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The Use and Regulation of Private Military Contractors: Lessons from Nigeria

SPECIAL POLICY REPORT

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EXECUTIVE SUMMARY

Private Military Contractors (PMCs) are playing an increasingly powerful and complex role in Africa's peace and security landscape, challenging states' monopoly on the use of force and proliferating the use of unconventional warfare. Governments' outsourcing of national security to private entities has frequently blurred the line between private military companies as 'legal' or 'legitimate' security providers and mercenaryism as an illicit and subversive activity. Using Nigeria as a case study, this report analyses the advantages and challenges of using the services of PMCs to enhance domestic and regional security. Nigeria's government has hired PMCs for a variety of military purposes, including the establishment of communication and surveillance networks, insurgency and counterterrorism, military training, asymmetrical warfare, and naval and air security. PMCs have also provided services to multinational companies, particularly oil and mining firms operating in the Niger-Delta region. Advantages of hiring PMCs include cost efficiency, political expediency, and the provision of a wide range of military services to enhance national security. However, non-state actors like PMCs also present significant challenges for national governments, including a lack of operational accountability and transparency, threats to state legitimacy, human rights violations, and the fact that private military companies have a vested interest in perpetuating local/regional conflicts to remain in business. This raises the question of how states and governments can ensure accountability and transparency, protect their legitimacy and image of their military, mitigate human rights-related challenges, and manage vested interests in terms of prolonging conflicts for profit. To this end, the report highlights the need for operational regulation and oversight and offers policy recommendations for the African Union (AU) and Regional Economic Communities (RECs). In the absence of an international legally binding instrument on the use of PMCs, the report outlines recommendations for the AU and RECs to establish mandatory regulatory measures for PMCs to operate within the continent and at a regional level and offers legally binding guidelines which AU/RECs member states may set up to guide PMCs' activities. The aim would be to ensure increased legal accountability and oversight of PMCs' activities in Africa, regardless of the location of their parent company.

KEY POINTS

- The use and recruitment of Private Military Contractors (PMCs) in African countries has witnessed a sharp increase amid new security threats and diversifying client bases.
- On the one hand, PMCs have the potential to improve African state security, by offering operational and tactical support to public sector security forces. On the other hand, PMCs frequently operate in a legal vacuum due to the absence of professional and legal standards. Hence, the use and operations of PMCs may aggravate existing security situations, and result in violations of human rights and international humanitarian law (IHL).
- Nigeria has a complex record of hiring PMCs for a range of purposes, primarily including (i) the prevention of military coups; (ii) counter-insurgency efforts against Boko Haram; and (iii) protecting the operations of multinational oil companies in the Niger Delta.
- To improve operational transparency and accountability for PMCs as well as their clients (i.e., national governments and MNCs), regulatory measures should be established by a Convention that specifically addresses the Use and Regulation of Private Military Contractors (PMCs) in Africa, operationalised by AU organs and RECs, an independent regulatory/monitoring authority consisting of a panel of experts (if established), and member states. Moreover, the implementation of such a Convention within the Africa Peace and Security Architecture framework should be clearly understood.
- In addition to establishing a regional regulatory/monitoring framework, the AU and RECs should collaborate with member states to support the implementation of knowledge campaigns with the aim of increasing awareness and understanding of the private military industry among the public and local media.

PRIVATE MILITARY CONTRACTORS: ENABLING FACTORS

The number and size of private military companies witnessed an unprecedented growth at the end of the Cold War, as Western countries initiated large-scale demilitarisation programs. Politically, demilitarisation became an important tool for garnering public support, particularly following the failures of the US-UN humanitarian intervention in Somalia in 1992-93 and the emergence of the so-called "Mogadishu Syndrome".[1] Simultaneously, the global arms trade market, previously the purvey of states, became increasingly privatised as Russian and Ukrainian arms stockpiles in Eastern Europe were looted by private actors. In Africa, arms dealers supplied weapons and logistical support from Eastern Europe to war zones including Liberia, Sierra Leone, Angola, and the Congo, leading to widespread atrocities.[2]

Against the structural background of the post-Cold War economy and rise of international private military companies, African state capacity witnessed a sharp decline from the late 1980s and throughout the 1990s. Weak state capacity was a result of both pre-existing factors, i.e., indigenous and colonial "projects of territorial statehood",[3] and the failures of economic liberalisation and structural adjustment programs (SAPs) imposed by institutions such as the World Bank and the International Monetary Fund (IMF). Concurrently, high levels of unemployment in African countries led to a sharp rise in various forms of violence and crime (including transnational organised crime and its intersection with ethnic and civil conflicts), and the creation of multiple regional security vacuums.[4]

Traditional state armed forces – undermined by insufficient training, inadequate equipment and logistical capacity, and widespread corruption among military ranks – were ill-equipped to tackle emerging security challenges. As a result, African governments began hiring PMCs in the 1980s to reinforce national security and address the operational and tactical gaps in public security forces. A seemingly paradoxical situation emerged whereby, on the one hand, African military rulers undermined their armed forces as a coup-proofing strategy; while, on the other hand, they sought the help of PMCs to complement (public) regime security. Decades later, the structural drivers that inform the use of PMCs in Africa persist.

