

## A. Introduction

As noted in last year's report to the Human Rights Council (A/HRC/24/45, para 19), the Working Group continues to believe that it is critical to study and identify legislative approaches regarding the activities of PMSCs (private military and security companies) and to assess the effectiveness of such legislation in protecting human rights and promoting accountability for violations. For this reason, the Working Group continued with its project to identify common points, good practices and regulatory gaps regarding national legislation on PMSCs. The Working Group would like to thank all Member States which submitted relevant laws and regulations. Following the first phase of the research that focused on samples of English-speaking countries in Africa (A/HRC/24/45, paras 19-52), the current report presents the Working Group's findings on eight French-speaking African countries.

The Francophone African countries analysed in the present report are Burkina Faso, Cameroon, Côte d'Ivoire, the Democratic Republic of Congo, Mali, Morocco, Senegal, and Tunisia.

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

The main topics addressed in the survey were: a) the scope of the legislation; b) licencing, authorisation and registration of PMSCs; c) selection and training of PMSC personnel; d) permitted and prohibited activities of PMSCs; e) rules on acquisition of weapons by PMSC personnel; f) use of force and firearms by PMSC personnel; g) accountability for violations of the law committed by PMSC personnel/remedies provided for victims; h) ratification of mercenary conventions.

## B. Analysis

The research shows that all analysed countries regulate in some ways private security companies and their activities, mainly focusing on guarding and protection provided to persons and goods<sup>1</sup>. At the

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<sup>1</sup> *Burkina Faso*: Law No. 032-2003 of 14 May 2003 on internal security, („Law No. 032/2003”), Decree No. 2009-343/PRES/PM/SECU/DEF/MATD/MJ/MEF/MTSS regulating the activities of private security companies („Decree No. 2009-343”), Decree No. 2011-0194/MATDS/CAB establishing the requirements for opening an institution providing training in private security (“Decree No. 2011-0194”), *Cameroon*: Decree No. 2005/031 of 2 February 2005 governing implementation of Law No. 97/021 of 10 September 1997 concerning private security activities (“Decree No. 2005/031”), *Côte d'Ivoire*: Decree No. 2005-73 of February 2005, regulating private security activities and the transport of money (“Decree No. 2005-73”), Decree No. 743/MI/MD/MFF of 24 November 2008 establishing the requirements for private security companies and transport of money (“Decree No. 743/2008”), of Decree No. 148 MS/CAB of 2 February 2007, establishing regulations for the use of firearms and grenades during the provision of guard services or the transport of money (“Decree No. 148/2007”), Decree No. 2005-73 and Article 4 of Decree No. 150 MS/CAB of 2 February 2007 (“Decree No. 150/2007”), Decree No. 200 MS/CAB of 7 February 2007 („Decree No. 200/2007”), *Democratic Republic of Congo*: Decree No. 31 of 30 January 1965 concerning the creation of private security groups (“Decree No. 31/1965”), Decree No. 66-425 of 20 July 1966, modifying Decree No. 31 of 30 January 1965 creating security groups (“Decree No. 66-425”), Ministerial Decree No. 98/008 of 31 March 1998, concerning conditions for operating security companies (“Ministerial Decree No.98/008”), *Mali*: Decree No. 2011-0589/MSIPC-SG of 24 February 2011 on the modalities of application of the regulation of private security companies in charge of guarding, surveillance,

same time the study reveals that none of the legislation covers the activities of private military companies and their provided services. The analysed laws focus on the domestic sphere without prohibiting the provision of military or security services abroad and without ruling on extraterritorial applicability. The research also shows that, while all reviewed States are committed in some ways to the international instruments related to mercenaries<sup>2</sup>, according to the legislation available for the analysis, no countries have at national level regulations on the prohibition of mercenary activities.

The following introduction provides an overview of the typical issues identified, which will then be further detailed in the comparative analysis below.

### **1. Regulation of the activities of PMSCs**

The analysis shows that in general States have detailed regulations on licensing and authorisation of private security services, as well as on the selection criteria of the personnel of private security companies, including relevant details regarding the responsibilities of the various interministerial, ministerial, and other governmental bodies. However, fewer rules can be found on the content of the training of PMSC staff and the national registration of PMSC companies. The analysed legislation focuses mostly on the necessity of providing training to PMSC staff by ruling on the trainings' form and procedural conditions, however, without providing sufficient details on the content of such trainings. The research revealed that none of the analysed legislation included references to international human rights and humanitarian law among the selection criteria or the training materials. With regard to the national registration of PMSCs, the study points out that only one State ruled on the obligation of its authorizing body to "[m]aintain a national record of security companies"<sup>3</sup>.

The study also points out that while States seem to have more detailed provisions on the permitted and prohibited activities, there remains certain unclarity about the dividing lines between the functions of the police/armed forces and the functions of private security service providers, as well as on whether the personnel of private security companies may take direct part in hostilities in armed conflict. The research notes that with the exception of one legislation, none of the analysed laws include any provisions on the illegal acquisition of weapons and on illicit trafficking in arms by PMSC personnel and their consequences. In addition, the study reveals that the regulatory approaches regarding the use of force and firearms are rather divergent: some entirely prohibit the

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transport of funds and protection of persons ("Decree No. 2011-0589"), Decree No. 96-00621/MATS/SG on the use of uniforms by private companies in charge of guarding, surveillance and transport of funds ("Decree No. 96-00621"), Decree No. 96-0566/MFC-MATS on the licensing fee of private companies in charge of guarding, surveillance and transport of funds ("Decree No. 96-0566"), Decree No. 96-064/P-RM on the activities of private companies in charge of surveillance, guarding, transport of funds and protection of persons ("Decree No. 96-064"), Decree No. 96-020 on private companies in charge of surveillance, guarding, transport of funds and protection of persons (Decree No. 96-020), *Morocco*: Law No. 27-06 concerning the activities of guarding and transporting money ("Law No. 27-06"), *Senegal*: Decree No. 2003-447 of 18 June 2003 establishing the conditions for the exercise of activities of guarding, providing security and escort of private property ("Decree No. 2003-447"), *Tunisia*: Decree No. 2002-81 of 3 August 2002, governing the activities of private companies that guard, provide security and transport money and precious metals as well as provision of physical protection of people ("Decree No. 2002-81"), Decree No. 2003-1090 of 13 May 2003 establishing the procedures and rights regarding authorization to exercise private activities of guarding, security, transport of money and precious metals and the physical protection of persons ("Decree No. 2003-1090").

