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Visit to Switzerland

Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination*

Summary

The Working Group visited Switzerland from 13 to 17 May 2019. Pursuant to its mandate, the Working Group's visit focused on private military and security companies on the one hand and mercenary and mercenary-related activities on the other hand. With respect to regulating private military and security services, Switzerland has been at the forefront of several international initiatives and has also taken concrete action to prevent the risks that are associated with exporting such services abroad by putting in place relevant federal legislation. This commitment is commendable, and brings expectations for continued Swiss strategic leadership and support in this area. The Working Group notes the importance of continuing to raising awareness about, and implementing, the federal legislation in its current broad scope, and of the need to move the relevant international initiatives towards more practical impact on the ground.

The present report addresses domestic regulation of private security providers where diverse practices exist at the cantonal level demonstrating the need for a nationwide framework. The lack of uniform standards within the industry represents a particular concern as the number of private security personnel outnumbers police officers and there is a growing market for private security services, including through contracts with public authorities in sensitive areas, such as asylum centres. The Working Group also considered legislation covering mercenaries and related actors.

After outlining its findings, the Working Group makes recommendations concerning private military and security services provided abroad and domestically, and mercenary and mercenary-related activities.

* The summary of the report is being circulated in all official languages. The report itself, which is annexed to the summary, is being circulated in the language of submission and French only.

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Annex

Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination on its visit to Switzerland

I. Introduction

1. Pursuant to Human Rights Council resolution 33/4,[1] the Working Group conducted an official visit to Switzerland from 13 to 17 May 2019, at the invitation of the Government. The Working Group was represented by three of its members: Jelena Aparac, Lilian Bobea and Sorcha MacLeod. They were accompanied by staff of the Office of the United Nations High Commissioner for Human Rights.

2. During the visit, the Working Group held meetings in Bern with representatives of the executive, legislative and judicial branches at the federal level. The delegation met with officials representing different divisions within the Federal Department of Foreign Affairs, the Armed Forces Attorney General, federal prosecutors of the Office of the Attorney General, and representatives of the Federal Office of Justice. The delegation also met with an official of the State Secretariat for Migration, which facilitated a visit to the Federal Asylum Centre of Kappelen in the Canton of Bern.

3. At the cantonal level, the delegation held meetings with the Conference of Cantonal Departments of Justice and Police, senior representatives of the Cantons of Geneva and Zurich, including officials from the respective cantonal police services, and the Justice and Public Security Committee of the cantonal parliament of Zurich. In Neuchatel, the Working Group met the Commission of the Concordat on Private Security Companies of the French-speaking Cantons.

4. The Working Group wishes to thank the Swiss authorities at the federal and cantonal levels for the excellent cooperation that they extended prior to, during and after the visit. The delegation met and held open and frank discussions with State representatives on the challenges faced and lessons learned.

5. The delegation was also grateful for the rich and varied discussions during meetings with non-governmental stakeholders. These included a member of the National Council; representatives of non-governmental organizations, trade unions, and an industry association; individuals working for companies providing private military and security services or for companies whose operations depend heavily on private security; and a multi-stakeholder initiative on private military and security companies.

II. Background and context of the visit

6. The purpose of the visit was to study the human rights impact of mercenaries and mercenary-related activities on the one hand, and of the activities of private military and security companies on the other hand. With regard to mercenaries, Switzerland is known for its historic mercenary tradition that was abandoned in the nineteenth century, with the institutionalization of neutrality as a principle of Swiss foreign policy which remains in place today. The Pontifical Swiss Guard, however, is allowed to operate as the official security force of Vatican City. Nevertheless, similarly to other European countries, the question of its nationals joining foreign military entities re-emerged recently through the phenomenon of foreign fighters, which the Working Group has defined as a mercenary-

[1] In September 2019, the Human Rights Council adopted resolution 42/9 renewing the mandate of the Working Group for a further three years.

related activity in some cases.[2] With respect to private military and security companies, Switzerland has been at the forefront of developing international regulatory initiatives to raise standards for the industry and of adopting its own legislation to apply international standards to private security services abroad.

7. The visit was an opportunity for the Working Group to examine the extent to which the efforts of Switzerland at the international level and within its borders could be considered a good practice, building on its analysis of Swiss and other national regulation in Europe (A/HRC/30/34), as well as to look at potential challenges to effective implementation. Within Switzerland, the increasing use of private security merited reflection on the regulation of private security companies operating domestically and on the human rights impacts that their activities may have. The Working Group also considered the role of State and non-State clients of such companies in setting standards, ensuring the respect of human rights, and facilitating remedies and reparations in case of human rights abuses by contractors.

8. During the visit, the Working Group took into consideration the principles of cantonal autonomy and decentralization which are fundamental parts of the Swiss political and legal landscape, noting the particular implications for private security services provided domestically. Furthermore, it was of interest to study the implications of such a highly decentralized political system on the applicable regulatory frameworks.

III. Mercenaries and mercenary-related activities

A. Legal framework

9. The International Convention against the Recruitment, Use, Financing and Training of Mercenaries defines a "mercenary" as someone who is specially recruited locally or abroad in order to fight in an armed conflict and is motivated by private gain, among other criteria.[3]

10. Switzerland is not a State party to this Convention. It has, however, ratified the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), which contains a similar definition of mercenaries and further provides that mercenaries "shall not have the right to be a combatant or a prisoner of war" (art. 47). There are no national laws in Switzerland specifically on mercenarism. Officials noted that ratification of the International Convention was not under discussion, arguing that the existing legal framework was sufficient to address current mercenary or mercenary-related activities. They also highlighted the practical difficulties in determining all components of the international legal definition, specifically meeting all the cumulative elements and proving the subjective aspects, notably motivation. They explained that the principle of neutrality could be interpreted as entailing an element prohibiting Swiss citizens from working as mercenaries.

11. In order to give effect to this principle and in the interest of preserving the country's defensive capacity, article 94 of the Military Criminal Code covers foreign military service and prohibits all Swiss citizens from serving in a foreign army without authorization from the Federal Council, and from recruiting or facilitating the recruitment of Swiss citizens into a foreign military service. The provision does not apply to those holding double nationality and undertaking military service in the State of their second nationality, and does not make reference to motivation. Offences committed under article 94 are punishable with a sentence of up to three years, or a monetary penalty.[4]

[2] See A/71/318 and A/70/330.

[3] See art. 1.

[4] *Peine pécuniaire/Geldstrafe*; see www.admin.ch/opc/fr/classified-compilation/19270018/index.html.

12. In order to respond to the more recent upsurge in foreign fighters from Switzerland, another law, the Federal Act on the Proscription of the Groups "Al-Qaeda" and "Islamic State" and Associated Organizations,[5] of 12 December 2014, was adopted by the Swiss Parliament and replaced a similar act issued earlier by the Government. Persons found to have joined or supported such groups may face a prison sentence of up to five years or a monetary penalty. This Act is valid until 31 December 2022. At the time of writing, Parliament was discussing amendments to the Criminal Code to broaden the scope of terrorism-related offences therein, including, inter alia, permanently anchoring the provisions of the above-mentioned Federal Act in the Criminal Code.

