



Why Nigeria Should Consider Adopting the Montreux Document Relating to Private Military and Security Companies (PMSCs)

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Executive Summary

There is an appetite for the services of private military and security companies (PMSCs) in Nigeria, despite its far-reaching legal and political implications. Since Nigeria returned to multi-party democracy in 1999, more of these PMSCs have been engaged by the government and multinational oil companies to support the national security agencies to combat new and emerging security challenges in at least two areas: a) stemming the wave of militancy and crime in the oil-rich but volatile Niger-Delta, and b) fighting the *Boko Haram* (roughly translated as 'Western education is prohibited') insurgency in the north-east. In both cases, no clear national law is in place specifically allowing or regulating how foreign PMSCs are to be contracted or to operate within the country. This policy brief makes a case for Nigeria to adopt and implement the Montreux Document relating to the operations of PMSCs as a precursor to enacting sound legislation on them. The Document provides guidance for developing national legislations and policy guidelines for regulating the operations of PMSCs.

Key Points

- ❖ There is an appetite for the services of PMSCs in Nigeria due to a gap in the services of the national security agencies, which are ill-equipped to handle new and emerging security challenges, such as insurgency and terrorism.
- ❖ PMSCs have played significant role in assisting Nigeria to tackle security challenges in the restive, oil rich Niger-Delta region in collaboration with oil multinationals, as well as in prosecuting the war against *Boko Haram* insurgency in the north-east of the country.
- ❖ The current state of Nigerian security agencies and the evolving security landscape in the country informs the demand for the services of PMSCs to be able to tackle new and emerging security challenges.
- ❖ By adopting the Montreux Document, Nigeria would be able to draw guidance (and international assistance) in crafting national legislations and laws related to the operations of PMSCs within her territory. Nigeria would also be able to develop principles and guidelines for engaging PMSCs in peace-keeping operations at home and abroad.

Nigeria's Engagement with Private Military & Security Companies (PMSCs)

Nigeria has no clear regulations regarding the employment of foreign private military and security companies (PMSCs), but has used them recently to fight the Boko Haram insurgency in the north east of the country. This is not the first time that foreign armed security operatives have operated in the country. In the oil-rich, but conflict-ridden, Niger-Delta region these companies have been used by oil-multinational companies, in conjunction with state security agencies, to provide security to their installations and protect their personnel. For these reasons, therefore, there is an urgent imperative for Nigeria to adopt the Montreux Document as a significant first step in regulating PMSCs operating within her territory. Like mercenaries of old, PMSCs are a double-edged sword: they help to manage complex security situations, just as they could pose threats to national security. Although they do not consider themselves as mercenaries by virtue of their burnished corporate outlook, a thin line sets them apart. To draw a parallel: both mercenaries and PMSCs are essentially motivated by private gains, which sometimes makes their loyalty questionable.

The Montreux Document is a product of a joint initiative between the Swiss Government and the International Committee of the Red Cross (ICRC) developed in response to the evolving role of PMSCs in conflict situations¹. The Document provides guidelines and best practices in regulating PMSCs. Increasingly; these companies play an important role in a sector hitherto considered the exclusive preserve of state military and security institutions². Across contemporary Africa, estimates have indicated the growth of PMSCs. For South Africa alone, there are around 9,000 private security firms and 445,000 private security guards³, which is at par with, if not bigger than, the national

army⁴. In Nigeria, recent estimates, though conservative, show that there are between 1,500 and 2,000 private security companies (PSCs), employing in excess of 100,000 people⁵. Given recent concerns around the mounting security challenges facing the country, and the inherent limitations of state security institutions, it is easy to guess that the appetite for PMSCs is likely to grow in the near future. Already, since the country returned to multi-party democracy in 1999, PMSCs have been engaged in supporting the national security agencies to combat emerging, complex and protracted security challenges in at least two areas: a) stemming the wave of militancy and crime in the oil-rich but volatile Niger-Delta, and b) fighting the Boko Haram. In both cases, no clear national law is in place specifically allowing or regulating how foreign PMSCs are to be contracted or to operate within the country.