<sup>2</sup> See further details in Section 9 below.

<sup>3</sup> In Cameroon, see Article 2 of Decree No. 2005/031.

use of force and firearms in all situations except for the case of self-defence, yet again others allow it according to the conditions provided by the relevant laws and regulations.

Finally, with regard to the accountability of PMSCs and their personnel, the analysis points out that the relevant legislation lacks specific rules on the content of monitoring activities and inspections, as well as references to the company's or its personnel's compliance with the standards of international human rights law and humanitarian law, and to effective remedies to victims.

The following comparative thematic analysis provides further specific details and examples on these general points.

## 2. Scope of legislation

This section looks at whether the analysed legislation covers both private military companies and private security companies; the meaning of the terms used for defining the scope of the application of the relevant laws; whether the analysed laws regulate on the direct participation in hostilities of PMSC personnel; whether the legislation applies to the export of security and/or military services beyond their borders; and whether or not such laws apply extraterritorially.

Seven laws of the analysed eight countries address this question<sup>4</sup> and state that the scope of the respective law covers "private security companies"<sup>5</sup>, "private security and guard companies"<sup>6</sup>, and "private security /guard services/activities"<sup>7</sup> with the general meaning of guarding and protection provided to persons and property/goods<sup>8</sup>. In addition, in the Democratic Republic of Congo there is a separate category listed "private security groups", under which the law means "private companies [that] may be authorized to organize and operate private security groups in order to ensure their own defence."<sup>9</sup> In Côte d'Ivoire private security activities can be carried out by companies "involved in the transport of money" that exercise an activity that "provides protection and transport of funds, money, important objects and documents"<sup>10</sup>, and similar provisions can be found in the legislation of Mali<sup>11</sup>, Morocco<sup>12</sup> and Tunisia<sup>13</sup>. None of the analysed countries' legislation addresses the issue of private military companies or private military services.

Similarly, none of the analysed laws include any specific provisions on PMSC personnel's direct participation in hostilities. While the legislation of Côte d'Ivoire, the Democratic Republic of Congo and Mali prohibits for PMSC personnel to carry out certain acts related to activities of the police and the armed forces, such as maintaining public order, patrolling, arresting, detaining, carrying and

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<sup>4</sup> In Cameroon the law available for the current analysis (Decree No. 2005/031) does not include any specific details on the nature of private security activities.

<sup>5</sup> Burkina Faso, Democratic Republic of Congo, Tunisia

<sup>6</sup> Côte d'Ivoire, Mali

<sup>7</sup> Burkina Faso, Cameroon, Mali, Morocco, Senegal

<sup>8</sup> In Burkina Faso see Article 23 of Law No. 032/2003 and Article 2 of Decree No. 2009-343, in Côte d'Ivoire in Article 2, para 1 of Decree No. 2005-73, in the Democratic Republic of Congo in Article 1 of Ministerial Decree No. 98/008, in Morocco in Article 1 of Law No. 27-06, in Senegal in Decree No. 2003-447, and in Tunisia in Article (1) a) of Decree No. 2002-81.

<sup>9</sup> Article 3 of Decree No. 31/ 1965

<sup>10</sup> Article 2, para 2 of Decree No. 2005-73

<sup>11</sup> Articles 1 and 3 of Decree No. 96-020

<sup>12</sup> Article 1, paras 1 and 2 of Law No. 27-06

<sup>13</sup> Article 1 b) of Decree No. 2002-81

using firearms<sup>14</sup>, it is not clear whether the related provisions apply only in times of peace or in armed conflicts as well. (In the laws available from Cameroon, Senegal, and Tunisia there are no relevant provisions to analyse from the point of view of direct participation in hostilities.) Further details regarding the direct participation in hostilities of PMSC personnel related to permitted and prohibited activities, rules on the use of force and firearms, and the consequences of such acts can be found in Sections 5, 6, and 7 below.

The research did not find in any of the laws under examination rules on export of security/military services abroad or relevant jurisdiction provisions or clauses on their extraterritorial application. Moreover, the relevant legislation in Burkina Faso even states that only "private security companies operating *in* Burkina Faso must adapt to these requirements ..."<sup>15</sup>.

The lack of consistent terminology and the ambit of services, the very limited range of security activities covered by the relevant laws, and the fact that none of the analysed legislation covers private military companies or their military activities all result in regulatory gaps, especially considering that PMSCs normally provide various other services besides only guarding and patrolling, such as military services, as well as training and advisory services on security matters and implementation of security measures. The missing rules on direct participation in hostilities of PMSC personnel, on the export of security and military services abroad, and the lack of extraterritorial application of the concerned laws further add to the regulatory gaps, especially with regard to the transnational nature of private security and military services, as well as the generally high likelihood of PMSC personnel's use of force and involvement in hostilities. The insufficient regulation regarding the scope of the analysed legislation seriously undermines the rule of law and the effective functioning of a democratic State institution responsible for ensuring public safety in accordance with international human rights standards and national laws.

### **3. Licensing, authorisation, registration**

This section analyses the relevant procedures and entities of licencing, authorization and registration of PMSCs and whether relevant criteria related to human rights law have been built into the licencing process.

As noted already by the Working Group with regard to the practice of Anglophone African countries<sup>16</sup>, in a number of Francophone African countries such as Burkina Faso, Côte d'Ivoire, the Democratic Republic of Congo, and Tunisia, the entities that issue authorizations and licences are appointed by or exist within the ministry responsible for internal security. For example, in Burkina Faso the authorisation is issued by the Ministry of Security in cooperation with the appropriate police services<sup>17</sup>, whereas in Côte d'Ivoire, it is the responsibility of the Minister for Domestic Security (supported by the Minister for Defence and the Minister for the Economy and Finance, as well as the Director for Domestic Security and the National Police<sup>18</sup>) and in Mali of the Minister of Security<sup>19</sup>. In

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<sup>14</sup> With regard to Côte d'Ivoire, see Article 8 of Decree No. 2005-73 and Article 6, para 2 of Decree No.743/2008, in Mali see Article 12 of Decree No. 96-020, and for the Democratic Republic of Congo see Article 6, para 2 and Article 7 of Ministerial Decree No. 98/008.

<sup>15</sup> Article 51 of Decree No. 343/2009

<sup>16</sup> A/HRC/24/45, para 39.

