



# Private Military Companies In Africa Impacts on Human Rights

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# **Private Military Companies in Africa impact on Human Rights**

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## Introduction

Since the Cold War, Private Military Companies PMCs have marketed their military expertise and skills to countries overrun with domestic conflict and are unable to provide effectively for their own security needs. In Africa, PMCs do not only provide security, in the late 1990s, Executive Outcomes, a private military company composed primarily of South African special forces from the former apartheid regime, was employed by the governments of Angola and Sierra Leone to fight rebels whom national forces there had failed to stop. While that company has been praised for its efficiency (especially by industry lobbyists), its record of compliance with international humanitarian law remains questionable.<sup>1</sup> Examples abound of PMCs accused of more dubious practices such as assisting in coups d'état. Such is the 2004 case of Sir Mark Thatcher in his trial for planning and plotting a coup to overthrow President Teodoro Obiang Nguema Mbasogo of Equatorial Guinea in collaboration with a private military company;<sup>2</sup> as well as the case of Simon Mann, a founding member of Executive Outcomes, a private military company which made its fortune protecting oil installations during the Angolan Civil War.<sup>3</sup>

Although international law is based on the concept of the state, where the state rests upon the foundation of sovereignty,<sup>4</sup> and reserves sovereign rights and responsibilities, to provide services such as security supposedly to be guaranteed internally by the police, and externally by an army to defend the territory and the national sovereignty; PMCs carrying out duties on behalf of state armed forces is not a new phenomenon. Article 4 (4) of the Third Geneva Convention of 1949 explicitly refers to “persons who accompany the armed forces without being members thereof, such as [...] supply contractors, members of labor units or of services responsible for the welfare of the armed forces.” Article 4 (4) of the Third Geneva Convention even provides that those persons who have fallen into the power of the enemy shall be prisoner of war “provided that they have received authorization from the armed forces which they accompany, who shall provide them for that purpose with an identity card similar to the annexed model”.<sup>5</sup> The continuous deterioration of the security situation in Africa and the dynamic nature of wars and armed conflicts have increased the continent's demand for security

<sup>1</sup> “Regulating the privatization of war: How to stop private military firms from committing human rights abuses”, Boston College International and Comparative Law Review, Vol. 28 (2005), p. 211, at p. 215.

<sup>2</sup> “Mercenary Mann faces 10-year jail for coup attempt linked to Mark Thatcher”. The Guardian, 28 August, 2004. Available online at <https://www.mail-archive.com/osint@yahoogroups.com/msg00012.html>

<sup>3</sup> Ibid.

<sup>4</sup> See Malcolm N Shaw. International Law (Cambridge University Press, 6th ed, 2008)

<sup>5</sup> Geneva Conventions 1949a. Third Geneva Convention of 1949 relative to the Treatment of Prisoners of War.

services, generating new business opportunities for PMCs and resulting in greater demand for security from the private sector than from the State.

What is worrisome however, is the fact that the outsourcing of some of the basic functions traditionally carried out by the State through national armies or police forces, has blurred the borderlines between the public services of the State and the private security sector creating a dangerous “grey zone” within which PMCs operate.<sup>6</sup> The use of these companies has been seen to produce more opportunistic violence and contribute to higher levels of human rights violations.

This paper maps out the services of PMCs in two African States: Libya and the Central African Republic. It explores the dynamics leading these interventions by the private sector and examines the impacts of the private military companies on human rights conditions in both countries. However, it should be mentioned at the outset that interventions in these countries differ from one another in terms of nature, scale and dimensions.

### **The concept of Private Military Companies (PMCs) and their role in Africa**

PMCs represent the corporate evolution of the age-old profession of mercenaries.<sup>7</sup> They are companies that provide governments with professional security services intricately linked to warfare.<sup>8</sup> However, unlike past mercenaries, PMCs are corporate bodies that provide a wide range of services including, strategic planning, tactical combat operations, logistical support as well as technical assistance.<sup>9</sup>

The origin of PMCs can be traced back to the 1960s and 1970s when *mercenaries* were a force of influence sought by governments of Europe and the United States, to solve problematic political tasks by military means. They were widely used primarily in African countries, during the formation of independent states after WWII. Following decolonization, many countries in Africa plunged into severe conflicts and civil wars which required expert military interventions from the West. This expertise arrived in the form of mercenaries. However, mercenaries posed a

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<sup>6</sup> See Virginia Newell & Benedict Sheehy, *Corporate Militaries and States: Actors, Interactions and Reactions*, 41 TEX. INT’L L. J. 67, 91 (2006)

<sup>7</sup> J.T. Mlinarcik, *Private Military Contractors & Justice: A look at the Industry, Blackwater, & The Fallujah Incident*, Regent Journal of International Law (2006)

<sup>8</sup> Ibid.

