

EXECUTIVE SUMMARY
COMPARATIVE ANALYSIS ON THE REGULATION OF PRIVATE MILITARY
AND SECURITY COMPANIES IN EIGHT ASIAN COUNTRIES

1. Introduction

The Working Group continued its national legislation project to study and identify legislative approaches regarding the activities of PMSCs (private military and security companies) and to assess the effectiveness of such legislation in protecting human rights and promoting accountability for violations. In particular, it aimed to identify common points, good practices and regulatory gaps in national legislation on PMSCs. This time, the Working Group looked at the national legislation on PMSCs of eight Asian countries: **China, India, Malaysia, Pakistan, the Philippines, Singapore, Sri Lanka** and the **United Arab Emirates**.

The report reviewed those laws that specifically focus on PMSCs and their activities. It did not cover other related pieces of legislation (such as criminal codes, procedures regarding civil liability or general laws/rules on business registration or the use of firearms) or regulations, policies, or administrative measures.

2. Analysis

The main topics addressed in the survey were: 1. the Acts' scope of applicability; 2. the establishment of a security industry administrative authority; 3. the licensing system; 4. the selection, training, equipment and conduct of PSC personnel; 5. PSCs' own conduct (permissible and non-permissible activities); 6. regulations on the use of force and firearms by PSCs; and 7. rules on accountability for offences.

All of the Acts always include the State's domestic jurisdiction. Only the **2005 Indian Act** also governs, in addition to domestic security companies, *Indian companies' export activities (extraterritorial activities are prohibited without the permission of the Controlling Authority, which, in turn, requires the permission of the Central Government)*, which is a very good practice. Likewise, only the **2005 Indian Act** governs foreign companies' import activities (India *does not allow foreign companies to engage in* or provide private security services under its jurisdiction, unless their branches in the country fulfil certain requirements). Indirectly, **China** also permits and limits the import activities of foreign companies. All the Acts cover private *security* or similar services, while none of them makes any mention of *military* services. Although the phrases *security services* or *security company* are expressly included in all the legislation, there are some interesting nuances with regard to their meaning and scope. In short, there is a lack of uniformity on this point. Finally, all the laws focus on regulating private companies or agencies and their personnel. Notwithstanding the foregoing, in some cases, a broader scope can be found: the **2009 Chinese Order** also provides for the possibility that government bodies, social organisations, enterprises, public institutions and realty service enterprises, among others, can engage security guards directly, provided the guards meet certain requirements. And the **2006 UAE Federal Law** includes in its definition of companies 'any government body' as well as any 'Security Company or Institution (...) offering a security service whether independently or in conjunction with other activities' (Article 1).

In all the cases, the internal system for the incorporation of security companies is based on the establishment of a central authority in a given Department or Ministry, or, at least, an appointed civil servant from the Department of the State. This Authority may be decentralised in the case of federal States, such as **Pakistan** or **India**, as well as in the case of **China**. Generally, the Acts give the authorised Minister the power to implement the Act through the necessary regulations. This authority is responsible for granting, renewing, cancelling and suspending licences, among other powers. In some cases, this authority has an explicit power of maximum supervision over the companies (**China, India, Malaysia, Sindh-Pakistan, Punjab-Pakistan, Sri Lanka** and the **UAE**).

In all the countries examined, in order to start or continue a security business or company, it is necessary first to obtain a *licence*. The main aim of this compulsory licence is to grant *permission to create and establish a security company in the respective country*. The procedure for applying for a licence is quite similar in all of the countries studied. A written application must be submitted to the competent authority (local or central), and any documents required as proof of eligibility must be attached. Generally, a fee is required. In some cases, PSCs must purchase insurance (the **Philippines, Punjab-Pakistan**). All the countries require all *companies or individuals seeking to carry on a security business* to obtain a licence. Only in four cases must a separate licence also be obtained for the *security company's employees*: in **China, the Philippines, Singapore** and the **UAE**.

Some of the eligibility criteria for the company or owner licence are common to most of the laws analysed. They include: the need for the applicant to meet certain *qualification and training requirements*;¹ *the requirement not to have been convicted of any crime or other offence*;² and a *good conduct requirement*.³ Other criteria are specific to *two or more* countries, such as the references to a manager's or company's nationality;⁴ the requirement for companies to have a minimum equity;⁵ manager age requirements;⁶ or requirements to have certain premises, equipment, facilities, etc.⁷

The eligibility criteria for security employees are also the same in the four States that provide for this licence (China, the Philippines, Singapore and the UAE). They include: the requisite training and experience;⁸ not to have been convicted of any crime or other offence;⁹ and fulfilment of criteria related to good moral conduct.¹⁰ Additional specific criteria in various countries refer to: nationality,¹¹ age,¹² physical characteristics¹³ and health.¹⁴ Other countries clearly state that licences are not

¹ The **1969 Philippine Act** (Section 4); the **2007 Singaporean Act** (Section 21.4); the **1998 Sri Lankan Act** (Art. 4.3); and the **2009 Chinese Order** (Arts 8.2 and 8.3).