<sup>17</sup> Article 24 of Law No. 032/2003 and Article 20 of Decree No. 343/2009

<sup>18</sup> Articles 4, 14, 34 and 36 of Decree No. 2005-73 and Article 4 of Decree No. 150/2007

the Democratic Republic of Congo “[a]greements authorizing the creation of a private security group [are] negotiated by the Minister of the Interior acting on behalf of the central government”<sup>20</sup>, but the “[o]peration of a security company is subject to ... [o]btaining approval of the ad hoc commission created by the Minister of the Interior”<sup>21</sup>. In Tunisia “any person requesting authorization to exercise one of the private activities of guarding, providing security, transport of money and precious metals and the physical protection of persons must submit an application to be obtained from the appropriate services of the Minister of the Interior and Local Development”<sup>22</sup>.

Yet in other countries, such as in Cameroon and in Senegal it is an intergovernmental body under the direction of the ministry in charge of internal security or the local government that is responsible for licencing and monitoring PMSC activities. In Cameroon, it is a commission under the supervision of the Ministry for Local Government that reviews the authorization requests<sup>23</sup>, whereas in Senegal “the request for authorization is submitted for review by a consultative committee whose composition is determined by decree of the Minister of the Interior”<sup>24</sup>.

Finally, in Morocco while the relevant law rules on a “competent administrative authority” in charge of reviewing the requests for authorization, it does not specify its further responsibilities or its relationship with a supervising or monitoring ministry or other governmental body.

As a precondition for the authorization, in Burkina Faso a “review of morality of the company’s managers”<sup>25</sup> is required, in Senegal the authority in charge of authorizing the private security activities carries out “an investigation of morality” of the applicant<sup>26</sup>, and in Tunisia future members of private security companies must “be known to be of good behaviour”<sup>27</sup>. While it is clear that all these laws set as a precondition for authorization of the activities of a private security company certain criteria related to the behaviour of its management and personnel, none of the analysed laws include any reference to human rights law criteria to be considered by the authorizing bodies.

With regard to the system of national registration of PMSCs, only Cameroon’s law provides for the obligation of the authorizing commission to “[m]aintain a national record of security companies”<sup>28</sup>. In Morocco a self-registration system exists that obliges the concerned companies to establish and maintain an internal registration on the identity of employees and on other data necessary for the monitoring of their activities<sup>29</sup>. Tunisia’s law includes a similar provision obliging the holder of the authorization “to keep a register annotated and initialled by the appropriate services of the Ministry of the Interior”<sup>30</sup>. The research did not find in other analysed countries’ legislation any reference to national or self-registration systems.

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<sup>19</sup> Articles 2 and 6 of Decree No. 96-064

<sup>20</sup> Article 2 of Decree No.31/1965

<sup>21</sup> Article 2 f) of Ministerial Decree No. 98/008

<sup>22</sup> Articles 1 and 2 of Decree No. 2003-1090, and see also Article 4 of Decree No. 2002-81

<sup>23</sup> Articles 1, 2 and 3 of Decree No. 2005/031

<sup>24</sup> Article 5, and Articles 1-3 of Decree No. 2003-447

<sup>25</sup> Article 16 and 20 of Decree No. 343/2009

<sup>26</sup> Article 3 of Decree No. 2003-447

<sup>27</sup> Article 6 of Decree No. 2002-81

<sup>28</sup> Article 2 of Decree No. 2005/031

<sup>29</sup> Article 11 of Law No. 27-06

<sup>30</sup> Article 18 of Decree No. 2002-81

The very different systems of licencing and authorisation, the lack of a single dedicated body responsible for licencing and monitoring the activities of PMSCs, the missing human rights criteria for the authorization process, as well as the generally lacking national registration systems all result in a private security industry without effective control. Considering the diverse activities and the broad geographical scope covered by PMSC services, while various systems of licensing and oversight may be possible, the Working Group's view is that a standard set of human rights based mandatory requirements of authorization, a national registration system, and a single dedicated licensing expert body would be desirable in order to guarantee the principles of the rule of law, to scrutinize effectively the conduct of PMSCs and the implementation of the necessary international human rights standards, and to ensure the accountability of PMSC personnel for violations of the law.

#### 4. Selection and training

This section looks at the criteria used for selecting PMSC staff and the trainings provided to its personnel, and whether the respective laws include any references to international human rights and humanitarian law standards.

The laws analysed set out various criteria for the selection of PMSC personnel, among which a clean criminal record is often a high priority.<sup>31</sup> However, the related provisions vary in relation to the gravity of the involved crimes. In the case of Burkina Faso, for example, no one may be a director or manager of a security company, if he or she has been "sentenced to imprisonment for three months or more than six months with a suspended sentence for a crime or misdemeanour, except for crimes of imprudence or involuntary crimes"<sup>32</sup>, and a "person who has been sentenced to at least a three-month suspended sentence for a crime against persons or property"<sup>33</sup> cannot be hired as an employee of a security company. In Côte d'Ivoire, only an Ivorian, who has never been sentenced, can be hired, whereas a foreigner, in order to be hired by a security company, would need to submit a copy of criminal record.<sup>34</sup> In Mali no one may be a director, partner or employee in a private security company, if he or she was subject to disciplinary sanctions or was sentenced to imprisonment<sup>35</sup>, and in Senegal the authorization to exercise private security or guard services cannot be granted for persons who have been "sentenced for a crime or common law misdemeanour except for a crime of imprudence, not involving an attempt to flee."<sup>36</sup> Finally, in Tunisia, only individuals who have not received an upheld sentence for a crime or misdemeanour (except for unintentional misdemeanours) may be hired by private security companies<sup>37</sup>.

Some States also included the criterion of "good moral standards" (for example, in Burkina Faso, Côte d'Ivoire and Senegal<sup>38</sup>) and "good behaviour" (for example, in Tunisia<sup>39</sup>). Finally, in Mali,

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<sup>31</sup> For example, in Burkina Faso see Articles 9 and 10 of Decree No. 343/2009, in Côte d'Ivoire in Article 13 of Decree No. 2005-73, in Mali Article 13 of Decree No. 96-020 and Article 3 of Decree No. 96-064, in Morocco Article 2 and 5 of Law No. 27-06, in Senegal Article 2 and 4 of Decree No. 2003-447, in Tunisia Article 6 and 11 of Decree No. 2002-81.

