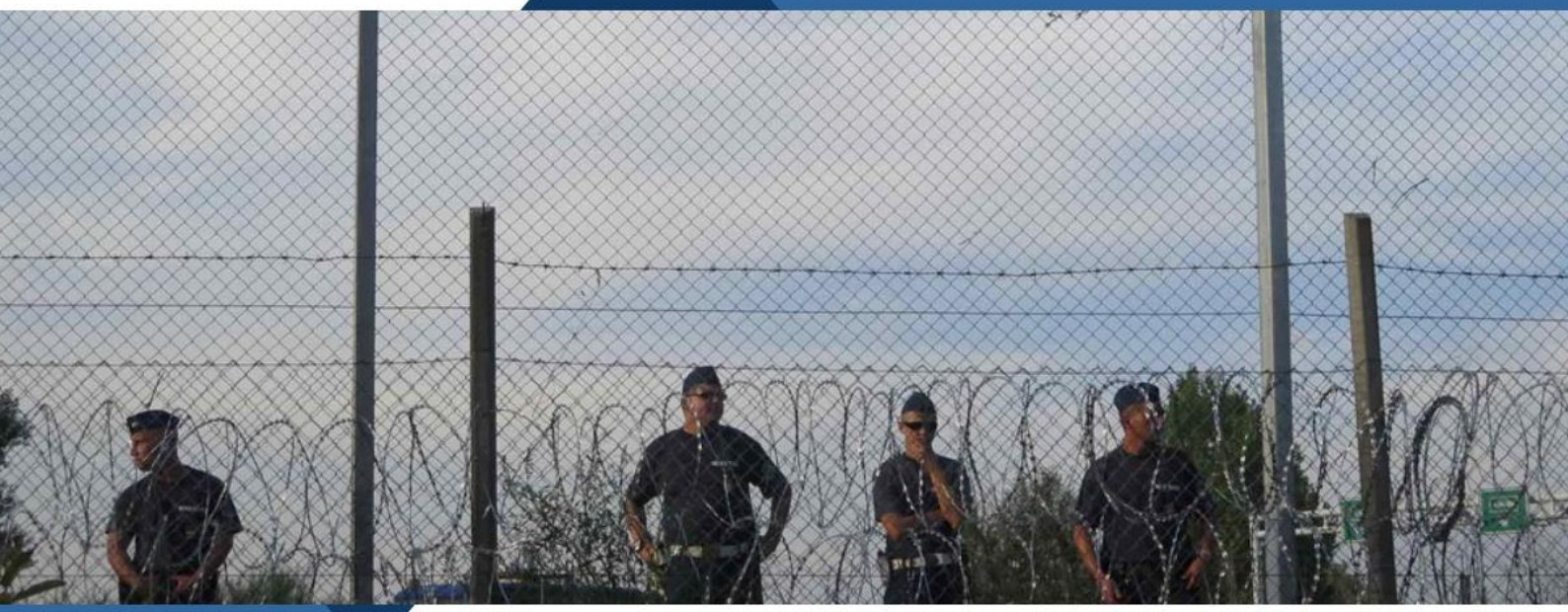
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When it Matters the Most: Identifying Indicators for Heightened Human Rights Due Diligence in Private Security

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This report was jointly produced by Loïse Donnet-Descartes, Gabriello Clemente White and Harshitha Reddy Singi within the framework of an agreement between the Geneva Graduate Institute (IHEID) and the International Code of Conduct Association (ICoCA).

ICoCA is a multi-stakeholder initiative formed in 2013 to ensure that providers of private security services respect human rights and humanitarian law. It serves as the governance and oversight mechanism of the International Code of Conduct for Private Security Service Providers (the "Code"). ICoCA works to raise standards and reduce risk in the private security sector by working with its Member and Affiliate Companies to provide capacity building, certification, advisory, monitoring, and complaint handling services.[1]

The views and opinions presented in this report belong solely to the author(s) and do not necessarily represent the stance of ICoCA.

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Acronyms and Abbreviations

ACHPR - African Charter on Human and People's Right

CAT - Convention Against Torture

CEACR - Committee of Experts on the Application of Conventions and Recommendations

CEDAW - Convention on the Elimination of All Forms of Discrimination Against Women

CPI - Corruption Perception Index (Transparency International)

DTM - Displacement Tracking Matrix

OHCHR - Office of the United Nations High Commissioner for Human Rights

hHRDD - heightened Human Rights Due Diligence

IASC - Inter-Agency Standing Committee

ICC - International Criminal Court

ICCPR - International Covenant on Civil and Political Rights

ICoCA - International Code of Conduct Association

ICRC - International Committee of the Red Cross

IOM - International Organization for Migration

ILC - International Labour Conference

ILO - International Labour Organization

ITUC - International Trade Union Confederation

LYD - Libyan Dinar

NACC - National Anti-Corruption Commission

NATO - North Atlantic Treaty Organization

PMC (s) - Private Military Company (ies)

PMSC(s) - Private Military and Security Company (ies)

PSC (s) - Private Security Company (ies)

PSEA - Protection from Sexual Exploitation and Abuse

The Code - The International Code of Conduct for Private Security Providers

SEA - Sexual Exploitation and Abuse

SEARO - Sexual Exploitation and Abuse Risk Overview

SOP - Standard Operating Procedure

TDN - Tunisian Dinar

UAE - United Arab Emirates

UDHR - Universal Declaration of Human Rights

UGTT - Union Générale Tunisienne du Travail

UNDP - United Nations Development Programme

UNICEF - United Nations International Children's Emergency Fund

UNFPA - United Nations Populations Fund

UK - United Kingdom

1. Introduction

The United Nations Development Programme's (UNDP) guideline states that "*heightened human rights due diligence strengthens the understanding of the context where businesses operate and ensures that their activities do not contribute to violence by identifying flash points, potential triggers or the forces that are driving the conflict.*"[1]

In the context of the private security sector there is ample literature that focuses on "how" heightened human rights due diligence (hHRDD) can be undertaken. The International Code of Conduct Association (ICoCA) in its efforts to reduce risks in the private security sector has stressed how, in order to correctly assess what enhanced human rights due diligence means, additional research concerning the identification of the *flash points, potential triggers and forces that are driving the conflict* is needed. In fact, it is still unclear *"when"* and in what contexts hHRDD should be conducted. In order to address this gap, an applied research project was initiated in the context of an agreement between the Geneva Graduate Institute (IHEID) and the International Code of Conduct Association (ICoCA).

The need to conduct hHRDD has always been closely associated with the idea of *"complex environments,"* namely an area experiencing or recovering from unrest and instability, which therefore requires hHRDD.[2] However, we find this framework to be misleading. Firstly, because it may exclude operational contexts that are not viewed as complex environments, but may still experience risks in some areas. For example, the use of force by security guards in the United States can be identified as an issue requiring hHRDD, even if the United States as a whole is not categorised as a complex environment.[3] Secondly, the broad and overarching nature of the complex environment framework does not satisfactorily allow for the eliciting of country or sector specific areas of concern. For this reason, this research moves away from this concept by breaking down the risk areas that may be found in, but are not limited to, the complex environment framework.

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[1] United Nations Development Programme (UNDP). 2022. *Heightened Human Rights Due Diligence for business in conflict-affected contexts: A Guide*. https://www.undp.org/publications/heightened-human-rights-due-diligence-business-conflict-affected-contexts-guide.

[2] International Code of Conduct Association (ICoCA). 2010. *The International Code of Conduct for Private Security Providers (The Code)*. ICoCA, https://icoca.ch/the-code/

[3] Berkeley Law. Experts confront excessive police use of force at Berkeley Law symposium. Accessed: 3 June 2024. https://www.law.berkeley.edu/article/excessive-police-use-of-force-experts-push-for-legal-solutions-focused-on-training-and-culture/.

To this day, there is no comprehensive model available to clients that is capable of identifying concerns which need additional attention. To this end, this report aims at developing a set of key indicators capable of eliciting the special risk faced by clients in the private security sector in view of the need to conduct hHRDD.

In the search for sensitive risk areas this research identified seven indicators that are of relevance in the context of hHRDD, namely: Working Conditions, Forced Labour, Unlawful Detention, Use of Force, Torture, Bribery & Corruption, and Sexual Exploitation & Abuse (SEA). These indicators can be applied to any country setting in which clients are seeking to contract a private security provider and aims to answer the question: ***"what are the risk factors, in an operational environment, that trigger the need to conduct heightened human rights due diligence in the private security sector?"***

The development of a framework capable of assessing the need for hHRDD is of particular practical relevance to ICoCA's activities in promoting responsible business conduct in the private security sector as it provides a tool for assisting private security companies (PSCs) and clients in better identifying when hHRDD is required so as to mitigate the risks associated with their presence.

The following section of this report is going to review the available literature regarding hHRDD so as to illustrate the relevance and practical utility of our risk assessment model. Section 3 explains the detailed methodology and rationale behind the model, while Section 4 will summarise the model's application to one of the two country case studies we applied the model to - Libya. For a more detailed analysis, a complete assessment of the two country case studies of Libya and Tunisia can be found in Annex A and B. Section 5 will discuss the implications of our model for hHRDD and its limitations. Lastly, we will provide a set of resulting recommendations at Section 6.

2. Literature Review

There is ample literature that focuses on 'how' PSCs and clients can undertake hHRDD and 'what' it entails. At an international level this literature often takes the form of guiding documents such as the *UN Guiding Principles on Business and Human Rights*. While there is

a high degree of interconnectedness between 'how' hHRDD is conducted and 'what' it constitutes, this is not in the scope of this research. The primary focus will be on identification of risk factors or indicators that constitute an environment as being one in which hHRDD is required, an area in which the literature is more scant. Therefore, to appropriately address this, the main research question we will consider is the following: ***what are the risk factors, in an operational environment, that trigger the need to conduct heightened human rights due diligence in the private security sector?"***

2.1 Risk Factors or indicators that qualify the operational environment

As discussed, our approach deviates from the typical characterisation of 'complex environments' as much of the literature in the field already considers such a dynamic. To better assist clients, we propose a risk-based assessment of operational environments as while the whole of the environment may not be at high-risk or in need of hHRDD, our approach will guide the clients in identifying and assessing even singular flashpoints that showcase a need for hHRDD. As the existing literature that typifies this risk-based approach is scant, we have, from our discussions with ICoCA, identified seven risk factors that determine the operational conduct of the PSCs and the due diligence requirements that must be undertaken by the clients. These risk factors include: Working Conditions, Forced Labour, Unlawful Detention, Use of Force, Torture, Bribery & Corruption, and Sexual Exploitation & Abuse (SEA).

As assessing risk in operational environments can only be a contextually specific exercise,[4] the given risk factors may present a unique assessment for different industries or sectors that PSCs are contracted in. These indicators assist in determining the effectiveness and accountability of PSCs and ensure that they adhere to internationally acceptable business conduct. Hence, they are relevant as they highlight the various ethical, legal, and social implications of environments where PSCs are contracted. The existing literature on the given indicators and their implications for PSCs operations is inadequate and generalistic, as it applies to any responsible business conduct, hence, we shall expound these in the specific context of PSCs.

2.2 The need for assessing risks in Private Security Companies' operations

The scope of this research will be solely limited to PSCs. Mercenary groups and military

[4] Ibid.

contractors engaged in military offensive operations will not be part of our area of exploration. PSCs have been defined as, "*any Company whose business activities include the provision of Security Services either on its own behalf or on behalf of another, irrespective of how such Company describes itself*."[5]

There is a growing demand for PSCs from businesses and governments as they are increasingly concerned about security threats.[6] PSCs operate in a wide range of sectors, namely: oil and gas, mining, prison management, construction, logistics, government, tourism, and for private clients. Due to the nature of PSCs' work there is a need to regulate their activities and bring them under the purview of local laws and enforcement mechanisms. Promoting clarity in the regulatory and legal frameworks that govern the operations of PSCs also aids clients by facilitating efficient and effective due diligence processes.

To understand and implement risk mitigation strategies the Montreux Document[7] plays an important role as it aims to enhance the accountability and transparency of PMSCs operating in armed conflicts. It has set out a series of principles for state regulation of PMSCs and encourages PMSCs to adopt high standards of conduct. However, this document focuses on private security providers' conduct during armed conflicts. As most often PSCs operate in benign environments, as security guards for corporations or industries, there is a need for a guidance document that identifies potential hotspots or triggers in such environments to ensure good conduct.

The UN Guiding Principles on Business and Human Rights (2011)[8] also mandate businesses to identify and assess the human rights risks associated with their operations, to take steps to mitigate these risks, and to have a complaints mechanism in place for victims of human rights abuses. However, the clients of PSCs require a clear model that states the varied risk-factors, so that they can better identify and mitigate such risks. On a different note, it must be pointed

[5] International Code of Conduct Association (ICoCA). 2010. *The International Code of Conduct for Private Security Providers (The Code)*. ICoCA, << https://icoca.ch/the-code/ >>
[6] The Economist."Bullets for Hire", The Economist, accessed 10 December, 2023, https://www.economist.com/international/2012/11/17/bullets-for-hire.
[7] International Committee of the Red Cross (ICRC). 2009. *The Montreux Document: On pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict*. Geneva: ICRC. https://www.icrc.org/en/publication/0996-montreux-document-private-military-and-security-companies.
[8] Office of the High Commissioner for Human Rights (2011). United Nations Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework.

out that these laws need a strong local enforcement mechanism to ensure that PSCs are held accountable in case of human rights violations and should be reframed to include guidance to PSCs on mitigation techniques.

Experts have highlighted that the main challenge in the sector relates to the relationship between states and PSCs. While some countries do have regulations for PSCs as well as requirements for obtaining a licence to operate, there is, however, a lack of effective implementation of the existing regulations as states are often not aware of PSCs activities within their jurisdiction and the risks that they pose. Oftentimes, the regulations are found to be lacking, whether in holding PSCs accountable if their actions are deemed as violating human rights or due to a lack of legal framework for effective enforcement.

2.3 The importance of the client to conduct due diligence

The ability to accurately understand nuances in a local context is consistently identified as a key precondition to successful security outsourcing. Case studies particularly underline how having a "clear understanding of existing power distributions, and the mechanisms that drive them"[9] is a means to this end. In these situations, it is the client that holds the onus of due diligence in undertaking a risk assessment of the environment that they seek to outsource security services in. Undertaking such a task inherently necessitates the ability to identify, with ease and accuracy, the complexities that both already exist and those which the client and PSC the client engages may perpetuate. Here we must clarify our understanding of the client is as per the ICoCA's definition which states that the client is "*an entity that hires, has formerly hired, or intends to hire a PSC to perform security services on its behalf, including, as appropriate, where such a PSC subcontracts with another company*."[10]

Expert interviewees have highlighted how a weakened rule of law and corruption may hinder these due diligence efforts. Conducting background checks of a PSC's personnel is particularly difficult in some environments due to limited access to information and unreliable criminal records that can easily be falsified or bought off.[11] This task is complicated by the reality that

[9] Østensen, *Reconfiguring Power and Insecurity*: 219
[10] International Code of Conduct Association (ICoCA). 2010. *The International Code of Conduct for Private Security Providers (The Code)*. ICoCA, https://icoca.ch/the-code/.
[11] Gabrielle Priklopilova and Anne-Marie Burzdy, 2024. The views reflected are personal and do not represent official DCAF position or statement.

the private security sector is oftentimes a highly competitive commercial market in which PSCs engage in a 'race to the bottom' pricing[12] regime to attract clients. Naturally, PSCs cut corners to win market share and inexperienced clients engage "the technically acceptable firm offering the lowest evaluated price."[13] To curtail the negligent practices of the clients, the promotion of due diligence in their operational environments is imperative.