² The **1969 Philippine Act** (Section 4); the **1998 Sri Lankan Act** (4.3); the **2009 Chinese Order** (Art. 8.2); the **2005 Indian Act** (Sections 5 and 6.1); and the **2002 Punjab Ordinance** (Art. 6.c).

³ The **1969 Philippine Act**, Sections 4.f; the **2007 Singaporean Act** (Section 21 on renewals); and the **1998 Sri Lankan Act** (Art. 4.3).

⁴ The **1969 Philippine Act** (Sec. 4) and the **2005 Indian Act** (Sec. 6.2).

⁵ The **1969 Philippine Act** (Sec. 4); the **2009 Chinese Order** (Art. 8).

⁶ The **1969 Philippine Act** (Section 4).

⁷ The **2009 Chinese Order** (Art. 84) and the **2006 UAE Federal Law** (Art. 6).

⁸ The **1969 Philippine Act** (Section 5); the **2007 Singaporean Act** (Section 21.4); the **2009 Chinese Order** (Art. 16).

⁹ The **1969 Philippine Act** (Section 5); the **2009 Chinese Order** (Art. 17); and the **2007 Singaporean Act** (Section 21.8).

¹⁰ The **2007 Singaporean Act** (Section 21, on renewals, and Section 21.6) and the **2009 Chinese Order** (Art. 16).

¹¹ The **1969 Philippine Act** (Section 5) and the **2009 Chinese Order** (Art.16).

¹² The **1969 Philippine Act** (Section 5) and the **2009 Chinese Order** (Art. 16).

¹³ The **1969 Philippine Act**.

¹⁴ The **1969 Philippine Act** (Section 5) and the **2006 Chinese Order** (Art. 16).

required for people employed solely for 'clerical or manual work'.¹⁵ Of the States examined here, **China** regulates the criteria for being a security guard most thoroughly.

There are few references in the Acts studied here to the establishment of a *security agency register*. Indeed, only three of the Acts provide for the establishment of such a register: the **2000 Sindh Ordinance (Pakistan)**,¹⁶ the **1969 Philippines Act**¹⁷ and the **1998 Sri Lanka Act**.¹⁸ There are virtually no express references in the other Acts, although this requirement may be considered to be included indirectly.

As for PSC personnel and the selection, training, equipment and conduct thereof, once again there is a lack of uniformity in the analysed legislation. In some cases, the Acts merely mention these issues, which are then regulated in detail in specific legislation. This is true in the case of **Pakistan (Sindh and Punjab Provinces)**, the **Philippines** and **Singapore**. As already noted, however, this report focuses solely on the Acts directly addressing PSCs. It is thus difficult to find common features with regard to this matter and to summarise them. With regard to the most relevant such feature, *employee conduct*, it should be noted that in some of the States examined here (**China**, the **Philippines** and **Singapore**), the conduct of PSC personnel is also indirectly governed through the eligibility criteria established for granting employee licences. When employee licences are not required, the selection criteria apply to the companies themselves. The **2009 Chinese Order** is definitely the most detailed on this point, stating that security guards may take a long list of measures in the process of providing security and guard services. In some cases, the Acts moreover establish a clear limitation on security employees' conduct, namely, not to exercise any activity or power conferred on police officers, customs officers, immigration officers, prison officers or any other type of public officer (**1971 Malaysian Act**, **2000 Sindh Ordinance (Pakistan)**, and **2002 Punjab Ordinance (Pakistan)**).

As a general rule, each country regulates *PSCs' conduct (permissible and non-permissible activities)* differently. However, four aspects are regulated by the laws of two or more countries: the requirement for PSCs to exhibit their licence publicly and in a conspicuous place (the **2007 Sri Lankan Act** (Art. 5.4), the **2005 Indian Act** (Section 12), the **1969 Philippine Act** (Section 10) and the **2002 Punjab Ordinance** (Pakistan, Art. 9)); the prohibition for PSCs to conduct criminal investigations (the **1971 Malaysian Act** (Section 6) and the **2006 UAE Federal Law** (Section 12)); the prohibition for PSCs to exercise any powers conferred on public security officers (the **1971 Malaysian Act** (Section 19.2.i), the **2000 Sindh Ordinance** in Pakistan (Section 15.2 Additional) and the **2002 Punjab Ordinance** in Pakistan (Art. 20)); and the requirement to keep an internal register of data (the **2005 Indian Act** (Section 15), the **1998 Sri Lankan Act** (Section 7.2) and the **2006 UAE Federal Law** (Art. 19)). Aside from these four aspects, which are each addressed in the legislation of multiple countries, the remaining permissible and non-permissible activities vary from country to country.

