# Working Group on the use of Mercenaries – Call for Submissions

The Voluntary Principles Secretariat submits the following in response to the general request from the UN Working Group on the use of Mercenaries for information on the human rights impact of private military and security companies (PMSCs) operating in the extractive industries.[[1]](#footnote-1)

### Context

It is important to draw a distinction between mercenaries, a term clearly defined in international humanitarian law, and responsible and regulated private security companies. The global private security industry provides an essential service supporting diplomatic, commercial and humanitarian activity in complex environments around the world.

The extractive sector often operates in countries or areas of elevated security risk and faces the difficult challenge of how to safeguard company personnel and property in a way that respects human rights and the security of local communities. In December 2000, the United States and United Kingdom governments, along with a group of extractive companies and non-governmental organizations, agreed on a set of principles, known as the Voluntary Principles on Security and Human Rights (“Voluntary Principles”), to guide companies on security and human rights. The Voluntary Principles provide an outline of actions companies should take to assess risks and implement public and private security measures in a manner that respects human rights. Along with this standard, there is also a Voluntary Principles Initiative, comprised of 55 members representing 10 governments, 30 corporations, and 15 NGOs. The Initiative seeks to promote universal respect for human rights in the provision of security for extractive industries activities in a manner guided by the Voluntary Principles; strengthen implementation and accountability; and increase the number of Initiative participants.

## Relationship between Private Security and the Extractive Industry

Governments have the primary role of maintaining law and order, security and respect for human rights. However, private security – whether in-house or contracted security providers – can also play a role in protecting valuable company property; delivering internal security management services; and mitigating health and safety risks when persons enter company property without safety equipment.[[2]](#footnote-2) Consistent with their function, private security personnel should only perform defensive and preventative services, and should not engage in activities that are exclusively the responsibility of the state military or law enforcement authorities. Companies should define their standards and expectations of private security clearly; verify compliance through inspection and review and audit of the contract; and communicate these standards to other security stakeholders.[[3]](#footnote-3)

## An important feature of the Voluntary Principles is the guidance on risk assessments, which inform companies of security and human rights risks, helping them to put in place mitigating measures. The Voluntary Principles state that effective risk assessments should consider: an identification of security risks; the potential for violence; human rights records (including the available human rights records of public security forces, paramilitaries, local and national law enforcement, as well as the reputation of private security); conflict analysis; and the risks associated with equipment transfers to public or private security providers. The ability to accurately assess risks present in a company’s operating environment is critical to the security of personnel, local communities and assets; the success of the company’s short and long-term operations; and to the promotion and protection of human rights. ​

## International, National and Company-level Regulations, Mechanisms and Procedures

The three elements of the Voluntary Principles are risk assessment; interactions between companies and public security; and interactions between companies and private security.

### For Companies

Below is an excerpt from the Voluntary Principles on interactions between companies and private security intended to guide private security conduct:

1. Private security should observe the policies of the contracting Company regarding ethical conduct and human rights; the law and professional standards of the country in which they operate; emerging best practices developed by industry, civil society, and governments; and promote the observance of international humanitarian law.
2. Private security should maintain high levels of technical and professional proficiency, particularly with regard to the local use of force and firearms.
3. Private security should act in a lawful manner. They should exercise restraint and caution in a manner consistent with applicable international guidelines regarding the local use of force, including the UN Principles on the Use of Force and Firearms by Law Enforcement Officials and the UN Code of Conduct for Law Enforcement Officials, as well as with emerging best practices developed by Companies, civil society, and governments.
4. Private security should have policies regarding appropriate conduct and the local use of force (e.g., rules of engagement). Practice under these policies should be capable of being monitored by Companies or, where appropriate, by independent third parties. Such monitoring should encompass detailed investigations into allegations of abusive or unlawful acts; the availability of disciplinary measures sufficient to prevent and deter; and procedures for reporting allegations to relevant local law enforcement authorities when appropriate.
5. All allegations of human rights abuses by private security should be recorded. Credible allegations should be properly investigated. In those cases where allegations against private security providers are forwarded to the relevant law enforcement authorities, Companies should actively monitor the status of investigations and press for their proper resolution.
6. Consistent with their function, private security should provide only preventative and defensive services and should not engage in activities exclusively the responsibility of state military or law enforcement authorities. Companies should designate services, technology and equipment capable of offensive and defensive purposes as being for defensive use only.
7. Private security should (a) not employ individuals credibly implicated in human rights abuses to provide security services; (b) use force only when strictly necessary and to an extent proportional to the threat; and (c) not violate the rights of individuals while exercising the right to exercise freedom of association and peaceful assembly, to engage in collective bargaining, or other related rights of Company employees as recognized by the Universal Declaration of Human Rights and the ILO Declaration on Fundamental Principles and Rights at Work.
8. In cases where physical force is used, private security should properly investigate and report the incident to the Company. Private security should refer the matter to local authorities and/or take disciplinary action where appropriate. Where force is used, medical aid should be provided to injured persons, including to offenders.
9. Private security should maintain the confidentiality of information obtained as a result of its position as security provider, except where to do so would jeopardize the principles contained herein.