3. Methodology

The final aim of this research attempts to determine what specific points in the private security sector require clients to engage hHRDD, namely what particular considerations clients need to be attuned to in an operational setting. This report considers the operational setting as the geographically defined area in which a client and PSC conduct operations and/or seek to conduct operations. Within this environment the indicators that have been developed below may or may not be present to varying degrees. These indicators seek to reflect the most significant risks clients will face when contracting security providers within an operational setting.

As noted previously, our research only considers the assessment of risk as it relates to PSCs, not military contractors engaged in military offensive operations. Clients should not use this risk assessment methodology when contracting the services of the latter in a particular operational setting, as the existence of armed conflict is a complicating factor that would require further consideration beyond what this risk assessment methodology considers.

To this end, the methodology we have developed is intended to be broad and overarching in nature when applied to the operations of PSCs. Its intended use is to assist clients of PSCs in assessing complexity in a country setting, as it relates to the need for conducting heightened human rights due diligence. The methodology is based on seven risk-based indicators, which can be broadly summarised as follows.

[12] Ibid.
[13] Østensen, *Reconfiguring Power and Insecurity*: 218

FIGURE 1: Summary of Methodology Approach

Indicator	Relevance	Sub-indicator	Assessment criteria
Working conditions	Link between working conditions of private security guards and their compliance with the law.	*Living conditions*	Subtraction of the living wage rate (or minimum wage rate) from the average wage rate of the country.
		Access to trade unions	Assessment of the legal guarantees and reported practices regarding freedom of association gathered by ITUC and ITUC's Global Rights Index score.
		Compliance with international labour standards	Analysis of the latest comments of the CEACR within the regular supervisory mechanism assessing the reporting duties of the Country regarding the implementation of the ILO Conventions.
		Client's due diligence	Human rights background check of the PSC, monitoring of their activities, licensing requirements and pay.
		Working hours and breaks	Reasonable weekly shifts and breaks, overtime pay and compensation holidays using as a reference the ILO Hours of Work (industry) Convention No. 112.

		Health and safety	Proper protection equipment, health and life insurances.
Forced Labour	Risk in complex operational environments to be subjected to or participate in forced labour.	*Government response to modern slavery*	Walk Free Global Slavery Index's assessment of the government's progress on the identification and support of survivors, the criminal justice mechanisms, the national and regional level coordination, the mitigation of risk factors and the depletion of government and business supply chains produced by forced labour.
		Migrant labour force in the private security sector	Use of migrant labour force in the private security sector and ethical recruitment process of third-country nationals by Clients and PSCs through interviews with practitioners and reports by NGOs (e.g. ILO, IOM, OHCHR).
		Reports of forced labour in the private security sector	Reports by Media and NGOs (Amnesty International, Human Rights Watch, and the Arab Reform Initiative).
Unlawful detention	Risk in complex operational environments where PSCs operate.	*Access to due process and legal proceedings*	Reports by Media and NGOs. World Justice Project's 'Rule of Law Index' measurement of:

			fundamental rights, regulatory enforcement, civil justice, and criminal justice. Freedom House's 'Freedom in the World Report' assessment of due process.
		State of emergency	Country-level situational assessment. Council of Europe and Venice Commission's observatory of situations of emergency in Venice Commission member states.
		Training	Is training provided to PSC personnel regarding legal norms and ethical practice relating to the deprivation of individual liberty and detention.
		Forced disappearance	Reports by Media and NGOs.
Use of force	PSCs are at risk of committing abuses where regulation and oversight is limited.	*Legal frameworks governing the use of force*	Country-level assessment of domestic legal frameworks. Law on Police Use of Force Worldwide's data on international and regional treaty adherence.
		Reports on cases of excessive use of force by private security companies	Recorded instances where excessive use of force has been inflicted by PSCs.

		Hiring criteria / recruitment process	Whether background checks are conducted on prospective personnel in the hiring process, whether PSCs maintain specific criteria on which to assess prospective personnel.
		Access to, and use of, weapons	Domestic legal frameworks governing the use of weapons and reports by media and NGOs.
Torture	As oversight and accountability measures are lax in some operational settings PSCs are at risk of committing severe abuses.	*Torture*	Reports by Associate for the Prevention of Torture and interviews with PSCs and industry professionals.
Bribery & corruption	PSCs can be both perpetrators as well as victims of illicit financial conduct making it necessary to measure the effectiveness and accountability of these companies.	*Bribery*	Transparency International's Corruption Perception Index. Interviews with PSCs and industry professionals.
		Tax fraud	
		Money laundering	
		Extortion	
		Corruption	
Sexual exploitation and abuse	PSCs are at risk of committing such abuses. It is necessary to understand the environment, crises and populations where PSCs operate to prevent such risks.	*Enabling environment*	IASC SEARO Assessment Reports, and Interviews with PSCs and industry professionals.
		Humanitarian context	
		Operational context	
		Protective environment	

To assess the efficacy of the methodology, and determine whether the need for hHRDD arises, it will be applied to the case study countries of Libya and Tunisia. Detailed analyses of which can be found at Annex A and Annex B. Libya and Tunisia were chosen as case study countries in discussion with ICoCA. As noted in the 'Contextual Background' of each respective Annex, events in the recent histories of both countries have resulted in two very distinct local settings in the same regional area; thus providing for an interesting backdrop on which to explore the respective indicators as they relate to the operations of PSCs. In applying the methodology to the country case studies, a five-point scoring regime (see Figure 2) will be applied to each indicator. For each case study country, each indicator will be assigned one of the following scores based on a qualitative assessment of the situation in the country as it relates to that indicator.

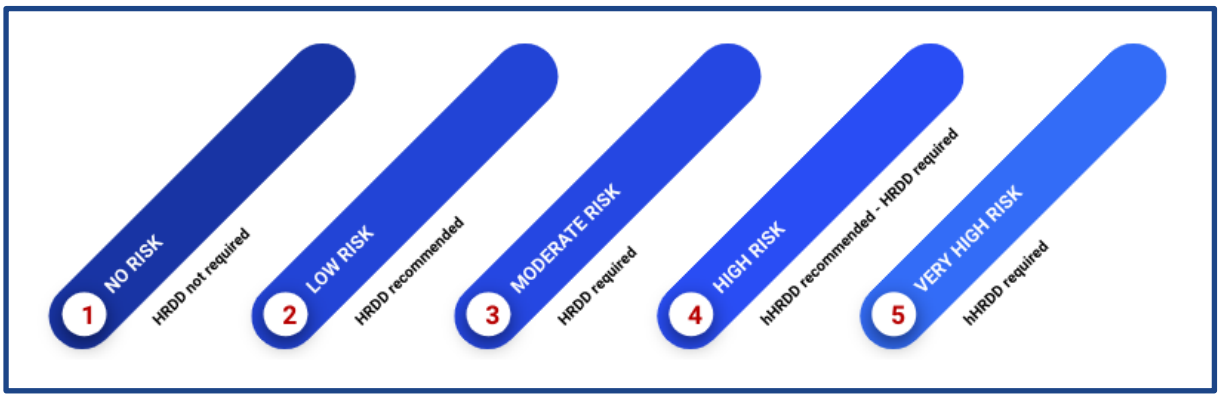


FIGURE 2: Scoring Regime

Each case study country will then be assigned a final score according to the above scoring regime taking into account the average combined score of each indicator. Given the purpose of this scoring regime is to assess risk, in the instance there is an equal split between the scores allocated to each indicator or sub-indicator the more risk averse approach is taken by allocating more weight to the higher score. This means that in the final evaluation if one of two sub-indicators scores 4 and the other scores 3, the indicator will be scored 4. The goal here is to provide a simple, holistic, and easy to interpret final assessment of each country based on the application of the methodology.

3.1 Working Conditions

The International Code of Conduct Association (ICoCA) has found that there is a direct link

between working conditions and compliance with the law by private security guards.[14] Factors to be taken into account when assessing working conditions include pay, working hours, and health/safety risks. Clients also have a major impact. Indeed, it is fundamental that they demonstrate due diligence by taking into account the human rights record of PSCs before hiring them and by applying continuous monitoring once they have been hired. Contrary to the generally observed trend, clients must be able to pay the PSCs enough so that the company can maintain decent working conditions. A central measure is the requirement for a certification such as that issued by ICoCA, which guarantees, to some extent, respect for human rights.[15] Working conditions are going to be assessed by looking at the four sub-indicators listed below.

3.1 (i) Living conditions

According to a practitioner, pay is one of the most important factors when it comes to assessing the nexus between working conditions and compliance with the law.[16] To assess the living conditions in a given country we are going to subtract the living wage (and if not available the minimum wage) from the country's average wage rate.

The living wage is defined by the global living wage coalition as: "The remuneration received for a standard workweek by a worker in a particular place sufficient to afford a decent standard of living for the worker and her or his family.".[17] The coalition is using the Anker methodology developed by Richard and Martha Anker to measure the living wage.[18] The minimum wage rate has been defined by the International Labor Organization as "the minimum amount of remuneration that an employer is required to pay wage earners for the work performed during a given period, which cannot be reduced by collective agreement or an individual contract".[19] For our assessment, we are going to use the WageIndicator

[14] ICoCA, Editor. «POLICY BRIEF: WHEN THE ABUSED BECOMES THE ABUSER». ICoCA - International Code of Conduct Association, 19 october 2023. https://icoca.ch/2023/10/19/policy-brief-when-the-abused-becomes-the-abuser/.
[15] Ibid.
[16] Charlie Mayne (founder of VSC Security), in discussion with the authors, online, 16 May 2024.
[17] Global Living Wage Coalition. «The Anker Methodology for Estimating a Living Wage». Accessed: 24 April 2024. https://www.globallivingwage.org/about/anker-methodology/
[18] The full methodology can be accessed here: Global Living Wage Coalition. «The Anker Methodology for Estimating a Living Wage». Accessed: 24 April 2024. https://www.globallivingwage.org/about/anker-methodology/
[19] International Labour Organization. «How to Define a Minimum Wage? | International Labour Organization», 28 January 2024. https://www.ilo.org/topics/wages/minimum-wages/how-define-minimum-wage.

Minimum Wage Database that contains the minimum wage rates for 208 countries, provided through checking the websites of ministries of labour and wage boards worldwide.[20]

The average wage rate is obtained by dividing the national-accounts-based total wage bill by the average number of employees in the total economy, which is then multiplied by the ratio of the average usual weekly hours per full-time employee to the average usual weekly hours for all employees.[21]

Subtracting the average wage rate from the living wage enables us to evaluate how many citizens of the given country are living below the wage rate allowing for a decent standard of living. Substituting the living wage with the minimum wage gives us less accurate information because the minimum wage rate may be set far below the threshold that allows for a decent life, and the number of people living in poverty may therefore be undervalued.

3.1 (ii) Access to trade unions

To assess the access to trade unions we are going to use the International Trade Union Confederation (ITUC) findings. We are going to assess the legal guarantees concerning the freedom of association (ratification of international convention and national law) and their reported practice regarding this right from 2019 to 2023.[22] This is going to be completed by the score of the country on the ITUC Global Rights Index[23], which gathers information on violations of internationally recognized collective labour rights by governments or employers and scales countries from one to five. 5+ being the worst rating a country can get signifying that the government fails to guarantee its rights.[24]

3.1 (iii) Compliance with International labour standards

The International Labour Organization (ILO) has a supervisory system that helps ensure that

[20] WageIndicator Foundation. «Minimum Wages». Accessed: 24 April 2024. https://wageindicator.org/salary/minimum-wage.
[21] OECD. «Earnings and Wages - Average Wages - OECD Data». Accessed: 24 april 2024. http://data.oecd.org/earnwage/average-wages.htm.
[22] ITUC. «Survey of Violation of Trade Union Rights». Accessed: 24 April 2024. http://survey.ituc-csi.org/?lang=en.
[23] ITUC GRI. «Méthodologie». Accessed: 16 May 2024. https://www.globalrightsindex.org/fr/2023/methodology.
[24] The Full methodology can be found here: ITUC GRI. «Méthodologie». Accessed: 16 May 2024. https://www.globalrightsindex.org/fr/2023/methodology.

countries implement the conventions they ratify. The regular system of supervision consists of the examination by two ILO bodies - the Committee of Experts on the Application of Conventions and Recommendations (CEACR), and the International Labor Conference's Tripartite Committee on the Application of Conventions and Recommendations - of reports on the application in law and practice send by member states and on observations in this regard sent by workers' organisations and employers' organisations.[25] Every three years, governments have to provide reports detailing the steps they have taken in law and practice to apply the conventions that they have ratified.[26]

For the purpose of this research, we are going to look at the regular supervisory system in the given country by analysing the latest comments (direct requests and observations) issued by the CEACR and see if the government has complied with its reporting duties and has provided the necessary responses.

3.1 (iv) Client's due diligence

The extensive field research done by the ICoCA has shown that clients play a pivotal role in the working conditions and consequent human rights due diligence of PSCs.[27] Firstly we are going to assess if the client takes into account the human rights record of the PSCs before hiring them, namely if they require a certification such as that issued by ICoCA, which is an effective human rights risk-reduction mechanism. Secondly, we are going to evaluate if the clients generally provide sufficient pay so as not to create a race to the bottom and an incentive for PSCs to lower standards to secure contracts. Thirdly, we are going to consider if the client keeps track of the PSC's performance over time. The client's due diligence is going to be qualitatively assessed through interviews with experts and practitioners in the field of private security.

[25] International Labour Organization. «ILO Supervisory System/Mechanism | International Labour Organization», 28 January 2024. https://www.ilo.org/about-ilo/how-ilo-works/ilo-supervisory-systemmechanism.
[26] International Labour Organization. «Committee of Experts on the Application of Conventions and Recommendations (CEACR) | International Labour Organization», 28 January 2024. https://www.ilo.org/international-labour-standards/ilo-supervisory-system-regular-supervision/applying-and-promoting-international-labour-standards/committee-experts-application-conventions-and-recommendations-ceacr.
[27] ICoCA, Editor. «POLICY BRIEF: WHEN THE ABUSED BECOMES THE ABUSER». ICoCA - International Code of Conduct Association, 19 october 2023. https://icoca.ch/2023/10/19/policy-brief-when-the-abused-becomes-the-abuser/.

3.1 (v) Working hours and breaks

This indicator is based on the above-mentioned findings that long working hours harm employees' well-being and affect their ability to perform their jobs effectively, which could result in human rights violations.[28]

The working hours and breaks in the security sector are going to be assessed by interviewing practitioners in the field. We want to ensure that the private security guards are working a reasonable number of hours and are allowed to take sufficient breaks taking as a reference the ILO Hours of Work (Industry) Convention (No.1) of 1919, which introduced a standard working time of eight hours per day and 48 hours per week.[29] Using this reference this indicator is going to assess guarantees regarding overtime pay, compensation holidays, and if the weekly plan provides for sufficient rest between shifts (for example through rotational shifts).