There is a lack of uniformity among the regulations concerning *the use of force and firearms by PSCs*. This is true not only among the different countries, but also among different states or provinces within a single country (**Pakistan** and **India** are the best examples). Most of the States and provinces allow PSC employees to carry firearms, including **China**, **India**, the **Philippines** and **Pakistan (Punjab)**. The **2007 Singaporean Act** prohibits private guards from carrying certain firearms *unless* the employees have a special permit. **Sri Lanka** likewise allows it, albeit indirectly. The **1971 Malaysian Act** makes no mention of the use of firearms by private security guards. Indeed, the matter is completely ignored by the

¹⁵The **1969 Philippine Act** (Section 9) and the **2007 Singaporean Act** (Section 17).

¹⁶ Section 6.6.

¹⁷ Section 8: '...the Chief of the Philippine Constabulary or his duly authorised representative shall issue a permit for the issuance of such license and register the same in his office (...)' . The section goes on to provide a detailed schedule of 6 circumstances along with their fees in pesos or the applicable taxes.

¹⁸ Section 6. Register to be maintained by Competent Authority.

specific legislation. However, the **1960 Malaysian Arms Act** *indirectly* indicates that the employees of companies could potentially carry firearms. Both the **2000 Sindh Ordinance (Pakistan)** and the **2006 UAE Federal Law** prohibit the carrying of firearms. With regard to other aspects, there is a lack of clear minimum training requirements and standards; a failure to specify the types of guns private guards may carry; and a lack of rules of engagement for those private guards that do carry firearms. The training requirements generally include training on the handling of firearms. However, there are no clear uniform standards. Most often, the certificates are issued by local police departments; however, the training requirements vary considerably. Furthermore, there are no specific references to respect for human rights and humanitarian law. Additionally, the illegal acquisition of arms is rarely addressed in the texts regulating PSCs. The **2006 UAE Federal Law** mentions this issue, but most of the laws examined here fail to address it entirely.

As for rules on accountability for offences, only six countries grant *specific powers of control over PSCs' activities, including powers of inspection, to the central authorities or to law enforcement agents: China, India, Malaysia, Sri Lanka, Pakistan (Sindh and Punjab Provinces) and UAE*. The **Chinese** system establishes the greatest control over PSCs. In fact, there is a public system for the supervision and administration of security and guarding services. All the laws regulate liability for the commission of certain *offences*. Five aspects are regulated by multiple States. Four countries *regulate liability in case of offences committed by the companies, as well as the attribution of liability to the director or another manager when certain requirements are met (India (2005 Act, Section 22), Malaysia (1971 Act, Section 16), Pakistan-Sindh (2000 Ordinance, Section 12) and Sri Lanka (1998 Act, Section 17))*. Several States *consider operating without a licence to be an offence (China, India, Singapore, Sri Lanka and Pakistan-Punjab)*. Additionally, *making false statement in relation to a licence application or other relevant official document is considered an offence in Malaysia, Pakistan-Sindh and Sri Lanka*. Five States have established a *kind of general penalty for all contraventions of any of the provisions of their respective laws (Malaysia (2006 Act), Pakistan-Sindh (2000 Ordinance), the Philippines (1969 Act), Sri Lanka (1998 Act) and the UAE (2006 Federal Law))*. Finally, three States have established a *duty to revoke or cancel the license in some specific cases (India, Philippines and the UAE)*. Each State also specifically regulates other aspects related to accountability. Only two countries clearly recognise *the obligation to report information concerning any offence or violation of their respective laws: China and Malaysia*. The **1998 Sri Lankan Act** indirectly includes it. With regard to rules on procedures for remedies, the **2009 Chinese Order**, the **1969 Philippine Act** and the **2002 Punjab Ordinance** include obligations in this regard. Finally, two of the laws examined here include a dangerous clause granting immunity to the central authorities, or even to any person, provided they have acted in good faith (the **2005 Indian Act** and the **2000 Sindh Ordinance (Pakistan)**).