In the Niger-Delta region, oil multinationals (with the tacit approval, and sometimes active collaboration of the Nigerian security agencies) have used private security companies to protect (or rescue) oil workers from kidnappers and to tackle militancy that often lead to the disruption of oil production⁶. In more recent times, the desperate effort to end the protracted *Boko Haram* insurgency in the north east region of Nigeria led the government to clandestinely engage private military companies from South Africa⁷. According to credible reports, these companies helped turn the tide against the insurgents through the deployment of sophisticated surveillance equipment and fighter jets⁸. Furthermore, there are indications that some foreign countries may be covertly employing armed private security contractors in contexts they believe is insecure to their missions and interests due to volatility and lack of faith in the capability of national security agencies to effectively do so⁹.

The limited regulation of PMSCs is, however, not exclusively a Nigerian phenomenon. Chaloka Beyani and Damian Lilly note that whilst the

international community has already developed a response to traditional mercenary activities through international conventions¹⁰, it has not done so in the case of PMSCs¹¹. In 2013, a United Nations (UN) expert group urged governments to establish a legally binding international regulation of private military and security companies¹². What currently exist are merely self-regulatory, rather than binding, initiatives, such as the Montreux Document and the International Code of Conduct for Private Security Service Providers (ICoC)¹³. Because they are voluntary, compliance, in the absence of effective state oversight, is difficult to achieve. Whereas a country like South Africa has an active legislation relating to the activities of PMSCs¹⁴, Nigeria lacks any such comprehensive legal and policy frameworks.

The Legal Regime on PMSCs in Nigeria

Nigeria does not have a holistic and, or specific legislation on PMSCs; and even where they exist, subsumed under different legislations, they are inadequate to regulate foreign, armed PMSCs that are increasingly known to operate within her territory. Only three legislations so far relate to private security arrangements: *the 1986 Private Guard Companies Act*¹⁵, *the 2003 Nigeria Security and Civil Defence Corps Act*¹⁶, and *the 2007 Nigeria Security and Civil Defence Corps (Amendment) Act*. These Acts cover, among other things, the establishment, licensing, operation and monitoring of nationally-owned, non-armed private security companies by the Nigeria Security and Civil Defence Corps (NSCDC). Because they do not include armed PMSCs registered within the country or outside, there is a legislative lacuna in dealing with foreign, armed private forces. Like most African countries, it would appear that Nigeria lacks the political will to openly court PMSCs as that might be construed

to mean a loss of monopoly over the legitimate use of force within its territories. Significantly, even when the need is obvious, PMSCs remind them of the notorious days of mercenaries who acted in ways that undermine security and sovereignty.

It is well known that multinational oil companies are quick to engage the services of armed private security companies, which sometimes work alongside national armed forces, in many locations, especially in developing countries where they can get away with lax regulations. Rita Abrahamsen and Michael C. Williams found that Chevron contracted Group4Securicor, a UK-based PMSC, which eventually expanded its engagement beyond the traditional guarding activities to include armed operations alongside Nigerian security forces¹⁷. A report by Platform showed that Nigeria is a major profit centre for UK-based PMSCs¹⁸, which are involved in guarding the oil industry and other sectors, free from any regulation by the UK government¹⁹. These companies actually operate outside Nigeria's laws since only nationally-owned, unarmed private security companies are sanctioned under the laws of Nigeria.

Invariably, the absence of robust legislation to regulate the activities of PMSCs contributed, in part, to the recent scandals surrounding the war against Boko Haram insurgency under former President Goodluck Jonathan Administration. Unable to secure military equipment from the United States (US) and her allies, ostensibly due to allegations of human rights violations by the Nigerian military, the administration sought to purchase weapons from a 'black-market' source with links to South Africa²⁰. The past administration also covertly recruited a South African PMC to help the Nigerian military fight the insurgency before the contract was terminated by the current administration of President Muhammadu Buhari because it was "opaque and without accountability"²¹. Paradoxically, the new

administration would again re-engage the services of another PMC, the Specialised Tasks, Training, Equipment & Protection (STTEP), to support the military²², despite the absence of an enabling law to give effect to such arrangement. It is uncertain if the current government contemplated the far-reaching concerns over probity and transparency, or even the possible backlashes of such engagement. It might be that precisely because of such negative prospects, the administration preferred the whole affair to be shrouded in secrecy.