3.1 (vi) Health and safety

This sub-indicator intends to measure the health and safety conditions of private security employees. Firstly, we are going to assess if they are provided with adequate personal protective equipment (e.g. bulletproof vests, safety vests, torches). Secondly, if the PSC makes provisions for health insurance and life insurance or any other risks employees can potentially face while working.[30] The data is going to be collected through interviews with practitioners in the private security sector.

3.2 Forced Labour

Given the link that has been found between working conditions and human rights risks, it is relevant to assess the culminating form of labour abuse, namely forced labour. In a complex operational environment there is a risk that PSC are subjected to or participate in forced labour. Forced labour is defined in the International Labour Organization's Forced Labour

[28] Ibid.
[29] International Labour Organization. «Convention C001 - Hours of Work (Industry) Convention, 1919 (No. 1)». Accessed: 24 April 2024. https://webapps.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C001.
[30] Security and Human Rights Knowledge Hub. «Labour Standards». Accessed: 14 May 2024. https://www.securityhumanrightshub.org/toolkit/challenge-areas/working-with-private-security-providers/labour-standards.html.

Convention, 1930 (No.29) as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily".[31] The risk of forced labour in the private security sector will be assessed by looking at the two sub-indicators listed below.

3.2 (i) Government response to modern slavery

The Global Slavery Index is a composite index of forced labour, debt bondage, forced marriage, and trafficking of human beings elaborated by the Walk Free Initiative. The index indicates the prevalence of modern slavery, the vulnerability to modern slavery, and the government's response to modern slavery. We are going to consider the government's response to modern slavery. Governments must play an exemplary role as clients of private security companies and have a critical role in developing and implementing the laws, policies, and programs that are needed to prevent and respond to modern slavery.[32]

The government response assessment is based on its progress towards the achievement of five milestones:

1. Survivors of slavery are identified and supported to exit and remain out of modern slavery.
2. Criminal justice mechanisms function effectively to prevent modern slavery.
3. Coordination occurs at the national and regional level and across borders, and governments are held to account for their response.
4. Risk factors, such as attitudes, social systems, and institutions that enable modern slavery are addressed.
5. Government and businesses stop sourcing goods and services produced by forced labour.

The five milestones are broken down into activities, which are further disaggregated into indicators. There are a total of 141 indicators in the conceptual framework and 42 activities. Activity scores are summed to give a total score for each milestone. Milestone scores are

[31] International Labour Organization. «C029 - Forced Labour Convention, 1930 (No. 29)». Accessed:18 May 2024. https://normlex.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:55:0::NO::P55_TYPE,P55_LANG,P55_DOCUMENT,P55_NODE:CON,en,C029,/Document.

[32] Walk Free. «Methodology Behind the Global Slavery Index». Accessed: 24 April 2024. https://www.walkfree.org/global-slavery-index/methodology/methodology-content/.

then summed to give a total government response score out of 78. Each activity is weighted equally so that a country can only obtain a total of 78 points, noting that the final score is presented as a percentage. This does lead to an implicit weighting of milestones, where the more activities in a milestone, the more weight it is given.[33]

3.2 (ii) Migrant labour force in the private security sector

Migrant labour from third countries are increasingly being employed in the private security sector and the report by ICoCA on working conditions has found that migrant workers are more vulnerable to violation of their fundamentals rights in terms of forced labour, child labour, unequal treatment, poor working conditions etc.[34] This is often linked to the vulnerable situations they may find themselves in, with many taking out loans to pay their recruitment fees and consequently facing debt bondage, which is a form of modern slavery. ICoCA found that intermediaries such as recruitment agencies, to which the hiring process is outsourced, may impose unethical procedures to third-country nationals, namely by making them pay for their recruitment process.[35] ICoCA also found that migrants often receive inaccurate information about the terms of their contract but due to debt bondage and fear of deportation, may be compelled to accept substandards conditions once they have been employed.[36] In this context due diligence by the PSCs and the Clients regarding transparent contract terms and monitoring of the recruitment process is essential. Through interviews with practitioners and an analysis of reports by organisations working in this sector (e.g. ILO, IOM etc.), this indicator is going to assess if third-country nationals are routinely used in the private security sector and if the recruitment process of the latter is transparent and follows an ethical procedure.

3.3 (iii) Reports of forced labour in the private security sector

For this indicator, we are going to look at media articles and NGOs reports denouncing cases of forced labour in the private security sector in a given country. To achieve this end, we are going to review if there has been any media article published online mentioning cases of forced labour. For the NGOs we are going to look at country reports by Human Rights Watch, Amnesty International, and the Arab Reform Initiative.

[33] The full methodology can be found here: Walk Free. «Methodology Behind the Global Slavery Index». Accessed: 24 April 2024. https://www.walkfree.org/global-slavery-index/methodology/methodology-content/.
[34] ICoCA, Editor. *Policy Brief: When the abused becomes the abuser*.
[35] Ibid.
[36] Ibid.

3.3 Unlawful Detention

In order to most accurately measure in totality the unlawful detention indicator, the following sub-indicators should be taken into consideration:

- 1. Access to due process and legal proceedings.
- 2. State of emergency.
- 3. Training.
- 4. Forced disappearance.

3.3 (i) Access to due process and legal proceedings

The World Justice Project's 'Rule of Law Index' (the 'Index') will be utilised to assess this sub-indicator.[37] The Index uses eight factors, which include their own sub-factors, to rank countries by scoring each sub-factor (and ultimately each factor) on a scale from zero to one (one indicating the most positive result). Four of these factors will be used to assess this sub-indicator, being: fundamental rights, regulatory enforcement, civil justice, and criminal justice. An average score from zero to one will be calculated based on the scores of each factor and then converted to a five point scale.

The above measure will also be aided by the inclusion of the findings in Freedom House's 'Freedom in the World Report'.[38] In their measuring of rule of law within a given country context, Freedom House scores countries from zero to four on the question of whether "Does due process prevail in civil and criminal matters?" Again, the score for each country will be standardised to a five point scale.

3.3 (ii) State of emergency

The assessment of this sub-indicator will commence by noting whether a state of emergency is currently in place in a specific country context. Beyond this simple assessment, it is difficult to broadly measure the sub-indicator 'state of emergency' without an examination of the powers each specific state has during a state of emergency. Due to the absence of an already established index ranking countries against this sub-indicator, we will instead use the below questions, as

[37] World Justice Project (WJP), *Rule of Law Index* (WJP 2022), available at: https://worldjusticeproject.org/rule-of-law-index/
[38] Freedom House, *Freedom in the World Report 2024* (Freedom House 2024), available at: https://freedomhouse.org/countries/freedom-world/scores

developed by the Venice Commission - Observatory on emergency situations[39] and adapted by the research team, to assess the case study countries through the examination of domestic law.

- Are there constitutional provisions or laws that regulate the state of emergency?
- If a state of emergency is declared:
    - Must the declaration be submitted for parliamentary approval (if the decision is made by the executive)?
    - Must the declaration be submitted for judicial review?
- Are derogations to human rights possible in emergency situations under national law?
- Are there legal remedies available against measures taken under the state of emergency?

3.3 (iii) Training

It is well established that inadequate training of private security company personnel regarding the appropriate conduct of their duties while at work is a key factor that can contribute to human rights issues.[40] To elicit information regarding this sub-indicator we will interview private security companies and practitioners in the private security sector. We anticipate that the obligation to provide adequate training, or indeed simply the reality of whether or not adequate training is provided, differs depending on the internal, or otherwise as perhaps imposed by clients, regulations which govern private security companies.

3.3 (iv) Forced disappearance

The Working Group on the Use of Mercenaries (WGUM) has noted that the involvement of both PMSCs and PSCs in human rights violations, including enforced disappearances, is of increasing concern.[41] In a special dialogue session with the Working Group on Enforced Disappearances in September 2021, the WGUM highlighted the increase in the instance of reports being received regarding forced disappearances in the private security sector.[42] Media

[39] Council of Europe Venice Commission, *Observatory of situations of emergency in Venice Commission member States* (Venice Commission 2023), available at: https://www.venice.coe.int/WebForms/pages/?p=02_EmergencyPowersObservatory&lang=EN.
[40] Interviews (various), ICoCA Responsible Security Forum, Geneva, 6 December 2023.
[41] United Nations Office of the High Commissioner of Human Rights (OHCHR), *Working Group on Enforced Disappearances: the Atrocious Crime of Enforced Disappearance Continues to Happen and Takes New Shapes and Forms* (OHCHR, September 2021), available at: https://www.ohchr.org/en/press-releases/2021/09/working-group-enforced-disappearances-atrocious-crime-enforced-disappearance.
[42] Ibid.

monitoring, NGO and UN reports will be utilised to identify instances of forced disappearance in which PSCs are complicit.

3.4 Use of Force

The Use of Force Indicator is conceptualised following the definition provided by the International Committee of the Red Cross (ICRC): "any constraint imposed on a person… ranging from physical restraint by hand or with a restraining device (like handcuffs), through "less lethal" weapons – like batons, tear gas, electroshock weapons (commonly known as tasers) and rubber bullets – to using firearms and other potentially lethal force."[43] This indicator also considers the clarification provided by the ICRC as an important distinction when making an assessment on the use of force: "force may be used only if other means remain ineffective or without any promise of achieving the intended result."

The following sub-indicators will be taken into consideration when assessing the use of force indicator:

- 1. Legal frameworks governing the use of force.
- 2. Reports on cases of excessive use of force by private security companies.
- 3. Hiring criteria and recruitment process.
- 4. Access to, and use of, weapons.

Regarding each sub-indicator, a qualitative assessment will be made based on the information available with respect to each sub-indicator in order to generate a score on the five-point scale as per the scoring regime.

3.4 (i) Legal frameworks governing the use of force

This sub-indicator considers the governance frameworks surrounding the use of force in a particular country context. The below three overarching questions[44] guide the assessment of this sub-indicator.

[43] International Committee of the Red Cross (ICRC), *The Use of Force in Law Enforcement Operations* (ICRC 2022), available at: https://www.icrc.org/en/document/use-force-law-enforcement-operations.
[44] DCAF - Geneva Centre for Security Sector Governance (DCAF), *Regulating the Use of Force by Private Security Providers: A Guidance Tool for States* (DCAF 2019), available at: https://www.dcaf.ch/sites/default/files/publications/documents/DCAF_Toolkit_Use%20of%20Force.pdf.

- Is the principle of self-defence and defence of others enshrined in national laws? Do national laws governing PSCs explicitly refer to these principles?
- Are there national laws which clearly outline if PSCs are permitted to use force for the defence of property?
- Does national law regulating PSCs specify for the prescription and/or prohibition of the use of force in crowd control and/or demonstrations and/or peaceful assembly?

This sub-indicator will then consider treaty adherence by outlining which relevant treaties regarding the use of force the specific country of interest is a party too. The relevant treaties are listed below.[45]

- International Human Rights Treaties:
    - International Covenant on Civil and Political Rights (ICCPR) (1966)
        - ICCPR Optional Protocol 1
    - Convention Against Torture (CAT)
        - Competence of CAT Committee to receive individual complaints
        - CAT Optional Protocol 1
- Regional human rights and criminal law treaties:[46]
    - African Charter on Human and Peoples' Rights (1981)
    - 1998 Protocol to the African Charter on the African Court
    - Article 34(6) declaration regarding individual petitions
    - Malabo Protocol on the African Court of Justice and Human Rights
    - Arab Charter on Human Rights (2004)

3.4 (ii) Reports on cases of excessive use of force by private security companies

Particular cases of excessive use of force by private security companies will be ascertained through interviews with industry professionals and via desk research. Regarding desk research, this sub-indicator will rely on reports available from civil society organisations and media outlets to assist in building a picture of the general number of known incidents of excessive use of force within a recent time frame. It is noted that it is not feasible to ascertain the actual

[45] The Law on Police Use of Force Worldwide (LPUFW), *Libya & Tunisia* (LPUFW 2021), available at:https://www.policinglaw.info/country/libya#:~:text=Libya%20does%20not%20regulate%20and,and%20proximate%20threat%20to%20life & https://www.policinglaw.info/country/tunisia.

[46] These will differ depending on the country of interest, however, for the purposes of this report the case study countries are located in North Africa and thus the following treaties apply.

number of incidents and estimating a number on the basis of the existence of only partial information would be imprecise.

3.4 (iii) Hiring criteria & recruitment process

Information on hiring criteria and recruitment processes will be obtained via interviews with industry professionals and private security companies, and via desk research. This sub-indicator will rely on available information which speaks to both whether hiring criteria and specific recruitment processes exist, and also what such criteria and processes specifically entail.

3.4 (iv) Access to, and use of, weapons

This sub-indicator seeks to understand the extent to which guards have access to and use weapons in the course of carrying out their duties. A key question is whether guards are issued with lethal weapons by their employer (a PSC), and whether the issuance of such is legal under domestic law. It also considers how guards may come about obtaining lethal weapons where the provision of such is not facilitated by the PSC and where the use of such is illegal under domestic law. The assessment of this sub-indicator thus relies on domestic legal frameworks governing the use of weapons and reports by media and NGOs regarding instances of the use of weapons by PSCs.

3.5 Torture

Given that PSCs provide their services in various operational environments (including prison management, corporate security, extractive industries) where methods of torture (due to the nature of the environment) may be employed by its personnel, it becomes imperative for the client to take necessary precautions, such as ensuring they have strict standards for PSCs that they wish to contract, or a code of conduct that prohibits such methods of punishment.

Our understanding of torture is shaped by four key elements as given by the OCHCR Convention against torture,[47] namely: intentional infliction, severe mental or physical pain or

[47]Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Article 1. OCHCR. Adopted in 1984. It describes 'torture' as '*any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a*

suffering as punishment, by an official who is directly or indirectly involved, and for a specific purpose such as obtaining information or confession. Due to the varied nature of the operational environment in which some PSCs operate, some PSCs are prone to employ torture methods whether to exploit labour, or to obtain a confession. In certain country settings where the legal framework is lax, or the overwatch mechanisms are weak, or the whistleblowers are threatened, and there is a lack of redressal tools to raise and address incidents of torture, in such contexts PSCs may be inclined to employ extreme methods of punishment, such as torture. No matter the context, torture as a punishment is prohibited and can never be justified in any situations.

According to the Association for the Prevention of Torture (APT), there are few key risk factors that can lead to torture. These can also be applied to the conduct of PSCs to better identify and prevent the risk of torture. These risks include: (a) the *operational environment* where PSCs operate may have a weak rule of law, there is a culture of impunity, poor access to justice, and privatisation of detention and security; (b) *practices that lead to torture* such as detention, solitary confinement, corporal punishment, use of restraints, threats; and lastly, (c) *in situations of vulnerability* such as discrimination, harassment and profiling of some persons due to their gender, age, nationality, ethnicity, disability, sexual orientation, gender expression and religion.[48]

PSCs contracted for prison management repeatedly face allegations for using torture methods on inmates during interrogation, or in detention facilities through solitary confinement, or denying medical treatment or by physically abusing the detainees.[49]

3.6 Bribery & Corruption

This paper has referenced the Transparency International's Corruption Perception Index (CPI) to assist in the analysis of the levels in the practice of bribery and corruption in private security companies (PSCs) in a specific country. It is necessary to note that as per the Transparency International's methodology, the CPI only captures bribery and corruption levels in the public

public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.'