MERCENARIES AND PRIVATE MILITARY CONTRACTORS: DISTINCTIONS IN LAW, OVERLAPS IN PRACTICE

i. Definitional Challenges

PMCs provide both armed and unarmed military services in high-threat environments for a range of clients, including national governments, multinational companies, and international organisations (IOs).[5] PMC services include intelligence gathering, security personnel training, and the provision of

1 The failures of US-UN humanitarian intervention in Somalia in 1992-1993 are widely seen to have generated a "Mogadishu Syndrome" in Washington, that is, a risk-averse approach to foreign intervention in civil conflicts due to the fear of politically unpopular casualties. For further detail, see: Robert G. Patman (2015). "The roots of strategic failure: The Somalia Syndrome and Al Qaeda's path to 9/11". International Politics Vol. 52, 1, 89-109, Macmillan Publishers.

2 Ruth Maclean and Dounard Bondo (2022), 'In Liberia and Across Africa, Victor Bout's Bloody Legacy is Still Felt', The New York Times.

3 Christopher Clapham (1999). "Sovereignty and the Third World State". Political Studies, XLVII, 522-537.

4 Ibid.

5 F. Schreier and M. Caparini (2005). 'Privatising Security: Law, Practice and Governance of Private Military and Security Companies', Occasional Paper no. 6, DCAF, Geneva.

logistical support. Often dubbed the "invisible army", PMCs represent a global industry worth more than $100 billion – one which has continued to grow amid increasing and diversifying security threats.

Mainstream media and public statements often use the terms 'mercenaries', 'private military contractors', and 'private military companies' interchangeably. However, while the services of PMCs are largely considered legal and/or legitimate, the use and recruitment of mercenaries are banned by international law according to the 1989 International Convention against the Recruitment, Use, Financing and Training of Mercenaries.[6] This was preceded by the African Union's Convention for the Elimination of Mercenaryism in Africa, enforced in 1985.[7] The African Union defines a mercenary as any person who:

a. is specifically recruited locally or abroad in order to fight in an armed conflict;
b. does in fact take a direct part in the hostilities;
c. is motivated to take part in the hostilities essentially by the desire for private gain and in fact is promised by or on behalf of a party to the conflict material compensation;
d. is neither a national of a party to the conflict nor a resident of territory controlled by a party to the conflict;
e. is not a member of the armed forces of a party to the conflict; and
f. is not sent by a state other than a party to the conflict on official mission as a member of the armed forces of the said state.[8]

The key legal difference between mercenaries and PMCs can be identified in point c), that is, "the [soldier's] desire for private gain". Mercenaries as individual soldiers who are not members of any organisation, company, or state, and are thus working solely for their own profit. PMCs, on the other hand, are professional soldiers recruited into a company that is formally registered with the government of a country where their operations are based. The United Nations' working definition of private military and security companies is "a corporate entity which provides on a compensatory basis military and/or security services by physical persons and/or legal entities." [9] As legally established corporate entities, private military companies such as ArmorGroup and Blackwater (through which PMCs are sourced and recruited) are often registered with the International Stability Operations Association (ISOA). Hence, PMCs are widely considered as a legal intermediary between professional soldiers and national governments.

ii. Regulation and Accountability

Despite being bound by the laws of the country in which their operations are headquartered, the legality of PMCs' operations is brought into question when they act outside their parent country. For example, South African contractors in Nigeria are not bound by local laws, nor are they necessarily subject to South African laws since the jurisdiction may not apply in the client country. As a result, PMCs frequently operate in a legal vacuum.

The image of professionalism that characterises PMCs is maintained by the rigorous vetting process, operational training, and liability insurance policies that are usually ensured by their parent private

6 United Nations (General Assembly) (1989). "International Convention against the Recruitment, Use, Financing and Training of Mercenaries." Resolution 44/34.

7 Organisation of African Unity (1985). "OAU Convention for the Elimination of Mercenarism in Africa."

8 Ibid.

9 United Nations (Human Rights Council) (2018). "Mercenarism and Private Military and Security Companies." United Nations Human Rights Special Procedures.

military/security companies.[10] Crucially, however, this does not exclude the possibility that individual contractors will commit acts of gross misconduct and breach international human rights and humanitarian law (IHL). At the international and/or institutional level, the United Nations Human Rights Council Working Group (2018) has drawn out several plans to regulate the operations of PMCs, but a legally binding international framework has yet to be established.[11] Soft law and self-regulatory approaches such as the Montreux Document[12] (2008) and the International Code of Conduct for Private Security Service Providers (2013)[13] have further sought to establish international human rights standards and codes of conduct to which private military companies and private security companies should universally abide.[14]

Attempts have also been made at regional regulation. For example, the British Association of Private Security Companies (BAPSC) is the UK's self-regulatory body of the private security industry. BAPSC representatives have argued that the AU could provide a regional regulatory framework for the private military industry.[15] At the national level, the expansion and diversification of PMCs – as well as their customer bases – has prompted several governments to consider adopting legislation to control PMC operations. However, no concrete steps have been taken to implement legislative or policy change. The use and recruitment of PMCs therefore remains mired by a lack of accountability in comparison to state-employed soldiers, who can be court-martialled if they violate their country's respective military laws.