<sup>32</sup> Article 9 of Decree No. 343/2009

<sup>33</sup> Ibid., Article 10

<sup>34</sup> Article 13 of Decree No. 2005-73

<sup>35</sup> Article 13 of Decree No. 96-020

<sup>36</sup> Article 2 of Law No. 27-06

<sup>37</sup> Article 6 and 11 of Decree No. 2002-81

<sup>38</sup> In Burkina Faso Article 9 of Decree No. 343/2009, in Côte d'Ivoire Article 13 of Decree No. 2005-73, in Senegal Article 9 of Decree No. 2003-447.

according to the relevant legislation, those who were “subject to disciplinary sanctions or sentenced to imprisonment for acts committed against the honour, honesty, morality, or against the security of goods and persons” cannot be directors, managers, partners, or employees of the company<sup>40</sup>. Similarly, in Morocco the relevant law states that no one may be hired if the person was “sentenced or imprisoned for a crime for reasons that are incompatible with the exercise of the activities described in this act, namely acts that are contrary to the honour, probity, good conduct or of a nature to bring into question the security of persons or property, public security or the security of the State”<sup>41</sup>. With regard to the selection criteria for PMSC personnel, of all eight countries, Morocco’s legislation is the most progressive in stating that “[t]he hiring of an employee must be in line with the professional qualification established by regulations regarding the nature of the employment”<sup>42</sup>. However, even this law does not provide any further details on what such requirement would entail in concrete terms. None of the eight laws analysed include any reference to international human rights or humanitarian law standards to be taken into account during the selection process.<sup>43</sup>

Of the analysed eight laws, only four provide information on the mandatory and regular training of PMSC personnel: Burkina Faso, Côte d’Ivoire, Morocco, and Tunisia. In the case of Burkina Faso, the law sets training “by a training structure recognized by the State” as a precondition for exercising private security activities and requires the content of the training to be determined by the Minister for Security<sup>44</sup>. The relevant decree specifies that the trainings must be organized by a training centre authorized by the same ministry and that only with the certificate about the completed training can applications be submitted for authorization<sup>45</sup>. Similarly, in Côte d’Ivoire the hired security employees must be trained from between one to three months in a centre approved by the licencing agency<sup>46</sup> and companies then must provide continued training for their staff in approved training centres every two years<sup>47</sup>. In Morocco the law requires as a precondition for the hiring of a PMSC employee that the person “be in line with the professional qualification established by regulations regarding the nature of the employment”<sup>48</sup>. As for Tunisia, the relevant legislation states that the recruited personnel shall receive “basic training and continuous training in the field of activity for which they are recruited at a relevant training centre of the Ministry of the Interior.”<sup>49</sup>

In Mali at the same time, according to the relevant law, the Security Services only *may* provide to private security companies technical support material for the training of their personnel, in case of expressed need<sup>50</sup>. The legislation in Mali also states that the training of the personnel of private

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<sup>39</sup> Article 6 and 11 of Decree No. 2002-81

<sup>40</sup> Article 13 of Decree No. 96-020

<sup>41</sup> Article 2 and 5 of Law No. 27-06

<sup>42</sup> *Ibid.*, Article 5 (3)

<sup>43</sup> Despite the fact that the recruitment issue is listed among the tasks of the “commission” in charge of authorizing private security activities in Cameroon (see Article 1 of Decree No. 2005/031), no specific recruitment/selection criteria is mentioned by the law.

<sup>44</sup> Articles 28 and 32 of Law No. 032-2003

<sup>45</sup> Articles 42, 43 and 44 of Decree No. 343/2009

<sup>46</sup> Article 14 of Decree No. 2005-73

<sup>47</sup> Article 10 of Decree No. 743/2008

<sup>48</sup> Article 5, para 3 of Law No. 27-06

<sup>49</sup> Article 11 of Decree No. 2002-81

<sup>50</sup> Article 16 of Decree No. 96-064

security companies is the responsibility of the company, however, without providing any further details in this respect<sup>51</sup>. None of the above laws includes sufficiently specific details about the content of the required trainings. In Burkina Faso's legislation some general references are made to "the ethics of private security", "introduction to law", "regulations governing civilian firearms and ammunitions"<sup>52</sup>. Similarly, the relevant decree in Côte d'Ivoire requires that „private companies that provide security and transport money must respect the provisions of the code of ethics established by the licensing agency" and that such code of ethics aims "to guarantee that agents respect moral and civic values such as discipline, honesty, discretion, thoroughness and professionalism"<sup>53</sup>. However, no specific details are included even in these two pieces of legislations on international human rights or humanitarian law standards.

The analysis of the available legislation shows that while States have mostly succeeded in establishing a framework for both the selection and training of PMSC personnel, the content of these important processes is not well developed. In order to ensure that the relevant international human rights law and humanitarian law standards are respected and effectively used in the course of PMSC operations, to minimize the risk of their violations, and to guarantee the effective accountability of private military and security companies and their personnel, it is essential to introduce human rights based vetting mechanisms of employees, as well as mandatory legal trainings with references to the relevant international human rights and humanitarian law standards.

## **5. Permitted and prohibited activities**<sup>54</sup>

This section focuses on permitted and prohibited activities of PMSCs, as well as on the participation in the activities of PMSCs by law enforcement agents.

Regarding the permitted activities, the analysed laws all emphasize that the only activities to be carried out by security providers must be guarding and protection provided to persons and property/goods and in some countries (such as Côte d'Ivoire, Mali, Morocco, Senegal and Tunisia) the protection provided to the transport of funds, money, documents, jewellery, precious metals and other important objects.<sup>55</sup> Another repeated issue (for example in Burkina Faso, Côte d'Ivoire, and Morocco) is that while carrying out their activities, private security companies are required to indicate the private nature of their work in order to avoid confusion between the activities of private persons and those of public security services<sup>56</sup>. The research shows that in several countries (Burkina Faso, Morocco and Tunisia), the permitted activities are to be carried out only inside the private guarded properties and must be limited to the guarded public properties.<sup>57</sup> However, in some cases certain exceptions are made with respect to the activities of private security companies in public

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<sup>51</sup> Article 27 of Decree No. 96-020

<sup>52</sup> Article 14 of Decree No. 2011-0194

<sup>53</sup> Article 3 of Decree No.743/2008

<sup>54</sup> With regard to Cameroon, the available legislation did not allow for drawing conclusions related to this Section.

