

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

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I. INTRODUCTION

This comparative study of domestic legislation on private security companies in several Asian countries aims to identify common and specific elements in the laws of eight Asian countries: China, India, Malaysia, Pakistan, the Philippines, Singapore, Sri Lanka and the United Arab Emirates. It will moreover look at how these elements affect and relate to respect for human rights. The Asian countries chosen for this report were selected according to the following criteria: firstly, by selecting English-speaking countries; secondly, by considering the significance of these countries in terms of their influence in the region; and thirdly, by taking into account the existence of national private military or security companies from these countries that have signed the International Code of Conduct.¹ The eight countries thus chosen have passed the following new acts, amendments and/or regulations on private security companies or services, all of which are currently in force.

China passed the Order of the State Council No. 564, on 'Regulation on the Administration of Security and Guarding Services', adopted at the executive meeting of the State Council on 28 September 2009 and promulgated on 13 October 2009, which came into force on 1 January 2010 (**2009 Chinese Order**).² India passed the Private Security Agencies (Regulation) Act, 2005, No. 29, 23 June 2005 (**2005 Indian Act**).³ Malaysia passed Act 27, the 'Private Agencies Act', of 30 April 1971, which now includes all amendments made up to 1 January 2006 (**1971 Malaysian Act**). **Pakistan** has no federal act concerning security companies in Pakistan as a whole.⁴ Instead, all agencies have to be created according to the 1984 Companies Ordinance (XLVII of 1984), and each federated state has its own regulation. Thus, the security agencies are regulated by provincial Ordinances. In this study, two provinces were selected: Sindh Province (Karachi), which passed the Sindh Private Security Agencies (Regulation and Control) Ordinance, 2000, on 30 December 2000 (**2000 Sindh Ordinance**)⁵ and Punjab Province, which passed the Punjab Private Security Companies (Regulation and Control) Ordinance, 2002 (LXIX of 2002) (**2002 Punjab Ordinance**). In the

¹ Number of companies which signed the ICoC by country: China: 3; India: 7; Malaysia: 1, Pakistan: 15; the Philippines: 7; Singapore: 8; Sri Lanka: 4; United Arab Emirates: 19 (<http://www.icoc-psp.org>, March 11, 2014).

² This Order is implemented by the Order of the Ministry of Public Security, No. 112, on 'Measures for the Public Security Organs to Implement the Regulation on the Administration of Security and Guarding Services', adopted at the executive meeting of the Ministry of Public Security on 29 December 2009 and promulgated on 3 February 2010; it came into force on the date of promulgation. It is supplemented by the Regulation on the Management of Use of Firearms by Full-time Escorting Security Guards of 2002.

³ It applies to all of India except the states of Jammu and Kashmir.

⁴ This country is a federation of four provinces: Punjab, Sindh, Khyber Pakhtunkhwa and Balochistan, as well as the Islamabad Capital Territory and the Federally Administered Tribal Areas in the northwest, which include the Frontier Regions.

⁵ The Ordinance came into force immediately. It was published on 3 January 2001.

Philippines, the organisation and operation of private detective, watchmen and security guards agencies are regulated by the Private Security Agency Law, Republic Act, No. 5487, 1969, dated 21 June 1969, as amended by Presidential Decree No. 11, dated 3 October 1972 and, subsequently, by Decree in 1973 and 1984 (**1969 Philippine Act**).⁶ Currently, a bill on private military security companies is being debated in the national parliament. Singapore passed the Private Security Industry Act 2007, Bill No. 26/2007, dated 27 August 2007 (**2007 Singaporean Act**). Sri Lanka passed the Private Security Agencies Act (No. 45) in 1998, which came into force on 1 January 2002 (**1998 Sri Lankan Act**). Finally, the United Arab Emirates passed Federal Law No. 37 of 2006 on Private Security Companies, issued on 9 October 2006 (**2006 UAE Federal Law**).⁷

This report is based solely on these laws. It does not cover the rules and regulations or ministerial decisions implementing them. Nor does it cover other related pieces of legislation (such as criminal codes, civil liability procedures, or general laws/rules on business registration or on the use of firearms), regulations, policies or administrative measures.

It should be noted that none of the eight countries analysed is a party to the 1989 UN International Convention against the Recruitment, Use, Financing and Training of Mercenaries. Likewise, of course, none is party to the 1977 African Convention for the Elimination of Mercenaries, which is open only to African countries. Nor do any of the Acts make reference to the prohibition of mercenaries or mercenary-related activities.

The rest of the report is divided into the following main sections: a) Analysis; b) Good practices included in the acts; c) Gaps in relation to the 2010 WG Draft Convention; d) Conclusions; and e) Recommendations.

II. ANALYSIS

This analysis will address the following main issues: the Acts' scope of applicability; the establishment of a security industry administrative authority; the licensing system; the selection, training, equipment and conduct of PSC personnel; PSCs' own conduct (permissible and non-permissible activities); regulations on the use of force and firearms by PSCs; and rules on accountability for offences. In each case, the report will indicate any common features shared by the Acts. It will likewise draw attention to any specific issues affecting only one or two countries.

1. Scope of applicability of the Acts

The Acts' scope of applicability was analysed at the territorial level, at the material level, and in terms of legal personality.

The *territorial scope* of all the Acts always includes the State's domestic jurisdiction. That is, the regulations deal with domestic security companies. This fact directly determines the content of the legislation.

Only the Indian regulation also governs, in addition to domestic security companies, *Indian companies' export activities*. Whether the legislation allows or prohibits private

⁶ The Act was implemented by the Rules and Regulations on the Implementation of the 1969 Act, a total of 22 rules, dated 10 May 2003.

⁷ The Act was implemented by Ministerial Decision No. 557 of 2008 for the Executive Order of Federal Law No. 37 of 2006 concerning Private Security Companies. This Decision is very long and complete.

security agencies from exporting their services, that is, from carrying out extraterritorial activities, is a crucial point. Only the **2005 Indian Act** is clear on it: *extraterritorial activities are prohibited without the permission of the Controlling Authority, which, in turn, requires the permission of the Central Government.*⁸ This is a very good practice.

Likewise, only the Indian regulation governs foreign companies' import activities. The **2005 Indian Act** directly addresses foreign companies' activities in India. India *does not allow foreign companies to engage in* or provide private security services under its jurisdiction, unless their branches in the country fulfil one of the following requirements: the company, firm or association of persons has to be *registered in India*, or its proprietor or a majority shareholder, partner or director has to be *a citizen of India*. Therefore, a company with 'a proprietor or a majority shareholder, partner or director who is not a citizen of India' is not eligible (Section 6.2).

One interesting aspect regulated under the **2009 Chinese Order** is the prohibition for certain organisations with public functions to contract wholly foreign-owned or mixed-capital (Chinese and foreign) security companies (Section 22: 'solely foreign-funded, Sino-foreign funded or Sino-foreign contractual security company'). This aspect is of particular interest, as it can be deduced indirectly from the regulation's wording that foreign and partially foreign-owned companies are allowed to operate in China.

The failure of most of the laws to regulate PSCs' import-export activities clearly affects the respect and protection of human rights and international humanitarian law.

The *material scope* of applicability of all the Acts encompasses private *security services* or similar, with none of the Acts mentioning any *military services*. The phrases *security services* or *security company* are expressly included in all the legislation, with some interesting nuances with regard to their meaning and scope. Specifically, the **2009 Chinese Order** refers to 'security and guarding services' (Art. 1);⁹ it also regulates 'security guard training entities' (Chapter VI). The **2005 Indian Act** covers companies 'providing private security services *including training* to private security guards or their supervisor or providing private security guards to any industrial or business undertaking or a company or any other person or property' (Section 2.b). The **1971 Malaysian Act** includes the protection of persons and of the property or business thereof, as well as the provision of information (Section 2).

The **2000 Sindh Ordinance (Pakistan)** defines private security businesses as providing, for consideration, 'security guards or security arrangements' (Section 2.a). Likewise, the **2003 Punjab Ordinance (also Pakistan)** defines PSCs as any company 'carrying on, maintaining or engaged in the business of providing for consideration, security guards or making other arrangements for the security of other persons and their property and cash-in-transit'

⁸ The **2005 Indian Act** provides 'that no private security agency shall provide private security abroad without obtaining permission of the Controlling Authority, which shall consult the Central Government before according such permission' (Section 4).

⁹ Article 2 defines these services thusly: '1. the doorman, patrol, guard, escorting, body guard, security inspection, and security technology protection, security risk assessment and other services which a security company offers to its client entities by assigning security guards under the security and guarding service contracts; 2. the internal watchman, patrol, guard and other security protection work undertaken by those persons employed by government organs, social organisations, enterprises and public institutions; 3. the guard, patrol, maintenance of order and other services conducted by persons employed by realty service enterprises within the realty management area'.

(Section 2.g). The **1969 Philippine Act** has a broader scope, referring to ‘private detectives’, as well as to ‘watchmen or security guards’ (Section 2). Similarly, the **2007 Singaporean Act** covers ‘private investigators and private investigation agencies’, as well as ‘security officers and security agencies’; curiously, the Act also provides detailed descriptions of terms such as ‘bouncer’,¹⁰ ‘security officer’¹¹ and the ‘person who provides a *security service*’, including the provision of ‘alarm surveillance services’.¹² The **1998 Sri Lankan Act** defines the ‘business of a private Security Agency’ as the business of providing, for payment, services for the protection of persons, including persons employed in the public sector, or of property (including property owned by the state)’ (Section 21). Two key aspects should be noted here: the inclusion of the requirement that the company be paid; and the fact that public sector or state property may be protected by private security agencies. In other words, the definition of PSCs given in the **1998 Sri Lankan Act** includes the possibility for them to offer their services to the public sector. Some of the other laws also include this possibility, such as the **2009 Chinese Order**, which, as we will see below, expressly states that public sector organizations may even engage the services of private security guards directly. None of the other cases makes any direct reference to this possibility. Indeed, logically, nothing should prevent a public sector organization from contracting a private company unless it is expressly prohibited.