The boundary between mercenary and PMC activities is frequently obscure. Conventional mercenaries often have lighter arms than professional PMCs, which have access to more complex and heavy military equipment such as tanks, helicopters, and planes. In addition, mercenaries are largely deployed for frontline combat while PMCs serve a variety of purposes, including in the fields of intelligence gathering, logistics, transportation, security, networks, and direct combat.[16] Despite these divergencies, the skillsets of PMCs and mercenaries largely overlap since both generally constitute ex-soldiers or former members of a national police force. Both groups wear a mixture of civilian clothing and special operation uniforms and belong to an illicit "word of mouth" business that is characterised by a lack of operational transparency.[17]

According to private military industry expert Sean McFate, PMCs frequently collaborate with mercenaries and recruit them as sub-contracts ("subs") to help execute missions, despite the international ban on the use and recruitment of mercenaries.[18] Due to the illicit nature of operations, the recruiter of PMCs – whether a national government of multinational company – is often unaware of the extent to which mercenaries and PMCs overlap within an operative context.[19] The covert character of the private military sector makes it impossible to identify the market volume and number of recruitments of both PMCs and mercenaries. In turn, this lack of transparency makes it profoundly challenging to hold PMCs accountable for their actions.

10 Andy Bearpark and Sabrina Schulz (2007). "The private security challenge in Africa: Problems and options for regulation", in Private Security in Africa: Manifestation, Challenges and Regulation. Monograph No 139.

11 United Nations (General Assemby) (2018). "Mercenaries, Private Military Contractors Can Destablize Ruel of Law, Expert Tells Third Committee, amid Calls to End Racism, Respect Migrant Rights." Seventy-Third Session, 39th & 40th Meetings.

12 International Committee of the Red Cross (ICRC) (2020). 'The Montreux Document on Private Military and Security Companies'. ICRC.

13 The International Code of Conduct Association (ICoCA) (2013). 'The International Code of Conduct for Private Security Service Providers'. ICoCA.

14 International Committee of the Red Cross (ICRC) (2020). 'The Montreux Document on Private Military and Security Companies.'

15 Rita Abrahamsen and Michael C. Williams (2011). 'Security Privatization and Global Security Assemblages.' The Brown Journal of World Affairs, vol. 18, no. 1, pp. 171–80.

16 Alican Tekingunduz (2018). 'Are private military contractors any different from mercenaries?' TRT World.

17 Ibid.

18 Sean McFate, quoted by Alican Tekingunduz (2018). 'Are private military contractors any different from mercenaries?' TRT World.

19 Ibid.

iii. Operational Implications

As non-state actors, both mercenaries and private military companies can be severely destabilising to a state's legitimacy and long-term security. The UN Working Group on the use of mercenaries has established a correlation between the presence of foreign fighters (including both mercenaries and PMCs) and an increase in human rights abuses. Private military companies are reported to have engaged in "direct participation in hostilities", even in situations where there is no armed conflict, "posing grave threats to human rights".[20] The Working Group has documented multiple violations instigated by private military companies and PMCs, including summary executions, forced disappearances, abductions, arbitrary detention, trafficking and violence against children, and sexual violence, among other crimes.[21] Due to the gaps in both national and international regulation, states seldom can or are willing to hold private military companies accountable for their actions. The rapid development of new technologies, including potential weapons, further emphasises the need to effectively regulate the private military industry.[22]

Another way that PMCs can threaten state legitimacy is by organising, or attempting to organise, mutinies against national militaries. This was the case with the Wagner Group's rebellion in June this year, which followed a period of rising tensions between the Russian Ministry of Defence and the group's former leader, Yevgeny Prigozhin.[23] The Wagner rebellion illustrated how outsourcing national security to private military companies can incite public doubt about the effectiveness of conventional militaries and, by extension, the legitimacy of the state.

In (post-)conflict societies, preventing long-term conflict recurrence and strengthening civil-military relations can only be achieved if a state restores its legitimacy, and not if mercenaries and PMCs claim that they restored the state's security themselves. Moreover, it is crucial to recognise that private military companies have a vested interest in perpetuating regional conflict to remain in business. In sum, while the use of PMCs may be operationally effective in restoring short-term order in conflict zones, they can also threaten the long-term stability and legitimacy of state governments and militaries.

NIGERIA'S USE OF PRIVATE MILITARY COMPANIES: A COMPLEX AND CONTESTED HISTORY

Cost-effectiveness, political expediency (since PMCs are not involved with the government or military), and enhancement of national security are widely cited as the primary reasons why the Nigerian government has hired both mercenaries and PMCs.[24] Multinational companies, meanwhile, have increasingly hired PMCs to protect their operations in Nigeria due to the lack of adequate security personnel offered by the state.

These accounts, however, fail to acknowledge the complex implications that using external non-state actors for national security purposes has had on the interactions between (i) Nigeria's military and government, (ii) the military and PMCs, (iii) the government and PMCs, (iv) the public and PMCs, and (v)

20 United Nations (General Assemby) (2018). 'Mercenaries, Private Military Contractors Can Destablize Ruel of Law, Expert Tells Third Committee, amid Calls to End Racism, Respect Migrant Rights.' Seventy-Third Session, 39th & 40th Meetings.