<sup>9</sup> Q&A” Private Military Contractors and the Law, Human Rights Watch, Oct 21, 2004. Available online at <https://archive.globalpolicy.org/component/content/article/167-attack/35796.html>



threat to state sovereignty and states acted to limit their influence<sup>10</sup> through, the adoption of the Convention for the Elimination of Mercenaryism in Africa by the OAU (Organization of African Unity now the African Union) in 1977; as well as the Protocols Additional to the Geneva Conventions of 1949, which legally banned the participation of mercenaries in combat: “Article 47. A mercenary shall not have the right to be a combatant or a prisoner of war”.<sup>11</sup> The 1989 UN Convention against the Recruitment, Use, Financing, and Training of Mercenaries and the above documents, in fact, put an end to mercenary activities in the modern sense of the term: “Article 3.1. A mercenary ... who participated directly in hostilities or in a concerted act of violence, as the case may be, commits an offence for the purposes of the Convention”.<sup>12</sup>

The emergence of the modern private security sector at the beginning of the 1990s was driven by a combination of three major factors: the end of the Cold War, the changing nature of warfare which blurred the lines between soldiers and civilians and a general trend towards the privatization of state functions globally.<sup>13</sup> At the end of the Cold War, there was a global downsizing of professional armies. Simultaneously, there was increasing instability as a result of warfare in developing countries such as the Rwandan Genocide of 1994, which the Western powers were reluctant to intervene.<sup>14</sup> As advanced military grew increasingly reliant on off-the shelf commercial technology often maintained by private firms, many governments succumbed to an ideological shift toward the privatization of state functions, including providing security. Among the first private military companies to appear in the late 1960s was Watch Guard International. Made up of mainly retirees of the British Special Air Service, the company which was founded in 1967 rendered mainly consultancy services which included personnel recruitment and training, combat and technical support during anti-rebel operations, and various military consultations. In addition, its operations were directly controlled by the British

<sup>10</sup> Eugene B. Smith, *The New Condottieri and U.S. Policy: The Privatization of Conflict and Its Implications*, PARAMETERS, Winter 2002, at 107-08.

<sup>11</sup> Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, art. 47.

<sup>12</sup> International Convention against the Recruitment, Use, Financing and Training of Mercenaries, Dec. 4, 1989. Available online at <https://undocs.org/pdf?symbol=en/A/RES/44/34>

<sup>13</sup> Carlos Ortiz, *Regulating Private Military Companies: States and Expanding Business of Commercial Security Provision*, in GLOBAL REGULATION: Managing Crises After the Imperial Turn 205, 208 (Keesvander Pijl, Libby Assassi & Duncan Wiggins eds., 2004)

<sup>14</sup> Doug Bandow, *Waging War Only When Necessary* (2008)

government.<sup>15</sup> However, a few firms, such as Executive Outcomes, offered a full range of combat services to their clients.<sup>16</sup>

### ***The Case of The State of Libya***

One of the most notable modern examples of privatization of security is in the State of Libya. Libya, a failed state has been embroiled in civil wars since 2011 when the rebel uprising that ended Al Gaddafi's long dictatorship.

The repressive policies and intolerance for human rights during the Gaddafi's long iron rule (1969–2011), were largely responsible for the quick outbreak of protest movements and violence. Encouraged by the successful uprisings in neighboring countries (the Arab Spring),<sup>17</sup> the gravity of the situation quickly led to NATO's armed intervention authorized by the UN Security Council. Following weeks of fighting, the UN Security Council implemented a no-fly zone, after which NATO forces began a military operation first to protect civilians, then to support the rebels against Gaddafi's government.<sup>18</sup> The capital city of Tripoli was occupied by rebels in August 2011 and in October 2011, Gaddafi was killed by rebel forces, ushering in a new government the Government of National Accord (GNA).<sup>19</sup> However, Libya is largely divided between the GNA – which controls a small enclave near Tripoli in the country's northwest – and the Libyan National Army (LNA), which controls the nation's oil-rich east as well as much of the south.<sup>20</sup> In April 2019, Khalifa Haftar's LNA launched an offensive to capture Tripoli, breaching the existing arms embargo imposed by the UN Security Council which includes a prohibition on the provision of armed mercenary personnel; as well as the International Convention against the Recruitment, Use, Financing and Training of Mercenaries to which Libya is party.<sup>21</sup>

<sup>15</sup> Ian Jefferies. Private Military Companies – A Positive Role to Play in Today's International System. 2002; *Connections*, 1(4), 103-125. Available online at <http://www.jstor.org/stable/26322969>

<sup>16</sup> See generally United Kingdom Foreign and Commonwealth Office, Private Military Companies: Options for Regulation (2002); SILVERSTEIN, *supra* note 11.