The **2006 UAE Federal Law** refers to ‘security’ without providing any direct definition; indirectly, Article 12 establishes that the scope of the company ‘shall be limited to providing preventive security protection, with the exclusion of carrying out criminal investigation duties’. Additionally, Article 2 mentions the following types of security employees, among others: ‘... transfer of funds guard, security guard of personalities, guards of buildings, enterprises, active sectors, ceremonies and activities’.

Regarding the scope of applicability in terms of *legal personality*, 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. **China** is the best example. Its regulation deals not only with security companies, but also with the organisations that employ them. These include ‘government organs, social organisations, enterprises, public institutions and realty service enterprises’ (**2009 Chinese Order**, Art. 2). All have recognised legal status and can engage security guards directly, provided the guards meet the requirements prescribed by the **2009 Chinese Order**. Moreover, the organisations themselves must have a sound security service management system, a post-accountability system and a security guard management system in place. Entertainment venues are excluded from the list and may not employ or engage security guards directly (Art. 13). The

¹⁰ Section 2, on ‘interpretation’ defines ‘bouncer’ as ‘a person who, in respect of any place of entertainment or other similar premises, and as part of his regular duties, performs for reward any function of a) screening individuals seeking entry; b) controlling or monitoring the behaviour of individuals; or c) removing individuals for behavioural reasons’.

¹¹ Section 13 defines a ‘security officer’ as ‘any individual who, for reward, carries out any of the following functions: a) patrolling or guarding another person’s property (including cash in transit) by physical means (which may involve the use of patrol dogs) or by electronic means; b) keeping the property (including cash in transit) of another person under surveillance, including for the purpose of preventing theft thereof; c) acting as a bodyguard or bouncer; or d) in respect of any public place or other premises and as part of his regular duties, performing any function of screening individuals seeking entry thereto.’

¹² The Act also refers to a person who ‘provides a security service’. Article 18 defines it in great detail and includes the provision of alarm surveillance services (Section 18.1.f).

Order moreover establishes the formalities and procedures the organisations are to follow (Art. 14), as well as a general limitation: the security companies engaged may not offer their security and guarding services off the premises of the organisation that has engaged them or beyond the limits of the property managed thereby (Art. 15).

The **2006 UAE Federal Law** includes in its definition of companies falling within the scope of the Law ‘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). This is the only Act to include the possibility of a government body offering a ‘security service’ considered to be ‘private’ (given its name: ‘Private security companies Federal Law’).

It should be borne in mind that some Acts expressly exclude all **government agencies** and bodies from their definition of security company or scope of applicability. For instance, the **2005 Indian Act** excludes any ‘government agency’ from the ‘person or body of persons’ included in the definition of ‘private security agency’ (Art. 2.g). Similarly, the **2007 Singaporean Act** expressly provides that it is not applicable to certain persons, such as ‘the Singapore Police Force’, the ‘Singapore Armed Forces’, ‘any public officer or employee of the Government’, ‘any officer or employee of the Auxiliary Police Force’, ‘any person appointed under the Air Navigation Act’ or ‘any person appointed under the Rapid Transit Systems Act to investigate into accidents (...) of the railway’ (Art. 3). Likewise, one of the final clauses of the **1998 Sri Lankan Act** states ‘for the avoidance of doubt’ that the provisions of the Act ‘shall not apply in relation to the State’, which can be interpreted as excluding application to State bodies such as the police, army, etc. (Section 19).

The scope of applicability of the Acts was analysed according to the three following features: territorial, material and personality.

2. Establishment of a security industry administrative authority

The internal system for the incorporation of security companies is primarily based on the establishment of a central authority within the State Administration. This authority is gradually vested with various powers to authorise, supervise and control security companies. All the legislation analysed here provides for this central authority within the framework of the domestic jurisdiction. This implies the existence 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. Generally, the Acts give the authorised Minister the power to implement the Act through the necessary regulations.

The **2009 Chinese Order** entrusts its system of supervision of companies to the Public Security Department of the State Council. This department is responsible for supervising and administering all security and guard services throughout the country. The **2005 Indian Act** provides for the appointment of a ‘Controlling Authority’, to be designated by each State Government, who must be ‘an officer not below the rank of a Joint Secretary in the Home Department of the State’.¹³ This authority will be responsible for granting, renewing, cancelling and suspending licences, among other powers. The State Governments moreover

¹³Section 3.

have the power to make rules for all or any provisions of the Act.¹⁴ The **1971 Malaysian Act** establishes the competence of the Minister charged with the responsibility for internal security, who may delegate any or all of his powers and duties (Section 17). The Minister is responsible for the issuance of licences and has the power to make rules (Section 18). The **2000 Sindh Ordinance (Pakistan)** provides for the appointment by the Government of Sindh of any person or authority as the Licensing Authority (Section 4). The **2002 Punjab Ordinance (Pakistan)** defines the licensing authority as ‘the Government of the Punjab or an officer nominated by Government to exercise all or any of the powers of the Licencing Authority’ (Section 2.e). The **1969 Philippine Act** establishes that *the competent authority* is the Chief of Constabulary, who ‘shall promulgate the necessary rules and regulations to carry out the provisions of this Decree’ (Section 8) and ‘shall exercise general supervision over the operation of all private detective and watchman or security guard agencies’ (Section 11). The Philippine Chief of Constabulary is moreover authorised to issue the rules and regulations necessary to achieve the purpose of the Act (Section 17).

According to the **2007 Singaporean Act**, the Minister is the competent authority to appoint one or more public officers to be the ‘licensing officer or officers’ responsible for the Act’s administration (Section 4.1). They will act under the direction of the Minister. The **1998 Sri Lankan Act** recognises the Ministry as the main authority to give effect to the Act’s provisions. It may issue general or special directions to the established ‘Competent Authority’ (Section 14).¹⁵ The Competent Authority may delegate all or any of its powers to the District Secretary appointed for a district. The Minister may establish regulations concerning all matters required by the Act and especially in respect of any or all matters specified in Section 8.2.¹⁶ The **2006 UAE Federal Law** recognises the establishment of a ‘Competent Authority’ (Art. 1), defined as ‘the Administration or Section in the Ministry or the Police General Administration having jurisdiction over dealing, supervising and following up the affairs of Private Security Companies’.

3. Licensing system

This section examines the features of the respective state licensing systems, taking into account whether they include relevant criteria related to human rights.

In all the countries examined here, in order to start or continue a security business or company, it is necessary first to obtain a *licence*. Companies that fail to do so will be prohibited from conducting their business and may be subject to sanction.¹⁷ As all the laws examined here mainly focus on domestic security, in all cases the main aim of this

¹⁴ Section 25. ‘Power of the State Government to make rules’. Furthermore, the ‘Central Government may frame model rules in respect of all or any of the matters with respect to which the State Government may make rules under this Act’ (Section 24). Under Section 19 (‘Delegation’), the State Government may delegate any power or function that it or the Controlling Authority may exercise or perform under the Act, except the powers to make rules under Section 25.

¹⁵ Section 3 establishes the appointment of a Competent Authority, with as many officers and servants as are needed to assist him. Section 21, on ‘Interpretation’, establishes that ‘Competent Authority means the person appointed under section 3 to be the Competent Authority for the purposes of this Act’.

¹⁶ Section 18.2: ‘(a) the procedure for selection of personnel by registered Private Security Agency including the security clearance to be obtained in respect, of such personnel; (b) the initial training and in-service training to be provided for such personnel; (c) the uniforms to be worn by such personnel; (d) the level of competence in the use of firearms, to be possessed by such personnel’.

¹⁷ For instance, in **China, India, Singapore, Sri Lanka and Pakistan-Punjab**.

compulsory licence is to grant *permission to create and establish a security company in the respective country*.¹⁸

In **China**, companies are also required to obtain a second licence, which is not exclusive to the security industry, namely, an industrial and commercial license (**2009 Chinese Order**, Art. 12). The **2009 Chinese Order** also provides for two other types of licences that are specific to security companies: a) a licence to offer armed escort services (Art. 10); and b) a licence to train security guards (Art. 33).

The **1969 Philippines Act** requires companies, as a prerequisite to obtaining a license, to get a 'permit from the Chief, Philippine Constabulary' (**1969 Philippine Act**, Art. 7). The **1998 Sri Lankan Act** establishes a more complex two-step procedure, involving registration and subsequent licensing (Sections 2, 4, 5 and 6); the Act considers each of these steps to be a separate process, and the registration must be completed first.

The requirements regarding the procedure to be followed, the licence recipients, eligibility criteria and the registration process are outlined below.

A. Procedure

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.¹⁹ Generally, a fee is required;²⁰ in some States, this fee must be paid annually for as long as the company exists.²¹ In some cases, PSCs must purchase insurance.²² The criteria for refusing, cancelling and suspending licences, as well as for appealing such decisions, and the conditions for all of these processes are set forth, in greater or lesser detail, in each country's legislation.²³ The fact that in all

¹⁸ Subject to the nuances of the **2005 Indian Act**.

¹⁹ The **2009 Chinese Order** (Art. 9); the **2005 Indian Act** (Arts. 7 and 8); the **1969 Philippine Act** (Art. 7); the **2007 Singaporean Act** (Art. 21.1); and the **1998 Sri Lankan Act** (Section 4). The **2005 Indian Act** establishes a specific application procedure for the granting of licences (Section 7.2): 'The applicant shall submit an affidavit incorporating the details in relation to the provisions contained in Section 6, ensure the availability of the training for its private security guards and supervisors required under sub-section (2) of Section 9, fulfilment of condition under Section 11 and of cases registered with police or pending in a court of law involving the applicant'. See also the **2002 Punjab Ordinance** (Art. 6); and the **2006 UAE Federal Law** (Art. 3).

²⁰ The **1971 Malaysian Act** requires a deposit (Arts. 3.1 and 3.3), although the Minister may waive this requirement (Section 3.5). See also, the **2000 Sindh Ordinance (Pakistan)** (Section 6.5); the **1969 Philippine Act** (Art. 8 requires a fee and the purchase of an insurance bond); the **2007 Singaporean Act** (Section 21.1); and the **1998 Sri Lankan Act** (Art. 5.1). The **2005 Indian Act** requires a fee based on the scope of the company's operations (a single district, up to five districts or an entire state) (Art. 7.3). Chinese law (or, at least, the **2009 Chinese Order** analysed here) does not establish a registration fee for companies. See also the **2002 Pakistan-Punjab Ordinance** (Art. 6).