<sup>55</sup> See Section 2 above.

<sup>56</sup> See for example in Burkina Faso Article 5 of Decree No. 2009-343, in Côte d'Ivoire Article 5 of Decree No. 2005-73, Article 2 of Decree No.743/2008 and, in Mali Article 8 of Decree No. 96-020, and in Morocco Article 9 (2) of Law No. 27-06.

<sup>57</sup> See, for example in Burkina Faso Articles 6 and 7 of Decree No. 2009-343, in Mali Article 11 of Decree No. 96-020, in Morocco Article 17 of Law No. 27-06, in Tunisia Article 16 of Decree No. 2002-81.



spaces. In Burkina Faso, for example, the law allows exceptionally certain interference of the duties of private security companies "into the public sphere" (without specifying it any further)<sup>58</sup> and in Mali, Morocco and Tunisia entering into public space is allowed in order to prevent thefts, burglary, or other attacks against property<sup>59</sup>.

As for the prohibited activities, some legislation (Burkina Faso, Côte d'Ivoire and Morocco) specifically emphasizes that all the services that are not linked to the security of persons and property are excluded from the ambit of the concerned laws, therefore they are prohibited<sup>60</sup>. Another activity, commonly prohibited in various laws (for example, in Burkina Faso, Côte d'Ivoire, Morocco and Senegal) is the involvement or participation of PMSC personnel in a labour conflict or related event<sup>61</sup>. Further prohibited activities include gathering information on political, religious or trade union opinions or maintaining files for that purpose (in Burkina Faso, Côte d'Ivoire, and in Morocco<sup>62</sup>), or in Côte d'Ivoire becoming involved in the activities of the administrative police or investigative police, participating „in operations aimed at maintaining public order at political, sport, social, traditional, cultural or religious events“, and escorting of persons<sup>63</sup>.

Finally, some legislation specifically prohibits certain activities of private security companies that may overlap with the functions of the police and the military. In the case of the Democratic Republic of Congo, for example, the law states that protection of persons and property is permitted, "without, however, replacing the police", further specifying that "[l]t is prohibited for security companies to patrol, arrest and carry and use firearms, special devices and other material usually reserved for the military and police."<sup>64</sup> The law adds that „[s]ecurity companies must respect existing legislation concerning arrest and detention of criminals."<sup>65</sup> The research found similar provisions in the legislation of Tunisia that prohibits private security forces „to intervene or participate for any reason in any act outside the limits of the mission legally assigned to them or which would be assigned to public authorities"<sup>66</sup>. Such prohibited activities, according to the law "[c]arrying out a mission aimed at preventing a crime, pursuing perpetrators, hindering the freedom of circulation of persons or their physical integrity or private activities; During their security services, engaging in body search or the search of handbags without the express approval of their owners or requiring the showing of identity documents or confiscating personal effects."<sup>67</sup> The legislation in Morocco includes very similar

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<sup>58</sup> Article 6 of Decree No. 2009-343

<sup>59</sup> In Mali para 2 of Article 11 of Decree No. 96-020, in Morocco Article 17 of Law No. 27-06 and in Tunisia Article 16 of Decree No. 2002-81

<sup>60</sup> For example in Burkina Faso Article 4 of Decree No. 2009-343, in Côte d'Ivoire Article 3 of Decree No. 2005-73 and Article 5 of Decree No.743/2008, in Mali para 2 of Article 5 of Decree No. 96-020, and in Morocco Article 8 of Law No. 27-06.

<sup>61</sup> In Burkina Faso Article 8 of Decree No. 2009-343, in Côte d'Ivoire Article 8 of Decree No. 2005-73, in Mali Article 9 of Decree No. 96-020, in Morocco Article 14 of Law No.27-06, in Senegal Article 7 of Decree No. 2003-447.

<sup>62</sup> In Burkina Faso Article 8 of Decree No. 2009-343, in Côte d'Ivoire Article 8 of Decree No. 2005-73, in Mali Article 9 of Decree No. 96-020, and in Morocco Article 14 of Law No. 27-06.

<sup>63</sup> Articles 6 and 8 of Decree No.743/2008

<sup>64</sup> Article 1 of Ministerial Decree No. 98/008

<sup>65</sup> Ibid., Article 6

<sup>66</sup> Article 15 of Decree No. 2002-81

<sup>67</sup> Ibid.

provisions<sup>68</sup>. The law in Tunisia concludes that „ [p]hysical constraint with the use of force, whatever its nature, is prohibited aside from cases of legitimate defence and taking into account legal conditions.”<sup>69</sup>

It is clear that the relevant laws aim to exclude from the activities of PMSCs those that may overlap with the functions of the police or the armed forces. However, the distinction between the functions of the public law enforcement agencies and PMSCs remains rather blurred and it is not at all clear whether the related rules should apply only to times of peace or to situations of armed conflict as well. It is therefore unclear the extent to which the laws concerned wish to rule on the prohibition of PMSC personnel's direct participation in hostilities.

As for the participation of law enforcement agents in the activities of PMSCs, of the eight analysed laws, five address this question. In principle the relevant laws in Burkina Faso, Côte d'Ivoire, the Democratic Republic of Congo and Morocco are quite straightforward in discouraging former members of the military forces or the police to act as managers or employees of private security companies. However, all analysed legislation approaches the issue in a slightly different manner. The Democratic Republic of Congo explicitly prohibits the inclusion in the staff of private security companies' active members of the army, former members of the armed forces, or the national police<sup>70</sup>. The laws in Mali and in Morocco at the same time state that at no time may a former police, gendarme officer or military personnel work as an employee or manager of the company<sup>71</sup>. In Burkina Faso, the related law only requires from former military and para-military members a specific authorization from the minister supervising their corps in order to act as managers or employees of a security company<sup>72</sup>, and in Côte d'Ivoire members of the police, gendarmerie and armed forces can act as owners, managers, or employees of a private security company a year after the date of cessation of their functions or activities<sup>73</sup>. In Burkina Faso and in Côte d'Ivoire, it is prohibited for managers or employees of a private security company having served in the military or paramilitary forces to announce or declare that fact publicly.<sup>74</sup>

The differences between the scope of prohibited activities, the varying dividing lines between the functions and activities of the police/and armed forces and PMSCs, the unclarity regarding the relevant laws' application in times of peace and armed conflict, as well as the different extent to which in the analysed countries direct participation in hostilities of PMSC personnel is prohibited all suggest regulatory gaps in the legislation of the reviewed countries. While there are differing views on whether outsourcing certain activities is necessary or wise, outsourcing raises new challenges for the application of international human rights and humanitarian law, especially with regard to ensuring that contractors are held accountable for violations, and that victims of human rights abuses have access to remedies. Therefore, it is essential to prohibit PMSC personnel's involvement in combat or mercenary related activities, in order to avoid potential risks to certain fundamental

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<sup>68</sup> Article 16 of Law No. 27-06

<sup>69</sup> Article 15 of Decree No. 2002-81

<sup>70</sup> Articles 4 and 7 of Ministerial Decree No. 98/008

<sup>71</sup> In Mali Article 10 of Decree No. 96-020 and in Morocco Article 9 (3) of Law No. 27-06.