3. Good practices

- Establishment of a Central authority and license procedures for PSCs: all of the analysed countries.
- Licensing procedures for PSC employees: only the **2009 Chinese Order**; the **1969 Philippine Act**; the **2007 Singaporean Act**; and the **2006 UAE Federal Law**.
- Prohibition to conduct extraterritorial activities without the permission of the Controlling Authority, which, in turn, requires the permission of the Central Government: the **2005 Indian Act**.
- Foreign companies are not allowed to engage in security services in the domestic territory unless their branches meet certain requirements: the **2009 Chinese Order**; indirectly included in other cases, such as the **2005 Indian Act**.

- Criteria for granting the licence, including the taking into account of previous criminal offences: the **2009 Chinese Order**; the **2005 Indian Act**; the **1969 Philippine Act**; and the **2007 Singaporean Act**.
- Regulation of the status of employees who are not security officers but work at the security agency, such as secretarial, clerical or other similar staff: the **2007 Singaporean Act** and the **1969 Philippine Act**.
- Obligation to purchase an insurance bond to cover any valid legal claim against the agency by a client or employee as a prerequisite to obtain a license: the **1969 Philippines Act** and the **2002 Punjab Ordinance (Pakistan)**.
- Requirement for PSCs to collaborate with the civil defence authority in the event of an emergency or in times of disaster or calamity: the **1969 Philippine Act**.
- General requirement for any PSC or similar company to have ‘a sound organisational structure and security and guarding services management system, post accountability system and security guard management system’: the **2009 Chinese Order** (Art. 8.5).
- Direct obligation for PSC employees to respect certain human rights: the **2009 Chinese Order**.
- Liability of legal persons and organizations: the **2005 Indian Act**; the **1971 Malaysian Act**; the **2000 Sindh Ordinance (Pakistan)**; and the **1998 Sri Lankan Act**.
- Requirement to exhibit the licence publicly in a conspicuous place: the **2005 Indian Act**; the **2002 Punjab Ordinance (Pakistan)**; the **1969 Philippine Act**; and the **1998 Sri Lankan Act**.
- Prohibition for PSCs to conduct criminal investigations: the **1971 Malaysian Act** and the **2006 UAE Federal Law**.
- Prohibition for PSCs to exercise any powers conferred on public security officers or on any police officer, customs officer, immigration officer, prison officer or any other public officer: the **1971 Malaysian Act**; the **2000 Sindh Ordinance (Pakistan)**; and the **2002 Punjab Ordinance (Pakistan)**.
- Requirement for PSCs to keep an internal register of data: the **2005 Indian Act**; the **1998 Sri Lankan Act**; and the **2006 UAE Federal Law**.
- Duty to revoke licence in case of violations of human rights or engagement in criminal activity: the **2005 Indian Act** (in other cases); the **1969 Philippine Act** (directly); the **2006 UAE Federal Law** (in other cases).
- Requirement to report alleged offences/violations to the police or law enforcement agents: the **2009 Chinese Order**; the **1971 Malaysian Act**; and the **1998 Sri Lankan Act** (indirectly).

4. Gaps identified in relation to the 2010 WG Draft Convention

This section focused on key aspects that are missing from the studied legislation in relation to the 2010 WG Draft Convention. The aim was to identify any legal vacuums in the domestic laws that might justify the need for an international convention to coordinate State practices in this industry. The research included a table comparing the various domestic laws with key articles of the 2010 WG Draft Convention and showing the main gaps. An overview of these gaps is provided below:

- States should regulate not only the scope of the security services these companies provide domestically, but also their export and import activities. All but one of the Asian laws address only the activities that PSCs conduct in the national territory (domestic jurisdiction); only the **2005 Indian Act** directly includes a few brief references to the import and export of security services.
- Only one of the Acts establishes standards for the contracting of foreign PSCs by the State. Specifically, the **1969 Philippine Act** includes a brief reference to foreign personnel (Section 4).