²¹ The **1971 Malaysian Act** (Art. 4.4); the **2000 Sindh Ordinance** (Section 6.5); the **2002 Punjab Ordinance** (Art. 6.3) (every three years); and the **2006 UAE Federal Law** (art. 8).

²² The **1969 Philippine Act**: 'The application shall further be accompanied by a *bond* issued by any competent or reputable surety or fidelity or insurance company duly accredited by the office of the Insurance Commissioner in the sum of not less than five thousand Pesos nor more than ten thousand Pesos in the discretion of the Chief, Philippine constabulary, which bond shall answer for any valid legal claim against the agency by its clients or employees' (Section 8). See also, the **2002 Punjab Ordinance** (Art. 13.6).

²³ The **2009 Chinese Order** does not include an appeal system (Art. 9). See also, the **1971 Malaysian Act** (Sections 2.2 and 4); the **1969 Philippine Act** (Rule IV, Part 2, Section 8 – Status and Validity of Licence to Operate); the **2000 Sindh Ordinance** (Sections 10 and 11); the **2007 Singaporean Act** (Arts. 21.3 and 21.6); the **1998 Sri Lankan Act** (Arts. 5.1-3, 10, 11 and 12); the **2005 Indian Act**, which includes the renewal of licences

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.

B. Licence recipients

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**.²⁴

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.

C. Company and employee eligibility criteria

It is important to distinguish between the eligibility criteria for the two types of licence recipients: companies (or the owners thereof) and employees.

Company or owner eligibility. Some of the eligibility criteria for starting a private security company, either as an individual or as a company, are shared by most of the laws analysed here. These include: the applicant's *qualification and training requirements*;²⁵ *the requirement not to have been convicted of any crime or other offence*;²⁶ and *the good conduct requirement*.²⁷

Other criteria are specific to *two or more* countries, such as the references to a manager's or company's nationality;²⁸ the requirement for companies to have a minimum

(Section 8), the conditions of the licence (Section 11), the cancellation and suspension of the licence (Section 13), the procedure for any subsequent appeals (Section 14), and a system for the inspection of licences (Section 16); the **2002 Punjab Ordinance** (Arts. 6.7 and 6.8).

²⁴ The **2009 Chinese Order** (Art. 16); the **1969 Philippine Act** (Sections 4 and 5); the **2007 Singaporean Act** (Sections 14.1, 15.1 and 16.1); and the **2006 UAE Federal Law** (Article 11 of which provides that the company may not contract a security employee until it has obtained the *approval* of the competent authorities and fulfilled the restrictions and conditions specified in the law's Executive Regulations).

²⁵ The **1969 Philippine Act** (Section 4); the **2007 Singaporean Act** (Section 21.4); the **1998 Sri Lankan Act** (Art. 4.3); the **2009 Chinese Order** (Arts 8.2 and 8.3).

²⁶ 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); the **2002 Punjab Ordinance** (Art. 6.c).

²⁷ The **1969 Philippine Act**, Sections 4 ('f) suffering none of the disqualification provided for in the preceding section') and 5 ('Provided, That *foreigners* who are already employed as watchmen or security guards prior to the approval of this Act shall not be subject to the above-mentioned requirements: Provided, further, That *veterans* shall be given priority in employment as security guard, watchman or private detective: And provided, finally, that person convicted on any crime involving moral turpitude shall not be employed as security guard, watchman or private detective'); the **2007 Singaporean Act** (Section 21 on renewals); and the **1998 Sri Lankan Act** (Art. 4.3).

²⁸ The **1969 Philippine Act** requires them to be a Filipino citizen or corporation (Sec. 4). Under the **2005 Indian Act**, one of the requirements to be eligible for a licence is for the company, firm or association of persons to be *registered in India*, or for its proprietor or a majority shareholder, partner or director to be a citizen of India (Sec. 6.2).

equity;²⁹ manager age requirements;³⁰ or requirements to have certain premises, equipment, facilities, etc.³¹

There are some additional criteria, such as in the **Philippines**, where it is prohibited to organise or hold an interest in more than one private security agency, except in certain cases (Section 4), or in **China**, where companies are required to have ‘a sound organisational structure and security and guarding services management system, post accountability system and security guard management system’ (Art. 8.5). This latter requirement is actually a general obligation for both security companies and organisations that employ security guards directly,³² and it is a good practice.

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.

Security employee eligibility. Common eligibility criteria to be a security guard in four of the States that provide for it (**China, the Philippines, Singapore and the UAE**) include the following: training and experience;³³ not to have been convicted of any crime or other offence;³⁴ and fulfilment of the criteria related to good moral conduct.³⁵ Specific criteria in various countries refer to: nationality,³⁶ age,³⁷ physical characteristics³⁸ and health.³⁹ Other

²⁹ The **1969 Philippine Act** requires a minimum capital of five thousand pesos, one hundred per cent of which must be owned and controlled by Filipino citizens (Sec. 4). The **2009 Chinese Act** requires ‘(a)t least 1 million yuan of registered capital’ (Art. 8).

³⁰ The **1969 Philippine Act** requires managers to be at least 25 years old (Section 4).

³¹ Under Article 84 of the **2009 Chinese Order**, the company has to have ‘a premise and facilities and equipment necessary for the provision of security and guarding services’. And under Article 6 of the **2006 UAE Federal Law**.

³² Article 4 of the **2009 Chinese Order** states: ‘The security companies and entities employing security guards by themselves (hereinafter referred to as the security guard employers) shall establish a sound security and guarding services management system, post accountability system and security guard management system to intensify the management, education and training of security guards and improve the security guard’s level of occupational ethics, eligibilities and an awareness of responsibilities’.

³³ The **1969 Philippine Act** (Section 5); the **2007 Singaporean Act** (Section 21.4); the **2009 Chinese Order** (Art. 16).

³⁴ The **1969 Philippine Act** (Section 5) and the **2009 Chinese Order** (Art. 17). The **2007 Singaporean Act** (Section 21.8).

³⁵ The **2007 Singaporean Act** (Section 21, on renewals, and Section 21.6, which provides that personal qualities will also be taken into consideration when it comes to refusing the granting or renewal of a license when, ‘in the opinion of the licensing officer: a) (...) the person is not a fit or proper person to hold or to continue to hold the licence; b) (...) an officer of the business entity is not a fit or proper person; c) it is not in the public interest to grant or renew the licence, or the grant or renewal of the licence may pose a threat to national security’; and the **2009 Chinese Order** (Art. 16, which refers to ‘good conduct’).

³⁶ Under the **1969 Philippine Act** (Section 5), they must be a Filipino citizen. Under the **2009 Chinese Order** (Art.16), they must be Chinese citizen.

³⁷ Under the **1969 Philippine Act** (Section 5), they must be between the ages of 21 and 50. Under the **2009 Chinese Order** (Art. 16), they must be 18 or over.

³⁸ Under the **1969 Philippine Act**, they must be at least 5 feet 4 inches tall.

³⁹ Under the **1969 Philippine Act** (Section 5), they must be physically and mentally fit, while under the **2006 Chinese Order** (Art. 16), they must be ‘healthy’.

countries clearly state that licences are not required for people employed solely for 'clerical or manual work'.⁴⁰

Of the States examined here, **China** regulates the criteria for being a security guard most thoroughly, among other things by establishing the following very specific criteria for the private security companies that employ them: once they have passed the relevant examination, they must issue the requisite security guard certificates; they must sign employment contracts with the guards they employ that include coverage under the country's social insurance programme, as stipulated by law (which is an interesting reference to labour rights); they must offer regular training to security guards with regard to the law and to professional knowledge and skills; they must regularly assess guards' performance; and they must purchase accidental injury insurance for the guards based on the degree of risk involved in the specific security position or guarding service to which they are assigned.⁴¹

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.

D. Register

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)**,⁴² the **1969 Philippines Act**⁴³ and the **1998 Sri Lanka Act**.⁴⁴ The lack of any obligation for the central authority to keep a register under some of the laws is a major gap that jeopardises respect for human rights.

There are virtually no express references in the other Acts. However, indirectly, the requirement for agencies and/or employees to obtain a licence can be construed as likewise entailing the State's registration of the licences it grants, such that the State itself would thus keep a list of the licence holders. The **2009 Chinese Order** and **2005 Indian Act** do not make any explicit reference to a central register of the licences granted. The **1971 Malaysian Act** is also silent on the matter; it is worth noting, however, that the Act provides that 'The Minister shall, in the month of March every year, cause to be published in the Gazette a list of licensed private agencies, and additions to and deletions from the list shall be published from time to time as they are made' (Section 5). Moreover, the Act does not exclude the additional application of the written law regulating the registration of businesses in Malaysia in general (Section 19.1).⁴⁵ The **2002 Punjab Ordinance (Pakistan)** makes no reference to a register. The

⁴⁰The **1969 Philippine Act** (Section 9). The **2007 Singaporean Act** (Section 17).

⁴¹ Arts. 16, 18, 19 and 20.

⁴² Section 6.6.

⁴³ 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.

⁴⁴ Section 6. Register to be maintained by Competent Authority.

⁴⁵ Section 19 of the Act includes a final salvatory clause, the first subsection of which establishes that 'insofar as the provisions of this Act relate to a business or company, such provisions shall be construed as in addition or

2007 Singaporean Act requires **licensed security agencies** to maintain a register, among other things, of all places in which the security officers employed by the licensed security agency are deployed for work and [to submit] **such information to the licensing officer** upon request (Art. 12).

4. PSC personnel: selection, training, equipment and conduct

Another common feature of the examined laws is their treatment of the personnel employed by private security agencies, including the selection, training, equipment and conduct thereof, as well as other related issues. In some cases, the Acts merely mention the issues, which are then regulated in detail in specific legislation. This is true in the case of **Pakistan (Sindh and the Punjab)**, the **Philippines** and **Singapore**. As already noted, however, this report will focus solely on the Acts. This section will also take into account whether the respective laws include any references to international human rights and humanitarian law standards.

