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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Annual 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

Chairperson/Rapporteur: Patricia Arias

Summary

The present report presents an overview of the Working Group's activities during the period under review, including regular sessions of the Working Group, communications and country visits.

The thematic part of the report presents the findings of the Working Group's ongoing global study of national laws and regulations relating to private military and/or security companies (PMSCs). In the present report, the Working Group focuses on laws and regulations of eight francophone countries in Africa, namely Burkina Faso, Cameroon, Côte d'Ivoire, the Democratic Republic of Congo, Mali, Morocco, Senegal and Tunisia as well as those of eight countries in the Asia region, namely China, India, Malaysia, Pakistan, the Philippines, Singapore, Sri Lanka and the United Arab Emirates. The Working Group's global study aims to assess existing national laws regarding PMSCs and their effectiveness in protecting human rights and promoting accountability for violations. Furthermore, it aims at identifying common points, good practices and regulatory gaps that may exist.

The Working Group observes that, while there are common elements in the laws of these countries, diverse contexts at the national level affect the way in which PMSCs are regulated and the regulatory approach of each country significantly varies. The Working Group reiterates the need for effective regulation of the activities of PMSCs and invites all Member States to facilitate its study of national legislation, which aims to identify trends and good practices and to develop guidance for Member States in exercising effective oversight of the activities of PMSCs.



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I. Introduction

1. In the present report, 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 describes its activities since its previous report to the Human Rights Council (A/HRC/24/45). The thematic section of the report presents the results of the Working Group's global study on national legislation concerning private military and security companies, which focuses on selected countries in Africa and Asia.
2. The report is submitted pursuant to resolution 2005/2 of the former Commission on Human Rights, which established the mandate of the Working Group, and Human Rights Council resolutions 7/21, 15/12 and 24/13, in which the Council further extended the mandate.
3. The Working Group is composed of five independent experts: Patricia Arias (Chile), Elzbieta Karska (Poland), Anton Katz (South Africa), Faiza Patel (Pakistan) and Gabor Rona (United States of America). Ms. Patel's term officially ended on 2 June 2014. Mr. Saeed Mokbil (Yemen) was appointed on the same day as member of the Working Group. During its 20th regular session in December 2013, the Working Group elected Ms. Arias as Chairperson-Rapporteur for the period from January to December 2014.

II. Activities of the Working Group

4. In accordance with its usual practice, the Working Group held three regular sessions during the reporting period: two in Geneva and one in New York. It held regular meetings with representatives of Member States, non-governmental organizations (NGOs) and experts. It reviewed allegations regarding the activities of mercenaries and private military and/or security companies (PMSCs) and their impact on human rights, and decided on the appropriate action to be taken.
5. For the purposes of the present report, PMSC is defined as "a corporate entity which provides on a compensatory basis military and/or security services by physical persons and/or legal entities". Military services refer to "specialized services related to military actions, including strategic planning, intelligence, investigation, land, sea or air reconnaissance, flight operations of any type, manned or unmanned, satellite surveillance, any kind of knowledge transfer with military applications, material and technical support to armed forces and other related activities", whereas security services refer to "armed guarding or protection of buildings, installations, property and people, any kind of knowledge transfer with security and policing applications, development and implementation of informational security measures and other related activities".¹

A. Nineteenth, twentieth, and twenty-first sessions of the Working Group

6. The Working Group held its nineteenth session in New York from 29 July to 2 August 2013. As part of that session, it convened a panel discussion with experts to discuss the use of PMSCs by the United Nations, in the context of its study launched in March 2013, the outcome of which will form the basis of the Working Group's report to the sixty-ninth session of the General Assembly. The first panel focused on the use of PMSCs by the

¹ Draft of a possible Convention on Private Military and Security Companies for consideration and action by the Human Rights Council, A/HRC/15/25, annex I.

United Nations as armed guards, while the second panel addressed the use of PMSCs by the United Nations in peace operations.

7. The twentieth session of the Working Group was held in Geneva from 16 to 20 December 2013. During this session, the Working Group held consultations with representatives of Member States with a view to pursuing outstanding country visit requests. From 3 to 7 March 2014, the Working Group held its twenty-first session in Geneva. During this session, the Working Group held discussions with representatives from civil society on the importance of an international binding instrument to regulate the activities of PMSCs, including minimum standards of regulation, and on strategies to mobilize stakeholders in support of a legally binding instrument to enhance constructive engagement with States, international organizations and NGOs. The Working Group will further elaborate on the draft of a possible international convention on private military and security companies.

8. On 5 March 2014, the Working Group held a public event on the topic of use by the United Nations of PMSCs, which was opened by the High Commissioner for Human Rights. The participants discussed the recently adopted United Nations Policy and Guidelines on the use of armed guards and the challenges faced by the United Nations when outsourcing a number of security tasks to private contractors. Discussions highlighted the risks posed to United Nations operations, its staff and local populations. The need for the United Nations to ensure that PMSCs and the actions of their employees are in conformity with international standards was also emphasized. Participants made concrete proposals to address some of the challenges, such as putting in place a robust selection and vetting process when employing private security companies and ensuring that mechanisms are established to provide remedies for possible human rights violations.

B. Communications

9. Since its last report to the Human Rights Council, the Working Group has sent six communications to the Governments of Australia, Honduras, Papua New Guinea, Tanzania and the United States of America, respectively.² The Working Group expresses its appreciation to the Government of Honduras, which replied to one of the communications addressed to it, and invites the other Governments to do so as soon as possible.

C. Country visits

10. The Working Group conducted one country visit during the period under review. It visited the Comoros from 7 to 16 May 2014. The report on the visit to the Comoros is presented as an addendum to the present report. The Working Group thanks the Government of Côte d'Ivoire for its positive response to its request for a visit, which it plans to undertake from 6 to 10 October 2014.

D. Collecting information on individuals convicted of mercenary activities

11. The Human Rights Council, in its resolution 21/8, requested the Working Group to establish a database of individuals convicted of mercenary activities (para. 18). Pursuant to that request, the Working Group sent a note verbale to all Member States on 22 January

² Summaries of the communications will be included in the Communications report of Special Procedures to be submitted to the twenty-seventh session of the Human Rights Council.

2013, requesting information on cases of mercenaries convicted by national courts. Reminders were sent on 6 March 2013. Information on replies received was provided in the Working Group's previous report to the Human Rights Council. No further responses have been received since.

E. Other activities of the Working Group members

12. Working Group member Gabor Rona participated in the Montreux +5 Conference convened by the Government of Switzerland, the International Committee of the Red Cross (ICRC) and the Geneva Centre for the Democratic Control of Armed Forces (DCAF), held from 11 to 13 December 2013. He also participated in the 55th Ordinary Session of the African Commission on Human and Peoples' Rights, held in Luanda, Angola, from 28 April to 12 May 2014.

III. Research on national regulation of PMSCs

A. Introduction

13. The Working Group continued its global study of national laws regarding PMSCs to assess their effectiveness in protecting human rights and promoting accountability for violations. The study aims to identify common points, good practices and regulatory gaps that may exist. The present report focuses on eight francophone African States and eight Asian States. The Working Group's previous report to the Human Rights Council (A/HRC/24/45) focused on 13 anglophone African States³. In its next report to the Human Rights Council, in 2015, the Working Group intends to report on the national legislation of countries in the Western European and Others Group (WEOG), the Eastern European Group (EEG), as well as the Latin American and Caribbean Group (GRULAC).