To minimize the risk that private security exceed their authority as providers of security, and to promote respect for human rights generally, the Voluntary Principles have developed the following additional principles and guidelines:

* Where appropriate, companies should include the principles outlined above as contractual provisions in agreements with private security providers and ensure that private security personnel are adequately trained to respect the rights of employees and the local community. To the extent practicable, agreements between companies and private security should require investigation of unlawful or abusive behavior and appropriate disciplinary action. Agreements should also permit termination of the relationship by companies where there is credible evidence of unlawful or abusive behavior by private security personnel.
* Companies should consult and monitor private security providers to ensure they fulfil their obligation to provide security in a manner consistent with the principles outlined above. Where appropriate, companies should seek to employ private security providers that are representative of the local population.
* Companies should review the background of private security they intend to employ, particularly with regard to the use of excessive force. Such reviews should include an assessment of previous services provided to the host government and whether these services raise concern about the private security firm’s dual role as a private security provider and government contractor.
* Companies should consult with other companies, home country officials, host country officials, and civil society regarding experiences with private security. Where appropriate and lawful, companies should facilitate the exchange of information about unlawful activity and abuses committed by private security providers.[[4]](#footnote-4)

[end of excerpt]

Additionally, Voluntary Principles guidance on roles and responsibilities for companies specifies that corporate participants will strive to:

* Manage sourcing, contracting, service delivery, and other interactions with private security providers, so that they are conducted in accordance with the Voluntary Principles.
* Consult and encourage engagement with host governments and local communities about company security arrangements.[[5]](#footnote-5)

These considerations are also relevant to the risk assessment pillar, as the Voluntary Principles state that participating companies should consider the available human rights records of public security forces, paramilitaries, local and national law enforcement, as well as the reputation of private security.

### Reporting

As part of the Voluntary Principles accountability framework, participating companies prepare annual reports on their efforts to implement and adhere to the Principles. Some companies using private security will report against related indicators. Corporate participants have the option to submit their annual report for publication on the Voluntary Principles Initiative website.[[6]](#footnote-6) Companies have reported that related security and human rights incidents tend to involve public security forces; incidents involving private security providers are rare.

### For Governments

The Voluntary Principles guidance for governments states that government participants should take appropriate steps to prevent, investigate, punish and redress human rights abuses within their territories and/or jurisdiction by third parties, including extractive companies and private security service providers, through policies, legislation, regulations, and adjudication, as well as take appropriate action to prevent recurrence.[[7]](#footnote-7)

Additionally, that same guidance outlines that governments should:

* Implement and support adequate and effective training for private security providers, including on international human rights law, international humanitarian law, local and national laws, and international law enforcement principles;
* Cooperate as appropriate with companies in developing human rights record of private security providers; and
* Develop appropriate policies and oversight for the government’s own use of private security service providers.[[8]](#footnote-8)

### Good Practices, Lessons Learned

### Model Clauses for Agreements between Government Security Forces and Companies

The Voluntary Principles Initiative has adopted model clauses for use in security agreements between Government Security Forces and companies in the extractive and energy sectors.[[9]](#footnote-9) The clauses could be used together or individually, but all reflect different aspects of the Voluntary Principles as they relate to government security forces. The clauses address elements such as the training of government security force personnel on security and human rights; investigation of security incidents; and use and control of weapons and equipment. It should be noted that these specific clauses are not intended to be used between extractive or energy sector companies and private security forces, or between governments and private security forces.