B. Application of the legal framework and recent cases

13. Offences under article 94 of the Military Criminal Code are prosecuted by the Office of the Armed Forces Attorney General, while offences under the Federal Act of 12 December 2014 are investigated by the Office of the Attorney General. The Working Group was informed that the two offices coordinated their investigations, especially in relation to offences that may be punishable under both legal frameworks. The prosecution of offences under article 94 can be handed over to civilian courts if they are associated to other more serious crimes.

14. Between 2000 and 2018, there were 35 convictions for offences under article 94,[6] mostly sanctioned by a suspended prison sentence, and in many instances concerning Swiss citizens who had joined the French Foreign Legion. In recent years, article 94 has also been used to prosecute individuals who returned to Switzerland after fighting alongside non-State armed groups regardless of their affiliation. For instance, in 2019, a military tribunal convicted a man for having served in a militia in the Syrian Arab Republic fighting against Islamic State in Iraq and the Levant between 2013 and 2015.[7] An appeal against the decision was pending at the time of writing. As regards the Federal Act on the Proscription of the Groups "Al-Qaeda" and "Islamic State" and Associated Organizations, there have been five legally enforceable decisions on the basis of this law since 2017.[8]

15. In its session of 8 March 2019, the Federal Council decided that Swiss authorities would not actively engage in repatriating adult Swiss nationals who had travelled abroad on the basis of "terrorist motivations". While acknowledging their right to return to Switzerland, the Council decided that, to the extent possible, such individuals should be prosecuted at the place of commission of the crime according to procedures that respect international standards, and should also serve their sentence there. The Council broadly referred, inter alia, to the possibility of supporting criminal proceedings on the ground, or assisting its citizens deprived of liberty through the framework of consular protection. The Council further observed that around 20 Swiss citizens associated with terrorism were present in conflict zones in the Middle East at the time.[9]

16. The Working Group expressed concern that, in some instances, that policy may put the rights of Swiss nationals at risk. The risks were particularly high in countries with laws that defined terrorism in broad and vague terms, and where the laws carried a death sentence, and in countries where suspected terrorists were allegedly subjected to torture or cruel, inhuman or degrading treatment or punishment, and were denied the right to a free and fair trial. The Working Group urges Switzerland to ensure that the rights of its citizens are upheld in line with its obligations under the international human rights treaties that it has ratified. In cases where Swiss citizens may be at risk of serious human rights violations, the authorities should seek their extradition.

[5] Available at www.admin.ch/opc/en/classified-compilation/20142993/index.html.

[6] See www.bfs.admin.ch/bfs/fr/home/statistiques/criminalite-droit-penal/justice-penale/jugements-mineurs-adultes.assetdetail.8946552.html.

[7] See www.rts.ch/info/suisse/10239019-le-combattant-suisse-anti-groupe-etat-islamique-condamne-avec-sursis.html.

[8] Figures shared by the Federal Department of Foreign Affairs.

[9] See www.ejpd.admin.ch/ejpd/fr/home/aktuell/news/2019/2019-03-08.html.

IV. Private military and security companies

17. During its visit, the Working Group considered three main aspects of the private military and security landscape in Switzerland: firstly, the leading role of Switzerland in developing the current international regulatory framework relating to private military and security companies; secondly, the development of its own legislation governing private security services abroad; and thirdly, private security companies operating domestically. Developments in these first two areas were prompted by widespread condemnation of serious human rights abuses committed by private military and security companies in Iraq and Afghanistan and pressure to raise standards for such companies. The Working Group particularly looked at the efforts by Switzerland to monitor and implement the related regulatory frameworks. Also of interest was the use of private security by private sector clients, especially in light of the importance of Switzerland in the international trade in gold and other commodities.

18. When considering these issues, the Working Group used the following definition of private military and security companies: a corporate entity that provides, on a compensatory basis, military and/or security services by physical persons and/or legal entities.[10]

A. International initiatives related to private military and security companies

19. Since 2006, Switzerland has shown commendable leadership in advancing the two main international regulatory initiatives on private military and security companies, namely 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 and the International Code of Conduct for Private Security Service Providers.

1. Montreux Document

20. Between 2006 and 2008, the Government of Switzerland and the International Committee of the Red Cross organized four intergovernmental meetings that culminated in the adoption of the Montreux Document. Since then, the number of participating States in the Montreux Document has grown from 17 to 56, and includes Switzerland and three international organizations.[11]

21. Developed in response to assertions that private military and security companies operate in an international legal vacuum while being increasingly active across national borders, the Montreux Document reaffirms the existing obligations of States, under international law, in particular international humanitarian law and international human rights law, relating to the activities of private military and security companies operating in contexts of armed conflict. Participating States support the Montreux Document on a voluntary basis as a show of commitment to the relevant international legal obligations referenced therein. The Montreux Document also sets out good practices for States relating to operations of such companies during armed conflict, which have increasingly been seen as relevant for non-conflict settings.

22. In 2014, the Montreux Document Forum was launched. Chaired by Switzerland and the International Committee of the Red Cross, it provides a venue for informal consultation among Montreux Document participants, seeks to bring more States and international organizations on board, and strengthens dialogue on lessons learned, good practices, and challenges around regulation of this sector. A Working Group on the International Code of Conduct Association (see para. 24 below) and another on the use of private military and security companies in maritime security have been established within the Forum.

[10] For the full definition, see A/HRC/15/25, annex, art. 2.

[11] See www.mdforum.ch/en.

2. International Code of Conduct for Private Security Service Providers

23. Through a Swiss-led multi-stakeholder initiative, the International Code of Conduct for Private Security Service Providers came into being in November 2010. The Code seeks to articulate human rights responsibilities of private security companies and to set out good governance principles and standards, based on international human rights law and international humanitarian law, for the responsible provision of private security services when operating in complex environments.

24. In 2013, the International Code of Conduct Association was set up as a Swiss non-profit association to act as an independent mechanism for governance and oversight of the Code. The Association has a tripartite Board composed of government, civil society and industry representatives. As of April 2019, seven governments, 85 private security companies, 32 civil society organizations and 33 observers participated in the Association. Only three Swiss-based companies were members of the Association.

25. The Government of Switzerland continues to play an active role in the Association and chairs its Board of Directors. The Working Group was informed that Switzerland encourages dialogue within the Association on how to engage with private clients of private military and security companies, for example in the commodities trading and sports sectors, and also supports the implementation of a complaints mechanism which would sanction violations by member companies. Furthermore, adherence to the Association is legally required for Swiss-based companies providing private security services abroad.[12]

26. The Working Group recognizes the large potential of this multi-stakeholder model for higher and more cohesive standards within the industry. It further welcomes the existence of the complaints mechanism and efforts to strengthen it, while noting the challenges in fully unpacking its potential, particularly in terms of bridging institutional layers between the Association and victims of human rights abuses and offering victims access to an effective remedy in line with international human rights standards.