Despite the baggage of notoriety which they carry from their forebears, it is worth noting that South African PMSCs contributed immensely to the reversal of the gains of Boko Haram in the north-east region of Nigeria. Armed with sophisticated military equipment, the PMSCs successfully gave aerial and intelligence support to the Nigerian military, which enabled them to rout the insurgents from areas where they had become entrenched²³. That PMSCs provided an alternative window of support to Nigeria, even at a cost, in its moment of desperation when traditional state allies were reluctant to help, is not lost on the country. It will be recalled that the US government, citing Leahy Law, refused to provide or support Nigeria to secure military equipment on the pretext of human rights violations allegedly committed by the Nigerian military in the course of fighting the insurgency. The Jonathan administration strongly protested against the US policy²⁴. In a recent speech at the US Institute for Peace (USIP), President Buhari underscored the position of his predecessor, saying that the blanket application of the Leahy Law by the United States on the grounds of unproven allegations of human rights violations levelled against our forces has denied us access to appropriate strategic weapons to prosecute the war against the insurgents²⁵.

Since it is inevitable that Nigeria would, from time to time in the near future, rely on PMSCs to fill in the gaps in security demands, it is judicious to contemplate putting in place appropriate legislative safeguards for dealing with them. The Montreux Document is, indeed, a veritable point of departure in the effort to put in place effective legislation for constructive engagement with PMSCs.

The Montreux Document and What It Offers

The Montreux Document is an initiative launched cooperatively by the Government of Switzerland and the International Committee of the Red Cross. It is not a new binding international instrument, but is the codification of relevant but disparate obligations under international humanitarian law and human rights law in a single text²⁶. Essentially, the Document provides good practices for States in relation to the operations of PMSCs, and a useful guidance to set meaningful regulatory standards for states dealing with them²⁷. It supports a regime of effective oversight in a rapidly changing industry in order to anticipate and prevent actions and, or, misconducts that may contribute to violations of national and international laws. Further, the Document seeks to protect states and their citizens from potential abuse by PMSCs in the absence of effective and binding international law²⁸. Just as it serves as a guide for states to deal with and regulate PMSCs in specific terms, the Montreux Document identifies four categories of states:

1. The Contracting States, that is states that employ PMSCs to work for them in their territory or in the territory of another state;
2. The Territorial States, namely the states where PMSCs operate;

3. The Home States, or the states of origin of the PMSCs, where they registered as their base and;
4. All other States.²⁹

Each of these states is required to do everything in its power to regulate PMSCs and ensure that they comply with international humanitarian and human rights laws,³⁰ especially through the adoption of legislative and other measures as may be necessary to give effect to the obligations of the states and the PMSCs. In addition to pertinent legal obligations on states, the Document also encapsulates good practices that aim to provide guidance and assistance to states in regulating PMSCs. It is relevant not only to states but also to international organisations, CSOs conducting oversight, PMSCs and PMSC personnel.

States wishing to support the Montreux Document are invited to do so by communicating their support through an official letter or a diplomatic note to the Swiss Federal Department of Foreign Affairs. This endorsement does not imply any binding obligation on the state, but mere expression of solidarity and readiness to voluntarily domesticate international humanitarian and human rights laws by passing legislations regulating PMSCs.

The Imperative of Adopting the Montreux Document by Nigeria

For Nigeria, the imperative to adopt the Montreux Document stems from the fact that the current capacities of her security agencies/infrastructure especially in responding to internal armed conflict leaves a lot to be desired. It is now widely acknowledged that the number of police personnel nationwide is grossly inadequate to ensure quality policing. In August 2015, three

months after his inauguration, President Buhari announced that the country would recruit 10,000 police officer.³¹ Without doubt, it would take many years for this number to have the right training and morale to improve the security situation in the country. Moreover, the evolving security landscape (nationally, regionally and internationally) provides opportunity for Nigeria to contract PMSCs, who possess relevant and specialised skills, to help in myriad strategic ways to confront new security challenges: insurgency, terrorism, cyber-crime and other forms of crime that require sophisticated approach and robust training. As presently constituted, the Nigerian security establishment lacks this capacity. In the interim, therefore, PMSCs can be engaged to rapidly bring the security agencies up to speed with new, peace enforcement best practices.