[48] APT Editors. *What is torture prevention?* Association for the Prevention of Torture (APT). << https://www.apt.ch/torture-prevention/what-torture-prevention >>

[49] The Guardian. G4S must end its complicity in Israel's abuse of child prisoners. 4 June 2014. <<https://www.theguardian.com/world/2014/jun/04/g4s-complicity-israel-abuse-child-prisoners>>

sector and not in the private sector, let alone in the PSCs. However, as the CPI is the most comprehensive and composite source, the CPI report (2023) will be the guiding source to further our understanding of the levels of bribery and corruption in a country setting.

The Transparency International defines corruption as "the abuse of entrusted power for private gain."[50] To score a country on this metric the CPI gathers inputs from 13 data sources from 12 independent institutions[51] specialising in governance and business climate analysis. The CPI considers 'perception of corruption' as the base on which to assess the levels of bribery and corruption because "to date there is no indicator which measures objective national levels of corruption directly and exhaustively."[52] The CPI is a perception-based indicator as bribery and corruption are often covert and hence, it may be difficult to measure it objectively. Since the CPI has a global coverage and relies on averages from multiple sources, this wide range (0 to 100, where 0 is perceived to be highly corrupt and 100 is perceived to be clean)[53] helps it reconcile different corruption aspects into one indicator.

The CPI attempts to capture 11 distinct indications of corruption[54] in the public sector. However, as the objective of this research is to assess the levels of bribery and corruption in

[50]What is Corruption?, Transparency International. << https://www.transparency.org/en/what-is-corruption>>

[51]The list of 13 data sources used to construct the 2023 CPI Report are listed below:

1. African Development Bank Country Policy and Institutional Assessment 2021
2. Bertelsmann Stiftung Sustainable Governance Indicators 2022
3. Bertelsmann Stiftung Transformation Index 2024
4. Economist Intelligence Unit Country Risk Service 2023
5. Freedom House Nations in Transit 2023
6. Global Insight Country Risk Ratings 2022
7. IMD World Competitiveness Center World Competitiveness Yearbook
8. Executive Opinion Survey 2023
9. Political and Economic Risk Consultancy Asian Intelligence 2023
10. The PRS Group International Country Risk Guide 2023
11. World Bank Country Policy and Institutional Assessment 2022
12. World Economic Forum Executive Opinion Survey 2023
13. World Justice Project Rule of Law Index Expert Survey 2023
14. Varieties of Democracy (V-Dem v. 13) 2023

[52]Corruption Perception Index: Frequently Asked Questions (2023). Transparency International is licensed under CC-BY-ND 4.0. Page 1.

[53]Corruption Perceptions Index Technical Methodology Note (2023). Transparency International.

[54]Ibid. The 11 manifestations of corruption that the CPI does capture:

- Bribery
- Diversion of public funds
- Prevalence of officials using public office for private gain without facing consequences
- Ability of governments to contain corruption and enforce effective integrity mechanisms in the public sector
- Red tape and excessive bureaucratic burden which may increase opportunities for corruption
- Meritocratic versus nepotistic appointments in the civil service
- Effective criminal prosecution for corrupt officials

the private security industry, only one indicator, namely bribery, will be examined to assess the overall levels of bribery and corruption in PSCs. This inductive approach will be then supplemented by remarks from experts, both practitioners and academicians, with specialised knowledge on the private security industry.

Lastly, apart from the corruption in the private sector, the CPI report also does not capture tax fraud, money laundering, and extortion, all of which are key indicators to measure the levels of bribery and corruption. The knowledge on the prevalence of these indicators in the private security industry will be gathered from the industry experts.

3.6 (i) Bribery

Bribery is defined by the Transparency International UK's Global Anti-Bribery Guidance as "the offering, promising, giving, accepting or soliciting of an advantage as an inducement for an action which is illegal, unethical or a breach of trust. Inducements can take the form of money, gifts, loans, fees, rewards or other advantages (taxes, services, donations, favours etc.)."[55] In the private security industry bribery manifests in several forms. For example, neglecting internal occurrences of corruption, like overlooking misconduct or accepting bribes to prefer one vendor over the rest; offering incentives in exchange for securing lucrative security contracts, or to circumvent licensing requirements, or to avoid penalties for non-compliance with local or international regulations; or offering bribe to local law enforcement authorities to overlook illegal activities like excess use of force, or unlicensed operations.

3.6 (ii) Tax Fraud

Tax fraud or tax evasion is understood as "a wilful attempt to circumvent tax law in order to illegally reduce one's tax liability."[56] In the private security industry this may manifest through payroll fraud which is to pay off the employees 'off the books' so as to avoid taxes or withholding social security benefits, etc; or classifying workers as contractors; or under-

- Adequate laws on financial disclosure and conflict of interest prevention for public officials
- Legal protection for whistleblowers, journalists, investigators when they are reporting cases of bribery and corruption
- State capture by narrow vested interests
- Access of civil society to information on public affairs

[55] *What is Bribery?, Global Anti-Bribery Guidance.* Transparency International UK. <<https://www.antibriberyguidance.org/guidance/5-what-bribery/guidance >>

[56] United Nations code of conduct on cooperation in combating international tax evasion. << https://unterm.un.org/unterm2/en/view/UNHQ/D7E05E4CD7DB0872852569FD0002A423 >>

reporting revenue to reduce taxable income; or falsifying invoices to overstate business expenditure on operational expenses like equipment, salaries, etc.

3.6 (iii) Money Laundering

Money laundering may be defined as "the conversion or transfer of property, knowing that such property is derived from any offence(s), for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in such offence(s) to evade the legal consequences of his actions."[57] In the private security landscape, some companies may create shell companies to hide the true source of funds; or falsify employment records to issue salaries to non-existent employees and then withdraw this money for personal gains; or like in tax fraud, PSCs may falsify invoices to overstate business expenditure on operational expenses like equipment, salaries, etc.

3.6 (iv) Extortion

Extortion is understood as "obtaining property (like money) from another through the wrongful use of actual or threatened force, violence or fear."[58] In the private security industry this may be through blackmail; or coercing employees to accept lower wages or comply with illegal demands by threatening to harm their families, etc; or fabricating threats (real or imagined) against businesses to demand money in exchange of protection.

3.6 (v) Corruption

Transparency International's definition of corruption considers 2 important elements: an abuse of power; and private gain. In the private security sector corruption can manifest in the form of clientelism to secure lucrative contracts; embezzlement; trading of information such as security protocols or client data; solicitation of favours like gifts and hospitality,[59] serving as advisors

[57]United Nations Vienna Convention (1988). Article 3.1.
[58]Editors. *Module 4: Infiltration of Organized Crime in Business and Government.* 2018. UNODC. << https://www.unodc.org/e4j/zh/organized-crime/module-4/key-issues/extortion.html#:~:text=Extortion%20consists%20of%20obtaining%20property,threatened%20force%2C%20violence%20or%20fear >>
[59] Editors. *Module 5: Private Sector Corruption.* 2018. UNODC. p.9. << https://grace.unodc.org/grace/uploads/documents/academics/Anti-Corruption_Module_5_Private_Sector_Corruption.pdf >>

to a foreign military or police force unit that procures services for PMSC activities, indicating a potential conflict of interest,[60] etc.

3.7 Sexual Exploitation and Abuse

This paper has referenced the Inter-Agency Standing Committee's (IASC) Sexual Exploitation and Abuse Risk Overview (SEARO) framework to aid in analysing the prevalence of SEA practices within the private security industry. This tool was developed by IASC to help organisations assess and mitigate risks related to SEA. The SEARO framework provides guidance on identifying potential SEA risks and implementing measures to prevent and respond to such incidents. This is particularly relevant in sectors like the private security industry, where the nature of the work and the power dynamics involved can create environments where SEA may occur.

As per the SEARO framework, SEA has two main components, namely sexual abuse and sexual exploitation. Sexual abuse is defined as "the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions, perpetrated by aid workers against the children and families they serve."[61] Sexual exploitation is defined as "any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes, perpetrated by aid workers against the children and families they serve."[62] The different forms of SEA include sexual assault, rape, transactional sex, trafficking, etc. The SEARO framework does not attempt to predict the occurrence of SEA, it only seeks to identify and measure the different contributing factors that may increase or reduce the likelihood of SEA. Thus, it can be leveraged as a significant tool for PSCs to identify SEA risks. The SEARO framework has 16 components, categorised under 4 dimensions, which are: enabling environment, humanitarian context, operational context, and protective environment.

3.7 (i) Enabling Environment

The enabling environment is a dimension that reflects factors that exist in every country, such as law, policies, societal norms and practices that create an 'enabling' environment for the

[60] *PRIVATE MILITARY AND SECURITY COMPANIES: HOW THEY FUEL CORRUPTION AND CONFLICT RISKS AND THE NEED FOR REGULATION*. Factsheet. Transparency International. << https://ti-defence.org/wp-content/uploads/2022/12/TI-DS_PMSC_Factsheet_digital0.pdf >>

[61] Sexual Abuse and Exploitation Risk Overview (SEARO): Concept and Methodology, 2022. Inter-Agency Standing Committee (IASC). p7.

[62] Ibid.

perpetration of SEA. It also considers the underlying factors that contribute to the occurrence of SEA, such as human rights violations and gender inequalities. In the private security landscape, the prevalence of nationals laws governing PSCs operations, laws against SEA at the workplace, and other labour laws contribute to creating an environment that enables women to work without the risk of SEA.

3.7 (ii) Humanitarian context

The humanitarian context is a dimension that assumes that when there is a humanitarian crisis the security and well-being of the population is put at risk, which may result in the perpetuation of SEA. Thus, this indicator attempts to capture the varying intensity of the crisis (or crises), "its geographic extent and scale, along with the people affected and severity of the needs."[63] When applied to the private security industry which may sometimes operate in high-risk environments, there are persistent issues that such environments pose to the vulnerable populations, such as women. In such contexts, it is essential for the better functioning of PSCs to monitor, anticipate and assess the possible humanitarian crises such a complex environment may present, so as to prevent SEA.

3.7 (iii) Operational context

This dimension presupposes that "the more sensitive and knowledgeable on the risks of SEA aid agencies and organisations are, the less likely they will perform or accept any act of SEA."[64] Thus, this indicator manifests how the overall response operation is designed and managed, as well as "the awareness and commitment of aid workers to prevent, identify and address the incidents of SEA."[65] For PSCs, this dimension focuses on their ability to understand and prevent the risk of SEA effectively. PSCs must design and manage operations in a manner that prevents any occurrence of SEA, and build an awareness among its employees to identify and report any SEA incidents when occurred.

3.7 (iv) Protective Environment

This dimension takes into account the specific capacities and protective measures that are put in place to reduce, identify and address the incidents of SEA. The protective environment is seen as the structures and resources in place to mitigate the impact and prevent the occurrence

[63]Ibid. p.11.
[64]Ibid.
[65]Ibid.

of SEA. The dimension also assumes that the better the accountability systems in place to report any incident of SEA and the higher access to services for the victims/survivors, the lower the risk of perpetuating SEA.[66] For PSCs, this suggests a policy framework that explicitly prohibits SEA. PSCs must ensure regular training programs to build SEA awareness and sensitivity among its workforce.

4. Country Case Study: Libya[67]

4.1 Main findings

The main findings resulting from the application of our model to the country of Libya are summarised in the diagram below. The *working conditions* indicator is leaning towards the very high risk (5) category. In fact, it scored 5+ on ITUC's Global Rights Index, meaning collective labour rights are not guaranteed as it is the worst possible rating.[68] The *forced labour* indicator is also leaning towards "very high risk" as there is a general lack of prosecution for crimes involving forced labour and the government response is significantly undermined by instances of state-imposed forced labour. In fact, the Global Slavery Index's assessment of the government's response is scored 10 out of 100, corresponding to the second-weakest regional response in Africa.[69] The *use of force* and *unlawful detention* indicators were also scored a 5 as, respectively, the absence of regulatory frameworks promotes the misuse of power as common practice and a lack of accountability for wrongdoing further encourages malpractice. Due to lack of any data on prevalence and use of torture by PSCs operating in Libya, for now our finding on *torture* in Libya will be inconclusive and in need of further exploration. The *bribery and corruption* indicator is scored as very high risk (5) as the CPI (2023) scored Libya an 18 out of 100, indicating extremely high perceived levels of public sector corruption. This score reflects a decade-long trend of severe corruption with minimal improvement; and hence, it suggests that similar conditions are likely to prevail in the private sector, including PSCs. There is a pervasive and persistently high level of bribery and corruption in Libya due to the ill-defined regulatory frameworks. The *SEA* indicator is scored as very high risk (5) as Libya's

[66] Ibid. p12.
[67] Detailed case study can be found in Section 7: Annex A - Libya Case Study Analysis, p.40 of this report.
[68] ITUC. «Rapport des violations des droits syndicaux : l'indice Des Droits Dans Le Monde». Accessed: 16 May 2024. http://survey.ituc-csi.org/?lang=fr.
[69] Walk Free. «Africa». Minteroo Foundation, 2023. Accessed: 17 May 2024. https://www.walkfree.org/global-slavery-index/findings/regional-findings/africa/.

unstable environment creates risks of SEA, with power dynamics and vulnerabilities being exploited. The lack of a comprehensive legal framework and inadequate enforcement further exacerbates these risks. Despite some progress, the IASC 2023 Assessment report indicates that Libya still faces significant challenges, including limited funding for gender-based violence victim assistance. It was found that, in case of very high risks (5) for the bribery and corruption or use of force indicators, *pay* (living conditions sub-indicator) becomes a critical factor as if guards are not paid enough they could engage in corruption-related activities (accepting bribes) or use their position of force for extortion.[70]

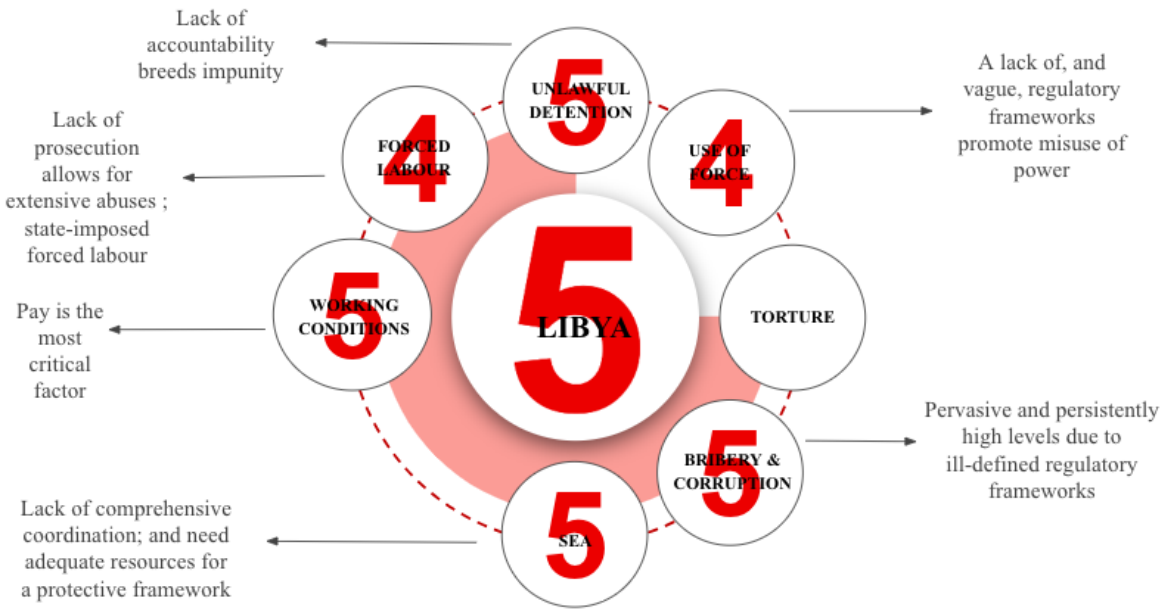


FIGURE 3: Summary of outcomes in the Libya case study

4.2 Model Validation

Through desk research and interviews, we have identified a set of key issues that emerged in the context of private security operations in Libya. This allows us to assess the relevance of our model.