14. In conducting this study of national legislation on PMSCs on a region-by-region basis, the Working Group hopes to develop guidance to help Member States regulate the growing phenomenon of PMSC use. Some of the laws reviewed for this report were made available by States and others were obtained through research. The various national laws were analysed through the lens of the following elements: (a) scope of the legislation; (b) licensing, authorization and registration of PMSCs; (c) selection and training of PMSC personnel; (d) permitted and prohibited activities of PMSCs; (e) rules on acquisition of weapons by PMSC personnel; (f) use of force and firearms by PMSC personnel; (g) accountability for violations of the law committed by PMSC personnel and remedies provided for victims and (h) ratification of the international convention on mercenaries. These elements were considered to be crucial in understanding the general regulatory framework in each State.

³ Botswana, Ghana, the Gambia, Kenya, Lesotho, Mauritius, Namibia, Nigeria, Sierra Leone, South Africa, Swaziland, Uganda and Zimbabwe.

B. Francophone Africa

1. Analysis

15. The following francophone States in Africa were analysed for this report: Burkina Faso, Cameroon, Côte d'Ivoire, the Democratic Republic of Congo, Mali, Morocco, Senegal and Tunisia.

16. All of these States have laws to regulate private security companies (PSCs) and their activities, which mainly focus on providing guard and protection services for persons and goods. None of the States have laws or regulations covering the activities and services of private military companies. The relevant laws focus on the domestic sphere, without prohibiting the provision of military or security services abroad or ruling on extraterritorial applicability. However, none of the laws analysed contain any specific provisions on direct participation by PMSC personnel in hostilities. Where legislation prohibits PSC personnel from carrying out certain activities of the police and the armed forces, it is not clear whether the related provisions apply only in times of peace or during armed conflicts as well.

17. All the States had detailed regulations on licensing and authorization of PSCs, including relevant details regarding the responsibilities of the various inter-ministerial, ministerial and other governmental bodies. As a precondition for obtaining a licence, most of the States analysed require a review of the "moral standards" or "good behaviour" of the company's managers and/or its personnel. However, none of the laws reviewed contain any reference to human rights law or standards as prerequisites for the operation of the PSC. Regarding national registration, only Cameroon⁴ requires the authorizing entity to maintain a national record of security companies.

18. In general, States have detailed selection criteria and place emphasis on the necessity of providing training to PSC staff. However, the laws focus on form and procedural conditions rather than on content, and none of the laws contain reference to international human rights or humanitarian law as part of the selection criteria or the training materials. All the laws reviewed address the question of the applicant's criminal record, but vary in relation to the gravity of the crimes involved. Half of the laws reviewed provide information on mandatory and regular training of PSC personnel, while the other half refers only to optional training and principles based on the PSC's code of ethics.

19. Regarding permitted activities, the relevant laws all emphasize that the only activities that security providers are authorized to carry out are guard and protection services to persons and property or goods. Furthermore, PSC personnel are required to indicate that their activities are private in nature and, in several countries, the permitted activities may only be carried out inside private properties and not beyond those boundaries. Prohibited activities include all services that are not linked to the security of persons and property and some countries prohibited activities such as the involvement of PSC personnel in labour conflicts and political or religious events. Some laws specifically prohibit PCS personnel from carrying out certain activities that may overlap the functions of the police and the military. The majority of the laws reviewed discourage PSCs from hiring former members of the military forces or of the police as managers or employees.

20. The States observed had different approaches to the acquisition and possession of weapons and firearms, for example, some allowed all PSC personnel to be armed and to possess weapons/firearms; others only allowed certain PSC personnel who carry out specific activities, such as surveillance, guarding and transport of funds, to carry weapons,

⁴ Cameroon, Decree No. 2005/031, art. 2.

and prohibited others, such as personnel protecting people; and some required special permits for the acquisition and possession of weapons and firearms. Some States prohibit PSC personnel from acquiring and possessing specific types of weapons and firearms, or prohibited the acquisition and possession of weapons and firearms for specific purposes. Only the legislation of Tunisia⁵ refers specially to illegal acquisition of firearms and the consequences relating thereto. Moreover, the regulatory approaches regarding the use of force and firearms are rather divergent; some States entirely prohibit the use of force and firearms in all situations, except for self-defence, while others permit the use of force in accordance with conditions prescribed in the relevant laws and regulations.

21. Most States appear to have a monitoring system carried out by the office that authorizes/licenses PSCs, which makes announced or unannounced, regular or ad-hoc inspections and reviews regular or ad-hoc reports on infractions or violations of the law committed by the PSC personnel. However, in general, the relevant laws do not provide rules on the content of the monitoring procedure, but focus mostly on administrative sanctions, such as warnings, fines, temporary suspension of the activities of the PSC, withdrawal of authorization or seizure of weapons and firearms. The laws rarely refer to penal and civil sanctions. None of the laws reviewed contain provisions regarding personnel compliance with the standards of international human rights and humanitarian law or guarantees for effective remedy to victims.

22. While all the States reviewed have 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 defines the term “mercenary”, and the majority are party to the Organization of African Unity Convention for the Elimination of Mercenaries in Africa, only Cameroon and Senegal have ratified the International Convention against the Recruitment, Use, Financing and Training of Mercenaries.⁶

2. Scope of the legislation

23. The legislation of seven of the States analysed address the issue of private security companies.⁷ These laws provide for “private security companies”⁸ or “private security and guard companies”,⁹ with the general meaning of guard and protection services provided to persons and property or goods.¹⁰ However, none of the legislation covers private military companies (PMCs) or addresses direct participation of PMSC personnel in hostilities.

24. While the legislation of Côte d’Ivoire, the Democratic Republic of the Congo and Mali prohibits PSC personnel from carrying out certain acts related to activities of the police and the armed forces,¹¹ it is not clear whether the related provisions apply in times of peace as well as during armed conflicts. None of the laws regulate the export of security or

⁵ Tunisia, Decree No. 2002-81, art. 34.

⁶ General Assembly resolution 44/34, annex.

⁷ The Cameroonian legislation, Decree No. 2005/031, does not contain any specific details on the nature of private security activities.

⁸ Laws of Burkina Faso, Democratic Republic of the Congo and Tunisia.

⁹ Laws of Burkina Faso, Cameroon, Côte d’Ivoire, Mali, Morocco, Senegal.

¹⁰ Burkina Faso, Law No. 032/2003, art. 23, and Decree No. 2009-343, art. 2; Côte d’Ivoire, Decree No. 2005-73, art. 2, para. 1; Democratic Republic of the Congo, Ministerial Decree No. 98/008, art. 1; Morocco, Law No. 27-06, art. 1; Senegal, Decree No. 2003-447; and Tunisia, Decree No. 2002-81, art. 1 (a).

¹¹ Côte d’Ivoire, Decree No. 2005-73, art. 8, and Decree No. 743/2008, art. 6, para. 2; Mali, Decree No. 96-020, art. 12; and Democratic Republic of the Congo, art. 6, para. 2, and Ministerial Decree No. 98/008, art. 7, concerning acts such as maintaining public order, patrolling, arresting, detaining and carrying and using firearms.

military services abroad nor contain relevant jurisdiction provisions or clauses regarding extraterritorial application.