3. Voluntary Principles on Security and Human Rights

27. Another relevant initiative is the Voluntary Principles on Security and Human Rights, elaborated in 2000 as "a set of principles designed to guide companies in the extractive sector in maintaining the safety and security of their operations within an operating framework that encourages respect for human rights". The Working Group's assessment of the Voluntary Principles can be found in its 2019 report on private military and security companies operating in the extractive industry (A/HRC/42/42). During its visit to Switzerland, the Working Group focused on the role of Switzerland in relation to the Voluntary Principles, particularly in light of the country assuming the role of Chair of the Voluntary Principles in March 2019.

28. Switzerland joined the Voluntary Principles as a participating government in 2011. Through its participation, Switzerland states that it works to ensure the broadest possible participation of governments in the initiative and to create synergies between the International Code of Conduct for Private Security Service Providers, the Voluntary Principles and the Swiss National Action Plan to implement the Guiding Principles on Business and Human Rights (see para. 32 below).[13]

29. When it was first Chair of the Voluntary Principles in 2013/2014, the Government of Switzerland supported the development of a verification framework for companies, governments and non-governmental organizations to streamline implementation of the initiative. The framework requires that member companies submit annual reports assessing progress made and results achieved in implementing the initiative. The companies choose whether to make the reports public. More recently, the Government has prioritized the implementation of the Voluntary Principles on the ground through in-country working

[12] See also paras. 51–53.

[13] See www.fdfa.admin.ch/eda/en/home/foreign-policy/human-rights/human-rights-policy/business-human-rights.html.

groups, for instance in Ghana, Myanmar, Nigeria and Peru, and supported outreach to third-country companies to join the initiative.[14]

30. One Swiss-based extractive company told the Working Group about its efforts to implement the Voluntary Principles in its mining operations and the challenges it had encountered. For example, in one country, the company provided training to security providers due to the lack of skilled and qualified workers. The company also emphasized that it tried to tailor security approaches to local contexts, and noted that, from its perspective, the conduct of public security forces was often more problematic than that of private security providers over whom, it argued, the company had greater control through contractual clauses and requirements. That said, public security forces were, at least in theory, subject to greater public scrutiny.

31. Overall, while several stakeholders recognized the practical framework that the Voluntary Principles provided and the useful tools that had been developed to seek to give companies the know-how for implementing them, there was considerable criticism of their limited impact for communities near extractive operations.

4. Guiding Principles on Business and Human Rights

32. The Working Group also considered broader initiatives, notably under the framework of the Guiding Principles on Business and Human Rights, to assess their effectiveness in strengthening human rights protection in the private military and security industry. In 2016, Switzerland adopted a report outlining a National Action Plan for the implementation of the Guiding Principles.[15] A revised National Action Plan for 2020–2023 was approved by the Federal Council in January 2020.[16]

33. The Working Group took note of several references to private security in the 2016–2019 Action Plan. These references primarily focused on information about initiatives undertaken, outreach, legislative developments (notably the Federal Act on Private Security Services Provided Abroad), and the role of Switzerland in international multi-stakeholder initiatives such as the International Code of Conduct Association and the Voluntary Principles. While these are significant achievements, the approach taken looked backwards rather than pointing forwards and failed to elaborate on new objectives and measures with respect to private military and security companies. The 2020–2023 Action Plan lacks detail in the area of private security. It fails to seize the opportunity to formulate objectives to consolidate and strengthen achievements made thus far with regard to private security services provided abroad, and to include goals to strengthen regulation of private security services provided domestically.

34. In addition to the National Action Plan, the Government has developed specific initiatives to foster the implementation of the Guiding Principles in several business sectors that rely heavily on private security.[17] For example, in 2018, the Government issued a guidance document for the commodity-trading sector on implementing the Guiding Principles.[18] This guidance is particularly relevant as Switzerland is one of the most important commodity-trading centres in the world, and given that there are persistent allegations of human rights violations and abuses in the complex and varied supply chains related to the mining, buying, transporting, storing, transforming and selling of natural resources.[19] The document makes reference to public and private security in relation to potential adverse human rights impacts associated with commodity trading, notably in the context of buying and storing commodities. It also gives the example of how a trading

[14] See www.voluntaryprinciples.org/wp-content/uploads/2020/02/Switzerland-2018-Annual-Report.pdf.

[15] See www.seco.admin.ch/seco/en/home/seco/nsb-news.msg-id-64884.html.

[16] See www.nap-bhr.admin.ch/napbhr/en/home.html.

[17] See www.fdfa.admin.ch/eda/en/home/foreign-policy/human-rights/human-rights-policy/business-human-rights.html.

[18] See www.seco.admin.ch/seco/en/home/Publikationen_Dienstleistungen/Publikationen_und_Formulare/Aussenwirtschafts/broschueren/Guidance_on_Implementing_the_UN_Guiding_Principles_on_Business_and_Human_Rights.html.

[19] See, for example, www.gfbv.ch/en/campaigns/no-dirty-gold/#switzerlands-role.

company may contribute to adverse impacts through the use of private security at different levels of the supply chain.

35. In 2015, a coalition of Swiss civil society organizations launched a public initiative to hold Swiss companies to account for human rights abuses committed abroad. The Swiss Responsible Business Initiative[20] obtained well over the required 120,000 signatures to trigger a citizen initiative. It seeks to introduce a partial amendment to the Constitution to include mandatory human rights due diligence. At the time of the visit, the Swiss Parliament was deliberating a counter-proposal containing elements from the Initiative with a more limited scope. While private military and security companies did not feature in the debate, any law concerning Swiss companies operating abroad could affect them, in addition to the Federal Act on Private Security Services Provided Abroad. The Working Group strongly supports any initiative that would strengthen human rights due diligence and supply chain liability in Switzerland, including for operations of Swiss-based private military and security companies abroad.

5. An international legally binding instrument

36. In parallel to the development of the above-mentioned non-binding initiatives on private military and security companies, there has been, since 2010, a process within the Human Rights Council to consider the possibility of elaborating an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies, including potentially an international legally binding instrument. During the visit, officials told the delegation that Switzerland considered the above-mentioned non-binding initiatives as complementary to an international regulatory framework, and noted that, for some stakeholders, it appeared important to reach an agreement on the content of an international regulatory framework before focusing on the nature thereof. Officials also elaborated on the positive aspects of these initiatives, such as inclusiveness, speed, and their apolitical and humanitarian nature. Nevertheless, it is important to note that, while extremely worthwhile, these initiatives are subject to critical limitations, particularly in relation to their narrow scope, the small number of States and companies that have committed to them, and their limited effectiveness in securing accountability and effective remedies for victims of abuses.