➔ **Lack of Clarity and Transparency**

[70] Charlie Mayne (founder of VSC Security), in discussion with the authors, online, 16 May 2024.

In Libya both the Forces under the Government of National Accord (GNA) and the Libyan National Army (LNA) allegedly relied on the support of different foreign armed actors, including mercenaries, private military and security companies.[71]

There is a general lack of clarity and transparency regarding the status, role, chain of command, and control mechanism, as well as the recruitment, financing, and deployment of security personnel.[72] This creates definitional challenges as the actions of Private Military Companies (PMCs) have led to negative public perceptions over the years, and some companies prefer to define themselves as Private Security Companies (PSCs) or Private Military and Security Companies (PMSCs) rather than PMCs. However, instances of a lack of transparency surrounding their activities, combined with the fact that some companies operate in a hybrid manner by offering both PMC- and PSC-type services, contribute to the lack of clarity surrounding operations in the private security sector.[73]

As a result there is a lack of specific attribution of harm in monitoring and documentation efforts. PMCs, PSCs or PMSCs escape close scrutiny because they are rarely named as their own category in data gathering and are often included in broader reporting categories such as *security forces*. For example, the civilian casualty data of the UN Security Mission in Libya does not distinguish private security forces, even though PMCs represent the largest percentage of combatants in Libya.[74] This was also found to be a great obstacle to the data collection process to assess our indicators.

Regarding our model coverage of this issue, the use of force indicator assesses the hiring criteria and recruitment process generally and the working conditions assesses how transparent and ethical the latter is in the context of hiring third-country nationals. However, the lack of clarity regarding the role, status and chain of command is not addressed by our model.

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[71] Kwaja, Chris, Elina Steinerte, Agnes Callamard, Mama Fatima Singhateh, and Nils Melzer. Communication OHCHR. «AL LBY 1/2020». Communication OHCHR, 10 June 2020. https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=25289. ; Kwaja, Chris, Elina Steinerte, Agnes Callamard, and Nils Melzer. Public Communication OHCHR. «AL OTH42/2020». Public Communication OHCHR, 9 June 2020. https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=25290.

[72] Ibid.

[73] Center for Civilians in Conflict (CIVIC). «Privatizing War: The Impact of Private Military Companies on the Protection of Civilians». Accessed: 5 June 2024. https://civiliansinconflict.org/publications/policy/privatizing-war-the-impact-of-private-military-companies-on-the-protection-of-civilians/.

[74] Ibid.

➔ **General Context of Impunity**

There is no monitoring body that oversees the activities and services of PSCs or PMCs delivered abroad if they are hired internationally. In Libya there is an insufficient legislative and regulatory framework and the general context of impunity breeds the proliferation of criminal networks that have ties with multiple security forces active in the region which are allegedly involved in human trafficking, kidnapping migrants for ransom, forced labour etc. One interview has also highlighted the increasing involvement of private security actors in economic crimes (e.g. money laundering, bribery, exploitation of natural resources).[75] As a result of the limited monitoring, lack of effective national legislation, and insufficient disaggregated data for specific attribution in instances of abuse there is a general lack of accountability.[76]

This issue is partially addressed by the unlawful detention indicator via the access to legal proceedings and due process sub-indicator as well as the judicial independence sub-indicator. In addition the use of force indicator considers the lack of any meaningful legislative framework and governance in promoting impunity for enforcement actors broadly, including private security actors. Regarding the risk of involvement in criminal networks, the forced labour indicator partially covers the issue as the government's response to modern slavery takes into account instances of forced labour, debt bondage, forced marriage, other slavery and slavery-like practices, and human trafficking. In terms of economic crimes money laundering and bribery is covered by the bribery & corruption indicator. However, no indicator regarding potential environmental damages has been included.

5. Discussion

5.1 Implications for Heightened Human Rights Due Diligence (hHRDD)

This research has sought to develop a detailed framework for measuring risk in an operational environment in order to aid clients in ascertaining when to conduct Heightened Human Rights Due Diligence (hHRDD). The assessment of risk stands as a precondition for any operations that involve a client engaging the services of a PSC, as it provides an overview of the areas

[75] Former chairperson of the working group on the use of mercenaries, OHCHR, in discussion with the authors, 23 May 2024.
[76] Ibid.

necessitating special attention in a specific operational context and allows clients and PSCs to implement preventive and mitigative measures prior to undertaking their operations.

If an indicator is rated 'very high risk (5)', hHRDD is imperative and required. When an indicator is categorised as 'high risk (4)', hHRDD is recommended and Human Rights Due Diligence (HRDD) is required. The difference between the two is that while hHRDD requires clients and PSCs to identify actual or potential impacts on the operational context (e.g. conflict dynamics), HRDD only implies an assessment of the human rights consequences of their presence.[77] When an indicator is categorised 'moderate risk (3)' HRDD is required, whereas for the 'low risk (2)' rating HRDD is only recommended. Finally, when an indicator is categorised as 'no risk (1)', there is no need for HRDD.

A very high risk (5), and indeed high risk (4), score signals the need to conduct hHRDD assessments regarding the relevant indicator frequently throughout the duration of the PSC's operation. This also includes evaluating the interaction and potential negative impacts the indicator of interest has on the other indicators that may be categorised as moderate risk (3) or low risk (2), as indicators scored as 3 and 2 do not require hHRDD per se. In fact, when an indicator presents a very high risk (5) it could engender additional threats in other areas due to the pervasiveness and transversal impact these indicators have. For example, as mentioned above, a practitioner working on the ground has highlighted how pay plays a crucial role in the nexus between working conditions and private guards' respect for the law.[78] This risk increases significantly if other factors such as corruption and bribery, or use of force are categorised as high risk (4) or very high risk (5). Their presence could create incentives for guards to find alternative ways of making money in an unlawful manner, namely by accepting bribes or threatening to use force.[79] Therefore, in some instances, a PSC might need to pay the guards more than the average salary to mitigate the issue created by their transversal impact.

When hHRDD is required it is crucial for PSCs and clients to implement preventive and mitigative measures before beginning any operations and these measures must be adapted

[77] United Nations Development Programme (UNDP). 2022. *Heightened Human Rights Due Diligence for business in conflict-affected contexts; A Guide*. New York: UNDP. << https://www.undp.org/publications/heightened-human-rights-due-diligence-business-conflict-affected-contexts-guide >>
[78] Charlie Mayne (founder of VSC Security), in discussion with the authors, online, 16 May 2024.
[79] Ibid.

continuously throughout the duration of their activities on the ground. A constant Human Rights Impact Assessment should be conducted by PSCs for the specific area they plan to operate in, namely by taking into account previous issues around personnel who were previously engaged by other protection forces and past incidents relating to the interaction between security forces and community unrest.[80] Consultations with security experts specialising in a particular high risk area would most likely be needed, and indeed advised. PSCs and clients should be mindful that even if such measures are implemented, risk remains a continuous variable. It should also be noted, and as mentioned above, that hHRDD is still recommended in a high risk (4) category. Regular evaluations and localised analysis should be conducted to stay updated on any changes in risk levels and to capture issues specific to a particular operating environment.

5.2 Limitations

While the model we have developed provides a broad overview of the 'on the ground' reality regarding each indicator within a country context, due to its broad nature applying the model may result in a less nuanced picture of a given operating environment as it relates specifically to the private security sector. For example, due to a lack of information regarding the pay rates of private security employees, the living conditions indicator relies on the much more broad data set of average national wage (not sector specific), rather than the average wage in the private security sector, meaning that an average wage for the private security sector cannot be established and compared against as a benchmark. It should also be noted that the model does not capture the lack of clarity of PSCs mandates and the potential for their operations to inflict environmental damages. To mitigate the lack of nuance in such cases, a sector specific approach is necessary in which clients conduct hHRDD specifically in the operational environment of interest and focussed directly on the PSC/s they intend to engage, or are engaging.

A further restriction that the model presents relates to the lack of information that is easily obtainable from PSCs directly without initiating direct contact with PSCs operating on the ground; meaning the model was largely designed using resources available via desk research. As such, there are numerous indicators that rely, for example, on NGO or media reports to support their assessment. These indicators may, therefore, not accurately capture the practical

[80] Ibid.

reality of the situation on the ground like speaking directly with on the ground contacts would have. For example, regarding the training sub-indicators, there are few avenues to collect data without this direct engagement with PSCs as they may be the sole guardians of such information. In order to promote a comprehensive and reliable assessment, significant resources should be dedicated to data collection methods that are tailored to each operational environment where on the ground connections can be established in order to promote a 'reality on the ground' approach. As part of this process we note that less reliance should be placed on contacts that are not physically present in an operational environment, versus those that are.

While the five-point scoring system we have developed has the advantage of being straightforward and broad in application, it may not capture nuances between different on the ground realities. The categorisation is based on a majority rule, meaning that a simple majority of one number has the potential to shift the score for an operational environment as a whole. Currently each indicator and sub-indicator are also weighted equally, and thus further research should be conducted to consider whether the attributed weighting could be tailored. Some indicators and sub-indicators may be more relevant to the private security sector than others and this should be taken into account when allocating a final score, otherwise one risks mis-evaluating the risk level in a given operational environment.

Despite the limitations noted above, this model provides clients with a broad risk assessment framework of an operational environment that allows them to understand when the need for hHRDD is triggered. Perhaps most importantly, clients will easily be able to identify that a category five scoring most certainly requires hHRDD, even if additional analysis might be required to tailor the assessment to the operational environment.

6. Recommendations

In developing the model we have identified a series of issues that need to be addressed in order to adequately assess the need for hHRDD in the future. On the basis of these challenges, we are advancing a series of key recommendations for clients, PSCs, and organisations promoting responsible conduct in the private security sector.

6.1 Clarify the Mandate

In order to address the lack of specific attribution of harm in monitoring and documentation of efforts, as well as the definitional challenges between PSCs, PMCs, or PMSCs we advise clients to:

- Clearly define the precise status, role, nature of activity, chain of command, modes of recruitment and payment of the PSC in the contract.
- Include clear clauses and performance requirements regarding respect for human rights as well as contractual sanctions in case of violations.

A clearer mandate and more transparency regarding the status of the companies would render the data gathering to assess the need for hHRDD easier.

6.2 Ensure Effective Governance and Oversight Mechanism

In order to address the lack of monitoring of private security providers especially when contracted internationally we advise clients to:

- Make sure that the private security provider has an effective governance and oversight mechanism that includes:
    - Internal investigations
    - Disciplinary actions in case of allegations of wrong-doing by personnel
    - Complaints mechanisms that allow individuals to safely raise grievances (namely through anonymity and protection arrangements)
    - Regular performance and incident reporting
- Closely monitor the PSCs activity on the ground (namely through inspection, CCTV visual monitoring etc.)

6.3 Review the Security Provider's Standards and Procedures

More generally, in order to mitigate the risks in the private security sector clients should:

- Review the selection and recruitment methodology of the company. Make sure it is transparent and follows an ethical procedure, especially for hiring third-country nationals.
- Make sure the background check before hiring personnel includes:
    - Criminal screening
    - Screening for human rights abuses
    - Drug screening

    - Psychological screening
- Special attention should be given to the working conditions of the guards, especially regarding pay.
- Consider hiring PSCs that are certified members of ICoCA.
- Make sure training is appropriate and takes into account the risks highlighted in the model.

7. Annex

Annex A - Libya Case Study Analysis

CONTEXT OVERVIEW

Libya has been embroiled in political turmoil since the 2011 NATO-backed uprising that toppled the Gaddafi government. The interim unity government established following the ceasefire agreement in 2020 struggles to maintain stability in this oil-rich nation. The country is governed by the 'Libyan Interim Constitutional Declaration' which was finalised in August 2011 and was intended to be in effect until a new constitution has been ratified. The 2017 draft constitution is intended to replace the 2011 interim version, however, has faced several obstacles stalling its ratification and adoption. The interim constitution remains preliminary in nature and lacks detailed provisions on various critical issues, such as the governance of the security sector.

After the collapse of the Gaddafi government the security environment in Libya has become more complex, marked by the presence of numerous armed groups and foreign power-backed militias who have filled the post-collapse power vacuum. There is a risk that these groups may seek to be contracted by domestic and international clients to provide security services in a highly fragile environment.

One such group that emerged after the collapse of the Gaddafi government is the Al Rada, which was formed in 2012, and has since been integrated into the Libyan government's security architecture without any proper or comprehensive vetting procedure overseeing this process. Al Rada is known for targeting foreign PSCs operating in Libya, for example seizing vehicles

and arresting contractors without any prior notice.[81] Such instances of conflict between foreign PSCs and local forces highlights the complex nature of their operations. These PSCs often operate in a grey zone due to the lack of specific regulations governing their activities and the absence of civil society oversight mechanisms.

Libya's security environment remains highly unstable. The incidents, as discussed above, underscore the complex and often hostile security landscape that PSCs must navigate. The interim government's limited control and the lack of clear regulations further complicate the situation, creating a challenging operational environment for PSCs.

SUMMARY OF THE ASSESSMENT OUTCOME IN THE LIBYAN CONTEXT

Indicator	Sub-indicator	Rating
Working Conditions	Living conditions	**4**
	Access to trade unions	**5**
	Compliance with international labour standards	**5**
	Client's due diligence	TBD
	Working hours and breaks	TBD
	Health and safety	TBD
	Indicator total	**5**
Forced Labour	Government's response to modern slavery	**5**
	Migrant labour force in the private security sector	**4**
	Reports of forced labour in the private security sector	**4**
	Indicator total	**4**

[81]Christopher Reynolds (2023). *GardaWorld employees spent 2 months in detention after arrest by Libyan militia.* Global News Canada. 20 September 2023. << https://globalnews.ca/news/9973190/gardaworld-libya-militia-arrest/ >>

Unlawful Detention	Access to due process and legal proceedings	**5**
	State of emergency	**5**
	Training	TBD
	Forced disappearance	TBD
	Indicator total	**5**
Use of Force	Legal frameworks governing the use of force	**4**
	Reports on cases of excessive use of force by private security companies	TBD
	Hiring criteria / recruitment process	TBD
	Access to, and use of, weapons	TBD
	Indicator total	**4**
Torture	***Indicator total***	TBD
Bribery & Corruption	Bribery	**5**
	Tax fraud	TBD
	Money laundering	**4**
	Extortion	**4**
	Corruption	**5**
	Indicator total	**5**
Sexual exploitation and abuse	Enabling environment	**4**
	Humanitarian context	**4**
	Operational context	**5**
	Protective environment	**5**

	Indicator total	**5**
LIBYA OVERALL RATING		**5**

WORKING CONDITIONS

Living conditions

a. Results

Unfortunately, there is no data on the living wage in Libya. Therefore, we will use the minimum wage, set at LYD[82] 1,000 per month, as a reference.[83] The average Libyan salary is estimated to range between LYD 1000 and 2500 (LYD 1750 on average).[84] This means that on average Libyans earn LYD 750 above the minimum wage per month.

b. Considerations

Even if on average Libyans earn above the minimum wage, these results are rendered less accurate by the fact that the living wage rate is not known. The poverty rate may, therefore, be underestimated. Hence, living conditions are generally lower as the average wage rate is not significantly higher than the minimum wage rate.