Employee selection by the security agency. The selection is subject to various requirements depending on the country. The **2005 Indian Act** establishes a variety of eligibility criteria to be a private security guard. Among other things, it takes into account whether a candidate has served in ‘the Army, Navy, Air Force or any other Armed forces of the Union or State Police including armed constabularies and Home Guards for a period of not less than three years’ with regard to granting preference for becoming a security agency supervisor (Section 9.5) or being engaged as a private security guard (Section 10.3); besides, in any case, a person who has been convicted shall be employed or engaged as a private security guard or supervisor (Section 10.2). The **1971 Malaysian Act** provides that, in order to be employed in any capacity by a licensed private agency, a person must provide a personal ‘letter of approval by the Commissioner of Police or the Chief Police Officer’.⁴⁶ The **1998 Sri Lankan Act** provides that the Minister may establish regulations for, or in respect of, ‘the procedure for selection of personnel by registered Private Security Agency including the security clearance to be obtained in respect, of such personnel’ (Section 18.2.a).

Employee training. In the **Philippines**, agencies applying for a permit – a prerequisite for obtaining a license – have ‘to certify under oath that their private detectives, watchmen or security guards, *have received the appropriate training* from either the Philippine Constabulary, the National Bureau of Investigation, any local police department, or any other public institution duly recognised by the government to conduct police training’.⁴⁷ The **1998 Sri Lankan Act** provides that the Minister may establish regulations for, or in respect of, ‘the initial training and in-service training to be provided for such personnel’ (18.2.b). The **2009 Chinese Order** places considerable emphasis on training, providing for specific organisations responsible for training security guards (Chapter VI, Security Guard Training Entities). The **2002 Punjab Ordinance (Pakistan)** states that ‘The Private Security Company shall make arrangements for training and refresher courses of the guards employed by it through Elite Police Force Training School, Lahore or any other institution prescribed by the Licensing

supplementary to, and not in derogation from, the provisions of any written law relating to registration of businesses or to companies’ (**1971 Malaysian Act**).

⁴⁶ **1971 Malaysian Act**, Section 9.

⁴⁷ **1969 Philippine Act**, Section 6.

Authority' (Art. 14). Finally, under the **2006 UAE Federal Law**, companies must undertake to provide security employees with a training session to be implemented by the training institute in accordance with the restrictions and conditions specified in the law's Executive Regulations (Art. 17).

Employee uniform and identification papers. In **China**, the **Philippines**, **India** and the **UAE**, the uniforms have to be different from the uniforms and badges used by the army and police.⁴⁸ The **1971 Malaysian Act** establishes that employees' 'uniform, badge or emblem' must be approved by the Minister (Section 10); and both the **1969 Philippine Act** and the **1998 Sri Lankan Act** provide that the respective Chief Philippine Constabulary or the Minister may establish regulations for, or in respect of, the uniforms to be worn by such personnel.⁴⁹ The **2005 Indian Act** regulates the issuance of a photo identity card (Section 17), and the **1971 Malaysian Act** sets forth similar rules regarding identity papers.⁵⁰ The **2002 Punjab Ordinance (Pakistan)** warns that private security uniforms must be different from those used by the police and armed forces (Art. 4) and provides that the Licensing Authority will determine what constitutes an adequate uniform (Art. 23.d). It likewise establishes the obligation to carry ID papers at all times (Art. 16). According to the **2006 UAE Federal Law**, the company must provide the security employee with a distinctive uniform in line with the specifications, restrictions and conditions specified in the law's Executive Regulations (Art. 18).

Employee equipment. The **2009 Chinese Order** establishes that all the equipment (protective gear, monitoring devices) used in the security guard services shall conform to quality requirements and shall not infringe lawful rights; moreover, video material and alarm records must be kept for at least 30 days for reference purposes.⁵¹ It moreover establishes that security guard employers must prepare the necessary equipment for the guards, in accordance with the equipment standards defined by the Public Security Department of the State Council.⁵²

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 the following measures in the process of providing security and guard services: 1. check the certificates of people entering or leaving the service area and register vehicles and items entering and leaving the service area; 2. engage in duties such as patrolling, surveillance, safety inspections and alarm monitoring within the service area; 3. conduct safety inspections of people at airports, stations, docks and other public places, as well as of the items they are carrying, and maintain the public order; and 4. set up temporary segregation

⁴⁸ The **2009 Chinese Order** underscores that they must be 'conspicuously' different and refers to the uniform designs recommended by the National Association of the Security and Guarding Services Industry (Art. 27). The **1969 Philippine Act** establishes that the Philippine Constabulary shall prescribe the uniform or ornaments, equipment and other items to be worn by security guards (Art. 14). See also the **2005 Indian Act** (Art. 21) and the **2006 UAE Federal Law** (Art. 18).

⁴⁹ **1969 Philippine Act** (17); **1998 Sri Lankan Act** (18.2.c).

⁵⁰ **1971 Malaysian Act**, Section 7.

⁵¹ **2009 Chinese Order**, Art. 25.

⁵² **2009 Chinese Order**, Art. 28.

areas, where necessary, for armed escort missions, subject to the taking of all possible measures not to disrupt citizens' normal business. Moreover, security guards shall stop any violation or crime occurring within the service area in a timely fashion and promptly report to the police any violation or crime they could not stop, simultaneously taking measures to protect the scene (Art. 29). Additionally, under the Act, security guard employers must keep confidential any state or business secrets to which they have access as a result of the provision of security and guard services, as well as any confidential client information (Art. 26). Likewise, 'no security guard employer shall instigate or connive with any security guard to impede the lawful execution of official missions, to participate in demanding repayment of debts, or to settle disputes by violence or threat of violence' (Art. 26.2). Finally, it is worth noting that the Order also prohibits certain forms of interference by security guards with personal freedom⁵³ and moreover protects security guards' right to refuse to execute illegal orders from their employers.⁵⁴

The **1971 Malaysian Act** excludes all powers conferred by written law on a '**police officer, customs officer, immigration officer, prison officer or any other public officer**' from the activities permitted of licenced private security agency employees (Section 19.2.i). This is a good practice. It moreover states that 'Nothing in this Act (...) (ii) shall authorise (...) the employees [of a licensed private agency] to do or to omit to do an act which act or omission is unlawful or illegal by virtue of any written law' (Section 19.2.ii). The **2000 Sindh Ordinance (Pakistan)** likewise provides that 'Nothing in this Ordinance shall be construed as conferring on a **licensee** or his employees any of the powers, which by any law are conferred upon or exercisable by a police officer or any other public servant' (Section 15 Additional.2). And the **2002 Punjab Ordinance (Pakistan)** likewise provides that 'Nothing in this Ordinance shall be construed as conferring on a licensee or his employees any of the powers which by any law are conferred upon or exercisable by a police officer or officers of customs, immigration, prisons, or any other public officer' (art. 20.2).

Surprisingly, 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. 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: PSC employees may not exercise the powers conferred on police,

⁵³ Art. 30 provides that 'no security guard shall: 1 restrict the personal freedom of others, conduct body search on others or insult or assault others; 2. detain and seize the certificate or property of others; 3. obstruct the lawful execution of official missions; 4. participate in demanding repayment of debts, or settle disputes by violence or threat of violence; 5. delete or modify or spread the video monitoring materials and alarming records formed during the security and guarding services; 6. infringe on personal privacy or divulge any state secret, business secret to which he accesses during the provision of security and guarding services, or the information which the client entities require to keep confidential; or 7. commit other acts in violation of laws and administrative regulations'.

⁵⁴ Art. 31 establishes that 'A security guard has the right to refuse to execute the illegal instruction of the security guard employer or client entity. A security guard employer shall not cancel the employment contract with the security guard who refused to execute the illegal instruction, or lower his remuneration and other benefits, or stop the payment, or underpay the social insurance premiums for which it shall pay according to law'.

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.

Nevertheless, overall, there is a clear lack of references to human rights and international humanitarian law in the analysed legislation. The legislation should include human-rights-based mechanisms for vetting employees, as well as mandatory legal training that makes reference to the relevant international human rights and humanitarian law standards.

5. PSCs' conduct (permissible and non-permissible activities)

The following observations can be made regarding the regulation of security companies' conduct (obligations and permissible and non-permissible activities).

As a general rule, each country regulates this aspect differently. However, four aspects are regulated by the laws of two or more countries. Specifically, four countries require PSCs to exhibit their licence publicly in a conspicuous place (1): **Sri Lanka** (2007 Act, Art. 5.4), **India** (2005 Act, Section 12), the **Philippines** (1969 Act, Section 10) and **Punjab Province (Pakistan)** (2002 Punjab Ordinance, Art. 9).⁵⁵ Likewise, both the **1971 Malaysian Act** (Section 6)⁵⁶ and the **UAE's 2006 Federal Law** (Section 12) *prohibit PSCs from conducting criminal investigations* (2). Similarly, the **1971 Malaysian Act** (Section 19.2.i)⁵⁷, the **2000 Sindh (Pakistan) Ordinance** (Section 15.2 Additional)⁵⁸ and the **2002 Punjab Ordinance (Pakistan)** (art. 20)⁵⁹ *prohibit PSCs from exercising any powers conferred to public security officers* (3). These are good practices. Finally, the **2005 Indian Act** (Section 15)⁶⁰, the **1998 Sri Lankan Act** (Section 7.2)⁶¹ and **2006 UAE Federal Law** (Art. 19)⁶² require PSCs *to keep an internal register of data* (4).