B. Regulation of Swiss-based private military and security companies operating abroad

1. Aims and scope of application of the regulation

37. Switzerland's reflections on better regulation for private military and security companies operating abroad were initiated in 2005. Three reports were adopted between 2005 and 2010 to scope the issue, which gained traction in 2010 when it was reported in the media that a holding company of a large private military and security company had moved to Switzerland. The activities of the private military and security company abroad were deemed not to be in conformity with Swiss foreign policy principles and objectives. This generated a sense of urgency to legally restrict the kinds of services that could be provided by Swiss companies abroad. As a result, the Federal Act on Private Security Services Provided Abroad, of 27 September 2013, was adopted, and the Act and its accompanying ordinance entered into force on 1 September 2015.[21] The company in question subsequently left Switzerland.

38. Positively, compliance with international law, and in particular human rights law and international humanitarian law, is one of the Act's four objectives (art. 1), against which activities are assessed on a case-by-case basis. The other three objectives are to contribute to: safeguarding the internal and external security of Switzerland; realizing the

[20] See https://corporatejustice.ch.

[21] See www.eda.admin.ch/eda/en/home/foreign-policy/security-policy/bundesgesetz-ueber-die-im-ausland-erbrachten-privaten-sicherheit.html.

foreign policy objectives of Switzerland; and preserving Swiss neutrality. Private security services that contradict these aims must be prohibited by the responsible authority (art. 14). The Act focuses on private security services rather than entities. An extensive list of services fall within the scope of the Act, ranging from security services at events to operating and maintaining weapons systems (art. 4). Hence, the regulation recognizes that private security services are provided by a wide variety of companies and sectors, including, for example, the intelligence and defence industries in Switzerland for the services they provide in relation to training or maintenance of equipment.

39. The Act applies not only to companies that establish, base, operate or manage a private security company in Switzerland, but also to those that exercise control over such a company from Switzerland (art. 2). This wide scope of application, coupled with the focus on services rather than on self-identification as a private security company, provides a means to ensure that a maximum number of potentially problematic activities falls under the law. Certain classic activities, however, such as protection of persons and guarding or surveillance of property, are covered by the Act only when undertaken in "complex environments", with a cumulative definition of "complex environments" that arguably sets the threshold too high.[22]

40. Importantly, the Act includes several categorical prohibitions. Specifically, a prohibition applies to services related to direct participation in hostilities (art. 8) and to services where it may be assumed that they will be utilized by the recipient(s) in the commission of serious human rights violations (art. 9). The law does not list specific violations, but the Working Group was informed that article 9 also encompassed gender-based violations, including sexual and gender-based violence.

2. A declaratory system

41. The Act provides for a declaratory procedure whereby legal persons, natural persons and business associations that provide private security services within the scope of the Act are required to declare all such activities to a federal authority that reviews them to ascertain whether they comply with the Act (art. 10). Moreover, companies are to notify the competent authority of any significant changes that occurred after the initial declaration of activities.

42. Pending notification from the competent federal authority, the company is required to refrain from carrying out the declared activities (art. 11). Where there are indications that an activity may be provided in non-compliance with the law, for instance contravening the aims of the law, the competent federal authority initiates a review procedure (art. 13) and decides whether an activity shall be prohibited. Some types of activities are subjected to a particularly thorough review, for example those provided in crisis or conflict regions or where they may be of service to institutions or persons in the commission of human rights violations (art. 14). In the case of non-compliance with the prohibitions and obligations described above, the Act provides for sanctions (sect. 5).

43. The declaratory procedure also requires companies to inform the competent authority about the measures taken for basic and advanced training of personnel, and specifically mentions training in human rights law and international humanitarian law for persons carrying out management duties and those carrying weapons.

3. Implementation of the Federal Act and its implications

44. To implement the law, the federal authorities have gone to great lengths to raise awareness with concerned companies and to prepare material to facilitate their work in abiding by their obligations under the law. This includes detailed guidelines explaining the contents of each article to enable companies and individuals to better understand the text, as well as a guidance document for companies on the elements that should be covered in the training provided to their personnel (including but not limited to: international human rights

[22] See www.eda.admin.ch/dam/eda/en/documents/aussenpolitik/sicherheitspolitik/Verordnung-ueber-die-im-Ausland-erbrachten-privaten-Sicherheitsdienstleistungen-VPS_EN.pdf.

law, including a component on the prohibition of human trafficking, sexual exploitation/abuse and gender-based violence, and international humanitarian law). The document also provides guidance on what should be understood as sufficient training in this domain. The federal authorities regularly report on the implementation of the Act by publishing annual reports, as required by article 37. This allows companies, the broader public and other interested actors to keep abreast of activities, updates and statistics pertaining to the implementation of the law.

45. Nevertheless, implementation has its challenges. The Act is based on the premise that companies will declare relevant activities, with the risk that some companies may not do so. Notably, the law does not contain a monitoring mechanism, thus limiting the means for detecting undeclared activities or ensuring that companies are complying with its provisions. Limited human resources within the competent authority for implementing the Act is also a considerable challenge.

46. Overall, however, the competent federal authority has made tangible progress in putting the Act into practice since it entered into force in 2015. The annual implementation reports indicate a gradual increase in the number of declarations made regarding private security services provided abroad, suggesting that companies are increasingly aware of their obligation to comply with the law. In 2018, 24 companies made 479 declarations to the federal authority,[23] a large majority of which concerned the protection of persons and the guarding or surveillance of goods and properties in "complex environments". Services for armed or security forces, such as operational or logistical support, and intelligence activities, were among other sizeable services declared. About half of the declared activities were concentrated in the Middle East and North Africa.

47. The review procedure appears to be conducted for a small number of declared activities. In 2018, 16 review procedures were launched for the 479 activities declared, resulting in seven prohibitions, all related to operations involving armed or security forces, with the remaining cases either pending or allowed to carry out the declared activity.

48. The June 2019 decision of the competent authority to prohibit a company from providing services in Saudi Arabia and the United Arab Emirates on the grounds that these services were incompatible with the foreign policy objectives of Switzerland[24] received significant attention and led some to question the scope of the Act. The company in question exported military training airplanes, used by pilots who would go on to fly fighter aircraft,[25] together with accompanying technical support services. While the export of military equipment is regulated under the Federal Act on War Material and the Federal Act on the Control of Dual-Use Goods, Specific Military Goods and Strategic Goods, related services such as maintenance and training also fall under the scope of the Federal Act on Private Security Services Provided Abroad, thus creating a certain overlap. Separate regimes are in place for obtaining the necessary authorizations, and a coordination mechanism is in place. In this case, the authorities found that the company had failed to comply with its obligation to declare its activities abroad, and reported the incident to the Office of the Attorney General, which reportedly dismissed the complaint.[26] Moreover, the company decided to legally challenge the prohibition of its activities, the first time that a business entity had contested a decision of the federal authorities implementing the Act. At the time of writing, the case was pending before the Federal Administrative Court.