<sup>17</sup> See Sadiki L. Libya's Arab Spring: The Long Road from Revolution to Democracy. *International Studies*. 2012;49(3-4):285-314. Available online at doi:10.1177/0020881714534035

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

<sup>20</sup> Crispin Burke. What You Need to Know About Private Military Contractors Backing Libya's Rebels. 2020; Small Wars Journal. Available online at <https://smallwarsjournal.com/jrnl/art/what-you-need-know-about-private-military-contractors-backing-libyas-rebels>

<sup>21</sup> See the Statement of the Working Group on the Use of Mercenaries. Libya: Violations related to mercenary activities must be investigated -UN experts. Available online at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25970&LangID=E>

Although the foreign interventions in Libya was originally a declared humanitarian intervention, factors such as regional competition for dominance and Western geopolitical interests have trumped humanitarian concerns. Furthermore, both the GNA and LNA receive covert and overt international support from a slew of actors which have morphed the country into a modern proxy conflict with a labyrinth of private military actors recruited from Russia (Wagner group), Syria, Turkey and Chad. These PMCs have been accused of indiscriminate attacks killing thousands of civilians, destruction of critical infrastructure, disappearances, arbitrary detentions, and unlawful killings and torture to mention a few.

The Wagner Group, a Russian private military company reportedly deployed military personnel on the Tripoli frontline to support the LNA as snipers and to direct artillery fire between September 2019 and May 2020. In September 2019, it was alleged that some of the personnel arbitrarily detained five civilians and summarily executed three of them in al-Sbeaa village near Tripoli. The Turkish government has also engaged in large-scale recruitment, financing, transfer and deployment of Syrian fighters to take part in hostilities in support of the GNA in Libya. According to a joint letter sent by UN rapporteurs in June 2020, the fighters were reportedly recruited through paramilitary contractors SADAT International Defense Consultancy.<sup>22</sup> Among those recruited include boys under 18 years of age reportedly internally displaced due to the conflict in Syria and who received military training by the armed group that recruited them prior to being transferred to Libya.<sup>23</sup> In addition the Syrian fighters deployed to Libya were reportedly affiliated with armed groups that have been accused of serious human rights abuses in Syria, thus seemingly perpetuating a cycle of abuse and impunity within the region.<sup>24</sup>

On October 23, 2020, the warring sides in Libya signed a ceasefire deal in Geneva. However, a major flaw in the cease fire agreement, is the absence of any commitment to hold accountable PMCs for violations of human rights. In addition to this, although the government took limited steps to investigate abuses within its area of reach; constraints on the government's reach and resources, as well as

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<sup>22</sup> See Stockholm Center for Freedom, UN Launches probe into deployment of foreign fighters to Libya by Turkish Government:report, August 21, 2020. Available online at <https://stockholmcf.org/un-launches-probe-into-deployment-of-foreign-fighters-to-libya-by-turkish-government-report/>

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

political considerations, reduced its ability and willingness to prosecute and punish those who committed such abuses.<sup>25</sup>

### ***The Case of the Central African Republic***

The Central African Republic remains profoundly affected by the violent upheaval which displaced a quarter of its population and decimated its economy in 2013. Multiple armed groups control or contest significant portions of the national territory. They benefit from illicit activities and the lucrative circulation of arms, fighters and natural resources across the porous borders.

The country plunged into chaos following the violence which broke out between mainly Muslim Seleka rebels, and Christian anti-balaka militias when President François Bozizé was overthrown in March 2013. As the situation escalated into greater violence, France responded in December 2013 with Operation Sangaris to put an end to the massacres and ease tension between the warring communities. Sangaris has been praised its critical role in momentarily stabilizing CAR.

Again renewed violence ensued when on January 4, 2021, the incumbent president of the Central Republic of Africa, Faustin Archange Touadéra was re-elected for a second term.<sup>26</sup> Like the case in Libya, the President Touadéra's army Forces armées centrales africaines (FACA) is backed by other actors including Russia through Wagner a PMC and Rwanda. Russia's influence in CAR emerged in 2017, when the UN-backed government requested help to fight rebels rampaging through the country.<sup>27</sup> However reports have emerged that the Russian PMC works closely with the UN peacekeeping mission United Nations Multidimensional integrated stabilization mission in the Central African Republic. (MINUSCA) been based in CAR since 2014. Furthermore, there have been reports of "violations of international humanitarian law as well as severe human rights abuses" carried out by Russian PMC in joint operations with FACA.<sup>28</sup> The alleged violations include mass summary

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<sup>25</sup> Sami Zaptia. US Libya 2020 Human Rights Practices report cites significant human rights violation. Libya Herald: March 31, 2021. Available online at <https://www.libyaherald.com/2021/03/31/us-libya-2020-human-rights-practices-report-cites-significant-human-rights-violations/>