⁵⁵ **1998 Sri Lankan Act:** The licence 'shall at all times be exhibited in the principal office or place of business of the person authorised by such licence to carry on the business of a private security agency' (Art. 5.4). **2005 Indian Act:** Every PSC 'shall exhibit its licence (...) in a conspicuous place of its business' (Section 12. Licence to be exhibited). **1969 Philippine Act:** 'The license shall be displayed at all times in a conspicuous and suitable place in the agency office or headquarters of the agency and shall be exhibited at the request of any person whose jurisdiction is in relation with the business of the agency or the employees thereof, or of the Chief of the Philippine Constabulary or his duly authorised representative or any peace officer' (Section 10. Display of Licence). **2002 Punjab Ordinance (Pakistan):** "Every licensee shall exhibit his licence or a certified copy thereof at a conspicuous place at his principal place of business and at every branch where the licensee carries on the business of Private Security Company" (art. 9).

⁵⁶ **1971 Malaysian Act:** In any case, nothing in the Act 'shall entitle a licensed private agency to enquire into any seizable offence' (Section 6).

⁵⁷ Specifically, it refers to powers conferred upon 'a police officer, customs officer, immigration officer, prison officer or any other public officer'.

⁵⁸ Specifically, it cites 'a police officer or any other public servant'.

⁵⁹ Art. 20 (2).

⁶⁰ In this case, it specifies that the *internal register* should contain information about the company's clients and the services provided.

⁶¹ **1998 Sri Lankan Act:** The company 'shall maintain such records and furnish such returns to the Competent Authority as may be prescribed'.

⁶² **2006 UAE Federal Law:** "The Company must keep organized records of its work and personnel working in accordance with the provisions of the Executive Regulations of this Law. The competent authority is entitled to peruse and scrutinize these records at any time".

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.

For instance, the **2009 Chinese Order** establishes a general principle whereby PSCs and organisations that employ security guards are required to establish a sound security and guarding services management system, a post-accountability system and a security guard management system to improve the management, education and training of security guards and heighten their professional ethics, eligibility and awareness of their responsibilities (Art. 4). This could be considered a good practice of that country.

At the same time, the **2009 Chinese Order** also establishes the obligation for PSCs to sign contracts with their clients that expressly stipulate the content of the service to be provided so that the PSC can determine the lawfulness thereof. The PSC is required to reject any request to contract an illegal security service and to report it to the public security authorities. Moreover, it must keep all contracts on file for at least two years.⁶³ Another interesting aspect regulated under the **2009 Chinese Order** is the prohibition for certain organisations with public functions to contract wholly foreign-owned or mixed-capital (Chinese and foreign) security companies. To this end, Section 22 provides that no national security body or body that deals with state secrets that is considered to play a key role in the provision of public security and safeguard services by the local people's government may 'employ any solely foreign-funded, Sino-foreign funded or Sino-foreign contractual security company to provide it with security and guarding services'. Finally, the **2009 Chinese Order** also requires companies to 'provide standard security and guarding services under the service standards of the security and guarding services industry' (Art. 24).

Under the **2005 Indian Act**, companies must have an employee supervisor as a prerequisite for commencing operations (Section 9). Indeed, the presence of such a supervisor is part of the definition provided of a private security agency (Section 2.g).

The **1971 Malaysian Act** establishes that 'Nothing in this Act (...) shall authorise a licensed private agency (...) to do or to omit to do an act which act or omission is unlawful or illegal by virtue of any written law' (Section 19.2.ii).

Under the **2002 Punjab Ordinance (Pakistan)** companies shall get their employees registered with the Punjab Social Security Institution and insured (Sections 17, 18) as well as respect other labour laws (Section 6 (9)).

The **1969 Philippine Act** includes several limitations and prohibitions affecting private agencies, concerning membership,⁶⁴ organisation⁶⁵ and services. In case of the latter, it

⁶³ **2009 Chinese Order** (Art. 21): 'To provide security and guarding services, a security company shall sign a security and guarding service contract with its client entity, expressly stipulating the items or contents of the services as well as the rights and obligations of both parties. After the termination of the security and guarding service contract, the security company shall keep the aforesaid contract for at least 2 years of reference. The security company shall examine the legitimacy of the security and guarding services which its client entity requests. It shall reject any illegal security service request and report to the public security organ.'

⁶⁴ Section 16.1: '(a) No agency operating in the City of Manila and suburbs may employ more than 1,000 watchmen or security guards; (b) no agency operating in other cities and first class municipalities may employ more than 500 watchmen or security guards; (c) no agency operating in municipalities other than first class may employ more than 200 watchmen or security guards.'

provides both that no agency shall offer, render or agree to render its services ‘to gambling dens or other illegal enterprises’ and that the ‘extent of the security service provided by any security agency shall not go beyond the whole compound or property of the person or establishment requesting the security service’, except when it involves escorting a large amount of cash.⁶⁶ One final aspect of this act worth noting is the obligation for security companies to participate in civil defence activities in case of disasters (Section 12).⁶⁷ This is a very good practice.

The **2007 Singaporean Act** includes an interesting control *over employees who are not security officers* whereby the company has to inform the central authorities (licensing officer) of the employment, or termination of employment, thereof (Section 17.1). The licensing officer then has the right to direct the licensed security agency to terminate the employee, should he or she consider that the employee is ‘not a fit and proper person’ based on various criteria, such as: ‘a) that the employee had on a previous occasion applied for a security officer’s licence or a security agency’s licence, and such application had been refused by the licensing officer; b) that the employee associates with a criminal in a way that indicates involvement in an unlawful activity; c) that in dealings in which the employee has been involved, the employee has shown dishonesty or lack of integrity; or d) that the continued employment of the employee is not in the public interest or may pose a threat to national security’ (Section 17).

While the **1998 Sri Lankan Act** covers several matters, the main ones are provided for in the Regulations. The Act regulates the following matters concerning the manner in which the holder of a license must conduct his business: he must do so ‘in such a manner as will safeguard the person and property of the persons who avail themselves of the services provided’ (Section 7.1); he has to notify the competent authority of the cessation of his business (Section 8.1); and he has to notify the competent authority of any change in the particulars of the application for registration (Section 9).

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.

⁶⁵ Section 16.2: ‘No person, corporation, partnership or association may organise more than one agency in any one city or municipality.’

⁶⁶ Section 16.3.

⁶⁷ Section 12: ‘In case of emergency or in times of disaster or calamities where the services of such agencies arise, the City or Municipal Mayor, as director of Civil Defence, may muster or incorporate the services of the agency nearest the area where such emergency, disaster or calamity arises and its duly licensed personnel to help maintain peace and order; and/or the prevention or apprehension of law violators and in the preservation of life and property. Deputised private detectives, watchmen or security guards shall take direct orders from the Chief of Police for the duration of the fire, inundation, earthquakes, riots or other emergencies’.

6. Regulations on the use of force and firearms by PSCs

Most of the States allow PSC employees to carry firearms, including **China**,⁶⁸ **India**,⁶⁹ the **Philippines**⁷⁰ and **Pakistan (Punjab)**.⁷¹ The **2007 Singaporean Act** prohibits private guards from carrying certain firearms unless the employees have a special permit.⁷² **Sri Lankan** likewise allows it, albeit indirectly.⁷³

The **1971 Malaysian Act** makes no mention of the use of firearms by private security guards. Indeed, the matter is completely ignored by the specific legislation. However, the **1960 Malaysian Arms Act** *indirectly* indicates that the employees of companies could potentially carry firearms.⁷⁴ Both the **2000 Sindh Ordinance (Pakistan)**⁷⁵ and the **2006 UAE Federal Law**⁷⁶ prohibits the carrying of firearms.

Among the countries that allow the carrying of firearms, the *limitations on the types of guns* that employees may carry and the *limits on the use thereof* (rules of engagement) vary. One common feature usually missing from these regulations is the specification of what type of guns PSC employees may carry. In the absence of such an explicit delimitation, it is difficult to say what types of firearms and other non-lethal weapons security guards can use. The **2002 Regulations on Administration of Use of Guns by Full-Time Guards and Escorts** is an example of good regulation of PSC employees in terms of limiting the use of firearms and defining the rules of engagement.⁷⁷

The legislation also differs when it comes to regulating the *training* of employees in order to obtain a proper license. 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

⁶⁸ In China, there is a specific regulation on this subject, the **2002 Regulations on Administration of Use of Guns by Full-time Guards and Escorts**, to which Article 29 of the **2009 Chinese Order** refers.

⁶⁹ Section 2, h) **2005 Indian Act**. The most comprehensive firearms legislation is the 1959 Indian Arms Act.

⁷⁰ Subject to the provision of training to security guards, as well as limitations on the types of firearms that may be carried. 'Section 13. Issuance of Firearms. A watchman or security agency shall be entitled to possess firearms after having satisfactorily passed the requirements prescribed by the Chief, Philippine Constabulary pertinent to the possession of firearm of any calibre not higher than 45 calibre in a number not exceeding one firearm for every two watchmen or security guards [...]'.

⁷¹ Section 15.

⁷² Article 42 prohibits 'any truncheon, handcuffs, or such other weapon or equipment as may from time to time be specified by the Minister in a notification published in the *Gazette*' unless the carrier has a special permit for it. However, PSCs may acquire a firearms license under the provisions of the Arms and Explosives Act (1913, revised 2003).

⁷³ **1998 Sri Lankan Act**, Section 18.2.d.

⁷⁴ As in Section 5.3: 'No arms licence or arms permit shall be granted in the name of any firm, partnership, company or corporation, but nothing in this subsection shall prevent an arms licence being issued to a responsible person nominated by or on behalf of a firm, partnership, company or corporation to have possession, custody or control of the arms or ammunition owned by the firm, partnership, company or corporation.'

⁷⁵ Section 7.

⁷⁶ Article 16.

⁷⁷ For example, Article 6 states 'When performing the task of guard or escort, full-time guards and escorts may use guns under any of the following emergencies where violent criminal acts cannot be prevented without using guns: (1) guarded objectives or escorted goods are being assaulted by violence or are in imminent danger of being assaulted by violence; (2) full-time guards and escorts are being assaulted by violence and their lives are in danger, or the guns and ammunition they carry are being seized or robbed.' (**2002 Regulations on Administration of Use of Guns by Full-time Guards and Escorts**).

considerably. More than one of the States whose laws are examined here (**Singapore, Pakistan Punjab**) establish training requirements but fail to specify minimum standards. The **1969 Philippine Act** allows PSCs to carry weapons, subject to the provision of *training* to security guards and limitations on the types of weapons carried.⁷⁸ **Sri Lanka** also has training requirements for the carrying of firearms, but they are poorly specified in the relevant legislation, which is a flaw that will affect its effectiveness. Specifically, Section 18.2.d of the **1998 Sri Lankan Act** merely vaguely states that ‘the Minister may establish regulations for, or in respect of (...) the level of competence in the use of firearms, to be possessed by such personnel’. The **2005 Indian Act** establishes that ‘To obtain a security license, the company shall ensure that its employees receive adequate training: - ensure the availability of the training for its private security guards and supervisors required under sub-section (2) of Section 9 (art. 7 (2)).