49. Significantly, the case gave rise to questions about the implementation of the Act, with some parliamentarians requesting the Government to review its interpretation of the scope of the Act and to clarify the interplay with the federal regulation on arms exports.[27] In

[23] See www.eda.admin.ch/dam/eda/en/documents/aussenpolitik/sicherheitspolitik/taetigkeitsbericht-2018_EN.pdf.

[24] See www.admin.ch/gov/en/start/documentation/media-releases.msg-id-75587.html.

[25] See www.pilatus-aircraft.com/en/fly/pc-21.

[26] See https://www.rts.ch/info/suisse/10962257-pilatus-n-a-pas-viole-la-loi-suisse-avec-ses-activites-au-moyen-orient.html.

[27] See www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20193991 and www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20194297.

2019, an interdepartmental working group assessed the two legislative frameworks and proposed solutions to improve harmonization. On this basis, in February 2020, the Federal Council instructed relevant ministries to submit amendments to the Ordinance on Private Security Services Provided Abroad for consideration by the Federal Council later this year. One of the proposals under consideration includes the possibility for the Federal Council to have the final say in cases where "the authorities have differing views or the arrangements concerned have far-reaching political implications".[28] There is a risk now that the current wide scope of application of the Act may be narrowed should some stakeholders seek to strip the Act of one of its key strengths – namely, capturing a wide array of activities that risk leading to human rights abuses and/or violations of international humanitarian law.

50. With regard to implications of the Act on business activity in Switzerland, the Working Group heard from a company whose activities fell within the scope of the Act. The company representative informed the Working Group that, from its perspective, the Act and the related regulation provided transparent and clear rules for the provision of security services abroad. The company stated that complying with the regulation involved considerable initial workload but could subsequently be managed efficiently and routinely. The Act and related regulation had also spurred the company to seek membership of the International Code of Conduct Association, resulting in an overhaul of its management standards and a revision of its human rights policy. The Working Group was also informed that, following the adoption of the Act, some companies had reportedly come to Switzerland to demonstrate their compliance with standards encapsulated in the Act. Others had apparently decided to relocate elsewhere.[29] As a result, the Act may be considered to be an effective means of preventing companies providing services that contradict the aims of the Act from establishing themselves in Switzerland.

4. Swiss federal authorities contracting private security services abroad

51. Besides, the Act regulates the use of private security companies by federal authorities in "complex environments" abroad and defines the minimum requirements for the companies concerned (sect. 7). Requirements on the training of personnel (art. 32) go beyond the brief reference to training in the earlier part of the text (see para. 44). Here, mention is made in the Act itself of the need for, inter alia, training on fundamental rights, personal privacy rights, and the use of physical force and weapons. Moreover, only member companies of the International Code of Conduct Association may be contracted by federal authorities in "complex environments".

52. These requirements apply to Swiss representations abroad that contract private security services for protection tasks in "complex environments". For contracts in other contexts, similar rules apply on the basis of the Ordinance on the Use of Private Security Companies by the Federal Government, but membership of the International Code of Conduct Association is not mandatory. The Federal Department of Foreign Affairs advises its representations abroad on procurement and contracts in compliance with the Act, although the large majority of contracts with private security providers are concluded locally. A publicly available model contract for Swiss federal authorities and private security providers provides transparent guidance on the prerequisites and obligations to be fulfilled by private security providers abroad. This includes clauses on training, non-discrimination, identification of personnel, use of force and weapons, and liability for harm to third parties. The Code of Conduct for Contractual Partners of the Federal Department of Foreign Affairs is also an integral part of the contract.[30]

53. The Working Group was informed that private armed protection services were used in a very limited number of high-risk areas, and that contracted private security personnel usually did not enjoy diplomatic privileges or immunities. In some cases, interest in

[28] See www.admin.ch/gov/en/start/documentation/media-releases.msg-id-78076.html.

[29] See www.rts.ch/info/economie/5803567-l-entreprise-aegis-quitte-la-suisse-en-raison-du-changement-de-legislation.html.

[30] See www.dfae.admin.ch/dam/eda/en/documents/dienstleistungen-publikationen/code-conduct-partners_EN.pdf.

obtaining a contract with a Swiss representation abroad had motivated companies to seek membership of the International Code of Conduct Association. There are, however, also challenges for Swiss representations operating in countries with little or no Association membership among security providers and where qualified security providers can be hard to find. Alternative measures, such as making use of United Nations security services, are used to mitigate such challenges in some cases.

54. Hiring of private military and security companies by federal authorities is governed by general public procurement procedures that are designed to ensure a transparent process, competition between and equal treatment of bidders, and value for money. Authorities putting out a tender are expected to include all relevant requirements set out in the Act, such as the requirement for companies to be members of the International Code of Conduct Association. While this is positive given the strengths of the Act, it would be stronger to explicitly mention human rights aspects in tenders, such as requiring contractors to have internal policies regarding human rights, gender equality and non-discrimination as well as a prohibition of sexual and gender-based violence, including sexual harassment.

C. Private military and security companies operating within Switzerland

1. Regulatory framework

55. Cantonal autonomy and decentralization are fundamental parts of the Swiss political and legal landscape and the 26 cantons of the Confederation have competence over security matters. The Confederation can legislate on economic activities, as do the cantons, and has made use of this competence only regarding private security services provided abroad. In contrast to the above-mentioned Federal Act on Private Security Services Provided Abroad, there is no uniform regulatory framework at the federal level for private security providers operating within Switzerland, a matter governed in part by cantonal law. As a consequence, disparities in the minimum standards required from private security companies operating domestically exist.

56. Paradoxically, efforts to develop and adopt consistent legal rules for private security companies operating domestically predate the discussions culminating in the aforementioned Federal Act. An intercantonal agreement, known as the Concordat on Private Security Companies, was adopted by six of the Romandie cantons[31] in 1996, establishing uniform rules for the operations of such entities. An intercantonal commission meets regularly to ensure a consistent implementation of the Concordat in these cantons. To facilitate implementation and interpret some of the Concordat provisions in more detail, the commission elaborated seven guiding directives.[32]

57. To comply with the Concordat, private security companies need to obtain a permit for the company and for their employees from the competent cantonal authorities (art. 7). The permits are recognized by all cantons of the Concordat and are valid for four years. The Working Group was informed that thorough background checks are conducted by the authorities, going beyond simple checks on criminal records. A directive guides cantonal authorities on how to assess the requirements of good repute, including elements related to behaviour and attitude as described in the Concordat (arts. 8 and 9).

58. To obtain a permit, the manager of a private security company must pass an examination organized by the cantonal authorities (art. 8). A separate directive details the form and contents of the examination, including, inter alia, specific provisions of the Criminal Code and the Criminal Procedure Code. Companies registered in cantons that are not part of the Concordat need to request a permit from the cantonal authorities, who assess the conformity of permits delivered by other cantons with the Concordat requirements.