- None of the eight countries analysed is a party to the 1989 UN International Convention against the Recruitment, Use, Financing and Training of Mercenaries. Neither, of course, is any party to the 1977 African Convention for the Elimination of Mercenaries in Africa, which is open only to African countries. Nor do any of the Acts make reference to the prohibition of either mercenaries or mercenary-related activities.
- Only three States (or State provinces) also grant this authority the power to keep a register of the licences awarded (the **Philippines, Sindh Province (Pakistan), and Sri Lanka**).
- Although all the Acts include a licensing system for PSCs, only four also require licences for individual security employees (those of **China, India, the Philippines and Singapore**). This lack of PSC employee licences in five of the analysed Acts is a major gap and one that directly affects the effectiveness of the right to security and other human rights and fundamental freedoms.
- The WG Draft Convention also includes several criteria for granting PSCs and their employees licences that are not always considered under the analysed Asian laws. Only four States take into account previous human rights violations when deciding whether to deny a licence (**China, India, the Philippines and Singapore**), although even in these cases, the relevant laws do not mention 'human rights' per se, but rather only criminal offences. In any case, the laws do not expressly or directly include any mention of requisite training for licence applicants in human rights and international humanitarian law. Nor do they include the necessary robust due diligence measures, which are included in the WG Draft Convention.
- Compared to the WG Draft Convention, considerable gaps can also be found with regard to the regulations governing the selection, training, equipment and conduct of PMSC personnel. None of the laws makes direct and express mention of training in human rights and international humanitarian law for PSC employees. Likewise, virtually none of the laws refers to the requirement to respect international human rights law and international humanitarian law. Interestingly, only the **2009 Chinese Order** prohibits certain conducts on the part of PSC employees on the grounds of respect for human rights and personal freedoms.
- Significant gaps were also identified in comparison to the WG Draft Convention with regard to the activities considered to be permissible or non-permissible for PMSCs. For instance, no explicit references were found to compliance with international labour standards, with the exception of the **2009 Chinese Order** and the **2002 Punjab Ordinance (Pakistan)**, which include a reference to coverage of security company employees under the national social insurance programme as provided by law. Likewise, no references were found to PSCs' obligation to train their personnel to respect international human rights law and international humanitarian law. Nor does any of the laws make reference to training in the use of specific equipment and firearms or the obligation for PMSCs that export their services to respect the sovereignty and laws of the country of operations.
- Compared to the WG Draft Convention, the following gaps were also found with regard to training in the use of firearms and the inclusion of rules on the acquisition of weapons by PSCs. Only in six cases (**China, India, the Philippines, Punjab Province (Pakistan), Singapore, Sri Lanka**) is the use of firearms regulated, and it is not done uniformly. None of the laws includes detailed regulations regarding the acquisition of weapons by PSCs (except a brief reference in the **2006 UAE Federal Law**), although this does not mean that this issue is not addressed under other acts or orders of the respective countries.

- Significant gaps can also be found in comparison to the WG Draft Convention with regard to rules on accountability for offences and procedures for remedies. Some of the States do not explicitly grant monitoring and oversight powers to the central authority (the **Philippines** and **Singapore**). Likewise, there are no references to the classic clause included in several international conventions on criminal cooperation concerning States' obligation to investigate, prosecute and punish violations in general and violations of human rights and humanitarian law in particular. Only **India**, the **Philippines** and the **UAE** (in some cases) include the obligation to revoke the licence in case of human rights violations or engagement in criminal activity. And only **China**, the **Philippines** and **Punjab Province (Pakistan)** include references to the obligation to ensure remedies for victims (Arts. 13.5, 17.4 and 23 of the WG Draft Convention). Only four countries (**India**, **Malaysia**, **Sindh Province (Pakistan)** and **Sri Lanka**) regulate liability for offences committed by the companies, as well as the attribution of liability to the director or another manager when certain requirements are met; there is thus a significant gap in this regard in the laws of the other four countries. Finally, none of the national laws makes reference to the various obligations related to international cooperation on legal matters, such as the establishment of jurisdiction, extradition, mutual legal assistance, the transfer of criminal proceedings, or notification of the outcome of such proceedings. These omissions are also significant gaps.
- Although there is no explicit reference to it in the WG Draft Convention, only three countries (**China**, **Malaysia** and **Sri Lanka** (indirectly)) include reporting requirements for alleged offences and violations.
- Finally, gaps can also be found with regard to specific international obligations included in the WG Draft Convention. To cite just one major gap, Article 13.6 of the WG Draft Convention establishes the obligation for States to report to the International Committee set up at the UN on the records of activities of companies that commit human rights violations or engage in criminal activities. Certainly, if any PSC has committed such an offence and had its licence revoked, any State should have a positive right to know and to inform its citizens of the offending PSC's name. The WG Draft Convention provides for such a process.

5. How the main elements and gaps of the analysed legislation affect and relate to respect for human rights

The lack of regulation of import export activities of PMSC in the majority of legislations affects without doubt the respect and protection of human rights and international humanitarian law. The fact that in all cases the licensing process involves a written application is positive, as it serves to limit arbitrariness by the State authorities and, thus, helps to ensure respect for the principle of non-discrimination. It is likewise positive that both the licensing process itself and the requirements and conditions for it are established by law; this, too, is a means of ensuring respect for the principle of non-discrimination against private individuals. Broadly speaking, in countries that do not require employees to obtain a specific licence (India, Pakistan-Sindh, Pakistan-Punjab, Malaysia and Sri Lanka), there is a greater risk of human rights violations and, thus, greater responsibility on the part of the State with regard to its international obligations to respect human rights.