Access to Trade Unions

a. Legal considerations

The International Trade Union Confederation (ITUC) has no affiliate organisations in Libya. Libya ratified Convention No. 87 on Freedom of Association and Protection of the Right to Organize (1948), and the right to freedom of association is recognised but strictly regulated in the Labor Code.[85] Among other things, a union: needs the Minister of Labor and Social Affairs' approval to establish branches in the provinces; must have at least 100 members to register; may not establish relations with a foreign union; is not permitted to establish more than one union or association in the same profession; cannot accept any donation or bequest without the prior authorisation of the Minister of Labor and Social Affairs; must ensure a worker's union membership ends one year after they stop working; and, ensure only workers with Libyan

[82] Libyan Dinar(s)
[83] WageIndicator Foundation. «Libya». Accessed: 16 May 2024. https://wageindicator.org/salary/minimum-wage/libya.
[84] TimeCamp. «Average Salary in Libya - Complete Guide 2024 - TimeCamp». Accessed: 9 June 2024. https://www.timecamp.com/average-salary/libya/.
[85] ITUC. « Rapport des violations des droits syndicaux : l'indice Des Droits Dans Le Monde». Accessed :16 May 2024. http://survey.ituc-csi.org/?lang=fr.

nationality can be members of a union.[86]

b. Practice

No incidents violating access to trade unions have been listed by ITUC in the last 9 years. The last available information relates to the assassination attempt of Nermin Al-Sharif, leader of the Libyan Dockers and Seafarers Union in 2015.[87]

c. Considerations

Despite the lack of information on incidents, due to the current situation in Libya, which makes access to information very difficult, the ITUC gives the World Rights Index score of 5+ to Libya meaning the rights of workers are not guaranteed due to the breakdown of the rule of law in the country after October 2011.[88]

Compliance with International Labor Standards

a. Results

Latest comments by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) – adopted 2023, published 112nd ILC Session (2024)[89]

Observation on submission to competent authorities
Serious failure to submit: the Committee once again expresses the firm hope, as did the Conference Committee in June 2016, June 2017, June 2018, June 2019, June 2021, June 2022 and June 2023, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authorities.

Latest comments by the CEACR – adopted 2022, published 111st ILC Session (2023)[90]

Direct request on the Hours of Work Convention (Industry), 1919 (No. 1) and the Weekly Rest Convention (Industry), 1921 (No. 14)
Request the government to indicate the measures taken or envisaged to ensure the implementation of these conventions.
Observation on the Forced Labour Convention, 1930 (No. 29)
The Committee urges the Government to take the necessary measures to prevent, suppress and combat trafficking in persons.
Direct request on the Forced Labour Convention, 1930 (No. 29)
Requests further information on the implementation of the convention.
Direct request on the Holidays with Pay Convention, 1936 (No. 52)

[86] Ibid.
[87] Ibid.
[88] Ibid.
[89] International Labour Organization. «Observation on submission to competent authorities (CEACR) - adopted 2023, published 112nd ILC session (2024)». Accessed: 17 May 2024. https://normlex.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:4365746,103130.
[90] International Labour Organization. «Comments adopted by the CEACR: Libya». Accessed: 17 May 2024. https://normlex.ilo.org/dyn/normlex/en/f?p=1000:13201::::13201:P13201_COUNTRY_ID:103130.

The Government's report has not been received.
Direct request on the Labour Inspection Convention, 1947 (No. 81)
The government report contains no information in response to its previous comments. Reiterates its request for more information.
Direct Request on the Night Work (Women) Convention, 1948 (No. 89)
The Government's report has not been received.
Observation on the Protection of Wages Convention, 1949 (No. 95) and the Minimum Wage Fixing Convention, 1970 (No. 131)
Urges the government to take the necessary measures for the full implementation of the conventions.
Direct request on the Protection of Wages Convention, 1949 (No. 95)
Request further information on the specific implementation of certain provisions.
Observation on the Social Security (Minimum Standards) Convention, 1952 (No. 102), the Equality of Treatment (Social Security) Convention, 1962 (No. 118), the Employment Injury Benefits Convention, 1964 (No. 121), and the Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128)
Request for information and statistical data on the application of theses convention, urges the government to make the necessary amendments to its national legislation and take the necessary measures to ensure the full implementation of the conventions.
Direct Request on the Maternity Protection Convention, 1952 (No. 103)
Request the government to provide the necessary special law regulating maternity protection.
Observation on the Maternity Protection Convention, 1952 (No. 103)
Urges the government to adopt the necessary amendments to the law and provide the text of the legislative provisions once adopted.
Observation on the Abolition of Forced Labour Convention, 1957 (No. 105)
No reports have not been received. The committee reiterates its previous comments.
Direct Request on the Abolition of Forced Labour Convention, 1957 (No. 105)
Given that no reports have been received the committee requests the government to provide information on the application of the convention.
Observation on the Worst Forms of Child Labour Convention, 1999 (No. 182)
No reports have been received. The committee reiterates its previous comments.
Direct Request on the Worst Forms of Child Labour Convention, 1999 (No. 182)
Given that no reports have been received the committee requests the government to take the necessary measures to implement the provisions of the convention and provides information in this regard.

b. Considerations

From the analysis of the latest comments of the CEACR relating to the reporting duties of the Libyan states regarding the implementation of the ratified ILO Conventions, it is clear that there is a lack of compliance and transparency. In many cases, the reports have not been received and when received they significantly lack information or measures taken to successfully implement the provisions of the various conventions. The latest observation (published in 2024) underlines a serious failure to submit since June 2016. Compliance with

international labour standards is therefore not guaranteed in the Libyan context.

Client's due diligence

This sub-indicator requires further research in order to be assessed and will not be assessed in this report.

Working hours and breaks

This sub-indicator requires further research in order to be assessed and will not be assessed in this report.

Health and safety

This sub-indicator requires further research in order to be assessed and will not be assessed in this report.

FORCED LABOUR

Government's response to modern slavery

a. Results

According to the Walk Free Global Slavery Index's assessment of the government response to modern slavery Libya scored 10 out of 100. This corresponds to the second-weakest regional response.[91]

The government response to modern slavery was assessed by scoring the following steps:

- Identification and support of survivors: -9%
- Criminal justice mechanism: 35%
- National and regional level coordination: 25%
- Mitigation of Risk factors: -7%
- Depletion of Government and business supply chains produced by forced labour: 0
- Total government response: 10%[92]

b. Considerations

Libya is one of the only three countries that have not implemented basic training on victim identification for the police. The government response is undermined by instances of state-

[91] Walk Free. «Africa». Minteroo Foundation, 2023. Accessed: 17 May 2024. https://www.walkfree.org/global-slavery-index/findings/regional-findings/africa/.
[92] ibid.

imposed forced labour to the extent that for some migrants the only way out of detention centres is to be sold to employees. Walk Free has also collected reports of "slave markets" where migrants are sold to then be tortured for ransom or exploited through forced labour. Officials working for coast guard, defence, immigration, and security authorities committing crimes relating to slavery are not investigated or prosecuted.[93] Walk Free urges the government to immediately end state-imposed forced labour in migrant detention centres and cease the use of compulsory labour as a punishment for holding views opposed to the established order. In that regard, the Libyan Publications Act No. 76 of 1972 needs to be amended. The use of children in armed conflict and human trafficking should be criminalised in line with international conventions.[94]

Given the above-mentioned considerations, there is a serious risk of private security guards taking part in crimes involving slavery or being victims of forced labour. This risk is significant and should be taken into account when operating in the Libyan context.

Migrant labour force in the private security sector

Libya is one of the major destinations of irregular migrants in Africa and according to estimates by the International Organization for Migration (IOM) Libya's Displacement Tracking Matrix (DTM) programme, there were at least 625,638 migrants in the country as of April 2020.[95]

A report on migrant labour in Libya by the International Labour Organization (ILO) found that the majority of the migrants interviewed used labour market intermediaries to get access to a job in Libya.[96] The nature of these relationships was largely constituted by informal arrangements that often went beyond the job offer also including provisions about housing and transportation.[97] There is a lack of regulation regarding this intermediation which exposes migrants to violations of their labour's rights. Only a minority of interviewees reported abusive

[93] ibid.
[94] Walk Free. «Modern Slavery in Libya: Global Slavery Index 2023 Country Snapshot». Minteroo Foundation, 2023. https://cdn.walkfree.org/content/uploads/2023/09/28081802/GSI-Snapshot-Libya.pdf.

[95] Borgnäs, Emma, Linda Cottone, and Tassilo Teppert. "Labour migration dynamics in Libya". *Migration in West and North Africa and across the Mediterranean: Trends, Risks, Development and Governance*, (2020) : 298-310. https://publications.iom.int/system/files/pdf/ch24-labour-migration-dynamics-in-libya.pdf
[96] International Labour Organization. «Labour Market Access for Migrants in Libya and the Impact of COVID-19 (August 2021) - Libya | ReliefWeb», 18 August 2022. https://reliefweb.int/report/libya/labour-market-access-migrants-libya-and-impact-covid-19-august-2021.
[97] Ibid.

practices at the hand of their intermediaries, but the one who did faced serious breaches of their rights including retention of documents or restricted freedom of movement.[98] A further analysis of the worker conditions highlighted how migrant workers lack basic protections in Libya especially if they are coming from East and West Africa.[99]

Even if it is difficult to determine the percentage of third-country nationals working in the private security sector, the above mentioned findings suggest migrant workers represent an important portion of the labour force in Libya, and their employment is tied with greater risks with respect to their working conditions.

Report Of Forced Labour in The Private Security Sector

a. Results

Reports by NGOs
Reports by Human Rights Watch - Report that Sudanese nationals are being recruited in the United Arab Emirates (UAE) by the security company Black Shield under the expectation they will work as security guards in skyscrapers and malls. Instead, they were stripped of their phones and passports and taken to a military base in Libya to protect oil terminals for the Libyan Arab Armed Forces, a UAE-baked armed group affiliated with the rival interim Government based in Eastern Libya.[100] - Multiple denunciations of forced labour and other abuses in migrant detention centres. Findings conclude that most smuggling and trafficking groups in Libya have links to official security institutions. Security in detention centers is often provided by militia groups but no mention of PSCs in conjunction with detention centres.[101]
Reports by Amnesty International[102] Mentions private military companies posing a threat to security in Libya. Denounces forced labour endured by migrants. No mention of PSC.
Reports by the Arab Reform Initiative No reports on that issue.
Reports by Media

[98] Ibid.
[99] Ibid.
[100] Human Rights Watch. «Recruited as Security Guards in the UAE, Deceived into Working in Conflict-Ridden Libya Instead | Human Rights Watch». Human Rights Watch, 1 November 2020. https://www.hrw.org/news/2020/11/01/recruited-security-guards-uae-deceived-working-conflict-ridden-libya-instead.
[101] Sunderland, Judith. «No Escape from Hell». *Human Rights Watch*, 21 January 2019. https://www.hrw.org/report/2019/01/21/no-escape-hell/eu-policies-contribute-abuse-migrants-libya.
[102] Amnesty International. «Human Rights in Libya». Accessed: 17 May 2024. https://www.amnesty.org/en/location/middle-east-and-north-africa/north-africa/libya/report-libya/.

The New Arab[103], International Politics and Society[104], ReliefWeb[105] Reported forced labour, enslavement and human trafficking endured by migrants. No mention of PSCs linked to this issue.

b. Considerations

The reports show that forced labour is still a present issue in Libya and that the fragile country environment allows for a variety of different actors to take part in abusive activities without any repercussions. Private security companies could be caught in those cycles, the reported case of Sudanese migrants forced into labour is an example of such a scenario.

UNLAWFUL DETENTION

Access to due process and legal proceedings

There is no information regarding Libya on the World Justice Project's 'Rule of Law Index, however, the United States Department of State reports that thousands of detained persons lack "access to lawyers and information concerning the charges against them."[106] While the 2011 Constitution Declaration provides rights to a fair trial that are generally consistent with international norms, these standards are not respected by state and non-state actors alike. Courts are generally more likely to process civil cases above others (e.g. criminal and human rights matters) due to the more uncontentious nature of these matters, further limiting accessibility. Libya also scores a zero out of a possible four points in response to the question "Does due process prevail in civil and criminal matters?"[107] There is a distinct inability to seek fair legal recourse in the Libyan context.

State of emergency

The 2011 Constitutional Declaration (the 'Declaration') is the current supreme law within Libya and is intended to act as such until a permanent constitution overcomes it. The

[103] Elsobky, Mahmoud. «Syrian Airline, Haftar's Army Profit from Human Smuggling». https://www.newarab.com/. The New Arab, 29 September 2023. https://www.newarab.com/investigations/syrian-airline-haftars-army-profit-human-smuggling.

[104] IPS. «The EU's Migration Blind Spots», 5 January 2024. https://www.ips-journal.eu/topics/foreign-and-security-policy/the-eus-migration-blind-spots-7225/.

[105] ReliefWeb. «Report of the Independent Fact-Finding Mission on Libya (A/HRC/52/83) (Advance Edited Version) [EN/AR] - Libya | ReliefWeb», 27 March 2023. https://reliefweb.int/report/libya/report-independent-fact-finding-mission-libya-ahrc5283-advance-edited-version-enar.

[106] United States Department of State Bureau of Democracy, Human Rights, and Labor, *2022 Country Reports on Human Rights Practices: Libya* (United States Department of State 2022), available at: https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/libya#:~:text=A%20breakdown%20in%20the%20court,immigration%20courts%20or%20due%20process.

[107] Freedom House, 'Freedom in the World' Report.

Declaration's only provision relating to the state of emergency stipulates that at least 120 members of the 200 member General National Congress must agree to the declaration and lifting of a state of emergency.[108] The current state of the law as it relates to the considerations under this sub-indicator remain unclear, however, the 2017 Draft Constitution (the 'Constitution') provides some clarity. While the Constitution is not yet in effect, it places a limitation of 120 days on the possible duration of a state of emergency.[109] Despite this limitation, the President is unilaterally responsible for declaring a state of emergency three days after which parliament must meet to confirm (or not) the decision, suggesting that during this short period there is broad remit on permissible actions. This is confirmed by Article 189 which allows for the derogation of civil and political rights in cases of necessity to protect public security. Evidently, there are significant concerns regarding the scope of government power and lack of accountability in states of emergency in the Libyan context.

Training

This sub-indicator requires further research in order to be assessed and will not be assessed in this report.

Forced disappearance

This sub-indicator requires further research in order to be assessed and will not be assessed in this report.

USE OF FORCE

Legal frameworks governing the use of force

Generally, Libyan law provides for the right to self-defence and empowers police to use force in particular scenarios.