<sup>72</sup> Article 12 of Decree No. 2009-343

<sup>73</sup> Article 16 of Decree No. 2005-73

<sup>74</sup> In Burkina Faso Article 13 of Decree No. 2009-343 and in Côte d'Ivoire Article 17 of Decree No. 2005/73.

human rights, such as the right to security, right to life, the prohibition of arbitrary deprivation of liberty and the prohibition of torture, cruel, inhuman or degrading treatment.

## 6. Rules on acquisition of weapons

This section looks at whether the laws have regulations on illegal acquisition of weapons and trafficking in firearms by PMSC personnel, as well as on the consequences of these acts.

With regard to the acquisition and possession of weapons and firearms, the rules included in the analysed legislation show quite different approaches<sup>75</sup>. In some countries, such as Burkina Faso, Côte d'Ivoire, Morocco and Tunisia, security companies are allowed to be armed and to possess weapons, including firearms as determined by the "relevant laws and regulations in force"<sup>76</sup>. In Mali, while private companies in charge of surveillance, guarding and transport of funds are allowed to possess weapons, the personnel of private companies protecting people cannot be armed<sup>77</sup>. In some cases special permits are required for the acquisition and possession of weapons and firearms, as it is ruled in the legislation of the Democratic Republic of Congo<sup>78</sup> and in Tunisia<sup>79</sup>. The research showed that in some countries it is either prohibited for the personnel of private security companies to acquire and possess specific types of weapons and firearms, or it is prohibited to acquire and possess them for specific purposes. In Cameroon, for example, according to the law available for the research, the "[p]rotection and alarm equipment may not include firearms", and "[s]ecurity companies may not have or use conventional armament"<sup>80</sup>. In Côte d'Ivoire at the same time, companies may only be "authorized to use stun bombs, clubs, rubber-bullet-firing firearms, pepper sprays and tear gas"<sup>81</sup>, in Mali it is prohibited to carry self-defence gas, knives and blunt weapons<sup>82</sup>, and in the Democratic Republic of Congo, it is prohibited for security companies to "carry and use firearms, special devices and other material usually reserved for the military and police"<sup>83</sup>. Finally, it is interesting to note that while in Mali the personnel of private security companies in charge of surveillance, guarding and transport of funds are allowed to carry "weapons of second, third and fourth category"<sup>84</sup>, in Côte d'Ivoire the personnel of companies transporting money are specifically obliged to "carry a first or fourth category firearm" (subject to authorisation) to exercise their activities<sup>85</sup>.

Most of the analysed legislation also includes specific provisions on the obligations of the personnel of private security companies related to the possessed weapons for the case of temporary suspension or final cessation of activities. In Cameroon, for example, in the event of withdrawal of an authorization, "edged weapons possessed by the security company shall be automatically seized by

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<sup>75</sup> From Senegal the available laws did not allow for the analysis of this criterion.

<sup>76</sup> In Burkina Faso Article 37 of Decree No. 2009-343, in Côte d'Ivoire Article 23 of Decree No. 2005-73, in Morocco Article 13 of Law No. 27-06, and in Tunisia Article 21 of Decree No. 2002-81.

<sup>77</sup> Article 15 of Decree No. 96-020

<sup>78</sup> Article 5 of Decree No. 31/1965

<sup>79</sup> Article 21 of Decree No. 2002-81

<sup>80</sup> Article 23 of Decree No. 2005/031

<sup>81</sup> Article 31 of Decree No. 2005-73

<sup>82</sup> Article 5 of Decree No. 2011-0599

<sup>83</sup> Article 6 (2) of Ministerial Decree No. 98/008

<sup>84</sup> Articles 2 and 3 of Decree No. 2011-0599, Article 15 of Decree No. 96-020 and Article 12 of Decree No. 96-064

<sup>85</sup> Article 43 (2) of Decree No. 2005-73

the appropriate administrative body", in the event of temporary cessation of activities, "the protection equipment of the security company is deposited for safe keeping with the appropriate effect" and after temporary cessation of activity for more than six months, the material has to be sold or transferred.<sup>86</sup> Similar rules can be found in the legislation of Tunisia in that the case of definitive cessation of activities includes provisions on recovering the permit to carry firearms, storing the firearms and ammunition in reinforced storage by the employer, keeping specific record of firearms, as well as on the procedure to follow in the case of loss of a firearm.<sup>87</sup>

Of the examined eight laws, only the Tunisian law refers to the illegal acquisition of firearms and its consequences when it states that if an agent authorized to carry firearm for the purposes of his mission "does not return the firearm after completing his mission, he shall be punished with one year of imprisonment and a fine of 1,000 dinars"<sup>88</sup>.

The very fact that with the exception of one legislation, none of the analysed laws include any provisions on the illegal acquisition of weapons and on illicit trafficking in arms by PMSC personnel, and that the laws reviewed all rule differently on the way of acquiring and possessing weapons by PMSCs show a patchy regulation throughout the analysed countries. In order to ensure that PMSC personnel respect the international standards related to arms control licensing procedures, arms transfer, acquisition of weapons, trafficking in arms and that the staff of PMSC can be held accountable for illegal acquisition of weapons and illicit trafficking in arms, it is essential to establish some standard methods of acquiring, exporting, importing, and possessing weapons by private military and security companies and their employees. In addition, it is desirable to introduce a restraint in the legal acquisition by PMSC personnel of weapons of mass destruction, or weapons resulting in overkill, mass casualties or excessive destruction.

## **7. Use of force and firearms**

This section analyses whether national legislation regulates the use of force and firearms by PMSC employees and their related direct participation in hostilities.