Surprisingly, there is no express mention of the need for private security company managers and/or owners to have specific training in or knowledge of human rights and international humanitarian law. The notion is referred to only indirectly by those States

that require applicants not to have been convicted of any crime (1969 Philippine Act, 1998 Sri Lankan Act, the 2009 Chinese Order, 2005 Indian Act and 2002 Punjab Ordinance). However, that is not enough to guarantee the protection and respect of human rights.

The criteria for granting employee licences likewise make no express mention of training in or knowledge of human rights and international humanitarian law, which is a clearly negative aspect. On the other hand, it is worth noting that the 2009 Chinese Order does make express reference to the protection of certain fundamental labour rights through the requirement for employment contracts to include coverage under the country's social insurance programme.

None of the nine laws analysed includes any direct reference to the need to take international human rights or humanitarian law standards into account during selection and training processes or with regard to conduct of employees. Only the 2009 Chinese Order directly prohibits certain forms of interference by security guards with personal freedom, which is a good example of the establishment of limits on employee conduct to safeguard the human right to personal freedom. Indirectly, Malaysia and the Pakistani provinces of Sindh and Punjab include a specific limitation on security employees that serves to protect and ensure respect for human rights: employees may not exercise the powers conferred on police, customs, immigration, prison or any other kind of public officers. Certainly there is an intrinsic relationship between the monopoly on the use of force by public powers and respect for human rights.

Concerning PSCs' conduct, as in the previous point, the Malaysian and Pakistani (Sindh and Punjab provinces) laws include a specific limitation on security companies that indirectly protects and ensures respect for human rights: PSCs may not exercise the powers conferred on police, customs, immigration, prison or any other kind of public officers. An interesting guarantee of the human right to information is the requirement to keep an internal register of data required under the 2005 Indian Act, the 2007 Sri Lankan Act and the 2006 UAE Federal Law. However, aside from these specific provisions, no other references are made to the application of international human rights and humanitarian law.

As for the regulations on the use of force and firearms by PSCs, again, there is no direct reference to minimum human rights standards or respect for international humanitarian law. In order to avoid potential risks to certain fundamental human rights, such as the right to security and the right to life, there must be clear and precise rules of engagement, including the specification that any use of force must be adequate, mandated and proportional. It seems that only China, through the adoption of the 2002 Regulations on Administration of Use of Guns by Full-Time Guards and Escorts, offers a good example of the regulation and limitation of the use of firearms by PSC employees.

Concerning to accountability, only in six cases are supervisory bodies established or are the predetermined central or local authorities given the necessary oversight powers to carry out this control. However, none of the laws examined here establishes the obligation to oversee compliance with human rights and international humanitarian law standards. This poses a clear risk with regard to respect for human dignity and fundamental rights. The establishment of certain offences related to the exercise of

private security is inarguably an indirect means of protecting fundamental human rights. However, the specific human rights affected must be more precisely defined, and most of the laws are silent on this matter. By way of exception, the 2009 Chinese Order expressly cites the ‘infringement of the legitimate rights and interests or personal privacy of others through the use of monitoring devices’.

Only India, Malaysia, Pakistan and Sri Lanka regulate liability in case of offences committed by companies, as well as the attribution of liability to the director or another manager when certain requirements are met. There is thus a significant gap in this regard in the laws of the other four countries

Only two countries clearly recognise the obligation to report information concerning any offence or violation of their respective laws (China and Malaysia); the 1998 Sri Lankan Act indirectly includes a quite similar obligation. This situation once again affects respect for fundamental human rights. All States should include the obligation for security companies to report human rights offences or violations. And only China, the Philippines and Punjab Province (Pakistan) include only some references to the obligation to ensure remedies for victims (Arts. 13.5, 17.4 and 23 of the WG Draft Convention), which means that the other cases do not respect the effective right of victims of human rights abuses to a remedy

Finally, none of the national laws makes reference to the various obligations related to international cooperation on legal matters, such as the establishment of jurisdiction (Art. 21 of the WG Draft Convention), extradition (Art. 24), mutual legal assistance (Art. 25), the transfer of criminal proceedings (Art. 26), or notification of the outcome of such proceedings (Art. 27). These omissions are also significant gaps which affect respect for fundamental human rights.

6. General conclusions

The eight countries analysed have all passed new acts, amendments and/or regulations on private security companies or services, most since the turn of the century. The regulations suffer from a lack of uniformity. This is true not only between different countries, but also for different states or provinces within a single country (**Pakistan** is a good example; **India** could be similar).