21 Ibid.

22 Ibid.

23 For a timeline of the months-long feud between Russia's defence ministry and Wagner leader Yevgeny Prigozhin, see Aljazeera (2023). 'Timeline: How Wagner Group's revolt against Russian unfolded.' Aljazeera.

24 Olusegun Oladele Idowu and Roimi Fabiyi (2021). 'Private Military Contractors and Nigeria's National Security'. Journal of Intelligence and Security. Afe Babalola University, Nigeria. Volume 1, No 1.

the public and the government. Bringing in foreign PMCs has further impacted Nigeria's international relations, both with regards to drawing international scrutiny, and impacting the relations with the parent country of private military companies.

i. Civil War

During Nigeria's Civil War from 1967 to 1970, the use of mercenaries was common practice among both the Biafran secessionists and Nigeria's federal military. Although the enlistment of mercenaries posed a political risk – Zambia's then-President Kaunda characterised mercenaries as "human vermin" during the Congo crisis – both sides used mercenaries for military training as well as direct combat purposes.[25] In July 1967, despite initial reluctance, the Federal Government hired mercenaries, including British, Rhodesian, and South African pilots. Biafra, meanwhile, hired French mercenaries under the command of Colonel Roger Faulqes in November 1967. Scholars have argued that these mercenaries contributed to prolonging the war.[26]

ii. Prevention of Successful Military Coups

PMCs were increasingly hired by the Nigerian government in the 1980s with the aim of enhancing national security. This trend was initiated by General Ibrahim Babangida, head of state from 1985 to 1993, who hired a group of Israeli-led PMCs to install and supervise high-level communication and surveillance equipment in the office and residence of the head-of-state, and in government agencies including the State Secret Service.[27] In 1990, when Army Major Gideon Orkar attempted to overthrow the government in what is officially described as the bloodiest coup in Nigeria' history,[28] the communications network was successful in informing the Nigerian army in time, as well as destabilising the communication lines of the coup-plotters. As a result, General Babangida was able to maintain power and prevent the successful overthrow of his government.

Similarly, President Olusegun Obasanjo, head of state from 1999 to 2007, hired foreign PMCs to design and supervise a re-professionalisation programme for Nigeria's Armed Forces. Partially funded by the United States (US) Government, the Obasanjo administration hired contractors from the Military Professional Resource Incorporation (headquartered in Virginia, USA) to re-professionalise the Armed forces between 2000 and 2001 with the aim of the long-term prevention of military coups.[29] This re-professionalisation program has been argued to be advantageous to Nigeria's overall security and democratic stability, given that a successful military coup has not occurred for more than twenty years and counting.[30]

iii. Counter-Insurgency Operations against Boko Haram

The Nigerian government's most prolific use of PMCs has been targeted at combatting the ongoing insurgencies of Boko Haram. Since 2009, the Islamist group has launched increasingly sophisticated attacks, initially exclusively against civilians, but progressing in 2011 to include bombings of the Nigerian Police Force, and UN offices in Abuja. As of July 2022, more than 35,000 people had been killed because of the conflict.[31] In addition, 2.2 million people have been displaced in the Northeast

25 Guy Arnold (1999). Mercenaries: The Scourege of the Developing World. Palgrave Macmillan, London. 1999. https://doi.org/10.1007/978-1-349-27708-7_2

26 Ibid.

27 Olusegun Oladele Idowu and Roimi Fabiyi (2021). 'Private Military Contractors and Nigeria's National Security'. Journal of Intelligence and Security. Afe Babalola University, Nigeria. Volume 1, No 1.

28 Peter Ogaba Agbese (1991). 'Demilitarised and prospects for democracy in Nigeria.' Bulletin of Peace Proposals. 22(3): 315-327.

29 International Crisis Group (2016). 'Nigeria: the Challenge of Military Reform.' Africa Report no. 237. International Crisis Group.

30 Carl LeVan (2019). Contemporary Nigerian Politics: Competition in a Time of Transition and Terror. Cambridge University Press.

31 Global Centre for the Responsibility to Protect (2023). Nigeria (Risk Report).

region, the vast majority (more than 1.8 million) in Borno State.[32]

Despite having the most powerful military in West Africa,[33] the Nigerian government was unable to effectively combat Boko Haram. This became particularly salient in April 2014, when Boko Haram kidnapped more than 200 schoolgirls in the town of Chibok, Borno State. Despite receiving security assistance and training from the United States and Britain, Nigeria's armed forces failed to retrieve the Chibok girls.[34] Then, in January 2015, reports began to emerge that the Nigerian government had hired South African PMCs to help rescue the schoolgirls and control Boko Haram's activities in the Northeast. By March, investigations by the New York Times[35] and Voice of America had revealed that hundreds of PMCs were participating in direct combat against Boko Haram in Borno State. Former president Goodluck Jonathan repeatedly denied these reports, claiming that the foreign fighters were "technicians" brought in for maintenance.[36]