The illegal acquisition of arms is rarely addressed in the texts regulating PSCs. The **2006 UAE Federal Law** mentions it⁷⁹, but most of the laws examined here fail to mention the issue entirely. That does not mean that PSCs have impunity to commit this crime. The criminal classification of the illegal possession or trafficking of firearms is established in specific legislation on the subject, usually in laws regulating the sale and possession of firearms.

In short, there is a lack of uniformity among the regulations. 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); 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.

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.

7. Rules on accountability for offences

This part is divided into the following topics: (a) monitoring and supervision: powers of control over PSCs’ activities by the authorities or law enforcement agents; (b) offences; (c) reporting requirements for alleged offences and violations; and (d) rules on procedures for remedies. It will also look at related human rights issues and accountability for human rights violations committed by PSC employees.

⁷⁸ ‘Section 13. Issuance of Firearms. A watchman or security agency shall be entitled to possess firearms after having satisfactorily passed the requirements prescribed by the Chief, Philippine Constabulary pertinent to the possession of firearm of any calibre not higher than 45 calibre in a number not exceeding one firearm for every two watchmen or security guards [...]’

⁷⁹ Article 16 ‘FIRE ARMS Personnel working within the Company are prohibited from acquiring or carrying any fire arms, or any part thereof. The authority prohibiting or authorizing the acquisition or carrying of any other materials is subjected to the restrictions and conditions specified in the Executive Regulations of this Law’.

A. Monitoring and supervision: powers of control over PSCs' activities by the authorities or law enforcement agents

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 the 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. In this sense, the Chinese system stands out for its centralisation and the control it grants the public authorities over private security and guarding services. Indeed, the very name of the regulation – Regulation on the *Administration* of Security and Guarding Services – is explicit in this regard. Thus, Article 3 of the **2009 Chinese Order** provides that the 'public security department of the State Council shall be responsible for supervising and administering the security and guarding services throughout the country. The public security organs of the people's government at and above the country level shall be responsible for supervising and administering the security and guarding services within their respective administrative areas'. The same article moreover establishes that 'associations of the security and guarding services industry shall, under the guidance of the public security organs, carry out self-disciplinary activities for the security and guarding services industry'.

The other countries establish various powers of control over PSCs, albeit in less detail. The **2005 Indian Act** gives the controlling authority powers of *inspection* over the licensed companies (Section 16).⁸⁰ The same power to inspect and search is established in the **2002 Punjab Ordinance (Pakistan)** (Art. 17). The **1971 Malaysian Act** gives police officers the power to *examine* identification papers and licences (Section 8). The same is included in the **2002 Punjab Ordinance (Pakistan)** (art. 16). The **1971 Malaysian Act** moreover establishes the power of authorised police officers to *enter and search the premises* of a licensed private agency should there be reason to believe that it is engaging in activities for 'purposes prejudicial to peace, welfare and good order in the Federation' (Section 11). It establishes the same power with regard to 'unlicensed private agencies' (Section 12). The **1998 Sri Lankan Act** allows the competent authority or any person authorised in writing thereby to '*enter at any time, any premises on which a person registered under this Act is carrying on the business of a Private Security Agency or any premises in respect of which such person is providing any services which he is authorised to provide by a licence issued under this Act, for the purposes of ascertaining whether the provisions of this Act or the terms and conditions of such licence are being complied with*' (Section 14). Likewise, the **2000 Sindh Ordinance (Pakistan)** gives the licensing authority, or any officer duly authorised to act on its behalf, the power to '*inspect the premises of the licensee, books of accounts and other records of the licensee, including the record of the persons employed by the licensee, the securities, cash and other properties held by the agency, and all documents relating thereto*' (Section 8.2). The **2006 UAE Federal Law** recognises the establishment of a 'Competent Authority' (Art. 1), having jurisdiction among others on **supervising** the affairs of Private Security Companies. The competent authority is entitled to peruse and scrutinize the PSCs records of its work and personnel working (art. 19).

⁸⁰ 'The Controlling Authority or any other officer authorised by it in this behalf may at any reasonable time, enter the premises of the private security agency and inspect and examine the place of business, the records, accounts and other documents connected with the licence and may take copy of any document.'

In short, 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.

B. Offences

All the laws regulate liability for the commission of certain offences. Five aspects are regulated by multiple States.

Thus, **India** (2005 Act, Section 22),⁸¹ **Malaysia** (1971 Act, Section 16),⁸² **Pakistan** (2000 Sindh Ordinance, Section 12)⁸³ and **Sri Lanka** (1998 Act, Section 17)⁸⁴ all 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 (1).

Likewise, several States consider operating without a licence to be an offence (2): **China**,⁸⁵ **India**,⁸⁶ **Singapore**,⁸⁷ **Sri Lanka**⁸⁸ and **Pakistan-Punjab**.⁸⁹ Additionally, making false

⁸¹ The **2005 Indian Act** refers to offences committed by companies thusly: ‘Section 22. Offences by companies. (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence. (2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. Explanation. For the purposes of this section — (a) “company” means any body corporate and includes a firm or other association of individuals; and (b) “director”, in relation to a firm, means a partner in the firm.’

⁸² ‘Section 16. Liability of director, etc. (1) Where an offence under this Act has been committed by a body of persons corporate or unincorporate, any person who at the time of the commission of such offence was a director, manager, secretary or other similar officer of the body of persons or who was purporting to act in any such capacity, shall be deemed to be guilty of that offence unless he proves that the offence was committed without his consent or connivance, and that he exercised such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances. (2) Any person who would have been guilty of an offence if anything had been done or omitted by him personally shall be guilty of such offence and liable to the same penalty if such thing had been done or omitted by his partner, agent or servant in the course of partnership business or in the course of his employment, as the case may be, unless he proves that the offence was committed without his knowledge or consent and that he took all reasonable precautions to prevent the doing or omission to do such thing: Provided that nothing herein shall relieve the partner, agent or servant from liability to prosecution’.

⁸³ ‘(2) Where the person committing an offence under this Ordinance is a company, or other body corporate, or an association of persons, every director, manager, secretary and other officer thereof shall, unless he proves that the offence was committed without his knowledge or consent, be deemed to be guilty of such offence.’

⁸⁴ Section 17 (Offences by bodies of persons): ‘Where an offence under this Act is committed by a body of persons, then (a) if that body is a body corporate, every director of the body corporate shall be deemed to be guilty of an offence; and (b) if that body is a firm, every partner of that firm shall be deemed to be guilty of that offence’.

⁸⁵ Article 41 **2009 Chinese Order**.

⁸⁶ Section 20.1: Operating without a licence ‘shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to twenty-five thousand rupees, or with both’.

statement in relation to a licence application or other relevant official document (3) is considered an offence in **Malaysia**,⁹⁰ **Pakistan-Sindh**⁹¹ and **Sri Lanka**.⁹²

Five States have established a kind of general penalty for all contraventions of any of the provisions of their respective laws (4): **Malaysia** (2006 Act),⁹³ **Pakistan-Sindh** (2000 Sindh Ordinance),⁹⁴ the **Philippines** (1969 Act)⁹⁵, **Sri Lanka** (1998 Act)⁹⁶ and **UAE** (2006 Federal Law)⁹⁷.

⁸⁷ **2007 Singaporean Act**: Section 14.2: any person who carries out any function of a security officer, or who advertises that he does, without a security officer's licence 'shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both'; Section 15.2: any person who engages in the business of providing the services of security officers, or who advertises that he does, without a security agency's licence 'shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both'; Section 16.2: any person who employs another person who is not licensed as a security officer to work as a security officer 'shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or both'; and Section 19.2: any person who engages in the business of *providing security services*, or who advertises that he does, without a security service provider's licence 'shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or both'.

⁸⁸ **1998 Sri Lankan Act**, Section 15 (Carrying on business of a private security agency without licence, an offence): 'Any person who carries on the business of a private security agency without being licensed under this Act, shall be guilty of an offence under this Act, and shall on conviction after summary trial before a Magistrate be liable to a fine not exceeding ten thousand rupees or to imprisonment for a term not exceeding seven years or to both such fine and imprisonment'.

⁸⁹ **2002 Punjab Ordinance**, Article 5, 'Prohibition of maintenance of a company without a licence' ('No person shall carry on the business of a Private Security Company or maintain or provide security guards or security arrangements for consideration unless he holds a licence for the purpose issued under this Ordinance.').

⁹⁰ **2006 Malaysian Act**, Section 13 (False statement): when a person furnishes false or misleading particulars in relation to an application for the granting of a licence or to obtain a letter of approval, the person 'shall, on conviction, be liable to a fine not exceeding two thousand ringgit or to imprisonment for a term not exceeding twelve months or both'.

⁹¹ Section 12.1.b of the **2000 Sindh Ordinance** establishes that any person who 'in an application for a license under this Ordinance or in any report or statement submitted to the Licensing Authority, makes any false statement or false representation: shall be punishable with imprisonment for a term, which may extend to two years, or with fine, which may extend to fifty thousand rupees, or with both.'

⁹² Section 16.b of the **1998 Sri Lankan Act** classifies as having committed an offence anyone who 'makes any statement, in an application or declaration made by him under section 4 [application for registration of persons carrying on business of Private Security Agencies], or in any record maintained, by him or in any return furnished under section 7, knowing such statement to be *false* in any material particulars'.