All the Acts deal with private security, although each provides its own definition of ‘security services’. Broadly speaking, these differences do not affect the traditional, generic understanding of security services: all the acts cover, at least, the provision of security and protection to persons or property by a private security guard, whether armed or unarmed, in the respective domestic jurisdiction. In contrast, none of the analysed Acts includes military services. Moreover, despite the transnational nature of private security services, only one Act (the **2005 Indian Act**) addresses PSCs’ import/export activities, and even it does so only briefly. This is a major gap compared to the 2008 Montreux Document and the WG Draft Convention. All the acts aim to regulate private security companies, which are generally defined in opposition to government bodies. Only the **2009 Chinese Order** also includes the possibility of certain public or private entities employing security guards directly.

All of the analysed laws provide for a government authority, which may be central or local. Each State grants this security authority different powers. All of the Acts require companies to obtain a licence as a prerequisite to starting or continuing a security business in the country. In all cases, an application

procedure is established involving the submission of a written application to the competent authority. Usually, a fee is required. Only the **Philippines** and **Punjab Province (Pakistan)** moreover require companies to purchase an insurance bond, which is a good practice. One aspect worth highlighting is the identification of who exactly is being licensed.

All the Acts require the security company or person seeking to carry on a security business to obtain a licence. Only four countries (**China**, the **Philippines**, **Singapore** and the **UAE**) also require employees to have a licence. This means that in all the other countries, natural persons who work for a security company are not required to have any kind of licence. This is obviously dangerous and signifies a lack of control by the authorities. This is another important gap compared to the WG Draft Convention.

The criteria for granting licences to companies and/or employees vary from State to State. Two common requirements applicable to both companies and their employees that are worth noting are: qualification and training requirements for applicants and the requirement not to have been convicted of any crime or offence. However, the Acts are not overly specific with regard to the exact content of this training. Moreover, none of the Acts specifies whether this training must include knowledge of human rights and international humanitarian law, as would be required under the WG Draft Convention. This is another major gap. As for the requirement not to have been subject to prior convictions for crimes or other offences, the Acts do not specify that said crimes and offences must involve human rights violations, although that may be implicitly understood. There is likewise no reference to the strict measures of due diligence required under Art. 14.3 of the WG Draft Convention. Only the **1969 Philippine Act** provides for the revocation of the licence in case of violation of any of the Act's articles. This is another gap compared to Article 13.6 of the WG Draft Convention, on the revocation of licences in case of human rights violations or engagement in criminal activity.

Only three of the Acts provide for the establishment of a security agency register (the **2000 Sindh Ordinance**, the **1969 Philippine Act** and the **1998 Sri Lankan Act**). This is a significant gap compared to the WG Draft Convention.

Most of the States have detailed regulations concerning the procedure to be followed for the selection, training, equipment and conduct of security personnel; however, the procedures are not at all uniform. The various laws usually include a reference to the need to provide training to employees but, with the exception of the **2009 Chinese Order**, fail to provide details concerning the exact content thereof (which is usually governed by subsequent regulations). Moreover, none of the Acts includes any direct reference to international human rights and humanitarian law in the context of the selection criteria, training material or conduct of PSC employees, as would be required under the WG Draft Convention. This is another major gap. The **2009 Chinese Order** is clearly the most detailed with regard to employees' conduct. Indirectly, it even includes references to respect for human rights and fundamental freedoms, including the prohibition to restrict others' personal freedom, to detain others or to infringe personal privacy. Attention should also be drawn to the exclusion from the activities considered permissible for PSC employees of those activities reserved for police officers, customs officers, immigration officers, prison officers or any other public officers in both **Malaysia** and **Pakistan (Sindh and Punjab Provinces)**.

As a general rule, each country regulates PSCs' conduct (permissible and non-permissible activities) differently. However, attention should be drawn to certain important points that can be considered good practices and are included in the regulations of two or more of the studied countries. The first is the requirement for PSCs to exhibit their licence publicly and in a conspicuous place (**India**, **Punjab Province (Pakistan)**, the **Philippines**, **Sri Lanka**). The second is the prohibition for PSCs to conduct criminal investigations, which is addressed in the Acts of just two of the countries (**Malaysia** and the

UAE). The third is the prohibition for PSCs to exercise any of the powers conferred on public security officers, established in only three cases (**Malaysia, Sindh Province (Pakistan) and Punjab Province (Pakistan)**). And the fourth and final one is the requirement for PSCs to keep an internal data register, provided for by three countries (**India, Sri Lanka and the UAE**). All of these are important points, which should be regulated by all of the countries included in the analysis. Such major gaps compared to the WG Draft Convention will hinder the effectiveness of the various national Acts with regard to respect for human rights and fundamental freedoms.