The PMCs allegedly conducted the majority of offensives against Boko Haram at night to avoid public sightings.[37] Typically, the Nigerian Army would arrive the next morning to claim success for the PMC operations.[38] Although the full extent of PMC offensives against Boko Haram remains disputed, the International Centre for Investigative Reporting (ICIR) has obtained evidence that 147 contractors served between December 2014 and April 2015, recruited from three different South African companies: Conella Services Ltd, Pilgrims Africa, and Specialised Tasks, Training, Equipment and Protection International (STTEP).[39]

Overall, the South African PMCs were highly operationally effective. Within three months, the PMCs had reclaimed almost all the lost territories in the Northeast region, including a territory which had, a few months earlier, been claimed by Boko Haram as a "sovereign country".[40] Operating according to the relentless pursuit doctrine, the PMCs launched strategic aerial attacks with private MI-24 attack helicopters and built REVA Mine-Resistant Ambush Protected Vehicles (MRAPs) armed with heavy machine guns.[41] Notably, the South African PMCs are reported to have resisted working with Nigerian military units, preferring to engage in their own combat strategy. This led to several instances of miscommunication between the PMCs and Nigerian soldiers, with casualties on both sides.[42]

Following widespread public disapproval, the South African PMCs were forced to withdraw their operations from Nigeria in late 2015. Since then, Boko Haram has regrouped and launched sporadic attacks in the Northeast but has not been able to regain their military stronghold over the region.[43] Despite the brevity of their operation, we may thus conclude that the PMCs' counterinsurgency was advantageous to Nigeria's national security at the time.

However, the use of PMCs to combat Boko Haram raises bigger strategic questions about bringing

32 Human Rights Watch (2022). 'Those Who Returned Are Suffering: Impact of Camp Shutdowns on People Displaced by Boko Haram Conflict in Nigeria.'

33 According to Global Firepower's 2023 annual ranking of African militaries, Nigeria ranks fourth in the Power Index score (determined by 60 factors), after Egypt (1), Algeria (2), and South Africa (3).

34 Charles Anthony Pfaff and Edward Mienie (2019). 'Strategic Insights: Five Myths Associated With Private Military Companies.' USAWC Press (US Army War College).

35 Adam Nossiter (2015). 'Mercenaries Join Nigeria's Military Campaign Against Boko Haram'. The New York Times.

36 Chris Stein and Mike Eckel (2015). 'VOA Exclusive: Nigeria Brings S. African Foreign Mercenaries Into Boko Haram Fight'. Voice of America (VOA).

37 Adam Nossiter (2015). 'Mercenaries Join Nigeria's Military Campaign Against Boko Haram'. The New York Times.

38 Ibid.

39 Samuel Malik (2016). 'How Nigeria Engaged South African Mercenaries To Fight Boko Haram'. International Centre for Investigative Reporting.

40 Jack Murphy (2015). 'Eeben Barlow speaks out (Pt. 6): South African Contractors withdrawal from Nigeria.' SOFREP News.

41 Olusegun Oladele Idowu and Roimi Fabiyi (2021). 'Private Military Contractors and Nigeria's National Security'. Journal of Intelligence and Security. Afe Babalola University, Nigeria. Volume 1, No 1.

42 Adam Nossiter (2015). 'Mercenaries Join Nigeria's Military Campaign AgainstBoko Haram'. The New York Times.

43 Olusegun Oladele Idowu and Roimi Fabiyi (2021). 'Private Military Contractors and Nigeria's National Security'. Journal of Intelligence and Security. Afe Babalola University, Nigeria. Volume 1, No 1.

in foreign soldiers for counter-insurgency purposes within Nigeria and the region. Although STTEP, Conella, and Pilgrims Africa were successful in pushing the Islamist group out of the Northeast, they effectively achieved this by pushing them into neighbouring countries. This has raised long-term challenges to establishing regional security, evinced by the rise in Boko Haram attacks in Chad, Niger, northern Cameroon, and Mali.

The public disapproval of PMCs, and the government's subsequent attempts to deny the fact that PMCs were engaging in direct combat with Boko Haram, have threatened Nigeria's state legitimacy and raised public distrust.[44] In addition, it has prevented the government from being able to hold PMCs legally accountable for their actions, since they claimed that PMCs were not engaging in direct combat in the first place.

Involving external actors can further introduce additional complexities to local conflicts, given that using PMCs of one nationality can prompt the involvement of rival nations. This was the case with the Nigerian government's use of South African PMCs, which prompted concerns that PMCs were violating South African mercenary laws. In 2015, for example, South Africa's government publicly expressed disapproval that its citizens were providing military services in the Boko Haram conflict.[45]

iv. Multinational Oil Companies in the Niger Delta

Multinational oil companies operating in the Niger Delta have been using PMCs to protect their facilities, vessels, and pipelines for almost two decades. Since the 1980s, the commercial extraction of crude oil has generated billions of dollars' worth of revenue for Nigeria.[46] Local populations, however, have largely not benefited from the presence of oil companies in the resource-rich Delta region. In the early 2000s, oil operations began to be severely disrupted by armed ethnic militant groups, fuelling a regional security crisis. Bunkering (i.e., large-scale oil theft) provided militant groups with funds to purchase arms, while destabilising oil prices in global energy markets.[47]