⁹³ Section 14 establishes a 'general penalty' for the contravention of the provisions of the Act or any rules made thereunder; the person responsible for the contravention 'shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding three years or to both'. Additionally, Section 15 provides that 'An offence under this Act shall be a seizable offence within the meaning of the law relating to criminal procedure.'

⁹⁴ The **2000 Sindh Ordinance** also establishes a general penalty for any person who 'contravenes any of the provisions of this Ordinance, or any rule or order made thereunder' (Section 12.1.a) and provides that such contraventions 'shall be punishable with imprisonment for a term, which may extend to two years, or with fine, which may extend to fifty thousand rupees, or with both' (Section 12.1). It moreover provides that '(3) No court shall take cognizance of an offence under this Ordinance except upon a complaint in writing made by the Licensing Authority, or any officer authorised by it [to act on its] behalf. (4) All offences under this Ordinance shall be triable by the Executive Magistrates' (Section 12).

⁹⁵ Section 8 (Fees to be Paid and Bonds) establishes the following general penalty: 'Any person who commit any act in violation of Republic Act No. 5487 and of this Decree, and the implementing rules and regulations already promulgated which are not in conflict herewith, and those to be promulgated by the Chief of Constabulary

Finally, three States have established a duty to revoke or cancel the license in some specific cases (5): India⁹⁸ Philippines⁹⁹ and UAE¹⁰⁰.

Each State also specifically regulates other aspects related to accountability.

The **2009 Chinese Order** regulates these aspects in Chapter VIII (Legal Liabilities), Articles 41 and following.¹⁰¹ Of special note is Article 42, which provides that that the security guard's employer will be ordered to rectify by a given deadline and, in several circumstances, will also receive a warning. If these circumstances are moreover deemed 'serious', the employer will be fined (between 10,000 and 50,000 yuan), and any illegal gains, where applicable, will be confiscated. These circumstances include: 1) changing the security company's legal representative without the examination and approval of the competent body; 2) failing to complete the filing formalities or cancelling the filing process; 3) conducting security and guarding services outside the client organisation or off the premises managed thereby; 4) employing people who do not meet the requirements set forth in the Order; 5) failing to verify the legitimacy of a requested security or guarding service or *failing to report an illegal request made by a client* to the competent public body; 6) failing to conclude or keep on file the security and guarding service contract; and 7) failing to keep all video materials and alarm records created over the course of the security and guarding services.

Likewise, Article 43 provides that the security guard's employer shall be ordered to rectify by a given deadline and will be fined between 20,000 and 100,000 yuan in any of the following circumstances: 1) divulgence of any state secret, business secret or confidential client information; 2) infringement of the legitimate rights and interests or personal privacy of others through the use of monitoring devices; 3) deletion, modification or dissemination of

pursuant hereto, shall, on conviction thereof, suffer imprisonment of from ten to fifteen years and a fine of not less than ten thousand pesos nor more than fifteen thousand pesos as a military court/tribunal or commission may direct.'

⁹⁶ Section 16 of the **1998 Sri Lankan Act** establishes miscellaneous offences, such as contravening '*any provision of this Act or any regulation made there under*' (paragraph 16.a).

⁹⁷ Art. 20.

⁹⁸ The **2005 Indian Act** provides that the contravention of the conditions for the commencement of operations and engagement of supervisors, of the eligibility requirements to be a private security guard, or of the obligation to exhibit the licence publicly shall be punishable with a fine of up to 25,000 rupees, in addition to the suspension or cancellation of the licence (Section 20.2).

⁹⁹ Section 18 (Penal Provisions): '*Any violation of this Act or the rule or regulation issued hereunder shall be punished by suspension, or fine not exceeding P200.00 or cancellation of his or its licenses to operate, conduct, direct or manage a private detective, watchman or security guard agency and all its members in the discretion of the court together with the forfeiture of its bond filed with the Philippine Constabulary. If the violation is committed by those persons mentioned under paragraph two, section four of this Act, the penalty shall be imprisonment ranging from one to four years and fine raging from one to four thousand pesos in the discretion of the court.*'

¹⁰⁰ The 2006 UAE Federal Law establishes that 'The Minister'(...) shall order the immediate cancellation of the security approval granted to the Company or the cessation of its activities should it cease to fulfil any of the conditions according to which the approval was given, exceed the functions specific to it, as provided in the Executive Regulations of this Law, or should the approval be given on the basis of false information. The relevant bodies shall be informed thereof in order to take the necessary measures to cancel the approval issued to the Company (art. 5).

¹⁰¹ This regulation was implemented by the "2010 Order of the Ministry of Public Security" (**2010 Chinese Order**), which establishes a detailed system of 'supervision and inspection' of security guard employers and security guard training entities (Chapter VII, Art. 35 and following) and also regulates legal liability (Chapter VIII).

video material or alarm records created over the course of the security and guarding services; 4) instigation of or connivance with any security guard to impede the *lawful execution of official missions*, participate in demanding *repayment of debts, or settle disputes through the use of violence or the threat of violence*; and 5) any failure to manage, educate or train security guards that results in serious consequences due to violations and crimes committed thereby. Depending on the exact events, the employer will be subject to punishment by the public security authorities or to criminal liability.

Also of note is the clause in Article 44 that establishes that when a security guard employer cancels its employment contract with a security guard who refuses to execute an illegal order (or lowers or suspends the guard's pay, underpays the guard, etc.), both the employer's punishment and the guard's compensation shall be governed by the laws and administrative regulations concerning employment contracts and social insurance.

Article 45 of the **2009 Chinese Order** establishes the security guard's liability in any of several circumstances: 1. restricting others' personal freedom, conducting body searches on others, or insulting or assaulting others; 2. detaining and seizing others' certificates or property; 3. obstructing the lawful execution of official missions; 4. participating in demanding repayment of debts or settling disputes through the use of violence or the threat of violence; 5. deleting, modifying or disseminating video material and alarm records created over the course of providing security and guarding services; 6. infringing on personal privacy or divulging any state secret or business secret to which the guard may have had access as part of the provision of security and guarding services or of any of the client's confidential information; and 7. engaging in any other conduct in violation of laws and administrative regulations. The same article establishes that if 'the circumstance is serious, [the security guard's] certificate shall be revoked'. However, the Order does not define what constitutes 'serious'. This is dangerous, as the lack of such a specific definition could lead to arbitrary enforcement. Finally, the article also establishes that the guard's liability may be administrative or criminal, depending on the facts of each case, and that when a security guard engaging in an armed escort service uses firearms in violation of the relevant provisions, 'he shall be punished under the Regulation on the Management of Use of Firearms by Full-time Escorting Security Guards'.

The **2009 Chinese Order** also establishes the liability of security guard training entities that fail to follow the teaching guidelines for training security guards.¹⁰² Likewise, it establishes the liability of any State body, as well as of the functionaries thereof, that might set up a security company,¹⁰³ as well as the liability of police officers of any public security body who engage in favouritism.¹⁰⁴

¹⁰² Article 47: 'Where a security guard training entity fails to follow the teaching outline for the training of security guards in its training, it shall be ordered to make a correction within a time limit, and be given a warning. If the circumstance is serious, it shall be fined not less than 10,000 yuan but not more than 50,000 yuan. If it commits fraud in the disguise of security guard training, it shall be subject to the public security administration punishment. If any crime is constituted, it shall be subject to the criminal liabilities.'

¹⁰³ Article 48: 'Where a state organ and its functionaries establish a security company, or participate in the business operations of any security company or do so in disguise, the directly liable person-in-charge and other directly liable persons shall be given a sanction according to law.'

¹⁰⁴ Article 49: 'Where any of the people's police of the public security organ abuses his power, neglects his duties or makes favouritism during the supervision and administration of the security and guarding services, he shall be given a sanction. If any crime is constituted, he shall be subject to the criminal liabilities.'

The **2005 Indian Act** includes penalties for the unauthorised use of certain uniforms (Section 21) and for the disclosure of information to unauthorised people (Section 18).

The **2007 Singaporean Act** establishes as an offence employing a licensed security officer, or terminating the employment thereof, without informing the licensing officer in the prescribed form and manner (Section 16.4).¹⁰⁵ The same offence is established in the case of the employment of any person other than a security officer (e.g., secretarial, clerical or other staff) (Section 17.3).¹⁰⁶ It is also considered an offence to fail to comply with any direction given by the licensing officer regarding the termination of the employment of any such non-security officer employee deemed not to be 'a fit and proper person' as per the terms of article 17.2 and 17.3. Finally, Section 20.1 of the Act classifies as an offence raising false alarms regarding a fire or intruder requiring the assistance or presence of a police officer.¹⁰⁷

The **1998 Sri Lankan Act** classifies as offences resisting or obstructing the competent authority or any person authorised thereby in the exercise of the power of entry into the security company's premises, as well as influencing, or attempting to influence, the competent authority or any person authorised thereby in the exercise of said power (Sections 16.c and 16.d, respectively).

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.

C. Reporting requirements for alleged offences and violations

Only two countries clearly recognise the obligation to report information concerning any offence or violation of their respective laws: **China**¹⁰⁸ and **Malaysia**.¹⁰⁹ The **1998 Sri**

¹⁰⁵ In this case, the employer 'shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both' (Section 16.4).

¹⁰⁶ Any licensed security agency that employs (or terminates the employment of) any person other than a security officer (e.g., secretarial, clerical or other staff) without informing the licensing officer 'shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both'.

¹⁰⁷ Section 20: '1. The licensing officer may charge according to a prescribed scale of charges for the attendance of any police officer at any premises in response to a call arising out of a false alarm.' Any person who intentionally gives a false alarm regarding a fire or intruder or is reckless about doing so, 'shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5000 or to imprisonment for a term not exceeding 6 months or to both'.

¹⁰⁸ Article 29 provides that the security guard shall stop any violation or crime occurring within the service area in a timely fashion. It moreover provides 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.

¹⁰⁹ The licensed private agency or the employees thereof shall pass on 'any information relating to any seizable offence (whether already committed or to be committed) (...) to a police officer or make a report at the nearest police station' (Section 6).

Lankan Act indirectly includes an obligation to furnish reports to the competent authority, which could be construed to include reports on offences or violations.¹¹⁰

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.

