendations:

- Latin American States, as well as regional and sub-regional organizations, having not yet done so should express their support for the Montreux Document.
- Latin American governments should consider the Montreux Document a guiding framework for the adoption and implementation of regulations regarding private military and security companies.
- Legislation must account for the resources and regulatory independence necessary to enforce national laws, from oversight to adjudication. Where conflicts of interest may be present, checks and balances should be created.
- The regulations regarding PMSCs must be balanced with the challenges and costs for firms implementing those regulations. The goal of regulations is not to create more paperwork or bureaucracy, which would simply increase incentives for companies to operate in the informal sector. Instead, countries should incentivize companies to move from the informal sector to the formal sector and provide proper oversight.

- Enforcement of regulations should start with the “worst offenders,” those PMSC firms that act in a way that causes human rights abuses and worsens public security.
- Data about PMSC licensing, registration and activities should be published in an open format by governments to allow citizens and civil society to analyze and review.
- As excessive use of force is most frequent around extractive industries and natural resource projects, international lending institutions should require an adherence to the Montreux Document’s best practices and those of the International Code of Conduct for Private Security Service Providers (ICoC, which applies to companies instead of states) as a precondition for loans on these projects.
- In Central America, the International Commission Against Impunity in Guatemala (CICIG) and the Mission to Support the Fight against Corruption and Impunity in Honduras (MACCIH) should engage in oversight on PMSCs in instances where private firms appear to be exercising excessive influence over governments to prevent their proper regulation. The OAS and other international bodies should back these efforts.
- The OAS Secretariat for Multidimensional Security should request and publish regular statistics regarding PMSCs in the hemisphere and their regulations, particularly regarding personnel and firearms. The OAS should also facilitate advice and technical assistance regarding the regulation of PMSCs as well as firearms going to PMSC firms.
- Active duty police and military should not be legally allowed to take second jobs in the PMSC industry. Off-duty actions should not receive the same treatment or legal protection as on-duty actions. An important part of effectively implementing this recommendation is paying police officers a living wage so that they do not feel obligated to take second jobs to feed their families.
- PMSC contractors must be subject to the same information disclosures as the state in cases in which they are acting in an official capacity. Contractors cannot be used by state entities to dodge public disclosure requirements.
- Weapons purchases and shipments should receive a heightened level of monitoring. Contractors who lose a significant amount of weapons should see penalties including potential loss of their license and restrictions in their ability to obtain and use firearms in the future.
- Latin American governments should use the Montreux Document as a guide for creating legislation that facilitates compliance with their obligations as both Home States and sources for PMSC personnel acting outside their jurisdiction. Those who engage in conflict zones abroad need both oversight in case of wrongdoing and support in case they have been harmed or experience PTSD. As a last resort, restrictions on where PMSC personnel can operate may be considered.



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