3. Licensing, authorization and registration of PSCs

25. The laws of Burkina Faso, Côte d'Ivoire, Mali, the Democratic Republic of the Congo and Tunisia¹² provide for authorizations and licences to be granted by or registered with the ministry responsible for internal security. In other countries, it is an intergovernmental body under the ministry in charge of internal security or the local government that is responsible for licensing and monitoring PSC activities.¹³ Morocco's law provides for a "competent administrative authority" in charge of reviewing the requests for authorization, but does not specify further responsibilities or the relationship with a supervising or monitoring ministry or other government body.

26. As a precondition for granting a licence, Burkina Faso requires a "review of the moral standards of the company's managers", while in Senegal, the authority in charge of authorizing private security activities conducts an "investigation of the moral standards" of the applicant, and in Tunisia, potential employees of PSCs must "be known to be of good behaviour."¹⁴ Nowhere is reference to human rights standards or training stated as being a prerequisite for managers or personnel in order for a PSC to obtain authorization for a licence.

27. With regard to national registration of PSCs, only Cameroonian law requires the relevant authority to "maintain a national record of security companies".¹⁵ Morocco has a self-registration system that obliges PSCs to establish and maintain an internal registry of the identity of employees and other data necessary for monitoring their activities¹⁶ and Tunisian law contains a similar provision, obliging the holder of the authorization to keep a register within the Ministry of the Interior.¹⁷ Legislation of the remaining countries do not make any reference to national or self-registration systems.

4. Selection and training of PSC personnel

28. The criteria for selecting PSC personnel indicate that a clean criminal record is a high priority in the States analysed.¹⁸ However, the related provisions vary with regard to the gravity of the offence. For example, in Burkina Faso, no one shall be a director or manager of a security company, if he or she was "sentenced to mandatory imprisonment of three (3) months or a suspended sentence of more than six (6) months for a crime or

¹² Burkina Faso, Law No. 032/033, art. 24, and Decree No. 343/2009, art. 20; Côte d'Ivoire, Decree No. 2005-73, arts. 4, 14, 34 and 36, and Decree No. 150/2007, art. 4; Mali, Decree No. 96-064, arts. 2 and 6; Democratic Republic of the Congo, Decree No. 31/1965, art. 2; Tunisia, Decree No. 2003-1090, arts. 1 and 2, and Decree No. 2002-81, art. 4.

¹³ In Cameroon, a commission under the supervision of the Ministry for Local Government reviews authorization requests; in Senegal, the request for authorization is submitted for review to a consultative committee whose composition is determined by a decree of the Minister of the Interior.

¹⁴ Burkina Faso, Decree No. 343/2009, arts. 16 and 20; Senegal, Decree No. 2003-447, art. 3; and Tunisia, Decree No. 2002-81, art. 6.

¹⁵ Cameroon, Decree No. 2005/031, art. 2.

¹⁶ Morocco, Law No. 27-06, art. 11.

¹⁷ Tunisia, Decree No. 2002-81, art. 18.

¹⁸ See for example, Burkina Faso, Decree No. 343/2009, arts 9 and 10; Côte d'Ivoire, Decree No. 2005-73, art. 13; Mali, Decree No. 96-020, art. 13, and Decree No. 96-064, art. 3; Morocco, Law No. 27-06, arts. 2 and 5; Senegal, Decree No. 2003-447, arts. 2 and 4; and Tunisia, Decree No. 2002-81, arts. 6 and 11.

misdeemeanour, except for torts of negligence or involuntary crimes.”¹⁹ This requirement is also found, to varying degrees, in the legislation of Côte d’Ivoire, Mali, Senegal and Tunisia.²⁰

29. The criterion of “good moral standards” is also important in several States.²¹ In Morocco, the relevant law states that no one shall be hired if he or she was “sentenced or imprisoned for a crime deemed incompatible with the exercise of the activities described in this Act...”²² Morocco’s legislation is in fact quite progressive; it states that “the hiring of an employee must be in line with the professional qualifications established by regulations regarding the nature of the job”.²³ However, this law does not provide further details on what such requirement would entail in concrete terms. None of the laws analysed contain any reference to international human rights or humanitarian law or standards to be taken into account during the selection process.²⁴

30. The laws of only four countries provide information on mandatory and regular training of PMSC personnel, namely Burkina Faso, Côte d’Ivoire, Morocco and Tunisia. However, none of the relevant laws contains details about the content of the required training, nor any specific details on international human rights or humanitarian law or standards.

5. Permitted and prohibited activities

31. In the laws reviewed, the activities that PSCs are permitted to carry out range from guarding and providing protection for persons and property/goods, and protection for the transport of funds, money, documents, jewellery, precious metals and other important objects.²⁵ In Burkina Faso, Côte d’Ivoire, and Morocco, PSCs are required to indicate the private nature of their work in order to avoid confusion between the activities of private persons and those of public security services.²⁶ Some countries²⁷ permit PSC personnel to carry out activities within the buildings and boundaries of the properties being guarded.²⁸ Exceptions exist, as in Burkina Faso, where the law states that such personnel shall only carry out their duties in the public sphere in exceptional cases (without specifying further), and in Mali, Morocco and Tunisia, where PSC personnel may, exceptionally carry out their duties in the public sphere in order to prevent theft, burglary or other attack against property.²⁹

¹⁹ Burkina Faso, Decree No. 343/2009, art. 9.

²⁰ Côte d’Ivoire, Decree No. 2005-73, art. 13; Mali, Decree No. 96-020, art. 13; Senegal, Law No. 27-06, art. 2; and Tunisia, Decree No. 2002-81, arts. 6 and 11.

²¹ Burkina Faso, Decree No. 343/2009, art. 9; Côte d’Ivoire, Decree No. 2005-73, art. 13; Mali, Decree No. 96-020, art. 13; Senegal, Decree No. 2003-447, art. 9.

²² Morocco, Law No. 27-06, arts. 2 and 5.

²³ Ibid., art. 5, para. 3.

²⁴ Despite the fact that recruitment is listed as one of the tasks of the commission in charge of authorizing private security activities in Cameroon (Decree No. 2005/031, art. 1), no specific recruitment or selection criteria is mentioned in the law.

²⁵ Côte d’Ivoire, Mali, Morocco and Tunisia.

²⁶ See, for example, Burkina Faso, Decree No. 2009-343, art. 5; Côte d’Ivoire, Decree No. 2005-73, art. 5, and Decree No. 743/2008, art. 2; Mali, Decree No. 96-020, art. 8; and Morocco, Law No. 27-06, art. 9, para. 2.

²⁷ Burkina Faso, Morocco and Tunisia.

²⁸ See, for example, Burkina Faso, Decree No. 2009-343, arts. 6 and 7; Mali, Decree No. 96-020, art. 11; Morocco, Law No. 27-06, art. 17; Tunisia, Decree No. 2002-81, art. 16.

²⁹ Burkina Faso, Decree No. 2009-343, art. 6; Mali, Decree No. 96-020, art. 11; Morocco, Law No. 27-06, art. 17; and Tunisia, Decree No. 2002-81, art. 16.