Of the eight analysed legal regimes, only four States have specific laws on the use of force and firearms by PMSC personnel. The relevant laws in Burkina Faso, in Côte d'Ivoire and in the Democratic Republic of Congo, for example, explicitly declare that the use of firearms during the exercise of any security activity is authorized only in cases of legitimate defence<sup>89</sup>. As it was explained earlier in Section 6 above on the Rules of acquisition of weapons, certain States included specific provisions in their legislation on the types of firearms that can be used by the personnel of private security companies. Yet another approach was applied by Morocco, where the relevant legislation allows for the personnel of private security companies to be armed and to use all means of defence and control, according to the conditions provided by the relevant laws and regulations<sup>90</sup>. In Côte

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<sup>86</sup> Articles 31 and 32 of Decree No. 2005/031

<sup>87</sup> Articles 21-25 of Decree No. 2002-81

<sup>88</sup> Article 34 of Decree No. 2002-81. The same law also refers to „the punishment imposed in the event of infractions concerning the introduction, possession and carrying of firearms established by decree No. 69-33 (Article 32), but for the purposes of the current research the referred law was unfortunately not available.

<sup>89</sup> In Burkina Faso Article 38 of Decree No. 2009-343 and in Côte d'Ivoire Article 1 and 2 of Decree No. 148/2007.

<sup>90</sup> Article 13 of Law No. 27-06

d'Ivoire, the use of firearms and grenades is authorized under the conditions defined by the Ministry for Domestic Security and the regulations concerning the carrying of firearms. The very same law also notes that the permit to carry firearms must indicate the firearm's intended use, and that no permit issued for firearms related to activities different from those described in the relevant laws and regulations may be used at any time and will be sanctioned as a case of carrying illicit firearms<sup>91</sup>. In Mali, the relevant law states that private security companies in charge of surveillance, guarding and transport of funds can only use weapons at their disposal to the extent that is necessary to carry out their missions in private sphere<sup>92</sup>. The law in Mali further specifies that such use of weapons is covered by the provisions of the Criminal Code and remains under the entire responsibility of the company<sup>93</sup>.

With regard to the use of force and firearms that may overlap with the functions of the police and the military forces and that may involve the PMSC personnel's direct participation in hostilities in armed conflicts, the analysed legislation is silent. The research found only two laws that addressed this question, in Côte d'Ivoire and the Democratic Republic of Congo. The legislation of Côte d'Ivoire points out that it is "prohibited for companies (...) to become involved in the activities of the administrative or investigative police..."<sup>94</sup> and adds that "it is formally prohibited to participate in operations aimed at maintaining public order at political, sport, social, traditional, cultural or religious events"<sup>95</sup>. The relevant law in the Democratic republic of Congo states that protection of persons and property is permitted, „without, however, replacing the police"<sup>96</sup>, and that „[i]t is prohibited for security companies to patrol, arrest and carry and use firearms, special devices and other material usually reserved for the military and police"<sup>97</sup>. The law further specifies that „ [p]hysical constraint with the use of force, whatever its nature, is prohibited aside from cases of legitimate defence and taking into account legal conditions."<sup>98</sup> In Mali, the relevant law states that it is prohibited for private companies in charge of surveillance, guarding transport of funds and protection of persons to be involved in maintaining order or to limit the free movement of people or vehicles<sup>99</sup>.

Different legislation regulates the use of force and firearms differently from prohibiting it except for the situation of self-defence, to allowing it according to the conditions provided by the relevant laws and regulations. Considering that the personnel of PMSCs often use force during their missions in their home countries and abroad, and the fact that they carry out activities in conjunction and in cooperation with the police and military forces, this issue requires more focused regulation. In order to avoid potential risks to some fundamental human rights, such as the right to security and the right to life, there must be a clear distinction between the activities of PMSCs and the police and armed forces, a prohibition of PMSC personnel's involvement in combat and mercenary related activities, as

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<sup>91</sup> Article 30 of Decree No. 2005-73

<sup>92</sup> Article 13 of Decree No. 96-064

<sup>93</sup> Article 18 of Decree No. 96-020

<sup>94</sup> Article 8 of Decree No. 2005-73

<sup>95</sup> Article 6 of Decree No. 2008/743

<sup>96</sup> Article 1 of Ministerial Decree No. 98/008

<sup>97</sup> Article 6 (2) and 7 of Ministerial Decree No. 98/008

<sup>98</sup> Ibid.

<sup>99</sup> Article 12 of Decree No. 96-020

well as a guarantee that in all other activities only adequate, mandated and proportional use of force is allowed.

## 8. Accountability and remedies

This section covers the reporting requirements for alleged offenses and violations; the relevant rules on accountability and the related procedures for remedies; the involved human rights aspects and accountability for human rights violations committed by PMSC employees.

According to the research conducted, in six of the eight analysed legal regimes there seem to exist some sort of monitoring system<sup>100</sup>. Generally, it is the authorizing/licencing agency that monitors the activities of private security companies and carries out announced or unannounced, regular or ad-hoc inspections. For example, in Burkina Faso it is the Ministry for Security in charge of the inspection, together with "other government agencies"<sup>101</sup>, in Cameroon it is the Minister for Local Government that submits an annual report on the activities of security companies to the Office of the President of the Republic, but according to the relevant law "security companies are also frequently inspected by the Ministry for Local Government, the commission or any other competent authority (for example the local prefect as well)"<sup>102</sup>. Similarly, in Côte d'Ivoire, the monitoring is carried out by the Minister for Domestic Security and the law describes in details the process of inspections<sup>103</sup>. According to the relevant law in Morocco, the control over the activities of private security companies is exercised by the officials of the judicial police and „other specially authorized agents“, however without providing any further details<sup>104</sup>. In Senegal, all security companies must undergo an annual fiscal, social and technical inspection, carried out by the Minister for Finance, the Minister of Labour and the Minister of the Interior, which is then reviewed by the consultative committee<sup>105</sup>. Finally, in Tunisia, the inspections (as detailed in the relevant law) are carried out by officials of the criminal police and the related reports are submitted to the holder of the authorization and the Ministry of Interior.