### Audit Protocol to Assess Compliance with Key Indicators

With input from government and NGO members, in 2013, a group of Voluntary Principles member companies developed an audit protocol to assess adherence to key performance indicators related to the Voluntary Principles.[[10]](#footnote-10) The audit protocol is based on the Voluntary Principles Initiative reporting criteria and covers commitment; policies, procedures and related activities; country implementation; and lessons and issues. Examples of indicators related to private security include:

* A security & human rights training package for public and private security exists and is in use;
* The Regional Legal Counsel or Regional Security Manager take the VPs or other applicable international standards on security and human rights into account when engaging and, where applicable, drafting an MOU with a public security provider or in a service contract with a private security contractor;
* An MOU with public security or a contract with private security is viewed and contains language regarding the VPs or other international standards on security & human rights are included as a requirement; and
* The most senior security person in the country of operation confirmed that the VPs were considered when entering into relationships with public/private security.

In 2015, a multi-stakeholder working group was formed and developed guidance to accompany the audit protocol to help measure, improve, and create greater stakeholder confidence in their security and human rights programs.[[11]](#footnote-11)

### Implementation Guidance

Members of the Voluntary Principles Initiative have benefited from the implementation support and guidance of other organizations to adopt best practices related to the use of private security. As an official observer to the Voluntary Principles Initiative, the Democratic Control of Armed Forces (DCAF) has - in partnership with the International Committee of the Red Cross (ICRC) - developed the “Addressing Security and Human Rights Challenges in Complex Environments” tool kit on security and human rights, which exists as an online knowledge hub.[[12]](#footnote-12) The toolkit contains a range of resources and guidance for members of the Voluntary Principles Initiative, many of which address best practices for interacting with private security.[[13]](#footnote-13)

A key document in the toolkit is the *Implementation Guidance Tool*s. This resource includes a module dedicated to working with private security providers that addresses the following steps when engaging private security:

1. Define and assess private security requirements;
2. Conduct due diligence and select/contract a private security provider;
3. Deploy and monitor selected private security providers;
4. Respond to private security misconduct; and
5. Address private security provider challenges.

The document also includes a set of guiding questions to inform how a company will address issues related to private security and community engagement, and a sample clause on compliance with the Voluntary Principles that can be included in contracts with private security providers.

Another tool addressing private security relations is the *Implementation Toolkit for Major Project Sites* developed by the World Bank Group. This document includes a performance checklist for regular review of the security provider’s services and their adherence to the Voluntary Principles. This resource also recommends that companies validate private security company performance using an external monitor. These external reviews can assess compliance with the Voluntary Principles and provide recommendations for improved security and human rights practices.

The Voluntary Principles are also referenced in the IFC’s Good Practice Handbook on the *Use of Security Forces: Assessing and Managing Risks and Impacts* related to implementation of IFC Performance Standard 4 on community, health, safety and security.[[14]](#footnote-14) Similar to the Voluntary Principles, this standard recommends that companies assess the security risk their operations may have or could create for communities and manage private security responsibly. There is significant overlap between Performance Standard 4 and the Voluntary Principles, and implementation of one may generally produce broad adherence to the other.

### In-country Working Groups

Another best practice implemented by the Voluntary Principles Initiative is the creation of in-country implementation working groups.[[15]](#footnote-15) The purpose of these groups is to promote implementation of the Voluntary Principles by raising-awareness, sharing lessons learned and implementation successes, and addressing the context-specific challenges to implementation. These groups may also help ensure that new guidance and tools are linked to in-country implementation of the Principles.

### Cross-cutting Issues

As the Voluntary Principles and guidance documents do not explicitly address issues such as risks of sexual exploitation and abuse perpetrated by private security forces, or special measures to promote child protection or protect other vulnerable groups, participating companies, governments and civil society have sought to fill these gaps in guidance and best practice. One such example is the *Child Rights and Security Checklist*, which provides 14 criteria for companies and governments to assess the extent to which their security frameworks are attentive to and protective of children’s rights.[[16]](#footnote-16) This checklist could be used alone or companies or states could incorporate checklist items into other related risks assessments or security and human rights audits. It can also be used by governments to assess and improve child protection measures within public security services.