Six of the analysed laws authorise PSC employees to carry firearms, directly or indirectly (**China, India, the Philippines, Pakistan (Punjab), Singapore, Sri Lanka**), and even then, not uniformly. On the contrary, there is a lack of clear minimum training requirements and standards; a failure to specify the types of guns private guards may carry; and a lack of rules of engagement for those private guards that do carry firearms. The lack of standard regulations in this regard may pose a threat to the right to security, the right to life, the prohibition on arbitrary deprivation of liberty, and the prohibition of torture and cruel, inhumane or degrading treatment. Moreover, none of the Acts includes detailed regulations on the acquisition of weapons by PSCs (although a brief reference is made in the **2006 UAE Federal Law**). That does not mean that this issue is not governed by other acts or orders in each country.

A lack of uniformity and significant gaps were also found in the examined laws with regard to rules on accountability for offences and procedures for remedies. Some of the States do not explicitly grant monitoring and oversight powers to the central authority (the **Philippines and Singapore**). **India, the Philippines and UAE** include the obligation to revoke the licence in case of human rights violations or engagement in criminal activity. And only **China, the Philippines and Punjab Province (Pakistan)** include references to the obligation to ensure remedies for victims, which could jeopardise the effectiveness of victims' right to effective remedies in the other States. Four countries (**India, Malaysia, Pakistan and Sri Lanka**) regulate liability for offences committed by the companies, as well as the attribution of liability to the director or another manager when certain requirements are met, which can be considered a very good practice. This practice highlights that non-State actors do have human rights obligations and criminal responsibility in these States, although there is a legal vacuum in the others.

In conclusion, the various domestic practices suffer from serious gaps that could potentially jeopardise **the right to security**, the right to life, the prohibition on arbitrary deprivation of liberty, the prohibition on torture and cruel, inhumane or degrading treatment, the right of victims to effective remedies, the right to a fair trial, and labour rights, among others. There is thus a clear need to coordinate individual States' policies and behaviour, which should be achieved through an international convention.

7. Recommendations

- To inform States of the good practices found in the laws of these eight Asian countries and to recommend that other States follow them.
- To conduct further research into national regulatory strategies in Asia. This is clearly needed in order to identify trends, gaps and good practices in regulating PMSCs in the region. This study could be the basis for a UNHCHR technical assistance programme for the regulation of PMSCs in both Asia and other regions.

- To undertake a serious study and work on a 'Framework convention to prevent violations of human rights arising from the privatisation of the use of force by States', which would be presented to the Intergovernmental Working Group in one year. Rather than an international convention that precisely and specifically regulates aspects traditionally understood to fall under domestic jurisdiction (licensing, authorisation, selection and training of PMSC personnel, etc.), I would suggest shifting to a 'framework' convention that compiles the main key principles in this area. The slowness, lack of interest and lack of consensus shown by States in their meetings with the Intergovernmental Working Group make it clear that the international community is not yet ready to adopt a detailed treaty on this matter. I thus suggest following the technique used in environmental law or for labour rights at the ILO. For instance, at the ILO, the General Conference begins by negotiating and adopting general conventions that set forth binding minimum standards, which are supplemented by recommendations (not binding but morally relevant). Both legal texts (the convention and the recommendations) are then adopted at the same meeting of the General Conference. This means that the present WG Draft Convention should be shortened to include only the fundamental general principles in this area, such as: 1) a duty for States and the UN to cooperate on issues such as: sharing information on PMSCs, licences, permits to leave the country, entry into the country, jurisdiction principles, the obligation to extradite and prosecute (*aut dedere aut judicare*), the duty to report the revocation of a licence or commission of an offence by a PMSC, etc.; and 2) a duty to respect the right to security and other fundamental rights and freedoms in all circumstances and, thus, the prohibition on delegating or privatising the use of force in any way that might jeopardise these rights, etc., among others. This Framework Convention should be supplemented by Annexes or even recommendations for States, which could include strict standards for the regulation of PMSCs, as has been done in environmental law and international labour law. Indeed, what is at stake is one of the oldest and most fundamental rights of all: the right to freedom and personal security.

- In any case, international control and oversight of the implementation of such a framework convention and recommendations, whether by a new committee or directly by an existing UNHCHR department, should be provided for. Certainly, I am considering the possibility to ask the Human Rights Council to establish a technical assistance programme for the regulation of PMSCs in Asia and other regions where it is proved to be necessary. While the path to an international convention is being paved, consideration should be given to implementing such an interesting programme.
