

### // EXECUTIVE SUMMARY

Power structures are changing. New political, economical and social actors are emerging, while traditional elites are struggling to maintain their quota of authority and influence. Among other scenarios, this trend is reflected in the contemporary privatization of armed conflicts and the resulting prominent role that the so-called private military and security companies (PMSCs) are acquiring.

The 9/11 terrorist attacks were the turning point of this phenomenon, as it was later reflected in the intervention and occupation of Iraq and Afghanistan. A number of private contractors and companies entered these countries accompanying coalition military forces, giving no political alternative to the invaded and later-elected governments to oppose to such a policy. Yet, after 12 years of international military presence, Afghanistan is still one of the most insecure countries in the world and public institutions are unable to fully guarantee human security in the country, thereby making PMSCs a necessary partner.

Corporate private armies in Afghanistan provides an analysis of the PMSC industry dynamics and the impact these private actors have on the sovereignty of the state and on the human rights of Afghan people. The author makes an exhaustive description of the regulatory puzzle under which PMSCs operate in Afghanistan, while the challenges international community will face to regulate and control this industry is highlighted. The report concludes with key recommendations to improve the regulation of PMSCs in 'territorial states in order to meet human rights obligations and enhance respect to International Humanitarian Law (IHL).

**// THE INDUSTRY:** The US funded an unprecedented private military and security industry in Afghanistan with the acquiescence of the international community and the government of Afghanistan. PMSCs have been deeply enmeshed in the political economies of the country by employing a majority of afghan nationals, having links with public officials and integrating local militias and strongmen in their business racket. This has hindered the demobilization and disarmament of irregular armed groups and created an important source of employment and business linked to the conflict and insecurity. As a result, the model of a militarized society with high levels of weapons and armed population is being perpetuated, which may have potentially destabilizing effects in the transitional scenario post-2014.

**// REGULATION:** PMSCs have operated in Afghanistan without a comprehensive national legislation regulating their activities and conducted their activities in an unregulated environment throughout most of the conflict. From the beginning, the regulation of military services was separated from that of security services and left largely to the contracting States by means of

the conclusion of military agreements. The regulatory process of security services can be assessed as a series of attempts to exert sovereignty and government control in this area, the last of which consisted in transferring the responsibility for private security services to a public-commercial entity, the APPF. Yet, the human rights component of each one of the PSCs regulations has been rather weak or poorly enforced in practice. Indeed, the current dissolution strategy -which leaves enough room for PSCs to remain in the country under different status and affiliations- results in a puzzle of regulations for PMSC contractors in Afghanistan which creates great uncertainty about who will actually monitor and control private security activities, and, at the final, how human rights will be protected.

**// THE IMPACT:** The interval of almost seven years between the arrival of the companies to the country and the first government regulation favoured the uncontrolled development of the industry and caused unforeseen impacts. As a whole, PMSCs' activities have had a direct impact (human rights incidents) as well as indirect effect (human security) on the human rights of civilians. Yet, there is a clear

deficit of information and analysis about the impact PMSCs' activities have on human rights, arising from the difficulty of distinguishing contractors from other armed actors, to the lack of specific oversight bodies and claiming mechanisms, as well as the general absence of official statistics.

**// ACCOUNTABILITY:** Most of the PMSCs' personnel present in Afghanistan, including certain local personnel, may benefit either from diplomatic immunities and/or immunities agreed in the two SOFAs in force. The contents of the military agreements further means that, unless permission is granted, PMSCs' personnel will not be surrendered to any international criminal tribunal or any other entity or state willing to exercise its jurisdiction. While Afghanistan has not excluded its primary jurisdiction over all PMSCs' contractors, prosecutorial activity has been practically non-existent. As a whole, this allows assessing an immunity de iure or de facto for private contractors in Afghanistan. It is still uncertain whether security and military agreements for the presence of troops beyond 2014 will keep this conflicting prerogative in force for contractor partners surviving the current dissolution process.