32. Regarding prohibited activities, the laws of Burkina Faso, Côte d'Ivoire and Morocco specifically emphasize that services not related to the security or protection of persons and property are excluded from the ambit of the concerned laws and are therefore prohibited.³⁰ The involvement of PSC personnel in a labour conflict or related event³¹ is prohibited in Burkina Faso, Côte d'Ivoire, Morocco and Senegal. Other prohibited activities include gathering information on political, religious or trade union opinions.³²

33. Some laws specifically prohibit PSCs from carrying out certain activities that may overlap the functions of the police and the military, and PSCs are required to respect existing legislation concerning arrest and detention of criminals. In the Democratic Republic of the Congo, PSCs are permitted to provide protection to persons and property, "insofar as they do not replace the police", but they are prohibited from "patrolling, arresting, carrying and using firearms, special devices and any other material normally reserved for the military and the police."³³ Similar provisions are contained in the laws of Tunisia and Morocco.³⁴

6. Rules on acquisition of weapons by PSC personnel

34. The States reviewed³⁵ appear to have different approaches regarding the acquisition of weapons by the personnel of PSCs. PSC personnel in Burkina Faso, Côte d'Ivoire, Morocco and Tunisia are allowed to be armed and to possess weapons, including firearms as determined by the "relevant laws and regulations in force"³⁶. In Mali, PSC personnel in charge of surveillance, guarding and transport of funds are allowed to possess weapons, however, personnel protecting people cannot be armed.³⁷ In some cases, special permits are required for the acquisition and possession of weapons and firearms, as in the Democratic Republic of the Congo and Tunisia.³⁸ However, some States prohibit PSC personnel from acquiring and possessing specific types of weapons and firearms, or prohibit them from possessing weapons for specific purposes. In Cameroon, for example, "protection and alarm equipment may not include firearms", and "security companies may not have or use conventional armament".³⁹ Côte d'Ivoire authorizes PSC personnel "to use stun bombs, clubs, rubber-bullet firearms, pepper spray and tear gas";⁴⁰ Mali prohibits carrying self-defence gas, knives and blunt weapons,⁴¹ while the Democratic Republic of the Congo

³⁰ Burkina Faso, Decree No. 2009-343, art. 4; Côte d'Ivoire, Decree No. 2005-73, art. 3, and Decree No. 743/2008, art. 5; Mali, Decree No. 96-020, art. 5; and Morocco, Law No. 27-06, art. 8.

³¹ See Burkina Faso, Decree No. 2009-343, art. 8; Côte d'Ivoire, Decree No. 2005-73, art. 8; Mali, Decree No. 96-020, art. 9; Morocco, Law No. 27-06, art. 14; and Senegal, Decree No. 2003-447, art. 7.

³² Burkina Faso, Decree No. 2009-343, art. 8; Côte d'Ivoire, Decree No. 2005-73, art. 8; Mali, Decree No. 96-020, art. 9; and Morocco, Law No. 27-06, art. 14.

³³ Democratic Republic of the Congo, Ministerial Decree No. 98/008, arts. 1 and 6.

³⁴ Tunisia, Decree No. 2002-81, art. 15; and Morocco, Law No. 27-06, art. 16.

³⁵ The laws available from Senegal did not allow for an analysis of this criterion.

³⁶ Burkina Faso, Decree No. 2009-343, art. 37; Côte d'Ivoire, Decree No. 2005-73, art. 23; Morocco, Law No. 27-06, art. 13; and Tunisia, Decree No. 2002-81, art. 21.

³⁷ Mali, Decree No. 96-020, art. 15.

³⁸ Democratic Republic of the Congo, Decree No. 31/1965, art. 5; and Tunisia, Decree No. 2002-81, art. 21.

³⁹ Cameroon, Decree No. 2005/031, art. 23.

⁴⁰ Côte d'Ivoire, Decree No. 2005-73 art. 31.

⁴¹ Mali, Decree No. 2011-0599, art. 5.

prohibits carrying and using firearms, special devices and other material normally reserved for the military and the police”.⁴²

35. The legislation analysed also contain specific provisions on the obligation of PSC personnel with regard to the weapons in their possession in the case of temporary suspension or cessation of activities. In Cameroon, for example, in the event that authorization is withdrawn, “edged weapons held by the security company shall be automatically seized by the appropriate administrative body”; in the event of temporary cessation of activities, “the protection equipment of the security company shall be deposited for safe keeping with the appropriate authorities”. After a temporary cessation of activity of more than six (6) months, said equipment may be sold or disposed of without consideration.⁴³ Tunisian legislation contains similar provisions whereby upon definitive cessation of activities, the security company and its personnel must hand over all weapons to the appropriate authorities.⁴⁴

36. Of the eight States reviewed, only Tunisia has laws that sanction to the illegal holding of weapons. If an agent authorized to carry a weapon for the purpose of carrying out a mission as part of his or her duties does not return the weapon immediately after completing his or her mission, he or she “shall be punished with imprisonment of one year and a fine of 1,000 dinars”.⁴⁵

37. The legislation reviewed depict patchy regulation, among the States, of the acquisition and possession of weapons by PSCs. In order to ensure that PSC personnel respect international standards relating to arms-control licensing procedures, arms transfer, acquisition of arms and trafficking in arms, and are accountable for any related offences, it is critical that States establish standard methods by which both PSCs and their personnel acquire, export, import and possess weapons.

7. Use of force and firearms by PSC personnel

38. Only Burkina Faso, Côte d’Ivoire, the Democratic Republic of the Congo and Morocco have specific laws on the use of force and firearms by PSC personnel. Those laws explicitly state that the use of firearms during the exercise of any security activity is authorized only in cases of legitimate defence.⁴⁶ Morocco has a different approach, in that the relevant law allows for PSC personnel to be armed and to use, inter alia, all means of defence and control, in accordance with the applicable provisions contained in the relevant laws and regulations.⁴⁷ In Côte d’Ivoire, the use of firearms and grenades in guarding and transport of funds is authorized under the conditions defined by the Minister of Internal Security and the regulations concerning the carrying of firearms. However, the permit to carry firearms must indicate the intended use of the arm. Furthermore, under no circumstances shall a firearm permit issued for activities other than guarding or transport of funds be used, under penalty of sanctions for carrying illicit firearms.⁴⁸ Mali’s legislation provides for the personnel of PSCs in charge of surveillance, guarding and transport of funds to possess and use arms and ammunition only for the time necessary to carry out their

⁴² Côte d’Ivoire, Decree No. 2005-73, art. 31; Mali, Decree No. 2011-0599, art. 5; and Democratic Republic of the Congo, Ministerial Decree No. 98/008, art. 6.

⁴³ Cameroon, Decree No. 2005/031, arts. 31 and 32.

⁴⁴ Tunisia, Decree No. 2002-81, arts 21–25.

⁴⁵ Ibid., art. 34.

⁴⁶ See, for example, Burkina Faso, Decree No. 2009-343, art. 38; and Côte d’Ivoire, Decree No. 148/2007, arts. 1 and 2.

⁴⁷ Morocco, Law No. 27-06, art. 13.

⁴⁸ Côte d’Ivoire, Decree No. 2005-73, art. 30.

mission in private sphere.⁴⁹ Furthermore, the use of such arms shall be under the responsibility of the PSC and is covered by the provisions of the Criminal Code.⁵⁰

39. The legislation of Côte d'Ivoire prohibits PSCs from being involved in administrative or investigative police activities and from participating in operations aimed at maintaining public order during political, sports, social, traditional, cultural or religious events.⁵¹ In the Democratic Republic of the Congo, PSCs are permitted to provide protection to persons and property, "insofar as they do not replace the police", but they are prohibited from patrolling, arresting, carrying and using firearms, special devices and any other material normally reserved for the military and the police".⁵² In Mali, PSCs in charge of surveillance, guarding, transport of funds and protection of persons are prohibited from participating in operations aimed at maintaining public order or limiting the free circulation of people or vehicles.⁵³ None of the legislation analysed address the use of force and firearms that may overlap the functions of the police and the military or that may involve the direct participation of PSC personnel in hostilities during armed conflicts.