Nigeria's armed forces were unable to tackle insurgencies in the Niger Delta due to a combination of factors, including the insufficient training of troops, underpayment, and inoperability of equipment.[48] Consequently, multinational oil companies hired PMCs to guard their headquarters, patrol facilities, provide protection for supply vessels and drilling rigs, and use satellite tracking systems to monitor the movement of vessels through waterways.[49] These PMC-led efforts are confirmed to have considerably reduced security disruptions to oil company operations, improving the overall security situation of the Niger Delta.[50]

However, PMCs have failed to address the root causes of the militant attacks, i.e., the disproportionate impacts of oil drilling on the livelihoods of local populations. Moreover, the use of PMCs in the Niger Delta has posed severe threats to state legitimacy. Asari Dokubo, ex-militant and leader of the now-defunct Niger Delta Peoples Volunteer Force, recently accused the Nigerian military of being "liars"

44 Nigeria Security Network (NSN) (2016). 'Nigeria's Private Army: A perception study of private military contractors in the war against Boko Haram'. Remote Control Project.

45 Teniola T Tayo (2021). 'Soldiers for rent in the Boko Haram Crisis'. Institute for Security Studies (ISS).

46 Olusegun Oladele Idowu and Roimi Fabiyi (2021). 'Private Military Contractors and Nigeria's National Security'. Journal of Intelligence and Security. Afe Babalola University, Nigeria. Volume 1, No 1.

47 Judith Burdin Asuni (2009), 'Blood Oil in the Niger Delta'. United States Institute of Peace.

48 Andy Bearpark and Sabrina Schulz (2007). 'The private security challenge in Africa: Problems and options for regulation', in Private Security in Africa: Manifestation, Challenges and Regulation. Monograph, No 139.

49 Rita Abrahamsen and Michael C. Williams (2011). 'Security Privatization and Global Security Assemblages.' The Brown Journal of World Affairs, vol. 18, no. 1, pp. 171–80.

50 Olusegun Oladele Idowu and Roimi Fabiyi (2021). 'Private Military Contractors and Nigeria's National Security'. Journal of Intelligence and Security. Afe Babalola University, Nigeria. Volume 1, No 1.

and orchestrating the oil bunkering in the Niger Delta region.[51] Dokubo further alleged that his soldiers, rather than the Nigerian military, were responsible for securing the Abuja-Kaduna road and other regional hot spots. "It is not the army that makes it possible for you to travel to Abuja or travel to Kaduna", Dakubo claimed in a press conference in June 2023. "It is my men, employed by the government of the Nigerian state". Like the Wagner Group mutiny earlier this year, Dokubo's claims highlight how the use of non-state actors for state security purposes can threaten the legitimacy of both the military and the government.

The extraction of natural resources has raised similar security challenges elsewhere in Africa (for example, Sierra Leone), accompanied by growing levels of mistrust in public security forces and an increasing demand for PMCs.[52] Given this rising trend, it is imperative that the activities of PMCs are held to regulatory standards by national governments, particularly within the context of resource-rich environments.

v. Public & Military Responses

Although PMCs have been effective operationally, they have been met with widespread public disapproval and international scrutiny. President Muhammadu Buhari condemned the former administration's collaboration with South African PMCs to combat Boko Haram, and proceeded to terminate their contracts when he assumed office in 2015.[53] Since then, terrorist attacks have increased, although the attacks are significantly more sporadic than they were before the PMCs were brought in.

According to the Nigeria Security Network (NSN), the Nigerian government's counter-insurgency operation has faltered because the government initially perceived Boko Haram as an "exclusively military problem with an exclusively military solution", without considering that PMC-resulting human rights violations, among other actions, could fuel the insurgency by alienating civilians and increasing their sympathies for anti-government actors.[54] As such, significant efforts should be made to professionalise the Nigerian military and ensure compliance with human rights standards.

It is important to note that despite President Buhari's initial resistance to using PMCs, the government has continued to use the services of private military companies in local counter-insurgency operations, albeit on a smaller scale than the 2015 South African-led counter-insurgency against Boko Haram.[55] From 2017 to 2018, Four-Troop, a military company founded by Israeli Defence Forces (IDF) veterans, trained the Nigerian Air Force in counter-terrorist strategies, asymmetrical warfare, and airport security. In 2020, the Nigerian Army School of Infantry employed Starter Point Integrated Services (SPIS) Ltd to train more than a thousand troops in the Jaji military camp. Moreover, in 2021, President Buhari established the Integrated National Security and Waterways Protection Infrastructure, known as the Deep Blue Project, to protect Nigeria's territorial waters and the Gulf of Guinea against sea piracy. An Israeli firm, HLSI Security Systems and Technologies Limited, was hired to manage the maritime project's $195 million contract.[56] Since its inception, the project, which is the first of its kind, has been subject to several investigations from Nigeria's House of Representatives, although it remains disputed among local media outlets whether this is for political motives or national security purposes.[57]

51 Jideofor Adibe (2023). "Asari Dokubo: Big lessons from Wagner's mutiny in Russia". Vanguard.

52 Andy Bearpark and Sabrina Schulz (2007). 'The private security challenge in Africa: Problems and options for regulation', in Private Security in Africa: Manifestation, Challenges and Regulation. Monograph, No 139.