- Article 70 of the Penal Code prescribes that there is no punishment for an actor when the act they commit is done so during the exercise of a right to "lawful defence" (i.e. self-defence).
- Article 13 of Law No. 10 of 1992[110] on Security and Police empowers police "to use force without the use of weapons to the extent necessary for the performance of their duties" and limits the use of weapons to a select number of cases. These cases include

[108] The Interim Constitutional Declaration of the State of Libya. 2011.
[109] International Institute for Democracy and Electoral Assistance (IDEA), Libya's final draft constitution: A contextual analysis (IDEA 2020), available at: https://constitutionnet.org/sites/default/files/2020-12/Libya%20analysis%20-%20Zaid%20Al-Ali%20%28December%202020%29%20%28English%29.pdf.
[110] Law No. 10 of 1992 on Security and Police And Its Amendments, Libya.

the control of actual or accused felons, prisoners, to disperse gatherings of five or more people that present a danger to public security, and in cases of self-defence.

Ambiguity remains, however, regarding how the regulation applies to private security companies in Libya.

The below table outlines Libya's adherence to relevant treaties governing the use of force. As is evident, Libya clearly seeks to limit any potential culpability for crimes and/or other actions by not signing treaties that would facilitate entities to bring complaints against the state.

International Covenant on Civil and Political Rights (ICCPR) (1966)	YES
ICCPR Optional Protocol 1	YES
Convention Against Torture (CAT)	YES
Competence of CAT Committee to receive individual complaints	NO
CAT Optional Protocol 1	NO
African Charter on Human and Peoples' Rights (1981)	YES
1998 Protocol to the African Charter on the African Court	YES
Article 34(6) declaration regarding individual petitions	NO
Malabo Protocol on the African Court of Justice and Human Rights	NO
Arab Charter on Human Rights (2004)	YES

Reports on cases of excessive use of force by private security companies

This sub-indicator requires further research in order to be assessed and will not be assessed in this report.

Hiring criteria / recruitment process

This sub-indicator requires further research in order to be assessed and will not be assessed in this report.

Access to, and use of, weapons

This sub-indicator requires further research in order to be assessed and will not be assessed in this report.

TORTURE

The State of Libya has several key legislations against torture. Article 7 of the 2011 Constitutional Declaration prohibits 'torture and other forms of cruel, inhuman, or degrading treatment or punishment. It declares that the state shall protect human rights and basic freedoms.'[111] Whereas Article 435 of the Libyan Penal Code on the prohibition of torture includes provisions that criminalize acts of torture. Sufficient data does not exist to meaningfully assess this indicator with specific respect to PSCs in Libya. There is also no Association for the Prevention of Torture report for Libya. There is, however, sufficient data available on the role of PMSCs but this is out of scope of this research.

BRIBERY & CORRUPTION

The 2011 Constitutional Declaration does not delve into matters of security, corruption and the like. However, the Penal Code has several provisions (Articles 239, 240, 241) that seek to address corruption-related issues in the public sector. The General National Congress under Law No. 11 of 2014 had established the National Anti-Corruption Commission (NACC) which had the broad mandate to monitor corruption and 'evaluate reports of corruption shared to it by local, regional or international organisations.'[112] It goes a step further and gives the NACC chairman the power to freeze the funds acquired through the crime of corruption.[113] However, it too faces the issue of 'vagueness' as it does not define the acts that would constitute the crime of corruption.

The Corruption Perception Index (CPI) 2023 report has scored the State of Libya 18 out 100. This suggests that the perceived levels of bribery and corruption in the public sector are extremely high. For over a decade (2012 to 2023) Libya has received a CPI score between 14 to 21. Due to very weak and ill-defined laws there is no improvement in the levels of bribery and corruption in the Libyan public sector. It can, thus, be extrapolated that the same levels of bribery and corruption may apply to the private security industry in Libya.

[111] Article 7. The Interim Constitutional Declaration of the State of Libya. 2011.
[112] Law No. (11) Of 2014 On Establishing The National Anti-Corruption Commission, Libya. Article 3 on Competences.
[113] Ibid. Article 4.

SEXUAL EXPLOITATION AND ABUSE

The Libya Inter-Agency Standing Committee (IASC) 2023 Assessment report[114] provides a detailed overview of the efforts and progress made in addressing Protection from Sexual Exploitation and Abuse (PSEA) in Libya. The key takeaways from the report are listed below.

Action Plan and Evaluation:

- No evaluation or assessment of SEA risks was carried out in 2022.
- The PSEA is integrated into the Humanitarian Response Plan as a cross-cutting issue.

Capacity and Reporting:

- 90% of implementing partners are assessed as having medium or full capacity based on the UN Implementing Partner PSEA Capacity Assessment.
- 41% of the population has access to a safe and accessible channel to report SEA.
- There is no inter-agency PSEA Coordinator in the country.

Support and Assistance:

- Only 17% of the funding needed for assistance to Gender-Based Violence (GBV) victims/ survivors is available.
- The percentage of SEA victims/ survivors who have been promptly referred to quality assistance, and those informed of the outcome of the investigations, is not provided.

Awareness and Training:

- 28% of PSEA Network members have personnel trained on SEA guidelines and protocols for victim/ survivor-centered investigations.
- 95% of deployed personnel have completed mandatory PSEA training.

Overall, while significant strides have been made in training, awareness, and establishing reporting mechanisms, the report highlights critical gaps in funding, evaluation, and comprehensive inter-agency coordination necessary for a robust PSEA framework in Libya.

[114]Libya IASC 2023 Assessment (2023). IASC.

Annex B - Tunisia Case Study Analysis

CONTEXT OVERVIEW

After the 2011 Jasmine Revolution, the first phases of the transition were marked by a broad consensus on the need for a complete overhaul of the state's security apparatus.[115] In 2014, Tunisia's National Constituent Assembly adopted a new constitution (the 'Constitution'), marking a shared desire to turn the page on authoritarianism. In the principles governing the armed forces and internal security forces, article 17 of the Constitution establishes the State's monopoly on the creation of armed forces and internal security forces, while article 19 stipulates the State's exclusive competence in matters of national security. However, there are no specific provisions concerning the creation of private security companies.[116]

The democratisation of the security sector that was initially planned under the Constitution has not taken place. The political assassinations of 2013 and the terrorist attacks of 2015 shook the country's already fragile political ecosystem, redefining security priorities. Changes within the security sector have tended to occur mainly at the operational level, but the rule of law, like any other policy transfer linked to norms and principles, has been neglected.[117] The Tunisian government negotiated assistance mainly in terms of training and infrastructure and, to a certain extent, albeit mainly on an informal level, changes in organisational structures, with the centralisation of coordination tasks in the hands of the Tunisian presidency.[118] The 2015 Anti-Terrorism Law and the approval of Bill 25/2015 on the Protection of the Armed Forces also demonstrate growing authoritarianism in the country's security strategy. While the Anti-Terrorism Law takes draconian measures to address terrorist threats, such as restoring capital punishment, Bill 25/2015 seeks to grant impunity, and thus lack of accountability, to the security forces to the detriment of citizens' constitutional rights.[119]

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[115]DCAF. «Security Sector Governance in the Tunisian Constitution of 27 January 2014 | DCAF – Geneva Centre for Security Sector Governance». Accessed: 14 May 2024. https://www.dcaf.ch/security-sector-governance-tunisian-constitution-27-january-2014.

[116] Ibid.

[117]DCAF. «Security Sector Governance in the Tunisian Constitution of 27 January 2014 | DCAF – Geneva Centre for Security Sector Governance». Accessed: 14 May 2024. https://www.dcaf.ch/security-sector-governance-tunisian-constitution-27-january-2014. ; Santini, Ruth Hanau, e Simone Tholens. «Security Assistance in a Post-interventionist Era: The Impact on Limited Statehood in Lebanon and Tunisia». *Small Wars & Insurgencies* 29, fasc. 3 (4 May 2018): 491–514. https://doi.org/10.1080/09592318.2018.1455336.

[118] Santini, Ruth Hanau, e Simone Tholens. «Security Assistance in a Post-interventionist Era: The Impact on Limited Statehood in Lebanon and Tunisia». *Small Wars & Insurgencies* 29, fasc. 3 (4 May 2018): 491–514. https://doi.org/10.1080/09592318.2018.1455336.

[119] Ibid.

The security sector in Tunisia is marked by informality, with an evolution at the operational level but a discontinuous and, to some extent, contradictory codification process. In fact, the adoption of a Constitution that enshrines democratic principles in security matters is at odds with the emergence of increasingly authoritarian laws. The lack of rules governing private security is all the more problematic because it is coupled with a public security sector governed by an already inconsistent framework. Indeed, the scarcity of provisions governing the creation of PSCs has not prevented their proliferation in the country. The case study analysis assesses the need for enhanced human rights due diligence in the Tunisian context in order to compensate for the weak state control and legal grey zone in which PSCs operate.

SUMMARY OF THE ASSESSMENT OUTCOME IN THE TUNISIAN CONTEXT

Indicator	Sub-indicator	Rating
Working Conditions	Living conditions	**3**
	Access to trade unions	**5**
	Compliance with international labour standards	**4**
	Client's due diligence	TBD
	Working hours and breaks	TBD
	Health and safety	TBD
	Indicator total	**4**
Forced Labour	Government's response to modern slavery	**3**
	Migrant labour force in the private security sector	**4**
	Reports of forced labour in the private security sector	**3**
	Indicator total	**3**
Unlawful Detention	Access to due process and legal proceedings	**3**
	State of emergency	**3**

	Training	TBD
	Forced disappearance	TBD
	Indicator total	**3**
Use of Force	Legal frameworks governing the use of force	**2**
	Reports on cases of excessive use of force by private security companies	TBD
	Hiring criteria / recruitment process	TBD
	Access to, and use of, weapons	TBD
	Indicator total	**2**
Torture	***Indicator total***	TBD
Bribery & Corruption	Bribery	**4**
	Tax fraud	TBD
	Money laundering	TBD
	Extortion	TBD
	Corruption	**5**
	Indicator total	**5**
Sexual exploitation and abuse	Enabling environment	**4**
	Humanitarian context	TBD
	Operational context	**4**
	Protective environment	**4**
	Indicator total	**4**
TUNISIA OVERALL RATING		**4**

WORKING CONDITIONS

Living Conditions

a. Results

There is no living wage rate reference for urban regions in Tunisia, however, the Anker Living Wage Reference for rural regions is TND[120] 695 per month.[121] The minimum wage in Tunisia for non-agricultural workers in a 48-hour system[122] is TND 459.264 per month[123] and the average wage rate in Tunisia is around TND 890 (ranges between 840 and 940).[124] This means that on average Tunisians earn TND 430.736 above the minimum wage per month and TND 195 above the living wage rate per month in rural regions of Tunisia.

b. Considerations

We can conclude that the minimum conditions for a decent living are at risk as Tunisians average wage is really close to the minimum wage. However, this doesn't allow us to determine whether conditions in the private security sector fall within this average. However, interviews with experts have highlighted that in Tunisia the salaries of private guards are significantly below average and there are constant turnovers of personnel. This creates a significant risk in the conducting of human rights due diligence because there is no opportunity for personnel to receive follow-up training.[125]

Access To Trade Unions

a. Legal Considerations

Tunisia ratified Convention No. 87 on Freedom of Association and Protection of the Right to Organize (1948) in 1957. This right is also enshrined in the Tunisian constitution and is regulated by the labour code (articles 242-257; and articles 376 and 387). The International Trade Union Confederation (ITUC) affiliate in Tunisia is the Union Générale Tunisienne du

[120] Tunisian Dinar(s)
[121] Global Living Wage Coalition. «Tunisia Archives». Accessed: 14 May 2024. https://www.globallivingwage.org/countries/tunisia/.
[122] Referring to a worker who works 48 hours per week.
[123] WageIndicator Foundation. «Tunisia». Accessed: 14 May 2024. https://wageindicator.org/salary/minimum-wage/tunisia.
[124] TimeCamp. «Average Salary in Tunisia - Complete Guide 2024 - TimeCamp». Accessed: 9 June 2024. https://www.timecamp.com/average-salary/tunisia/.
[125] Senior Project Officer and Programme Manager DCAF, in discussion with the authors, online, 26 April 2024. The views reflected are personal and do not represent official DCAF position or statement.

Travail (UGTT).[126]

b. Practice (2019-2023)

- In 2019, the ITUC reported that Moahmed Romdhani and Khechimi Ben Salem, two members of trade unions, were sentenced to prison for their activities. In the same year, Sonia Jebali, a union member and founder of a union affiliated with the UGTT, was dismissed for her activities in the protection of workers' rights and can no longer find work as all private companies in the country have blacklisted her.[127]
- In 2020, 56 Tunisian workers employed by Gartex were dismissed, including elected leaders of the workers' union and members of the advisory committee, for attempting to discuss workplace safety issues with management.[128]
- The Tunis Court of First Instance has annulled the decision of the UGTT National Council (held in Hammamet from 24 to 26 August) to convene an extraordinary non-elective congress, thereby infringing the UGTT's right to organise its activities freely.[129]
- On 9 December 2021, the government issued a Circular (No. 20) to all ministries and government institutions prohibiting anyone from negotiating with trade unions without the formal prior authorization of the head of government.[130]
- On 31 January 2023, Anis Kaâbi, General Secretary of "Société Tunisie Autoroutes" employees' union, was arrested for their participation in a strike.[131]

c. Considerations

Evidently, there are still significant barriers to the exercise of full trade union freedom. Although it is a right codified in law, some provisions and practices limit the efficacy of its application (see Circular No. 20 or restriction of UGTT's activities). More importantly, involvement in trade union activities may expose an individual to criminal sanctions, dismissals, or reputational damages that could prevent them from finding work in the future. According to ITUC, Tunisia is now one of the ten worst countries in the world for workers as

[126]ITUC. "CSI - Rapport des violations des droits syndicaux». Accessed: 14 May 2024. http://survey.ituc-csi.org/?lang=fr.
[127] Ibid.
[128] ITUC GRI 2021. «Tunisie». Accessed: 14 May 2024. https://www.globalrightsindex.org/fr/2021/countries/tun.
[129] ITUC GRI 2022. «Tunisie». Accessed: 14 May 2024. https://www.globalrightsindex.org/fr/2022/countries/tun.
[130] Ibid.
[131] ITUC GRI 2023. «Tunisie». Accessed: 14 May 2024. https://www.globalrightsindex.org/fr/2023/countries/tun.

work rights are often not guaranteed. The country has a Global Rights Index of 5- in 2023, a deterioration compared to 2021's score of 4-.[132] The worst score of the index being 5+ we can conclude that access to trade unions is not guaranteed.