<sup>26</sup> See Stephen Buchanan-Clarke, What is behind the renewed violence in Central African Republic, Governance Reports, SADC. February 1, 2021. Available online at <https://gga.org/what-is-behind-the-renewed-violence-in-car/>

<sup>27</sup> See Luke Harding and Jason Burke, Russian mercenaries behind human rights abuses in CAR, say UN experts, The Guardian, March 30, 2021. Available online at <https://www.theguardian.com/world/2021/mar/30/russian-mercenaries-accused-of-human-rights-abuses-in-car-un-group-experts-wagner-group-violence-election>

<sup>28</sup> Ibid.



executions, arbitrary detention, torture and the forced displacement of the civilian population.<sup>29</sup>

According to a UN report, in January 2019, a man from the central city of Bambari was held by the Russian PMC Wagner and tortured repeatedly for five days. It was alleged that his back slashed with a knife and his little finger was cut off.<sup>30</sup> The Russian PMC (Wagner) was also implicated in an attack on a mosque in Bambari, the prefecture's capital.<sup>31</sup> In addition, it was reported that the Russian PMC (Wagner) and FACA soldiers opened fire on a vehicle for failing to stop at a checkpoint in Ouaka prefecture, killing three persons and injuring fifteen others in December 2020.<sup>32</sup> What is worse is that there is no evidence of investigations and no accountability for the violations.

### What is the Implication for Human Rights?

While the aforementioned examples are inexhaustive, they provide a clear pattern of impunity in which PMCs are allowed to operate within contracting countries. From the case studies it is evident that the blurred of the lines between civil, military and peacekeeping operations during hostilities has created complexities regarding the legitimate targets, thus heightening the risks for widespread human rights abuses and international humanitarian law violations. Furthermore, the interconnections between the various PMCs and the state actors jeopardizes the chances for thorough and impartial investigations as well as chances of ensuring accountability for human right violations committed by PMCs.<sup>33</sup> In addition, it is also clear that the actions of the PMCs allow governments to shift responsibility and use repression. This is evident in both case studies where, the state has made no explicit commitments or taken any strong decisive actions to hold accountable PMCs for violations of human rights.

The military and security services provided by PMCs are highly specific and dangerous. They should not be considered ordinary commercial commodities left

<sup>29</sup> Ibid.

<sup>30</sup> Yahoo News, UN investigates 'Russian Soldier Torture' case in Car, February 12, 2019. Available online at <https://news.yahoo.com/un-investigates-russian-soldier-torture-case-car-190039798.html>

<sup>31</sup> See Luke Harding and Jason Burke, Russian mercenaries behind human rights abuses in CAR, say UN experts, The Guardian, March 30, 2021. Available online at <https://www.theguardian.com/world/2021/mar/30/russian-mercenaries-accused-of-human-rights-abuses-in-car-un-group-experts-wagner-group-violence-election>

<sup>32</sup> Ibid.

<sup>33</sup> Ibid.

to the self-regulation of the market and internal controls. Unfortunately, the grey area presented in international law has allowed for PMCs to create diffuse responsibility and a lack of accountability through a labyrinth of contractual and insurance layers and shells. Thus, the implication of this unregulated space is a significant increase in abuses and a greater difficulty in monitoring and restraining the PMCs, particularly because many of these companies benefit from the persistence of violence from which they profit. Within this context, the lack of control is also much more pronounced and dangerous in fragile States.

It is the obligation and legal responsibility of the state, to take appropriate measures to prevent, investigate, punish, and provide effective remedies for relevant misconduct of PMCs and their personnel fully even if states have chosen to contract out certain security functions.<sup>34</sup> In the case of PMCs in Africa, this would mean that an individual states would be responsible for human rights violation committed by PMCs within its territory. Therefore, the actions of PMCs in the Africa should be subject to tougher international scrutiny, both with respect to overt activity and corporate associations. For example, if PMCs are permitted to operate to establish military order in an acute setting, even in a more systematic way, then there must be an immediate follow-up system in place to accomplish the task of post-conflict reconstruction with civil guidance and support.

## Conclusion

The expansion of security services and providers in Africa raise many issues regarding their role in both security and human rights violations. Although that PSCs have the potential to increase the sense of security in areas where they operate, the failure of states to implement existing law to regulate the activities of domestic and multinational PMCs operating in Africa has resulted in gross violation of human rights on the continent. Furthermore, PMCs further complicate an already complex human rights situation which exists on the continent. In light of this the failure of African states to adequately regulate PMCs operating in their territory constitutes a failure to respect state obligations under international law. It is therefore important for African states to ensure that all persons subject to its jurisdiction have full enjoyment of their rights according to international conventions and laws. These obligations (which include to prevent, investigate, prosecute, and remedy any violation of human rights) are binding regardless of whether the violations of human rights are committed by a PMC.

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<sup>34</sup> Ibid.