8. Accountability for violations of the law committed by PSC personnel and remedy for victims

40. Six of the States analysed have monitoring systems provided for in their respective laws,⁵⁴ which are generally administered by the agency that authorizes or grants licences to PSCs. Monitoring the activities of PSCs include carrying out announced or unannounced, regular or ad-hoc inspections.

41. Only Cameroon's legislation provides details on the scope of the monitoring and inspection activities of the monitoring body. It specifies that the inspection shall cover the staff, general recruitment conditions, cases of dismissal, respect for requirements concerning uniforms and badges, the validity of insurance coverage; the appropriateness of the types and quantity of communication, protection and alarm equipment used.⁵⁵ Further to the laws regulating their activities, PSCs in Côte d'Ivoire are required to submit quarterly and annual activity reports to their licensing agencies or monitoring bodies;⁵⁶ however, are not obliged to report on their compliance with other laws. Compliance with the standards of international human rights and humanitarian law is not a requirement of the responsibilities of the monitoring bodies.

42. Côte d'Ivoire, the Democratic Republic of the Congo and Senegal are the only States in which PSCs are obliged to immediately report infractions or violations of the law committed by their personnel. In Côte d'Ivoire, PSC personnel must immediately inform the national defence and security forces of "any infraction or fact concerning the security of persons and property or State security" that they know about and must provide any information enabling the apprehension of the criminals. However, a serious restriction is attached to this provision; "under no circumstances shall such information be provided to a foreign power or a physical person or legal entity foreign to the Ivorian defence and security forces."⁵⁷ The legislation of the Democratic Republic of the Congo requires that

⁴⁹ Mali, Decree No. 96-064, arts. 12 and 13.

⁵⁰ Mali, Decree No. 96-020, art. 18.

⁵¹ Côte d'Ivoire, Decree No. 2005-73, art. 8 and Decree No. 2008/743, art. 6.

⁵² Democratic Republic of the Congo, Ministerial Decree No. 98/008, arts. 1, 6 and 7.

⁵³ Mali, Decree No. 96-020, art. 12.

⁵⁴ The legislation available from the Democratic Republic of the Congo does not include any specific references to monitoring or inspections.

⁵⁵ Cameroon, Decree No. 2005/031, art. 25.

⁵⁶ Côte d'Ivoire, Decree No. 2005-73, art. 38 and Decree No. 743/2008, art. 19.

⁵⁷ Côte d'Ivoire, Decree No. 743/2008, art. 20.

PSCs report “any serious incident to the administrative authority”, without delay, and “hand over anyone apprehended in the PSC’s area of operation”.⁵⁸ In Senegal, any infraction of the relevant law shall be notified to the committee established by the Minister of the Interior.⁵⁹ None of the above-mentioned laws provide further details regarding the nature of the “infractions” or “facts concerning the security of persons and property or State security” or the “serious incidents” that need to be reported, which may make their implementation difficult.

43. With regard to the accountability of PSC personnel, most of the laws reviewed focus on acts violating the provisions regarding permissible activities, licensing, authorization, recruitment and other administrative processes.⁶⁰

44. With regard to sanctions, the various laws focus on administrative sanctions applied by the authorizing or licensing agencies in the forms of a warning, a fine, temporary suspension of the company’s activities, withdrawal of authorization, and seizure of weapons and firearms.⁶¹ In Mali, Morocco and Tunisia, the sanctions include imprisonment.⁶² In some instances, laws contain references to penal and civil sanctions for infractions linked to the exercise of the PSC activities;⁶³ however, none of the legislation analysed contains provisions on remedies for victims.

C. Asia

45. The legislation of the following States in the Asia region were reviewed: China, India, Malaysia, Pakistan, the Philippines, Singapore, Sri Lanka and the United Arab Emirates.

1. Analysis

46. All eight States reviewed have regulations on private security companies (PSCs), albeit without uniformity. None of the laws covers private military companies or services. Despite the transnational nature of private security services, almost all the laws address PSC activities within the national sphere, with the exception of India which briefly addresses the import and export of PSC activities.⁶⁴ In most of the States, the regulation of PSCs is administered by a central or local government authority. The powers of the regulating authorities differ in each State. The requirement to obtain a licence is mandatory in all the States.

⁵⁸ Democratic Republic of the Congo, Decree No. 31/1965, art. 8.

⁵⁹ Senegal, Decree No. 2003-447, art. 16.

⁶⁰ See, for example, Burkina Faso, Decree No. 2009-343, art. 47; Côte d’Ivoire, Decree No. 2005-73, arts. 51–53; Mali, Decree No. 96-020, arts. 19–24; Morocco, Law No. 27-06, arts. 22–27; and Senegal, Decree No. 2003-447, art. 16.

⁶¹ See, for example, Burkina Faso, Decree No. 2009-343, arts. 47–50; Cameroon, Decree No. 2005/031, arts. 30–32; Côte d’Ivoire, Decree No. 2005-73, arts. 50–53; Mali, Decree No. 96-020, arts. 19–23; Morocco, Law No. 27-06, arts. 22–28; Senegal, Decree No. 2003-447, art. 16; and Tunisia, Decree No. 2002-81, arts. 29–34.

⁶² Mali, Decree No. 96-020, art. 24; Morocco, Law No. 27-06, arts. 22–28; and Tunisia, Decree No. 2002-81, arts. 29–34.

⁶³ Burkina Faso, Decree No. 2009-343, art. 47; Côte d’Ivoire, Decree No. 2005-73, arts. 51 and 53; Morocco, Law No. 27-06, art. 28; Mali, Decree No. 96-020, art. 19; and Tunisia, Decree No. 2002-81, arts. 30–34.

⁶⁴ See India, Private Security Agencies (Regulation) Act, 2005 (Act No. 29, 2005), art. 4. Extraterritorial activities are forbidden without prior permission, and foreign companies are not allowed to engage in security services unless they fulfil certain requirements.

47. The criteria for granting licences to PSCs and/or their employees vary among the States. In all of the States reviewed, PSC employees must not have any criminal convictions and must possess certain training qualifications. Most of the laws do not specify the training requirements and none refers to training that includes human rights law or standards. Furthermore, the relevant laws do not specify whether the disclosure of past criminal convictions also includes acts involving human rights violations. In terms of a central register for PSCs, only three States have laws pertaining to that. Although all the laws analysed require PSCs to obtain a licence, only four States require that individual security personnel or employees hold a licence. The requirement for PSC personnel to obtain licences can be an important vetting mechanism to ensure that qualified persons are employed, but also that persons with past convictions relating to human rights abuses are excluded.