59. Moreover, the Concordat elaborates the obligations of private security companies and their personnel, including a restriction on the use of force and a requirement to provide initial and continuous training to private security personnel (sect. IV). The content,

[31] Fribourg, Geneva, Jura, Neuchâtel, Valais and Vaud.

[32] See www.cldjp.ch/actes-des-conferences/concordat-ces/.

modalities and monitoring of the training requirement are elaborated in another directive. Private security personnel are further obliged to carry specific identification delivered by the cantonal authorities and to use vehicles, uniforms and other equipment that are easily distinguishable from those of public police forces and subject to approval by the cantonal authorities.

60. The Working Group commends the Romandie cantons for developing and implementing a regulatory framework for private security companies operating within their territory, and for the commitment and knowledge of the cantonal authorities it met. The *Concordat romand* sets an important baseline for ensuring minimum standards and seeking to prevent human rights abuses by private security companies and their personnel.

61. A draft concordat for the remaining cantons was developed in 2010 but never entered into force after being rejected by several cantons, including those where a large number of private security companies are registered. The draft envisaged a four-step training system for private security personnel and gave the responsibility to verify requirements for private security personnel to their employers instead of public authorities. The creation of a heavy administrative burden, for both cantonal authorities and companies, especially smaller ones, was given as one of the reasons for the rejection of the draft concordat in some cantons.

62. Following the rejection of the draft concordat, some cantons opted to develop their own legal framework for private security companies, while others have no specific legal basis for the operations of such companies. Some stakeholders argue that this encourages private security companies to be registered in cantons with no or weak regulation and does not incentivize higher standards and requirements, such as thorough vetting and consistent training.

63. The Canton of Zurich, for example, adopted its own legislation to regulate private security companies and rejected the draft concordat. As of 1 January 2019, companies are required to register with cantonal authorities, who vet the executive director of the company, but not its staff – a task to be fulfilled by companies themselves. The lack of a criminal record appeared to be an important element of the vetting procedures in both cases. In terms of registering the company in the Canton, additional elements of the vetting procedure were cited, including a background check of the company's director and sufficient training by private security personnel as appropriate to their respective security tasks. Contrary to the draft concordat, permits obtained by private security companies are not limited in time, but remain valid as long as the same executive director is responsible and as long as there are no changes that result in the requirements not being met anymore.

64. The rejection of the draft concordat reinforced the calls of certain constituencies and convinced others to push for federal legislation that would establish common minimum standards applicable to private security providers across the entire country. At the time of the visit, the Swiss Parliament was deliberating on a proposal to entrust the Federal Council with the preparation of a draft law,[33] which had the support of the Federal Council as well as the main private security industry association in Switzerland. However, Parliament rejected the motion in December 2019, arguing that the activities of such companies should be regulated by cantonal and not federal law.

65. This latest development has put efforts to elaborate a standard regulatory system for the whole country on hold, which is unfortunate given the need to harmonize and consolidate existing good practice in some cantons. Indeed, the positive lessons from the implementation of the *Concordat romand* should serve as a starting point for elaborating a nationwide framework that would close existing regulatory gaps and offer solid safeguards for private security companies to respect human rights.

2. Private security providers within Switzerland

66. Private security providers are increasingly used by both public and private clients to deliver a broad range of services. The number of companies and private security personnel

[33] See www.parlament.ch/fr/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20163723.

has consistently grown over the last 20 years. Approximately 23,000 private security personnel working in some 800 companies outnumber the 18,600 Swiss police officers, thus recalibrating the security landscape.[34] Switzerland is among the European countries with one of the lowest ratios of police forces compared to the size of the population. The industry's workforce is largely male-dominated, with a slight increase in the percentage of female personnel from 18 per cent in 2013 to 21 per cent in 2015.[35]

67. The private security market is dominated by a handful of large companies operating alongside a myriad of small and medium-sized enterprises. In 2015, 17 companies had more than 100 employees and only 2 had more than 1,000.[36] Services commonly provided included guarding of persons and property, patrolling, video surveillance and monitoring the related video feed, cash-in-transit, traffic control, dog handling, security at public events, and transport of prisoners.

68. The main industry association of private security providers, the Association of Swiss Security Service Companies, has around 80 member companies and represents industry interests vis-à-vis the Government and other stakeholders.[37] The Association also provides professional training to private security personnel, notably by organizing examinations for three nationally recognized diplomas related to private security.

69. Nevertheless, the Association does not play the role of a self-regulatory mechanism aiming to uphold and improve standards in the industry, and no other body fulfils this role. There is no sector-wide code of conduct elaborating ethical and legal duties and human rights responsibilities of private security companies. In 2017, the Association established the function of a mediator mandated to support member companies with an impartial interpretation of legal rules and to suggest solutions to resolve disputes, mainly as regards labour issues and contracts. The mediator, however, cannot receive grievances from individuals and members of the public against member companies.

70. In terms of labour conditions, a collective work agreement was put in place in 2004 and renewed in 2014. The agreement defines the minimum conditions of work and remuneration and applies to all private security companies operating in Switzerland with more than nine staff members.[38] A mechanism to monitor compliance with the agreement is in place and can impose sanctions or start legal proceedings in case of non-compliance. The agreement also includes an obligation to provide staff with initial training lasting at least 20 hours. Although this could be an opportunity to ensure consistent minimum standards throughout the industry, some stakeholders have observed that the training is often outsourced and increasingly delivered through online platforms, negatively impacting on the quality.

3. Use of private security services by governmental authorities

71. Private security providers have increasingly come to fulfil a range of security tasks for public entities. This trend is driven by an increasing demand for security services linked to the way society has evolved, with a rise in large public events and the development of infrastructure, among other things. Increased demands on police, coupled with budgetary pressures, appear to be pushing public authorities to prioritize the use of police for core security tasks, potentially involving the use of force, and the delegation of tasks perceived as minor and non-sensitive to private security providers.

72. Private security providers deliver tasks related to traffic control, issuance of parking tickets, guarding of buildings, and securing large sporting and other public events, as well as to more sensitive areas such as ensuring security inside and outside facilities for asylum seekers, transportation of prisoners, maintaining peace and order, and patrolling public spaces. These tasks, and the associated regulatory framework, vary from one canton to

[34] Figures shared by the Swiss Association of Police Officers.
[35] See www.coess.org/newsroom.php?page=facts-and-figures.
[36] Figures shared by the Association of Swiss Security Service Companies.
[37] See www.vssu.org/Association/A-notre-sujet.
[38] See www.unia.ch/fr/monde-du-travail/de-a-a-z/secteur-des-services/securite/cct.

another. In the French-speaking part of Switzerland, for example, the police have exclusive authority for the maintenance of law and order and public patrols. In prisons and penal institutions, 15 cantons employ private security companies regularly, while 2 cantons prohibit this practice. The tasks performed in those 15 cantons vary from the provision of security outside the institutions to tasks requiring direct contact with inmates in situations that do not rule out the use of direct force, such as security service support in the case of serious staff shortages or transfers within the institution.