D. Rules on procedures for remedies

The **2009 Chinese Order** establishes a duty for the security guard's employer or the security company to provide compensation when a security guard causes injuries or casualties.¹¹¹ The **1969 Philippine Act** establishes an interesting good practice concerning the respect for human rights: the security company is required to purchase a bond issued by a reputable insurance company to cover any valid legal claim filed against the company.¹¹² A similar practice is established in the **2002 Punjab Ordinance** (Art. 13.6).¹¹³ This means that the other cases do not respect the effective right of victims of human rights abuses to a remedy.

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. Specifically, the **2005 Indian Act** exempts the controlling authority of liability for indemnities for anything done in good faith,¹¹⁴ while the **2000 Sindh Ordinance (Pakistan)** exempts *any person* of liability for indemnities for anything done in good faith.¹¹⁵ From the point of view of the rule of law, there should be liability for any damages caused, regardless of the good faith of the responsible parties.

III.- GOOD PRACTICES CONTEMPLATED IN THE ACTS

A selection of the best practices found in the eight countries' legislation is included in the following table.

¹¹⁰ Section 7.2: 'The holder of a licence (...) shall maintain such records and *furnish such returns* to the Competent Authority as may be prescribed'.

¹¹¹ Article 46: 'Where a security guard causes personal injuries and casualties of or property losses to others during the security and guarding services, the security guard employer shall make compensations, and it may demand recourse according to law against the security guard who has malice or gross negligence.'

¹¹² Section 8: 'The application shall further be accompanied by *a bond* issued by any competent or reputable surety or fidelity or insurance company duly accredited by the office of the Insurance Commissioner in the sum of not less than five thousand pesos nor more than ten thousand pesos in the discretion of the Chief, Philippine constabulary, which bond shall answer for any valid legal claim against the agency by its clients or employees: Provided, that licences issued in the province of an authorised representative of the Chief of Constabulary is subject to review by the Chief of Constabulary.'

¹¹³ Art. 13(6) 'Every licensee shall make arrangements for insurance of every security guard employed by him, with a registered insurance company.'

¹¹⁴ Section 23. Indemnity: 'No suit, prosecution or other legal proceeding shall lie against the Controlling Authority or any other officer authorised by it in respect of anything in good faith done or intended to be done under this Act.'

¹¹⁵ Section 13. Indemnity: 'No suit, prosecution or other legal proceedings shall lie against any person for anything, which is in good faith done or intended to be done under this Ordinance.'

GOOD PRACTICES	COUNTRIES
Establishment of a Central authority	All the analysed countries
Licensing procedures PSCs	All the analysed countries
Licensing procedures for PSCs employees	Chinese Order Philippine Act Singaporean Act 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	Indian Act
Foreign companies are not allowed to engage in security services in the domestic territory unless their branches meet certain requirements	Chinese Order: in some cases, indirectly included Indian Act
Criteria for granting the licence, including the taking into account of previous criminal offences	Chinese Order Indian Act Philippine Act 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	Singapore's Act The Philippines' 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	Philippines Act 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	Philippines 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' (art. 8.5).	Chinese Order
Direct obligation for PSC employees to respect certain human rights	Chinese Order
Liability of legal persons and organizations	Indian Act Malaysian Act Sindh Ordinance (Pakistan) Sri Lankan Act
Requirement to exhibit the licence publicly in a conspicuous place	Indian Act Punjab Ordinance (Pakistan) Philippine Act

	Sri Lankan Act
Prohibition for PSCs to conduct criminal investigations	Malaysian Act 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	Malaysian Act Sindh Ordinance (Pakistan) Punjab Ordinance (Pakistan)
Requirement for PSCs to keep an internal register of data	Indian Act Sri Lankan Act UAE Federal Law
Duty to revoke licence in case of violations of human rights or engagement in criminal activity	Indian Act (in other cases) Philippine Act directly EAU Federal Law (in other cases)
Requirement to report alleged offences/violations to the police or law enforcement agents	Chinese Order Malaysian Act Sri Lankan Act indirectly

IV. GAPS IDENTIFIED IN RELATION TO THE 2010 WG DRAFT CONVENTION

This section will focus on key aspects that are missing from the studied legislation and how these elements affect and relate to respect for human rights. To this end, an ideal model law or international standard containing the main obligations to be compared must be chosen. The 2008 Montreux Document and the ‘Draft of a Possible Convention on Private Military and Security Companies (PMSCs)’ proposed in 2010 by the UN Working Group on the Use of Mercenaries (WG Draft Convention) are two such documents. However, to simplify the analysis, this report will compare the various national laws solely with the WG Draft Convention. The aim is 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. For this purpose, the scope of the cross-border management of these services will also be considered.

Table 1 [*Comparison of the various domestic laws with key articles of the 2010 WG Draft Convention, Annex*], which compares features of the various domestic laws with the main articles of the WG Draft Convention, shows the main gaps. An overview of these gaps is provided below.

One key gap identified concerns the transnational dimension of this issue. States should regulate not only the scope of the security services these companies provide domestically, but also their export and import activities. Both the Montreux Document and the WG Draft Convention are quite clear on this point. The Montreux Document, in particular, distinguishes among ‘contracting states’, ‘territorial states’ and ‘home states’ with regard to international standards. The WG Draft Convention also includes detailed regulations governing licences for

the import and export of military and security services (Arts. 15 and 17.5), as well as various references to procedures and criteria for selecting and contracting PMSCs (Art. 4.2). In contrast, the Asian laws analysed here only address the activities that PSCs conduct in the national territory (domestic jurisdiction)¹¹⁶. Only the **2005 Indian Act** includes directly a few brief references to the import and export of security services; none of the Acts establishes standards for the contracting of foreign PSCs by the State. An international convention on licensing, authorisation, selection and training of PMCs personnel would promote the inclusion of export and import activities of PSCs in national implementation. The failure of most of the laws to regulate PSCs' import-export activities clearly affects the respect and protection of human rights and international humanitarian law.

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.

All of the laws establish a national system for governing the activities of PSCs and their personnel, who, for the most part, are understood to be nationals of the State in question. Article 13 of the WG Draft Convention also includes a reference to 'foreign personnel' working for PSCs. Only the **1969 Philippine Act** includes a brief reference to foreign personnel (Section 4).

All the laws also establish a government authority responsible for granting licences to PSCs. However, only three States (or Province of a State) also grant this authority the power to keep a register of the licences awarded (**Philippines, Sindh Province-Pakistan, Sri Lanka**), as required under Articles 16.1, 3 and 14.2 of the WG Draft Convention. The lack of any obligation for the central authority to keep a register under some of the laws is a major gap that jeopardises respect for human rights.

Although all the Acts include a licensing system for PSCs, only four also require licences for individual security employees (**China, India, Philippines, Singapore**). This lack of PSC employee licences in five of the analysed countries *is a major gap and one that directly affects the effectiveness of the right to security and other human rights and fundamental freedoms*. Certainly, 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.

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 (Art. 14). Only **four States take into account previous human rights violations when deciding whether to deny a licence (China, India, Philippines, Singapore)**, although even in these cases, the relevant laws do not mention 'human rights' per se, but rather only criminal offences; this is not enough to guarantee the protection and respect of human rights. In any case, the laws do not expressly or directly include any mention of requisite training for licence applicants in

¹¹⁶ They thus fail to draw an effective distinction between the home states and territorial states (or states of operations) identified in the Montreux Document and WG Draft Convention.

human rights and international humanitarian law. Nor do they include the necessary robust due diligence measures, what is 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 (Art. 14 of the WG Draft Convention). Likewise, **virtually none of the laws refers to the requirement to respect international human rights law and international humanitarian law** (Art. 7 of the WG Draft Convention). 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. This includes prohibitions on the *'infringement of the legitimate rights and interests or personal privacy of others through the use of monitoring devices'* (Art. 43.2), on *'restricting others' personal freedom, conducting body searches on others, or insulting or assaulting others'* (Art. 45.1), and on *'infringing on personal privacy'* (Art. 45.6). 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. Nevertheless, overall, there is a clear lack of references to human rights and international humanitarian law in the analysed legislation. The legislation should include human-rights-based mechanisms for vetting employees, as well as mandatory legal training that makes reference to the relevant international human rights and humanitarian law standards.

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 human rights labour standards** (Art. 17.1 of the WG Draft Convention); only the **2009 Chinese Order** and the **Punjab Ordinance (Pakistan)** 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** (Art. 17.2 of the WG Draft Convention). Nor does any of the laws make reference to training in the use of specific equipment and firearms (Art. 17.3 of the WG Draft Convention) or the obligation for PMSCs that export their services to respect the sovereignty and laws of the country of operations (Article 17.5 of the WG Draft Convention). The legislation should include the PSCs obligation to train their employees to respect relevant international human rights and humanitarian law standards.

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 five cases (**China, India, the Philippines, Punjab Province (Pakistan), Singapore, Sri Lanka**) the use of firearms is regulated, and they do so non-uniformly. None of the laws includes detailed regulations regarding the acquisition of weapons by PSCs (except a small reference in **UAE Federal Law**), although this does not mean that this issue is not addressed under other acts or orders of the respective countries. 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, according to international law standards.

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 (Art. 16.3 of the WG Draft Convention): the **Philippines** and **Singapore**. In short, 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.

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 (Arts. 17.4 and 13.5 of the WG Draft Convention). Only **India**, the **Philippines** and **EAU** (in some cases) include the obligation to revoke the licence in case of human rights violations or engagement in criminal activity (Art. 13.6 of the WG Draft Convention). 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. 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 (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.

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. 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.

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.

V.- 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). The following conclusions can be drawn regarding the national systems for regulation and oversight of PSCs established in the Acts.

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.¹¹⁷ 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

¹¹⁷ *Extraterritorial activities are forbidden without permission* and foreign companies are not allowed to engage in security services unless their branches fulfil certain requirements.

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 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 **Sindh Province and Punjab Province (Pakistan)**.

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, EAU**). 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 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 small reference is in 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 or the possibility to revoke the licence in case of 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.

VI.- 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.