48. Notwithstanding the gaps and lack of uniformity among the laws reviewed, some good practices were observed as follows: foreign companies are not allowed to engage in the PSC domain without meeting legal requirements;⁶⁵ PSCs are required to cooperate with the civil defence authority in times of emergency, such as natural disaster;⁶⁶ PSCs are required to have a sound organizational structure with post accountability and a security guard management system;⁶⁷ liability of legal persons and the PSC;⁶⁸ revocation of licence due to engagement in criminal activity;⁶⁹ PSCs are prohibited from conducting criminal investigations;⁷⁰ PSCs are prohibited from exercising any of the powers conferred on public security officers;⁷¹ and PSCs are required to keep an internal data register.⁷² These practices provide the necessary framework that can contribute to the monitoring of human rights violations.

49. None of the eight States reviewed is a party to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries.

2. Scope of the legislation

50. In the States reviewed, the relevant laws and regulations governing private security companies (PSCs) refer to either private security services or private security companies;⁷³ none refers to military services. Divergent approaches to regulating PSCs exist not only among the States reviewed, but also within a given State. For instance, Pakistan has no

⁶⁵ China and, to some extent, India.

⁶⁶ Philippines.

⁶⁷ China.

⁶⁸ India, Malaysia, Pakistan (Sindh Province) and Sri Lanka.

⁶⁹ India, Philippines and United Arab Emirates.

⁷⁰ Malaysia and United Arab Emirates.

⁷¹ Malaysia, Pakistan (Sindh and Punjab Provinces).

⁷² India, Sri Lanka and United Arab Emirates.

⁷³ See China, Order of the State Council No. 564, Regulation on the Administration of Security and Guarding Services, 2009 (State Council Order No. 564, 2009); India, Private Security Agencies (Regulation) Act, 2005 (Act No. 29, 2005); Malaysia, Private Agencies Act, 1971, incorporating all amendments up to 1 January 2006 (Act 27, 1971); Philippines, The Private Security Agency Law, 1969 (Republic Act No. 5487, 1969), as amended by Presidential Decree No. 11, 1972 and, subsequently, by Presidential Decrees No. 100, 1973, and No. 1919, 1984. A bill on private military and security companies is currently being debated in the National Parliament; Singapore, Private Security Industry Act, 2007 (Act 38, 2007); Sri Lanka, Regulation of Private Security Agencies Act, 1998 (Act No. 45, 1998); and United Arab Emirates, Federal Decree No. 37, 2006, concerning Private Security Companies (Decree No. 37, 2006)..

federal law governing private security companies;⁷⁴ PSCs are created under the 1984 Companies Ordinance⁷⁵ and each state or province has its own regulations. Thus, PSCs in Pakistan are regulated by provincial ordinances. For the purposes of this study, the ordinances of two provinces were selected: the Sindh Private Security Agencies (Regulation and Control) Ordinance, 2000 (2000 Sindh Ordinance), Sindh Province (Karachi),⁷⁶ and the Punjab Private Security Companies (Regulation and Control) Ordinance, 2002⁷⁷ (2002 Punjab Ordinance), Punjab Province.

51. While most of the laws regulate actual security and guarding services, China's laws also cover security guard training entities;⁷⁸ India's law provides information on PSC services and provides for training of private security guards and supervisors;⁷⁹ Malaysia's law provides information on PSC services;⁸⁰ Pakistan's Punjab Ordinance covers services such as security guards for persons, property and cash-in transit. The law in the Philippines covers private detectives and security guards, while Singapore's law defines private investigators, security officers and the provision of security service, including the provision of alarm surveillance services and Sri Lanka's law covers the provision of services to protect public-sector officers and State-owned property. China's law also provides for the public sector to engage the services of PSCs directly. Other than China and Sri Lanka, none of the other States make direct reference to the engagement of PSCs by the public sector, nor do they expressly prohibit the use of PSCs by public sector organizations.

52. All the laws focus on the provision of private security services in the domestic sphere; however India's law further provides for the export of private security activities, but states that the provision of private security services abroad is prohibited without the permission of the Controlling Authority, which, in turn, requires the permission of the Central Government. Furthermore, India's law does not permit foreign companies to engage in or provide private security services under its jurisdiction, unless they are registered in India, or have a proprietor, majority shareholder, partner or director who is a citizen of India.⁸¹ China's law also permits and limits the import of activities of foreign PSCs by prohibiting certain organizations that have public functions from contracting wholly foreign-owned or mixed-capital (Chinese and foreign) security companies.⁸²

53. All the laws reviewed regulate PSC personnel. In some cases, the regulation is quite broad in scope. For example, China's law does not only regulated security companies, but also the organizations that employ them, including government bodies, social organizations and public institutions, although the security guards must meet the requirements prescribed by law and may not provide services outside of the premises that they have been hired to guard or beyond the limits of the property managed by the hiring entity.

54. Article 1 of the United Arab Emirates Private Security Companies decree includes in the definition of PSCs, "any government body" as well as any "security company or institution ... offering a security service, whether independently or in conjunction with

⁷⁴ Pakistan is a federation comprising four provinces – Punjab, Sindh, Khyber Pakhtunkhwa and Balochistan –, Islamabad capital territory and federally administered tribal areas in the northwest, which include the frontier regions.

⁷⁵ Pakistan, Companies Ordinance, No. XLVII of 1984.

⁷⁶ The Ordinance came into force immediately, but was published on 3 January 2001 as Sindh Ordinance No. II of 2001.

⁷⁷ Pakistan, Punjab Ordinance No. LXIX of 2002.

⁷⁸ China, State Council Order No. 564, 2009, chap. VI.

⁷⁹ India, Act No. 29, 2005, sect. 9 (2).

⁸⁰ Malaysia, Act 27, 1971, sect. 2.

⁸¹ India, Act No. 29, 2005, sects. 4 and 6 (2).

⁸² China, State Council Order No. 564, 2009, sect. 22.

other activities". That law seems to be the only one that provides for possibility of a government body providing a security service that is considered as being "private".

3. Licensing, authorization and registration of PSCs

55. All of the laws reviewed provide for a central authority, normally a government department or ministry, vested with the powers to authorize, supervise and control PSCs.⁸³ The authority may be decentralized, as in the case of federal States such as Pakistan, India and China and generally, the relevant laws give the central authority the power to inter alia, implement the executing regulations, and grant, renew, cancel and suspend licences. In some cases, the authority has the explicit power of maximum supervision over PSCs.⁸⁴

56. In all of the States examined, a PSC must have a licence in order to start or continue its security business. The person establishing the PSC must also obtain a licence. Only four countries⁸⁵ require that PSC personnel have a separate licence also.

57. Some of the eligibility criteria for the company or owner licence are common to most of the laws analysed, including the need for the applicant to meet certain qualification and training requirements;⁸⁶ the requirement not to have been convicted of any crime or other offence;⁸⁷ and the requirement of good conduct.⁸⁸ Other criteria specific to two or more States include the nationality of a manager or company;⁸⁹ the requirement for companies to have a minimum equity;⁹⁰ requirement concerning the age of the manager;⁹¹ requirements concerning premises, equipment, facilities, etc.⁹² The eligibility criteria for the security personnel licence are the same in the four States that require it and include requisite training and experience;⁹³ not to have been convicted of any crime or other offence;⁹⁴ and fulfilment of the criteria relating to good moral conduct.⁹⁵ Of the States reviewed, China regulates the security guard criteria most thoroughly by requiring, inter alia, that personnel pass relevant examinations; employee contracts must include coverage

⁸³ In China, the Public Security Department of the State Council; in India, the Controlling Authority is delegated by each State Government; in Malaysia, the Minister of Internal Security; in Pakistan (Sindh and Punjab), the licensing authority as appointed by the Government; in the Philippines, the Chief Constabulary; in Singapore, the Minister of Internal Security; in Sri Lanka, the competent ministry; in United Arab Emirates, the competent ministry or the police.