73. At the federal level, the Ordinance on the Use of Private Security Companies by the Federal Government, of 2015,[39] defines requirements for such contractors and specifies contractual obligations that must be included when engaging private security services domestically or abroad.[40] It makes references to the above-mentioned Federal Act on Private Security Services Provided Abroad. Importantly, among other requirements, private security providers should be applying a code of conduct; have an adequate internal control system and disciplinary measures in place to ensure appropriate behaviour by staff; and provide training appropriate to the protection tasks to be fulfilled, including fundamental rights and the use of force. Nevertheless, the Ordinance does not contain gender-specific clauses, for example in regard to internal policies on gender equality and non-discrimination.

74. Neither the 2015 Ordinance nor any other regulation clearly defines public security tasks that can be delegated to private contractors. Rather, the delineation of responsibilities appeared to be based on the concept of the State monopoly on the use of force. Unlike the police, private security personnel have no special prerogative to use force. As ordinary citizens, the Swiss Criminal Code restricts and limits their right to use force to legitimate self-defence, including the right to defend property, and persons under their protection, the legitimate defence of others, and necessity.[41] They can also bear arms as can any other citizen, in line with the existing legal requirements and restrictions.[42]

75. A 2018 decision of the Federal Supreme Court prohibiting private security personnel from requesting identification of citizens in public spaces was cited as an additional rule to delineate police and private security responsibilities.[43] The case involved personnel from a private security company contracted by a municipality to perform public peace and order functions. A private security guard was fined for requesting and taking a picture of an identification document belonging to a minor.

76. The case illustrates the challenges in ensuring that private security providers do not overstep their authority in performing public functions, particularly as members of the public may not be aware of the respective prerogatives of public and private security actors. Moreover, identification carried by private security personnel varies depending on cantons. Several stakeholders told the Working Group that some private security personnel may not always fully respect the limits of their roles and responsibilities, a challenge that was ascribed to limited and inconsistent training and insufficient vetting.

77. The Working Group considered the specific example of asylum and migration, given the vulnerable situations in which migrants and asylum seekers find themselves and the ensuing risk of human rights abuses. The delegation met with the State Secretariat for Migration – the federal authority responsible for operating federal asylum centres – and visited the federal asylum centre in Kappelen bei Lyss in the Canton of Bern. The delegation met male and female private security personnel working in the centre and spoke to some of the residents. The delegation had requested a visit to the federal asylum centre in

[39] See www.admin.ch/opc/fr/classified-compilation/20150956/index.html.

[40] For security services contracted in complex environments abroad, the Ordinance applies in conjunction with the Federal Act on Private Security Services Provided Abroad; see also paras. 49–52 of the Ordinance.

[41] Arts. 15.3 and 17.3 of the Criminal Code; see www.admin.ch/opc/fr/classified-compilation/19370083/index.html.

[42] See www.admin.ch/opc/en/classified-compilation/19983208/index.html and www.admin.ch/opc/fr/classified-compilation/20081148/index.html#a48.

[43] Decision 1298/2017 of 4 June 2018.

Embrach in the Canton of Zurich, where there appeared to be stringent security arrangements in place, but the authorities were not able to facilitate such a visit.

78. The State Secretariat for Migration contracts private companies for security services inside the federal asylum centres where private security personnel provide a number of services, such as maintaining peace and order, conducting entry and exit checks or intervening during emergencies before the arrival of the police or rescue services. Some centres reportedly had a tighter security regime in place than others. Private security personnel working in federal asylum centres are subject to some vetting and training procedures, and receive training on a number of issues, including cross-cultural competencies. However, the timeliness of delivery and content of the training was reportedly not always adequate. Moreover, little clarity was provided regarding the inclusion of human rights aspects, such as the principle of non-discrimination and gender issues, into training received by private security personnel working in federal asylum centres.

79. The Working Group was pleased to find that decision-making processes affecting residents of the federal asylum centres, such as the security regimes implemented or sanctions taken against residents, were not delegated to private security personnel but remained in the hands of public authorities. Equally, there were limitations on the use of force, and private security personnel carried minimal equipment, such as pepper gel, for use in case of aggressive and harmful behaviour. The Working Group was told that such situations arose only sporadically and coercive measures were used minimally and had to be formally recorded and reported.

80. The presence of at least one female security guard at all times in the asylum centre was a positive element to ensure that security rules were implemented taking into consideration the specific needs of women and children. However, in centres accommodating significant numbers of women and families, the presence of a single female security guard may be insufficient.

81. In June 2019, the State Secretariat for Migration published a tender for private security services to be provided in federal asylum centres in 2020 and 2021, with possible renewal up to 2027.[44] The tender included the prerogative of federal authorities to conduct background checks on individual private security staff to be deployed to the centres,[45] and other requirements established in the 2015 Ordinance.[46] Moreover, bidders were expected to carry out regular background checks on their employees every two years, including checking of criminal records. Concerning training, and in addition to the 2015 Ordinance, the tender required companies to submit their (continuous) training programmes together with their offer and to ensure that staff received cross-cultural training every two years. The Working Group was pleased to see the tender openly published but noted the lack of human rights references therein. The Working Group encourages the State Secretariat for Migration to further detail the tender requirements in the contract itself, including by elaborating on specific human rights principles, such as non-discrimination, and by putting in place thorough compliance monitoring by the federal authorities.

V. Conclusions and recommendations

82. **With its historic tradition of mercenarism, Switzerland has found ways to curtail the numbers of mercenaries to a minimum through the institutionalization of neutrality as a founding principle of its foreign policy. Although Switzerland has not ratified the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, its current legal framework appears to be sufficient to deal**

[44] Call for offers of 4 June 2019, notice number 1076737, available at www.simap.ch.

[45] See www.admin.ch/opc/fr/classified-compilation/20092321/index.html.

[46] The background checks are regulated by the Federal Act on Measures to Safeguard Internal Security (sect. 4) and the Ordinance on Personal Security Checks, which deal with access to sensitive and classified information. Basic background checks largely rely on the criminal record and any ongoing legal proceedings.

with the handful of cases that are brought to the attention of judicial authorities. That said, it is important for the authorities to ensure that adult Swiss nationals who travel abroad with "terrorist motivations", some of whom may be considered mercenary-related actors, receive appropriate support from the Swiss authorities to ensure that their rights are upheld if they are prosecuted in countries with poor human rights protections.