Compliance With International Labor Standards

a. Results

Latest comments by the Committee of Experts on the Applications of Conventions and Recommendations (CEACR) – adopted in 2023, published 112nd ILC session (2024)[133]

Observation on the Convention No. 87 on Freedom of Association and Protection of the Right to Organise (1948).
The Committee shows concerns for the arrest of the secretary-general of the trade union representing officials of the Tunisian Motorway and notes with regret that the Government has not reported any progress in bringing the legislation into conformity with the convention.
Direct request on the Employment Service Convention, 1948 (No. 88)
Sufficient information provided.
Direct Request on the Employment Policy Convention, 1964 (No. 122)
Notes the absence of information regarding implementation of the different provisions of the Convention.
Direct Request on the Human Resources Development Convention, 1975 (No. 142)
Report submitted but no sufficient information.
Direct Request on submission to competent authorities (CEACR)
Request the Government for more extensive information.

b. Considerations

The analysis of the latest comments published by the CEACR in 2024 underlines how the Tunisian Government is responding to and providing reports in a scattered and incomplete manner following observations and direct requests from the CEACR. It has not as of yet responded to any of the comments for the years 2021, 2022, 2023, 2024.[134] In 2020 it delivered only one report out of the six requested, in 2019 eight out of eleven, and in 2018 two out of four. Furthermore, between 2018 and 2020 only three out of the eleven replies received did not

[132] Ibid.
[133] International Labour Organization. «Comments adopted by the CEACR: Tunisia». Accessed: 17 May 2024. https://normlex.ilo.org/dyn/normlex/en/f?p=1000:13201:::::13201:P13201_COUNTRY_ID:102986.
[134] International Labour Organization. «Reporting Obligations». Accessed: 14 May 2024. https://normlex.ilo.org/dyn/normlex/en/f?p=1000:14000:0::NO:14000:P14000_COUNTRY_ID:102986.

give rise to any further comments.[135] According to these findings, Tunisia's compliance with international labour standards can not be ensured.

Client's due diligence

This sub-indicator requires further research in order to be assessed and will not be assessed in this report.

Working hours and breaks

This sub-indicator requires further research in order to be assessed and will not be assessed in this report.

Health and safety

This sub-indicator requires further research in order to be assessed and will not be assessed in this report.

FORCED LABOUR

The Government's Response to Modern Slavery

a. Results

According to the Walk Free Global Slavery Index's assessment of the government response to modern slavery Tunisia scored 47 out of 100 for its response to modern slavery. This score places the government's response above the african regional average, which is 36, the weakest average out of all regions.[136] The government response to modern slavery assessed the progress of the following steps:

- Survivors of slavery are identified and supported: 50%
- Criminal justice mechanisms: 54%
- National and regional level coordination: 50%
- Risk factors are addressed: 57%
- Depletion of government and business supply chains produced by forced labour: 0
    - Government's Total response: 47%

b. Considerations

Tunisia is one of only four countries in the African region where all children have access to

[135] Ibid.
[136] Walk Free. «Africa». Accessed: 15 May 2024. https://www.walkfree.org/global-slavery-index/findings/regional-findings/africa/.

birth registration systems and where over 95% of citizens have a registered birth certificate, and there have not been reported cases of state-imposed forced labour as of late 2020.[137] However, there are still many areas for improvement to combat forced labour, such as access to universal healthcare, the criminalisation of forced labour in national law according to international standards, the criminalisation of commercial sexual exploitation of children, and increasing the legal age of marriage for men and women to 18.[138] Despite Tunisia ranking well compared to the regional average, the above mentioned-areas for improvement still signify some risk.

Migrant labour force in the Private Security Sector

Tunisia has become a transit country for migrants from Africa to Europe.[139] The authorities' failure to develop a comprehensive strategy to manage migration flows from sub-saharan Africa has exacerbated the issues linked to this reality. The combination of bureaucratic obstacles and the absence of legal protections, coupled with xenophobic and conspiratorial narratives, poses a significant risk of periodic violence and human rights violations, which in turn exacerbates the vulnerability of migrants in Tunisia.[140]

As of today, sub-Saharan migrants are still exploited and underpaid both in the informal and formal sector, which confines them to a state of vulnerability where they do not have any legal guarantee of residency rights.[141] Despite some efforts to counter human trafficking with the establishment of the National Committee against Trafficking in Persons in 2018, the tunisian government has been reluctant to implement safeguarding policies against migrant exploitation.[142] Instead, Saied increasingly relies on security services to manage migration,

[137] Ibid.
[138] Walk Free. «Modern slavery in Tunisia: Global Slavery Index 2023 Country Snapshot». Minteroo Foundation, 2023. https://cdn.walkfree.org/content/uploads/2023/09/28090350/GSI-Snapshot-Tunisia.pdf.
[139] Meddeb, Hamza, e Fakhreddine Louati. «Tunisia's Transformation Into a Transit Hub: Illegal Migration and Policy Dilemmas», 27 March 2024. https://policycommons.net/artifacts/11768946/tunisias-transformation-into-a-transit-hub/12661178/.
[140] Ibid.
[141] FTDES and Migreurop. "Politiques du Non-Accueil en Tunisie: des acteurs humanitaires au services des politiques sécuritaires européennes". June 2020, https://ftdes.net/rapports/ftdes.migreu.pdf.
[142] Tasnim Abderrahim. "Walking a Tightrope in Tunisia. The Aspirations and Limitations of Migration Policy Reform". German Council on Foreign Relations, no. 12, June 2021. https://dgap.org/sites/default/files/article_pdfs/Report-Tunisia_EN_2021_korr_1.pdf.

prioritising informal arrangements and repressive measures, which ultimately worsens migrants' situations.[143]

Reports Of Forced Labour in The Private Security Sector

a. Results

Reports by NGOs
Reports by Amnesty International[144] No mention of forced labour in the private security sector.
Reports by Human Rights Watch[145] No mention of forced labour in the private security sector.
Reports by the Arab Reform Initiative[146]
No mention of forced labour in the private security sector.
Reports by Media
Equal Times[147], **Freedom United**[148], **Info Migrants**[149] Reports of forced labour of Black African migrants. Makes no mention of forced labour in the private security sector.

b. Considerations

[143] Refugees International. "Abuse, Corruption, and Accountability: Time to Reassess EU & U.S. Migration Cooperation With Tunisia". 16 November 2023. https://www.refugeesinternational.org/reports-briefs/abuse-corruption-and-accountability-time-to-reassess-eu-u-s-migration-cooperation-with-tunisia.

[144] Amnesty International. «Tunisia: Where Running from Police Can Be Deadly», 4 April 2019. https://www.amnesty.org/en/latest/campaigns/2019/04/tunisia-where-running-from-police-can-be-deadly/. ; Amnesty International. «Tunisia: Abuses in the Name of Security Threatening Reforms», 10 February 2017. https://www.amnesty.org/en/latest/press-release/2017/02/tunisia-abuses-in-the-name-of-security-threatening-reforms/.

[145] Human Rights Watch. «Tunisia: No Safe Haven for Black African Migrants, Refugees | Human Rights Watch», 19 July 2023. https://www.hrw.org/news/2023/07/19/tunisia-no-safe-haven-black-african-migrants-refugees. ; Human Rights Watch. «Tunisia: Crisis as Black Africans Expelled to Libya Border | Human Rights Watch», 6 July 2023. https://www.hrw.org/news/2023/07/06/tunisia-crisis-black-africans-expelled-libya-border. ; Human Rights Watch. «Tunisia: Events of 2023». In *World Report 2024*, 2023. https://www.hrw.org/world-report/2024/country-chapters/tunisia.

[146] Pluta, Audrey. «Impossible "Reform" of the Tunisian Security Sector? The Role of Unions, International Organizations, and Activist Groups in Policing». *Arab Reform Initiative*, 7 April 2023. https://www.arab-reform.net/publication/impossible-reform-of-the-tunisian-security-sector-the-role-of-unions-international-organizations-and-activist-groups-in-policing/. ; Lakhal, Malek. «Tunisia: The Nation and Its Traitors». *Arab Reform Initiative*, 12 December 2023. https://www.arab-reform.net/publication/tunisia-the-nation-and-its-traitors/.

[147] Equal Times. «In Tunisia, Black Africans Face "the Harshest Exploitation"», 3 May 2020. https://www.equaltimes.org/in-tunisia-black-africans-face-the.

[148] FreedomUnited.org. «Forced Labor Widespread for Black Africans in Tunisia». Accessed: 15 May 2024. https://www.freedomunited.org/news/forced-labor-widespread-for-black-africans-in-tunisia/.

[149] InfoMigrants. «Report: Human Trafficking Cases on the Rise in Tunisia», 25 January 2019. https://www.infomigrants.net/en/post/14742/report-human-trafficking-cases-on-the-rise-in-tunisia.

No cases of forced labour involving PSCs were reported in the media or by the NGOs Amnesty International, Human Rights Watch, and the Arab Reform Initiative. The fact that there is no available data online does not guarantee that the reality on the ground is necessarily the same. There are reported cases of forced labour in some instances outside of the private security sector, signifying that risk does broadly exist.

UNLAWFUL DETENTION

Access to due process and legal proceedings

'Rule of Law' Index[150]	
Fundamental rights	0.56 / 1
Regulatory enforcement	0.55 / 1
Civil justice	0.56 /1
Criminal justice	0.52 / 1
TOTAL	2.19 / 4
TOTAL on a 5-point scale	2.74 / 5
'Freedom in the World' Report[151]	
"Does due process prevail in civil and criminal matters?"	2 / 4
TOTAL on a 5-point scale	2.5 / 5
Regarding this sub-indicator as a whole, Tunisia scores 2.62 out of 5, hence the model applies a '3' rating.	

State of emergency

Article 80 of the 2014 Tunisian Constitution (the 'Constitution') provides for a state of emergency and gives full power to the President to "take the measures required by the state of emergency". The power of the President is limited in the Constitution in that the President must consult the Head of Government, the President of the Assembly and inform the President of the Constitutional Court when making a declaration of a state of emergency. Decree 78-50

[150] WJP, Rule of Law Index..
[151] Freedom House, Freedom in the World Report.

(1978)[152], which remains in force, however, "gives broad prerogatives to the Minister of the Interior and governors to limit and arrange civil and individual freedoms".[153] The Constitution's broad aim is to ensure that emergency measures "come to an end, as soon as their reasons are terminated."[154] There are, however, concerns regarding the availability and accessibility of remedies against actions taken under the state of emergency, particularly in a context where the activity of the courts were suspended during the Covid-19 state of emergency.

Training

This sub-indicator requires further research in order to be assessed and will not be assessed in this report.

Forced disappearance

This sub-indicator requires further research in order to be assessed and will not be assessed in this report.

USE OF FORCE

Legal frameworks governing the use of force

The below table outlines Tunisia's adherence to relevant treaties governing the use of force.

International Covenant on Civil and Political Rights (ICCPR) (1966)	YES
ICCPR Optional Protocol 1	YES
Convention Against Torture (CAT)	YES
Competence of CAT Committee to receive individual complaints	YES
CAT Optional Protocol 1	YES
African Charter on Human and Peoples' Rights (1981)	YES
1998 Protocol to the African Charter on the African Court	YES
Article 34(6) declaration regarding individual petitions	YES
Malabo Protocol on the African Court of Justice and Human Rights	NO

[152] Décret no 78-50 du 26 janvier 1978, réglementant l'état d'urgence, Tunisie.
[153] Venice Commission, Tunisia.
[154] Ibid.

Arab Charter on Human Rights (2004)	YES

Reports on cases of excessive use of force by private security companies
This sub-indicator requires further research in order to be assessed and will not be assessed in this report.

Hiring criteria / recruitment process
This sub-indicator requires further research in order to be assessed and will not be assessed in this report.

Access to, and use of, weapons
This sub-indicator requires further research in order to be assessed and will not be assessed in this report.

TORTURE

As per the 2014 Tunisian Constitution, article 23 on the prohibition of torture states that "*the state protects human dignity and physical integrity, and prohibits mental and physical torture. Crimes of torture are not subject to any statute of limitations.*"[155] The Government of Tunisia has also ratified the ICCPR and OHCHR conventions against torture. While Tunisia has laws against torture and is party to key international conventions, these measures remain inadequate and there is thus a need to improve on four significant issues: the implementation of these laws, prevention of torture, ensuring accountability, and providing comprehensive care to the victims. Again, sufficient data does not exist to meaningfully assess this indicator with specific respect to PSCs in Tunisia.

BRIBERY & CORRUPTION

Discontent that fuelled the 2011 Tunisian Revolution was predicated on, among other issues (e.g. high rates of unemployment, the inflation of food prices, lack of political freedoms, etc.), the high level of corruption in the government machinery. Post the revolution a Constituent Assembly was set-up to draft a new constitution which was adopted in 2014. This Constitution had framed a law against the practice of corruption under Part 5, Article 130 by establishing The Good Governance and Anti-Corruption Commission. One of the mandates of the Commission is to "...monitor cases of corruption within the public and private sectors… [and to carry out] investigations into these cases and refer them to the competent authorities."[156]

[155] The Constitution of Tunisia, 2014. Article 23: Prohibition of Torture.
[156] The Constitution of Tunisia, 2014. Part 5, Article 130 'The Good Governance and Anti-Corruption Commission'.

However, this is a rather vague and poorly defined law as it does not elaborate on its understanding of corruption in the private or public sector, nor does it enumerate measures to regulate and punish corruption. Furthermore, as this research pertains to the levels of bribery and corruption in the private security industry, this 'vagueness' in the anti-corruption law creates a grey zone that allows PSCs to engage in corrupt practices with little to no oversight. Particularly as the law does not distinguish the operations of the private security industry from other industries. In a complex environment like in Tunisia, such weak laws result in the inappropriate actions by PSCs such as the extortion of the local community by offering work opportunities in exchange for bribes.[157]

The CPI 2023 report had scored the Republic of Tunisia 40 out of 100. This means that the perceived level of corruption in the public sector is at a moderate level. Since 2012, with minor differences, Tunisia has received scores between 40 to 44. Thus, for over a decade, there has not been any significant reduction in corruption in Tunisia. In 2022, after President Kais Saied seized control of Tunisia's judiciary and suspended parliament, he further consolidated his power. Since then the government of Tunisia has undertaken measures which include "the weakening of the anti-corruption commission and the closing of civic space for those willing to speak up."[158] This trend is attributed to high levels of political corruption that undermine anti-corruption efforts across the Middle East and North Africa region. This is due to the absence of proper infrastructure and national integrity systems.

SEXUAL EXPLOITATION AND ABUSE

There is no IASC SEARO assessment report for Tunisia. Society and culture play an important role in ensuring the dignity of women at the workplace remains unaffected. In Tunisia, women's participation in the private security industry reflects a mixed landscape as there is a discrepancy between rural and urban areas. In the urban areas, women are often hired by PSCs for various roles, however, they may remain subordinate to their male counterparts and are stuck in junior level positions.[159] In the rural areas, it is uncommon for women to work, and

[157] Gabrielle Priklopilova and Anne-Marie Burzdy (Senior Project Officer and Programme Manager DCAF), in discussion with the authors, online, 26 April 2024. The views reflected are personal and do not represent official DCAF position or statement.

[158] Corruption Perception Index Report, 2023. Transparency International. p.12.

[159] Romy Nasr (Associate, First Call Partners), in discussion with the authors, 16 May 2024.

quite often women are discouraged from taking up any work opportunities. PSCs in rural areas have a small workforce and due to local customs do not hire women.[160]

In urban areas, women are compelled to lie about their work so as to protect their families or due to the prevalence of gender-based discrimination. Often women working in the private security industry do not report any instances of misdemeanour or harassment due to fear of backlash or criticism.[161] The process of reporting such instances is lengthy, and if successfully reported, it may further exacerbate the risk faced by women working in these environments. Thus, under-reporting results in no action being taken against the perpetrator. As a consequence of this, accountability and proper redress is rare.

[160] Ibid.
[161] Ibid.