⁸⁴ This is the case in China, India, Malaysia, Pakistan (Sindh and Punjab), Sri Lanka and the United Arab Emirates.

⁸⁵ China, the Philippines, Singapore and the United Arab Emirates.

⁸⁶ Philippines, Republic Act No. 5487, 1969, sect. 4; Singapore, Act 38, 2007, sect. 21 (4); Sri Lanka, Act No. 45, 1998, art. 4 (3); and China, State Council Order No. 564, 2009, sects. 8 (2) and (3).

⁸⁷ Philippines, Republic Act No. 5487, 1969, sect. 4; Sri Lanka, Act No. 45, 1998, art. 4 (3); China, State Council Order No. 564, 2009, sect. 8 (2); India, Act No. 29, 2005, sects. 5 and 6 (1); and the 2002 Punjab Ordinance (Art. 6.c).

⁸⁸ Philippines, Republic Act No. 5487, 1969, sect. 4 (f); Singapore, Act 38, 2007, sect. 21 on renewals; and Sri Lanka, Act No. 45, 1998, art. 4 (3).

⁸⁹ Philippines, Republic Act No. 5487, 1969, sect. 4; and India, Act No. 29, 2005, sect. 6 (2).

⁹⁰ Philippines, Republic Act No. 5487, 1969, sect. 4; China, State Council Order No. 564, 2009, sect. 8.

⁹¹ Philippines, Republic Act No. 5487, 1969, sect. 4.

⁹² China, State Council Order No. 564, 2009, sect. 84; and United Arab Emirates, Decree No. 37, 2006, sect. 6.

⁹³ Philippines, Republic Act No. 5487, 1969, sect. 5; Singapore, Act 38, 2007, sect. 21 (4); China, State Council Order No. 564, 2009, sect. 16.

⁹⁴ Philippines, Republic Act No. 5487, 1969, sect. 5; China, State Council Order No. 564, 2009, sect. 17; and Singapore, Act 38, 2007, sect. 21 (8).

⁹⁵ Singapore, Act 38, 2007, sect. 21 and 21 (6); China, State Council Order No. 564, 2009, sect. 16.

under the national social insurance programme; employees must have regular training on law, professional knowledge and skills; and regular assessment of work performance.

58. Only some of the laws examined contain reference to the establishment of a security agency register: Pakistan, 2000 Sindh Ordinance;⁹⁶ Philippines, Republic Act No. 5487, 1969;⁹⁷ and Sri Lanka, Act No. 45, 1998.⁹⁸ The other laws do not expressly provide for such register.

59. None of the laws state the need for PSC personnel, including managers and owners, to have specific training in, or knowledge of, human rights law or standards.

4. Selection and training of PSC personnel

60. There is a lack of uniformity in the laws reviewed with regard to the selection and training of PSC personnel. There is no reference to training in human rights law and standards in any of the laws, which focus rather on various types of training, including by public institutions such as the police,⁹⁹ or the issuance of letters of approval by government authorities such as the Chief Police Officer.¹⁰⁰ The selection criteria are covered in detail in the laws of Pakistan (Sindh and Punjab Provinces), the Philippines and Singapore. With regard to employee conduct, in some of the States reviewed,¹⁰¹ the conduct of PSC personnel is also indirectly governed through the eligibility criteria established for granting individual employee licences. Where employee licences are not required, the selection criteria apply to the companies themselves. China's State Council Order No. 564 is the most detailed in this respect: it contains a long list of measures that security guards must take when providing security and guard services. Some of the relevant laws establish a clear limitations on security employees' conduct, for example, the prohibition from carrying out any activity or exercising powers normally conferred to police officers, customs officers, immigration officers, prison officers or any other type of public officer.¹⁰²

5. Permitted and prohibited activities

61. Each of the States reviewed regulates PSC conduct, in terms of permitted or prohibited activities, differently. However, four aspects are regulated by the laws of two or more States, namely the requirement for PSCs to exhibit their licence publicly and in a conspicuous place;¹⁰³ the requirement to keep an internal register of data;¹⁰⁴ prohibition from conducting criminal investigations;¹⁰⁵ and prohibition from exercising any powers that are normally conferred to public security officers.¹⁰⁶ In that respect, the laws of Malaysia and Pakistan, for instance, state that PSCs may not exercise the powers conferred on police,

⁹⁶ See sect. 6 (6).

⁹⁷ See sect. 8: "...the Chief of the Philippine Constabulary or his duly authorized representative shall issue a permit for the issuance of such licence and register the same in his office ...". A detailed schedule of six circumstances and their related fees in pesos or the applicable taxes is provided.

⁹⁸ See sect. 6: register to be maintained by the Competent Authority.

⁹⁹ Philippines, Republic Act No. 5487, 1969, sect. 6.

¹⁰⁰ Malaysia, Act 27, 1971, sect. 9.

¹⁰¹ China, the Philippines and Singapore.

¹⁰² Malaysia, Act 27, 1971; Pakistan, 2000 Sindh Ordinance and 2002 Punjab Ordinance.

¹⁰³ Sri Lanka, Act No. 45, 1998, art. 5 (4); India, Act No. 29, 2005, sect. 12; Philippines, Republic Act No. 5487, 1969, sect. 10; and Pakistan, 2002 Punjab Ordinance, art. 9; Malaysia, Act 27, 1971, sect. 6 and United Arab Emirates, Decree No. 37, 2006, sect. 12.

¹⁰⁴ India, Act No. 29, 2005, sect. 15; Sri Lanka, Act No. 45, 1998, art. 7 (2); and United Arab Emirates Decree No. 37, 2006, sect. 19.

¹⁰⁵ Malaysia, Act 27, 1971, sect. 6; and United Arab Emirates, Decree No. 37, 2006, sect. 12.

¹⁰⁶ Malaysia, Act 27, 1971, sect. 19 (2) (i); Pakistan, 2000 Sindh Ordinance, sect. 15.2 Additional, and 2002 Punjab Ordinance, art. 20.

customs, immigration, prison officers or any other kind of public official. Aside from the four aspects mentioned above, the permitted and prohibited activities of PSCs vary from country to country and there are no provisions for the application of human rights standards or principles.

6. Regulations on the use of force and acquisition of weapons by PSC personnel

62. Most of the States reviewed allow PSC personnel to carry firearms. Singapore's law prohibits private guards from carrying certain firearms unless the employee has a special permit; Sri Lanka has a similar requirement. Malaysia's law makes no mention of the use of firearms by PSC personnel, but it indicates that an arms licence may be issued to a responsible person designated by the security company. A common detail that is usually missing from the regulations is the type of firearms and other non-lethal weapons that security guards can use. China's regulations¹⁰⁷ on the use of guns by guards and escorts are a good example of legislation that limits the use of firearms and defines the rules of engagement. The laws reviewed also differ in their regulation of training that PSC personnel must have in order to obtain a licence to handle firearms. There are no clear or uniform standards on this issue. Training requirements in some States¹⁰⁸ provided for fail to specify minimum standards; the Philippines allow PSC personnel to carry weapons subject to the provision of training to security guards and limitations on the types of weapons carried. Sri Lanka's law vaguely states that the Minister may establish regulations with regard to the level of competence in the use of firearms for PSC personnel and the certificates for the use of firearms are issued by the local police departments.