83. **In the area of private military and security companies, Switzerland has shown exceptional leadership and commitment by steering international initiatives aimed at raising standards within the industry and increasing levels of awareness about the responsibilities of private military and security companies to respect human rights, prevent abuses by their personnel, and ensure access to an effective remedy in the event of such abuses. In 2019, Switzerland acted as Chair of three of the most important international initiatives in this field, namely the Montreux Document Forum, the International Code of Conduct for Private Security Service Providers and the Voluntary Principles on Security and Human Rights. It remains unclear, however, whether there has been any tangible progress towards achieving the stated objective of increasing the impact of these initiatives on the ground during the past year. In the future, greater resources and efforts are needed to ensure tangible results.**

84. **Building on its role in international forums, Switzerland modelled strong regulatory practices by enacting national legislation in 2013 in the form of the Federal Act on Private Security Services Provided Abroad, as promoted by the Montreux Document. The Act is grounded in international human rights law and international humanitarian law and has a wide scope of application with a focus on services rather than entities. The Working Group commends Switzerland on the adoption of this law and on the exemplary efforts undertaken for practical implementation of the legislation, as demonstrated by the 2019 decision to prohibit services linked to the export of military training aircraft to Saudi Arabia and the United Arab Emirates. This decision offers a rare example, worldwide, of balancing risks to human rights and international humanitarian law with interests of the defence industry and related services. The Working Group therefore looks with concern at the recent discussions about potentially narrowing the scope of the Act, a development that could revert the regulatory progress made and weaken the ability to prevent human rights abuses and/or violations of international humanitarian law in the future.**

85. **Compared to private security services provided abroad, the regulatory framework with respect to private military and security companies operating domestically is lagging behind. The Working Group recognizes that no serious human rights abuses by such companies have been brought to its attention. Nevertheless, considering the sensitive nature of some of the tasks performed by private security providers, the Working Group is concerned about the lack of a consistent legal framework for their operations, especially in relation to vetting, training and oversight. While recognizing that cantonal autonomy and decentralization are fundamental parts of the Swiss political and legal landscape, the Working Group finds that the current regulatory system does not adequately ensure minimum standards for private security companies and their personnel across the country. A regulatory framework that would ensure consistent regulation of private security services for all cantons is therefore needed. The Working Group is disappointed that a parliamentary motion opening the way to federal legislation on private security services was rejected in 2019 and encourages the Government and all other relevant stakeholders to consider new initiatives that would make possible a framework that is applicable throughout the country.**

86. **In light of the findings elaborated above, the Working Group provides the following recommendations to the Swiss authorities:**

International initiatives relevant to private military and security companies

87. **Continue to exercise leadership by pushing forward processes to strengthen existing international non-binding initiatives related to private military and security companies.**

88. **In particular, invest greater resources and efforts to assist the International Code of Conduct Association to: (a) make its complaints mechanism more robust; (b) explore ways to strengthen monitoring of compliance with the Code and to bring to light human rights abuses and violations of international humanitarian law by member companies in ways that ensure the protection of victims and witnesses; and (c) facilitate victims' access to an effective remedy in line with international human rights standards. Overall, there is a need to dedicate sufficient resources towards these objectives by all three pillars of the Association.**

89. **With regard to the Voluntary Principles on Security and Human Rights, work with other members to outline and concretize the Voluntary Principles on the ground, particularly with Swiss-based companies in the extractive and commodities sectors; build on its annual reports by providing detailed information regarding implementation of the Voluntary Principles by Switzerland; encourage Swiss commodity trading companies to join the Voluntary Principles; and explore ways to collaborate with the International Code of Conduct Association to ensure that private security providers used for shipping, transporting and storing commodities respect human rights and understand and assess human rights risks associated with upward supply chains (producers of raw materials).**

90. **Substantively contribute to the open-ended intergovernmental working group to elaborate the content of an international regulatory framework, without prejudging the nature thereof, relating to the activities of private military and security companies, pursuant to Human Rights Council resolution 36/11, and support an international legally binding instrument in this area.**

91. **Elaborate upon elements related to private security in the 2020–2023 National Action Plan for Business and Human Rights, for example by developing an accompanying plan that includes actions to: (a) overcome challenges in implementing the Federal Act on Private Security Services Provided Abroad, of 2013; (b) support relevant multi-stakeholder initiatives to achieve tangible impact on the ground; and (c) raise minimum regulatory standards concerning private security services within Switzerland.**

92. **Seize the momentum created by the Responsible Business Initiative to enshrine mandatory human rights due diligence in the Constitution and to opt for the most comprehensive and far-reaching text possible.**

Regulation of companies providing private security services abroad

93. **Maintain the wide scope of application of the Federal Act on Private Security Services Provided Abroad. Furthermore, clarify and harmonize the procedure applicable for services falling within the scope of both the Federal Act on Private Security Services Provided Abroad and the federal regulation on arms exports, while ensuring that human rights and international humanitarian law safeguards contained in the Federal Act are retained.**

94. **Continue to raise awareness about the Federal Act with Swiss companies offering private military and security services abroad.**

95. **Explore ways to strengthen monitoring of compliance with the Federal Act, including by increasing available human resources within the competent authorities.**

96. **Consider lowering the threshold defining "complex environments" in the Ordinance on Private Security Services Provided Abroad in order to widen the scope of application of the Federal Act.**

97. **Conduct a gender analysis of the Federal Act, the accompanying Ordinance and other guidance, and consider issuing additional guidance on a gender-sensitive implementation of the Act.**

Private military and security companies in Switzerland

98. **Adopt a unified regulatory framework to set minimum standards for private security companies applicable in all cantons of the Confederation. This should contain: (a) a clear definition of the private security activities falling within the scope of the regulation; (b) clear delineation of the competencies of police and private security respectively; (c) thorough background checks conducted by police or the appropriate cantonal authority on all private security employees, going beyond simple checks on criminal records; (d) standardized training, including on human rights; (e) restrictions regarding the use of force by private security personnel; (f) a requirement to be distinguished by uniform and insignia; and (g) a greater oversight function for the State on actions by private security.**

99. **In the period before a unified regulation is adopted, cantonal authorities should consider ways to enforce minimum standards on private security companies, notably in terms of vetting, training, monitoring and oversight.**

100. **Encourage public authorities at all levels of government to integrate stricter requirements into contracts with private security providers in relation to human rights standards, including the principle of non-discrimination, gender issues, vetting, and monitoring of contractual obligations.**

101. **In federal asylum facilities, continue limiting the use of force, and limiting the role of private security providers to non-decision-making tasks. The presence of female security guards in federal asylum centres should be maintained commensurate with the number of women and families present in a facility.**

102. **The Working Group invites private security companies and related industry associations to work towards raising standards, not only to ensure high professional standards integrating human rights elements but also to maintain competitiveness in a sector where good conduct and reputation play an important role. Tools to be explored in this respect include the development of complaints procedures, codes of conducts and self-regulatory mechanisms.**

Mercenaries and mercenary-related activities

103. **Continue to ensure complementarity between legal instruments that touch on mercenarism and mercenary-related activities, and in their implementation, and consider how best to use the international normative framework on mercenaries, including the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, to this effect.**

104. **Monitor the situation of Swiss citizens detained, prosecuted or sentenced abroad for terrorism-related offences, and seek their extradition in contexts where there are credible concerns that their rights to, inter alia, freedom from torture and a fair trial may be violated.**