

SUBMISSION TO PARTICIPANTS IN THE
INTERNATIONAL CODE OF CONDUCT FOR PRIVATE SECURITY PROVIDERS (ICoC)

CONCERNING THE DRAFT CHARTER FOR THE
INDEPENDENT GOVERNANCE AND OVERSIGHT MECHANISM OF THE ICoC

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Background

The Institute for Human Rights and Business (IHRB) appreciates the opportunity to provide comments on the draft charter for the independent governance and oversight mechanism of the International Code of Conduct for Private Security Providers (ICoC). As an independent organisation dedicated to advancing corporate respect for human rights, IHRB believes the ICoC is an important new multi-stakeholder initiative deserving of broad support. IHRB welcomes the commitments made by the growing number of ICoC signatory companies, participating governments and civil society organisations, and congratulates them for their leadership in this effort.

Ultimately, the success of the ICoC will depend on whether human rights conditions improve in the many environments where private security providers operate around the world. This will require private security companies to fully meet their responsibility to respect human rights as affirmed in the United Nations (UN) *Protect, Respect and Remedy* framework and Guiding Principles on Business and Human Rights and to implement the provisions as set out in the ICoC. Equally important, governments must fulfill their duties under international human rights and humanitarian law, including protecting against human rights abuses involving corporate actors, and ensuring that adequate remedies are available for victims.

This submission highlights three areas where IHRB believes the draft Charter would benefit from further revisions in order to:

1. fully align with the UN *Protect, Respect and Remedy* framework and Guiding Principles on Business and Human Rights;
2. strengthen provisions with respect to external reporting and auditing and;
3. provide greater clarity regarding the affiliation of civil society organisations and the provision for greater protections concerning third party complaints.

1. Aligning the ICoC draft Charter with the UN Guiding Principles on Business and Human Rights

IHRB welcomes the reference in paragraphs 2 and 3 of the ICoC to the UN *Protect, Respect and Remedy* framework on business and human rights and to the concept of due diligence set out by the UN Special Representative on Business and Human Rights. However, the draft Charter for the ICoC oversight mechanism currently fails to make any reference to the UN framework and Guiding Principles on Business and Human Rights. This may seem a minor oversight but given the importance of the new UN framework as a baseline standard applying to all companies and governments, it should be corrected in the draft Charter to make clear that the ICoC oversight mechanism is being implemented consistent with the UN Guiding Principles.

For example, in Section I, the Preamble/General Provisions should include reference to the UN Guiding Principles alongside the Montreux Document pertaining to state obligations both to ensure consistency with the text of the ICoC and to avoid possible questions as to whether the UN Guiding Principles inform participants in implementing their commitments. Similarly, Section IV of the draft Charter concerning participation criteria for companies in the initiative would benefit from reference to the UN Guiding Principles, in particular to the human rights due diligence steps set out as basic expectations for all companies.

Other areas of the draft Charter should also be considered from the perspective of engagement and consistency with international standards and competent authorities in these areas. For example, Section III B. concerning Board functions and responsibilities refers to: “j. developing guidance and resolving questions as necessary relating to the scope of complex environments.” It would be important in such contexts, as a point of consistency with international standards and as a means of ensuring policy coherence, to make clear that such steps will be carried out in cooperation with relevant UN mandates and agencies, the International Committee of the Red Cross (ICRC) and other authorities as appropriate. The same is true of provisions in Section III C. concerning the role of the Secretariat on matters such as referenced in point i. with respect to contributing to the development of standards, policies and regulations aimed at harmonization of standards based on the ICoC. Making clear throughout the draft Charter that all such activities will be carried out consistent with the UN Guiding Principles on Business and Human Rights would be an important clarification.

2. Strengthening public reporting and auditing provisions

Independent auditing and public reporting functions are increasingly viewed as a legitimising and confidence-building measure for stakeholders and are part of a systematic approach to mainstreaming respect for human rights throughout corporate policies and practices. The draft Charter should require participating companies to make human rights impact assessment processes mandatory and part of public reporting.

With reference to section VII on Accreditation Criteria for Independent External Auditors and Monitors, the ICoC is to be commended for considering the issue of accreditation criteria of external auditors and monitors. However, there is the risk, as with other multistakeholder initiatives, that individuals or organisations accredited by the Mechanism will not be viewed as being completely

neutral and independent because they are paid at least in part by the participating companies in the initiative. How do participants in the ICoC aim to address this issue to avoid the appearance of conflict of interest? It may be appropriate to establish procedures similar to those described in section XI, A.3 concerning amendment of the Code and Charter in order to address the question of auditor and monitor independence.

Section IX. B. 2 on External Reporting currently states that written reports will be prepared which provide “general aggregate findings and trends resulting from the performance assessment process.” While recognising the challenges in this area, it is increasingly expected that external reporting mechanisms include details of specific performance on individual companies participating in multistakeholder initiatives. At a minimum, a revised Charter should signal the intention of moving towards company specific public reports over a 3 to 5 year period.

3. Providing clarity concerning affiliation of Civil Society Organisations and Third Party Complaints

A multistakeholder initiative is meaningful only with the full participation of all actors, and transparency concerning all organisations. Draft Charter section V on Affiliation of Civil Society Organisations (CSO) B.1.c. refers to the issue of “whether the CSO receives substantial funding from PSCs, from for-profit enterprises that employ PSCs, or from government agencies.” While agreeing with the concerns implicit in this provision, the formulation raises a number of questions. For example, what would be the position of a CSO that does not receive “substantial” funding from PSCs or for-profit enterprises but does receive 50% or more of its funding from government agencies? Would this render such organisations ineligible to participate in the Civil Society Pillar? A cut-off based on a loosely defined proportion may rule out a number of potentially interested CSOs and may therefore require further clarification.

Finally, with reference to Section X on Third Party Complaints, IHRB welcomes inclusion in subsection B.1 of complaints that may be made by parties that are not part of the ICoC. Victims seeking justice in complex environments may prefer to deal directly with the Mechanism rather than government or other actors. It is therefore important to establish firm rules to protect the anonymity of complainants. In this regard, IHRB urges ICoC participants to address this issue and refer in a revised Charter to the relevant existing standards with regard to access to remedies within the UN Guiding Principles on Business and Human Rights.

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