63. Illegal acquisition of arms is rarely addressed in the relevant laws. The law of the United Arab Emirates mentions the prohibition from acquiring or carrying firearms, but most of the laws reviewed make no mention of arms or weapons. However, this may be due to the fact that specific laws regulate the sale and possession of firearms, and does not infer that PSCs have impunity with regard to this issue.

7. Accountability for violations of the law committed by PSC personnel and remedy for victims

64. Only two States, namely China¹⁰⁹ and Malaysia,¹¹⁰ clearly recognize the obligation to report information concerning any offence or violation of their respective laws. The Sri Lanka law provides for the obligation to furnish reports to the competent authority, which could be construed as including reports on offences or violations.¹¹¹ However, specific provisions for reporting human rights offences or violations is generally absent from among the laws reviewed, which raises important questions about the impact of PSC operations on human rights and the issue of accountability.

65. A good practice observed in China provision is the duty of the employer or the security company to provide compensation in cases where a security guard causes injuries or casualties.¹¹² The law of the Philippines also provides for what is considered to be good

¹⁰⁷ China, Regulations on the Administration of the Use of Guns by Full-time Guards and Escorts, 2002.

¹⁰⁸ Pakistan (Punjab) and Singapore.

¹⁰⁹ See China, State Council Order No. 564, 2009, art. 29, which states that the security guard shall stop any violation or crime occurring within the service area in a timely fashion. Moreover, it states that he must promptly report to the police any violation or crime that he could not stop, while simultaneously taking measures to protect the scene.

¹¹⁰ Malaysia, Act 27, 1971, sect. 6.

¹¹¹ Sri Lanka, Act No. 45, 1998, sect. 7 (2).

¹¹² See China, State Council Order No. 564, 2009, art. 46: "Where a security guard causes personal injuries and casualties or property losses to others during his security and guarding services, the

practice: security companies are required to purchase a bond issued by a reputable insurance company to cover any valid legal claim filed against the company.¹¹³ The 2002 Punjab Ordinance also provides for the security company to make arrangements for insurance for its guards.¹¹⁴ The absence of similar provisions in the laws of other States may have implications on the rights of victims of human rights abuses to a remedy.

66. On the other hand, two of the laws examined contain provisions for immunity to the central authorities,¹¹⁵ or any person¹¹⁶ so long as they have acted in good faith. The 2005 India Act exempts the controlling authority of liability for indemnities for anything done in good faith while the 2000 Sindh Ordinance (Pakistan) exempts any person of liability for indemnities for anything done in good faith.

IV. Conclusion and recommendations

67. The study of legislation on private military and/or security companies of States in francophone Africa and in Asia highlights the different approaches to the privatization of security. Analysis of the legislation in both regions show a regulatory emphasis on the provision of guard and protection services to persons and property in the domestic sphere. None of the legislation deals with private military companies or adequately addresses the issue of military and security services provided abroad and the extraterritorial applicability of relevant legislation.

68. The transnational nature of private military and security services (PMSC), the high likelihood of the use of force and involvement in hostilities on the part of PMSC personnel and the gaps in regulations and inconsistency of approaches found in the present study underscore the risk that the status quo can seriously undermine the rule of law and the effective functioning of democratic State institutions responsible for ensuring public safety. Furthermore, the regulatory and accountability gaps noted create potential risks to fundamental human rights, such as the right to security and the right to life, as well as the right of victims to effective remedies. The Working Group stresses that the right to security is an inherent human right, which underpins the enjoyment of other rights.

69. The study of the laws and regulations reveals a lack of specific rules on the content of monitoring activities and inspections of PMSCs, as well as a lack of references to compliance by the PSC and/or its personnel with international human rights and humanitarian law and standards, and provisions on penal accountability, civil liability of individuals and corporate actors, as well as effective remedies to victims.

70. Considering the diverse activities and the broad geographical scope covered by PMSC services, lack of regulation in those critical areas may result in States' ineffective control over the private security industry and the activities of its personnel. Lack of familiarity with human rights standards among PMSC personnel also raises concerns. In order to ensure that the relevant international human rights and humanitarian law and standards are respected and effectively used in the course of private security operations with a view to minimizing the risk of violations thereto and

employer of the security guard shall provide compensation and may demand recourse, in accordance with the law, against the security guard who has acted with malice or gross negligence.”

¹¹³ Philippines, Republic Act No. 5487, 1969, sect. 8, second para.

¹¹⁴ See article 13 (6).

¹¹⁵ India, Act No. 29, 2005, sect. 23.

¹¹⁶ Pakistan, 2000 Sindh Ordinance, sect. 13.

guaranteeing the effective accountability of PSCs and their personnel, it is essential that human rights-based vetting mechanisms as well as mandatory legal training with reference to the relevant international human rights and humanitarian law and standards be introduced. Such training in human rights standards is imperative and should form part of the overall mandatory criteria for obtaining a licence to operate and for subsequent licence renewals.

71. The study indicates that, although several national laws provide for the establishment of a government authority responsible for granting licences to PSCs, very few of the States reviewed require or grant power to the said authority to keep a centralized register of licences that have been awarded. States' obligation to keep such a register may assist in maintaining oversight of PSC operations and the conduct of PSC personnel.

72. The Working Group hopes that the study of national legislation on PMSCs will enable it to identify good practices that would contribute to its development of guidance for Member States on how to regulate PSCs effectively and ensure the enjoyment of the right to security by all. For instance, the regulation of the export of security (and military) services is an example of good practice, which States must consider addressing within their regulatory frameworks. Other good practices include the mandatory requirement for PMSCs to have a sound organizational structure coupled with an effective post accountability system that addresses not only their activities, but also the conduct of their personnel, and the requirement for all alleged offences or violations committed by PMSCs and/or their personnel to be reported to the police or other law enforcement agents.

73. Notwithstanding the good practices that may be identified by the Working Group in the course of its study of national legislation on PSCs and despite the detailed provisions on permitted and prohibited activities, there are still regulatory gaps relating to issues such as the acquisition of weapons and trafficking in arms by PMSC personnel and their consequences and divergent approaches to the use of force and firearms in the course of duty. Taking into account the nature of PMSC activities and the potential participation of PSC personnel in combat and mercenary-related activities, as well as the likelihood that PMSC personnel carry and use weapons, the lack of regulation creates potential risks to human rights. An international convention could provide standard rules and methods on acquiring, exporting, importing, possessing and using weapons and would ensure that PMSC personnel worldwide are also held accountable for illegal acquisition of weapons, illicit trafficking in arms and prohibited use of force.

74. The study highlights the lack of clear regulations on oversight by the authorities and accountability of actors in the PMSC industry. Legislation is particularly silent on how the conduct of PSCs or PMCs is arbitrated during potential events of unrest or armed conflict. An international convention covering issues such as licensing, authorization, selection and training of PMSC personnel would promote implementation at the national level of common and consistent regulations that would ensure effective accountability and the availability of remedies for violations.

75. The Working Group reiterates its view that a comprehensive, legally binding international regulatory instrument would be the best way to ensure adequate protection of human rights. In that regard, the Working Group welcomes the work of the intergovernmental working group established by the Human Rights Council with a view to considering the possibility of an international instrument for the regulation of PMSCs; it encourages all States to participate actively in that process.