

A. Introduction

The Working Group continued its project to study and identify national 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, more particularly to identify common points, good practices and regulatory gaps.

Following its conclusions on samples of English-speaking countries (see A/HRC/24/45), the Working Group looked this time at the national legislation on PMSCs of eight French-speaking African countries, namely Burkina Faso, Cameroon, Côte d'Ivoire, the Democratic Republic of Congo, Mali, Morocco, Senegal, and Tunisia.

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

The main topics addressed in the survey were: 1. the scope of the legislation; 2. licencing, authorisation and registration of PMSCs; 3. selection and training of PMSC personnel; 4. permitted and prohibited activities of PMSCs; 5. rules on acquisition of weapons by PMSC personnel; 6. use of force and firearms by PMSC personnel; 7. accountability for violations of the law committed by PMSC personnel/remedies provided for victims; 8. ratification of mercenary conventions.

B. Analysis

All analysed countries have some **regulation of private security companies** and their activities, mainly focusing on guarding and protection provided to persons and goods. **None** of the legislation **covers the activities of private military companies and their provided services**. The study showed that the analysed laws focus on the **domestic sphere** without prohibiting the provision of military or security services abroad and without ruling on extraterritorial applicability. Similarly, the research revealed that **none** of the analysed laws include any **specific provisions on PMSC personnel's direct participation in hostilities**. The study noted that even where legislation prohibits PMSC personnel to carry 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 in armed conflicts as well.

In general States have detailed regulations on **licensing and authorisation** of private security services, including relevant details regarding the responsibilities of the various inter-ministerial, ministerial and other governmental bodies. The report noted that as a precondition for the authorisation most of the analysed States require a review of the "morality" or "good behaviour" of the company's managers or its personnel, but none of the reviewed laws include any reference to human rights law criteria to be considered by the authorizing bodies. With regard to the system of **national registration** of PMSCs, only one country requires the authorizing entity to maintain a national record of security companies.

The analysis showed that in general, States have detailed **selection criteria** and emphasis on the necessity of providing **training** to PMSC staff. However, the laws focus on form and procedural conditions, instead of on content, and none of the analysed legislation included references to international human rights and humanitarian law among 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 involved crimes, from

crimes resulting in imprisonment to acts against “good moral standards” and “good behaviour”. The research revealed that only half of the reviewed States' legislation provides information on a mandatory and regular training system of PMSC personnel and the laws of the rest of the countries refer only to optional trainings and to principles based on the PMSC codes of ethics.

Regarding **permitted activities**, the report noted that the analysed laws all emphasize that the only activities to be carried out by security providers must be guarding and protection provided to persons and property/goods. The study also showed that while carrying out their activities, private security companies are required to indicate the private nature of their work and that, with some exceptions, in several countries the permitted activities are to be carried out only inside the private guarded properties and must be limited to the guarded public properties. As for **prohibited activities**, the study concluded that certain laws prohibit all services that are not linked to the security of persons and property. As noted by the report, other commonly prohibited activities include the involvement and participation of PMSC personnel in a labour conflict or related event, gathering information on political, religious or trade union opinions, or becoming involved in the activities of the administrative police or investigative police. Finally, the study noted that some laws specifically prohibit certain activities of private security companies that may overlap with the functions of the police and the military, specifying that PMSCs shall not replace the police or the military in patrolling, arresting, engaging in body search or the search of handbags, requiring the showing of identity documents or confiscating personal effects, carrying and using firearms, or exercising constraint with the use of force, aside from cases of legitimate defence. At the same time, the report emphasized that the distinction between the functions of the public law enforcement agencies and PMSCs remains rather blurred, it is not clear whether the related rules should apply only to times of peace or to situations of armed conflict as well, and the extent to which the concerned laws purport to prohibit PMSC personnel's direct participation in hostilities.

As for the **participation of law enforcement agents in the activities of PMSCs**, the study noted that the majority of the analysed laws discourage former members of the military forces or the police to act as managers or employees of private security companies. However, the report also pointed out that the applied approaches vary significantly (e.g., prohibiting active or former members of the armed forces or the police/gendarmerie from inclusion in the staff of private security companies; requiring from former military and para-military members only an authorization from the minister supervising their corps in order to act as managers or employees of a security company; and allowing members of the police, gendarmerie and armed forces to act as owners, managers, or employees of a private security company a year after the date of cessation of their functions or activities).

The study revealed a variety of approaches to **acquisition and possession of weapons and firearms** e.g., allowing all PMSCs to be armed and to possess weapons/firearms; allowing the possession of weapons only for certain employees of PMSCs who carry out some specific activities such as surveillance, guarding and transport of funds and prohibiting to others, for example to the personnel of private companies protecting people; and requiring special permits for the acquisition and possession of weapons and firearms. The study also showed that in some countries it is either prohibited for the personnel of private security companies to acquire and possess specific types of weapons and firearms, or it is prohibited to acquire and possess them for specific purposes. The study noted that only one country's legislation refers to the specific phenomenon of illegal acquisition of firearms and its consequences. The study showed that only half of the reviewed States' legal regimes have specific laws on **the use of force and firearms** by PMSC personnel. In addition, the study revealed that 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 the case of self-defence, yet again others allow it according to the conditions provided by the relevant laws and regulations.