53 Teniola T Tayo (2021). 'Soldiers for rent in the Boko Haram crisis'. Institute for Security Studies.

54 Nigeria Security Network (NSN) (2016). 'Nigeria's Private Army: A perception study of private military contractors in the war against Boko Haram'. Remote Control Project.

55 Ibid.

56 DefenceWeb (2021). 'The key to success of the Nigerian Deep Blue Project does not lie offshore – Dryad'. DefenceWeb.

57 Colin Udoh (2023). 'The suspicious Ghajabiamila probe of Deep Blue Project'. This Day.

a. Military and Government

Domestic pushback against using PMCs has been particularly strong among Nigerian military officials. In 2022, Babagana Zulum, the governor of Borno, reiterated his call for re-hiring PMCS to fight against Boko Haram.[58] The proposal has since become subject to parliamentary inquiry. While several government officials have voiced support for using PMCs to combat insurgencies, military officials have resisted against introducing external actors into local and regional conflicts. Defence Chief Lucky Irabor, for example, insisted that it was the Nigerian army's "own responsibility" to combat terrorists, rather than that of international stakeholders.[59] This was echoed by National Security Adviser Babagana Monguno, who announced that PMCs were no longer required, since the army had developed both the operational and tactical expertise to defeat terrorist groups.

b. Citizens

According to a 2016 perception study by the Nigeria Security Network (NSN), most Nigerians (75%) are in favour of using PMCs to combat Boko Haram.[60] However, the study also revealed that opposition against PMCs was strongest when they were engaged in direct combat, and that there was public concern that PMCs would carry out human rights abuses with impunity.

Many Nigerians remain unaware of the legality of PMC operations, evinced by the local media's frequent mislabelling of PMCs as mercenaries. Hence, it is important that the Nigerian public, and especially the media, gain a better understanding of the use and operations of private military companies. Crucially, public trust and state legitimacy can only be achieved through a combination of knowledge campaigns and increased governmental transparency and accountability about using PMCs to enhance national security.

STRATEGIC OPTIONS

i. Regulation

The AU, RECs and member states should establish a consistent regulatory framework to strengthen the accountability of PMCs and eliminate impunity for human rights violations. In accordance with the African Union Commission's Human Rights Strategy for Africa, the effective implementation of PMC regulation demands enhanced synergy and coordination among AU and RECs organs, institutions, and member states.[61] To this end, AU Organs, Institutions, RECs and member state officials should hold regular meetings and consultations to discuss the scope, methodology, and framework of a regional binding instrument for the use of PMCs national governments and multinational companies in Africa.

Following an in-depth assessment of the use of PMCs on a country-by-country basis, a roadmap should be formulated to establish a regional convention on the use and regulation of PMCs and private military companies. Given the overlap between mercenaryism and the activities of PMCs (see above), this framework could use existing documents such as The OAU (AU) Convention for the Elimination of Mercenaryism in Africa as a starting point.[62] For example, The Convention for the Use and Regulation of Private Military Contractors (PMCs) in Africa could be structured around the following articles:

58 Murtala Abdullahi (2022). 'Nigeria's Frosty Interest in Private Military Contractors.' HumAngle.

59 Ibid.

60 Ibid.

61 Department of Political Affairs, African Union Commission (2011). 'Human Rights Strategy for Africa'. African Union Commission.

62 Organisation of African Unity (1985). 'OAU Convention for the Elimination of Mercenaryism in Africa'. CM/817 (XXIX) Annex II Rev. 1. Organisation of African Unity.

Article 1 – Definition
Article 2 – Aggravating Circumstance
Article 3 – Status of PMCs
Article 4 – Scope of Criminal Responsibility
Article 5 – General Responsibility of States and their Representatives
Article 6 – General Responsibility of Non-State Actors, Including but Not Limited to Multinational Companies (MNCs)
Article 7 – Obligations of States and Non-State actors
Article 8 – Penalties
Article 9 – Jurisdiction
Article 10 – Extradition
Article 11 – Mutual Assistance
Article 12 – Judicial Guarantee
Article 13 – Settlement of Disputes
Article 14 – Signature, Ratification and Entry into Force
Article 15 – Accession
Article 16 – Notification and Registration

Importantly, given that there is no one-size-fits-all solution to the regulatory challenges of the private military industry, the AU and RECs should collaborate with institutions and member states to address the specific needs of countries beyond the general regional convention.

Monitoring and evaluation (M&E) frameworks on the use of PMCs by both governments and MNCs should align with existing international and regional law instruments, including the Protocol Relating to the Establishment of the Peace and Security Council of the African Union,[63] the African Charter on Human and Peoples' Rights, the Universal Declaration of Human Rights, and the elements of crimes of genocide, crimes against humanity and war crimes established by articles 6, 7 and 8 of the Rome Statute and International Criminal Court. Mandatory regulatory measures could include:

a. Vetting of PMCs, including checks on identity, employment history, national and immigration status, and unspent criminal record.
b. Ensuring that licensing and registration criteria of PMCs and the private military companies which have recruited them are lawful.
c. Limitations on permissible functions (see proscribed activities below).
d. Accountability for perpetrators of human rights violations that reflects relevant international human rights and humanitarian law.
e. Enforceable remedies for the victims of human rights violations resulting from PMC operations.