Nigeria would not be the first, or the last, to embrace PMSCs, but it must seek to do so on its own terms. Already, PMSCs are becoming part of peace-keeping missions across Africa and in other parts of the world. Today, the UN and its agencies are a major consumer of the plethora of services offered by PMSCs. In hostile situations, the UN contracts PMSCs to provide security and protection services to its personnel and stations, secure humanitarian works, support peace-keeping operations and political missions with security functions such as risk assessment, logistic support, demining and explosive ordnance disposal, but not with active military operations.³² PMSCs are even known to be contracted by member states as part of the latter's support to UN activities.³³ The US is a major player in the UN, and supports the UN using PMSCs. For that the US also supports the Montreux Document, even though it has far-reaching implications for their military industry, which is the largest producer and exporter of military equipment and expertise. Hence, developing and fragile countries, which are largely "importers" of

PMSCs should have more reasons to support regulation. Thus far, only 5 African states have expressed support to the non-binding Document since 2008: Angola, Madagascar, Sierra Leone, South Africa and Uganda.³⁴ As a big peace-keeping player in Africa, Nigerian contingents would, sooner rather than later, have cause to engage with PMSCs in theatres of operation. It is therefore pertinent for Nigeria to have clear principles and guidelines for her national forces and policy makers in dealing with PMSCs at home and abroad.

regulate the private security industry within her territory. By adopting the Document, Nigeria would join the comity of nations that are committed to regulating PMSCs and, if favourable, support their responsible operations across the world.

In designing appropriate legislations, guidelines or policies regarding the PMSCs, relevant stakeholders in Nigeria should consider the following:

- ❖ Review existing legislation to meet with new and emerging security needs, including expansion of the scope of legal regulation beyond Private Guard Companies to include other PSCs that provide specialised security and protection services including in conflict zones. This can be initiated by either the President or the National Assembly.
- ❖ Adopt a binding legislation and articulate guidelines and policies to govern the use of PMSCs in Nigeria based on key provisions of the Montreux Document, adapted to the Nigerian context. As a first step, the President should communicate his Government support to the Montreux Document by sending a letter or note verbale to the Swiss Foreign Ministry.
- ❖ Encourage PSCs operating in the country to adopt and abide by the ICoC for Private Security Service Providers so as to promote professionalism, trust and transparency in the industry.
- ❖ Following the South African example of the Private Security Industry Regulation Act 2001, the National Assembly should establish and empower a National Regulatory Authority or Commission for PMSCs instead of investing that responsibility in a department of the NSCDC.
- ❖ Define clear prohibitions and punitive measures against specific harmful activities of PMSCs in the country. This may include

Conclusions and Policy Recommendations: Regulating PMSCs in the Light of the Montreux Document

It is overdue for Nigeria to seriously contemplate and enact robust legislation to regulate the employment of PMSCs within the country; be it by the government agencies, foreign investors and diplomatic missions. It is the most pragmatic thing to do now in view of the volatile security landscape within the country, and how that tends to evolve faster than the capacity of the state security agencies to respond. PMSCs can be responsible partners in capacity building and strategic support to the nation's security institutions, as their involvement in reversing the gains of the Boko Haram insurgents testifies. However, the absence of robust legislations or guidelines not only render their activities questionable, but also open to abuse. This may influence the government to operate in secrecy, with the prospects of corruption and negative public opprobrium when details about their secretive activities become open. The Montreux Document provides guidance on how Nigeria can

outlawing illegal or renegade PMSCs, stripping their personnel of prisoner of war (POW) status if captured, mandating foreign missions, investors and development partners to declare PMSCs in their employment.

- ❖ Provide guidelines, rules of engagement and standard operating procedures to set limits to PMSCs' involvement with national security agencies, especially when they operate in

theatres of conflict and peace-keeping operations.

- ❖ In addition to bi-lateral military and security assistance, which may not be assured at all times, PMSCs can be used as alternative sources of national security training, logistics and capacity building on intelligence for Nigeria's security agencies.

Endnotes

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