The report showed that in the majority of the reviewed States there appears to exist some sort of **monitoring system** by the authorizing/licencing agency of private security companies by carrying out announced or unannounced, regular or ad-hoc inspections, and by reviewing regular or ad-hoc reports submitted on infractions or violations of law committed by the companies' personnel. However, the study revealed that the relevant legislation in general lacks specific rules on the content of the monitoring procedure and concentrates mostly on administrative sanctions (such as warning, fine, temporary suspension of the company's activities, withdrawal of authorization, seizure of weapons and firearms), and only rarely makes reference to penal and civil sanctions. The study noted that none of the analysed legislation included provisions on the personnel's compliance with the standards of international human rights law and humanitarian law, or on guarantees for effective remedies to victims.

The study showed that while all reviewed States **ratified** the Additional Protocol to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) defining „mercenary“, and the vast majority of States are Party to the Organization of African Unity Convention for the Elimination of Mercenaries in Africa, there is a general reluctance to becoming a party to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries. The report also revealed that none of the analysed legislation makes reference to any of the above international standards regarding the activities of mercenaries, and there are no relevant signs of effective **national implementation** of any of these instruments.

C. Conclusions

The objective of the study was to carry out an analysis on national legislation regulating PMSCs in eight French-speaking countries in Africa and to identify and compare common elements, gaps and best practices. The findings will help the Working Group to develop guidance for Member States seeking to regulate PMSCs. The study confirmed the need for a legally binding international instrument regulating the activities of the industry.

The research revealed that while each of the eight Francophone African countries examined have legislation regulating PMSCs, each country approaches the privatization of the security industry differently, resulting in patchy and inconsistent regulation in that region.

The transnational nature of private security and military services, the high likelihood of PMSC personnel's use of force and involvement in hostilities, and the regulatory gaps and inconsistency of approaches demonstrated in the current study, all suggest a risk that the status quo seriously undermines the rule of law and the effective functioning of democratic State institutions responsible for ensuring public safety. Furthermore, the noted regulatory and accountability gaps create potential risks to fundamental human rights, such as the right to security, right to life, the prohibition of arbitrary deprivation of liberty, the prohibition of torture, cruel, inhuman or degrading treatment, and the right of victims to effective remedies.

The research showed a regulatory emphasis on protection provided to persons and goods in the domestic sphere, without addressing private military companies, the issue of military and security services provided abroad or the extraterritorial applicability of relevant legislation. While the study noted that in general States have detailed regulations on licensing and authorisation of private security services, as well as on the procedure of selection and training of personnel, the relevant laws do not include any references to a

single dedicated body responsible for licencing and monitoring the activities of PMSCs. Nor is there reference to applicable international human rights and humanitarian law in the selection criteria or the training materials. Considering the diverse activities and the broad geographical scope covered by PMSC services, the lack of regulation in these crucial fields may result in ineffective control over the private security industry and its personnel's activities, and a lack of familiarity with human rights standards among PMSC personnel. An international convention on licensing, authorisation, selection and training of PMSC personnel would promote national implementation of common and consistent regulation that is desirable to ensure effective scrutiny, accountability and the availability of remedies for violations.

The study showed that despite detailed provisions of existing laws on permitted and prohibited activities, there remains some confusion about the distinction between the functions of the police/armed forces and the functions of private security service providers, including PMSC personnel's involvement in combat activities. The research also noted serious regulatory gaps concerning the acquisition of weapons and trafficking in arms by PMSC personnel and their consequences, and there are divergent approaches to the use of force and firearms. Taking into account the nature of PMSC activities and the personnel's potential participation in combat and mercenary related activities, as well as the likelihood that PMSC staff carry and use weapons, the lack of regulation creates potential risks to the right to security, right to life, the prohibition of arbitrary deprivation of liberty and the prohibition of torture, cruel, inhuman or degrading treatment. An international convention could provide some standard rules and methods of acquiring, exporting, importing, possessing and using weapons and would ensure that the staff of PMSC is held accountable for illegal acquisition of weapons, illicit trafficking in arms and prohibited use of force in all parts of the world.

The study showed that the analysed legislation lacks specific rules on the content of monitoring activities and inspections, as well as references to the company's or its personnel's compliance with the standards of international human rights law and humanitarian law, penal accountability and civil liability of individuals and corporate actors, as well as effective remedies to victims.

Research into the national regulatory strategies of other regions will follow in order to identify further trends, gaps and good practices in regulating PMSCs.

Finally, the Working Group notes that the research also showed that while the reviewed States show commitment to certain international or regional instruments related to mercenaries, according to the legislation available for the analysis, none of them prohibit mercenary activities at a national level.