Proscribed Activities

Largely in accordance with International Alert's recommendations for the UK government,[64] the activities from which PMCs and private military companies should be proscribed include:

1. Direct participation in hostilities.

63 Article 4c of the Protocol Relating to the Establishment of the Peace and Security Council of the African Union implores AU Member States to respect the rule of law, fundamental human rights and freedoms, the sanctity of human life and international humanitarian law.

64 Chaloka Beyani and Damian Lilly (2001). 'Regulating private military companies. International Alert.

2. Activities that could lead to a lethal outcome.
3. Use, recruitment, financing, and training of mercenaries.
4. Acts that may lead to human rights violations.
5. Assistance to non-state armed actors or irregular forces.
6. Looting, plunder, and other illicit economic activities including mineral extraction.
7. Unauthorised procurement and brokering of arms.

Regulated Activities

Activities conducted by PMCs for the purpose of enhancing the security of state (national governments) and non-state actors (e.g., MNCs) that require regulation include:

1. Military training
2. Security Services, including designing, establishing, and maintaining communication systems.
3. Intelligence gathering.
4. Crime prevention services.
5. Arms procurement.
6. Logistical support.[65]

Penalties

In accordance with the proposed Convention for the Use and Regulation of Private Military Contractors (PMCs) in Africa (see above), the AU and RECs should recommend the relevant punishment and penalties imposed on private military actors who have been involved in committing offences prohibited by the regulatory measures, e.g., direct participation in hostilities or acts resulting in human rights violations. This requires coordination between existing judicial organs on behalf of the African Union, including the African Commission on Human and Peoples' Rights (ACHPR) and the African Court on Human and Peoples' Rights (ACHPR), as well as member states' national judicial systems.

Regulatory/Monitoring Authority

The AU and/or RECs should consider setting up a specialised regulatory authority which can impose administrative sanctions (e.g., withdrawing licensing and seizing assets) on PMCs and private military companies, as well as their clients (i.e., national governments and multinational companies), if they are found to have breached the mandatory regulatory measures. This regulatory authority could be modelled on or be integrated into existing monitoring organs, such as the ACHPR, which was created by Article 30-45 of the African Charter on Human and Peoples' Rights and monitors the implementation of the rights set out in the Charter. The Commission is formed by 11 independent experts who are nationals of State parties to the charter and meet for two 15-day sessions each year, held in April/May and October/November.[66]

Independent Complaints Mechanism

To promote accountability for PMCs and private military companies operating in Africa, the AU and

65 Ibid.

66 Child Rights International Network (CRIN) (2006). 'African Commission on Human and Peoples' Rights'. CRIN.

RECs, in collaboration with institutions and member states, should establish an independent complaints mechanism, which local populations can use to anonymously report human rights violations and the engagement of PMCs and private military companies in proscribed activities. This could be linked to the existing complaints mechanism established by ACHPR, which receives both individual and inter-state complaints alleging human rights violations.[67]

Annual Regulation Updates

The AU and RECs should meet for multiple sessions each year with an accredited panel of experts and/or the regulatory/monitoring authority (if established) to discuss required updates to regulation. In accordance with the ACHPR reporting procedure, states should submit annual reports about their progress in implementing the regulatory measures set out by The Convention of the Use and Regulation of PMCs in Africa (see above). These reports should then be considered by the regulatory/monitoring authority in public sessions (see above). Regular updates are particularly important given the increasing development of new technologies, including potential weapons, which private military companies and PMCs are likely to utilise during operations.[68]

ii. Knowledge Campaigns

The AU and RECs should collaborate with national governments to support the implementation of knowledge campaigns with the aim of increasing awareness and understanding of PMCs and private military companies among the public and local media outlets. This is crucial to reinforce state legitimacy and increase governmental transparency. Specifically, attention should be drawn to:

a. Distinguishing between the legality of PMCs and mercenaries.
b. Highlighting the advantages and disadvantages of bringing in PMCs for national security purposes, using verifiable case studies (e.g., Nigeria).
c. Demonstrating how respective national governments in collaboration with the AU and RECs are taking steps to increase accountability of PMCs and private military companies.

Knowledge campaigns could take various formats. Supported by the AU and RECs, respective African governments should organise seminars, workshops, symposiums, conferences, public lectures, and webinars to inform citizens about the use of PMCs.

iii. Professionalisation of Security Personnel

The AU and RECs should support and encourage national governments to retrain security personnel in unconventional warfare tactics. This is vital to ensuring that military units are trained and equipped to not only fight using conventional warfare (i.e., war between state actors according to internationally established rules), but also unconventional warfare against non-state actors such as terrorists, ethnic militias, warlords, armed bandits, pirates, cattle rustlers, etc., who do not recognise traditional rules of war. In turn, this will reduce governments' dependence on foreign PMCs for national security, which are often adept in unconventional warfare tactics.

67 Ibid.

68 United Nations (General Assemby). 30 October 2018. "Mercenaries, Private Military Contractors Can Destablize Ruel of Law, Expert Tells Third Committee, amid Calls to End Racism, Respect Migrant Rights." Seventy-Third Session, 39th & 40th Meetings.

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