The Voluntary Principles themselves do not address gender-based violence. However, other resources provide guidance on these issues, including the International Code of Conduct Association (ICoCA) Guidelines for Private Security Providers on Preventing and Addressing Sexual Exploitation and Abuse.[[17]](#footnote-17) Gender is also mainstreamed throughout the DCAF toolkit mentioned already mentioned. In future, more attention may be given to risks of sexual and gender-based violence for both community members as well as female security providers.

Voluntary Principles Secretariat

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1. *Guiding questions for submissions,* available at: https://www.ohchr.org/Documents/Issues/Mercenaries/WG/GuidingQuestionsExtractives\_EN.pdf [↑](#footnote-ref-1)
2. *Implementation Guidance Tool*s, available at: https://docs.wixstatic.com/ugd/f623ce\_087e0c0d878c4576800779c69dcb60a1.pdf [↑](#footnote-ref-2)
3. *Implementation Toolkit for Major Project Sites*, available at: https://www.miga.org/sites/default/files/archive/Documents/VPSHR\_Toolkit\_v3.pdf [↑](#footnote-ref-3)
4. *What are the Voluntary Principles?* available at: https://www.voluntaryprinciples.org/what-are-the-voluntary-principles [↑](#footnote-ref-4)
5. *Voluntary Principles Initiative – Guidance on Certain Role and Responsibilities of Companies*, available at: https://docs.wixstatic.com/ugd/f623ce\_f1112b13e4b4481a88dcb8bccc8a392c.pdf [↑](#footnote-ref-5)
6. Links to 2018 reports are found here: https://www.voluntaryprinciples.org/resources [↑](#footnote-ref-6)
7. *Voluntary Principles Initiative – Guidance on Certain Roles and Responsibilities of Governments*, available at: https://docs.wixstatic.com/ugd/f623ce\_64253cb1f65740b7940068d7702157c8.pdf [↑](#footnote-ref-7)
8. *Voluntary Principles Initiative – Guidance on Certain Roles and Responsibilities of Governments*, available at: https://docs.wixstatic.com/ugd/f623ce\_64253cb1f65740b7940068d7702157c8.pdf [↑](#footnote-ref-8)
9. ###  *Model Clauses for Agreements between Government Security Forces and Companies*, available at: <https://docs.wixstatic.com/ugd/f623ce_47e69625843a48d2b648ab8ec1e6bf23.pdf>

 [↑](#footnote-ref-9)
10. *Audit Protocol to Assess Compliance with Key Indicators*, available at: <https://www.business-humanrights.org/sites/default/files/media/documents/voluntary-principles-audit-protocol-jun-2013.pdf> [↑](#footnote-ref-10)
11. *Auditing Implementation of the Voluntary Principles on Security and Human Rights, A Guidance Document to Assist Companies and their Auditors Assess Implementation of the Voluntary Principles on Security and Human Rights,* available at: https://globalcompact.ca/wp-content/uploads/2016/08/Auditing-Implementations-of-VPs-on-Security-and-Human-Rights.pdf [↑](#footnote-ref-11)
12. *Addressing Security and Human Rights Challenges in Complex Environments,* available at: http://www.securityhumanrightshub.org/content/toolkit [↑](#footnote-ref-12)
13. *Guidance Related to the Voluntary Principles*, available at: http://www.securityhumanrightshub.org/content/guidance-related-voluntary-principles [↑](#footnote-ref-13)
14. *Use of Security Forces: Assessing and Managing Risks and Impacts,* available at: https://www.ifc.org/wps/wcm/connect/ab19adc0-290e-4930-966f-22c119d95cda/p\_handbook\_SecurityForces\_2017.pdf?MOD=AJPERES [↑](#footnote-ref-14)
15. In 2016, Myanmar, Nigeria and Ghana were selected to establish In-Country Implementation Working Groups. Other groups include Peru, Colombia and Kenya. Example: <http://ghanavps.org/> [↑](#footnote-ref-15)
16. *Child Rights and Security Checklist,* available at: https://www.unicef.org/csr/files/Child\_rights\_and\_Security\_Checklist\_ENG.pdf [↑](#footnote-ref-16)
17. *Guidelines for Private Security Providers on Preventing and Addressing Sexual Exploitation and Abuse*, available at: https://icoca.ch/sites/default/files/uploads/ICoCA\_PSEA\_Guidelines\_A4\_web.pdf [↑](#footnote-ref-17)