Only Cameroon's legislation provides further details on the scope of the monitoring and inspecting activities of the monitoring body by specifying that the subject of the inspection shall be the staff, general recruitment conditions, cases of dismissal, respect for requirements concerning uniforms and badges, the validity of insurance coverage; the appropriateness of the types and quantity of communications, as well as the protection and alarm equipment used.<sup>106</sup> It is interesting to note that none of the countries have among the described responsibilities of their monitoring bodies, the requirement to comply with the standards of international human rights and humanitarian law. In Côte d'Ivoire private security companies are requested to submit regular (quarterly and annual) reports to their licencing agencies and monitoring bodies<sup>107</sup>, but the companies are not obliged to report on their compliance with other laws other than those regulating their activities.

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<sup>100</sup> The available legislation from the Democratic Republic of Congo does not include any specific references to monitoring or inspections.

<sup>101</sup> Article 46 of Decree No. 2009-343

<sup>102</sup> Articles 9, 25 and 27 of Decree No. 2005/031

<sup>103</sup> Article 34 of Decree No. 2005-73

<sup>104</sup> Article 21 of Law No. 27-06

<sup>105</sup> Article 15 of Decree No. 2003-447

<sup>106</sup> Article 25 of Decree No. 2005/031

<sup>107</sup> Article 38 of Decree No. 2005-73 and Article 19 of Decree No. 743/2008

In only three of the eight analysed countries (Côte d'Ivoire, Democratic Republic of Congo, and Senegal) are private security companies obliged to report immediately on infractions or violations of law committed by the personnel of private security companies. In Côte d'Ivoire, according to the relevant law, the defence and security forces must be immediately informed of "any infraction or important fact concerning the security of persons and property or State security that they or another party learn about" and all information must be provided that allows the apprehension of criminals.<sup>108</sup> However, a serious limitation to this provision is that the concerned information "must not be provided to a foreign country or to a physical person or legal entity of the Ivorian defence and security forces."<sup>109</sup> The legislation of the Democratic Republic of Congo allows for reporting "any serious incident to the administrative authority" and for "hand[ing] over anyone apprehended in the area of operation of the private security unit."<sup>110</sup> The relevant law of Senegal also states that "any infraction of this decree shall be notified to the committee"<sup>111</sup>. It is to be noted though that none of these laws provide more details regarding the nature of "infractions", "important facts concerning the security of persons and property or State security", and "serious incidents" that need to be reported on, which may make their implementation difficult.

With regard to the accountability of the personnel of PMSCs, the research showed that most of the analysed laws focus on acts violating the relevant laws' provisions regarding the scope of permitted activities, licencing, authorisation, recruitment and other administrative processes<sup>112</sup>.

As for the range of sanctions and consequences for violations of the laws relevant to the activities of PMSCs, the analysed laws concentrate on administrative sanctions applied by the authorizing/licencing agencies in the forms of warning, fine, temporary suspension of the company's activities, withdrawal of authorization, and seizure of weapons and firearms<sup>113</sup>. In Mali, Morocco and in Tunisia the sanctions include imprisonment as well<sup>114</sup>. It is only in some instances that laws make some very few references to penal and civil sanctions for infractions linked to the exercise of the activities of private security companies<sup>115</sup>, and none of the analysed legislation includes provisions on remedies provided for victims.

The conducted research revealed the lack of specific rules on the content of monitoring activities and inspections, the lack of references to the company's or its personnel's compliance with the standards of international human rights law and humanitarian law, as well as the lack of references to effective

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<sup>108</sup> Article 20 of Decree No. 743/2008

<sup>109</sup> Ibid.

<sup>110</sup> Article 8 of Decree No. 31/1965

<sup>111</sup> Article 16 of Decree No. 2003-447

<sup>112</sup> For example, in Burkina Faso see Article 47 of Decree No. 2009-343, in Côte d'Ivoire Articles 51-53 of Decree No. 2005-73, in Mali Articles 19-24 of Decree No. 96-020, in Morocco Articles 22-27 of Law No. 27-06, in Senegal Article 16 of Decree No. 2003-447.

<sup>113</sup> In Burkina Faso see Articles 47-50 of Decree No. 2009-343, in Cameroon Articles 30-32 f Decree No. 2005/031, in Côte d'Ivoire Articles 50-53 of Decree No. 2005-73, in Mali Articles 19-23 of Decree No. 96-020, in Morocco Articles 22-28 of Law No. 27-06, in Senegal Article 16 of Decree No. 2003-447, and in Tunisia Articles 29-34 of Decree No. 2002-81.

<sup>114</sup> In Mali Article 24 of Decree No. 96-020, in Morocco Articles 22-28 of Law No.27-06 and in Tunisia Articles 29-34 of Decree No. 2002-81.

<sup>115</sup> In Burkina Faso Article 47 of Decree No. 2009-343, in Côte d'Ivoire Articles 51 and 53 of Decree No. 2005-73, Article 28 of Law No. 27-06, in Mali Article 19 of Decree No. 96-020, and in Tunisia Articles 30-34 of Decree No. 2002-81.

remedies to victims. Considering the transnational nature of PMSC activities and the broad geographical scope of the provided services, as well as the right of victims of human rights violations to effective remedies, it is essential to ensure the accountability of private military and security companies and their personnel to the Government of their country of origin, registration or their country of operation. The Working Group notes that standardized and effective accountability mechanisms need to be put in place to ensure the enforceability of the regimes regulating the activities of PMSCs, as well as the necessary penal accountability and civil liability of both individuals and corporate actors<sup>116</sup> for human rights violations.

## **9. Ratification of regional and international instruments on mercenaries**

This section focuses on whether States ratified the UN and/or the African Convention on Mercenaries, or the Additional Protocol I to the Four Geneva Conventions.

Of the eight countries analysed, only three States are party to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries: Cameroon, Mali and Senegal, although the Democratic Republic of Congo and Morocco are also signatory States. With regard to the definition of mercenaries, the Additional Protocol to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) defines „mercenary” in article 47, paragraph 2. All States analysed ratified Protocol I, which means that these States are all legally bound to implement Protocol I.

With regard to the Organization of African Unity Convention for the Elimination of Mercenaries in Africa, with the exception of two States (Morocco is not yet a State Party, but Côte d'Ivoire is already a Signatory Party), all other States ratified it to date.

None of the analysed legislation makes reference to any of the above international standards regarding the activities of mercenaries. The Working Group is of the view that in order to ensure the respect for the right of self-determination, States Parties to legal instruments on mercenaries must build into their national legislation the prohibition of mercenary related activities, and introduce relevant enforcement and accountability mechanisms.

## **C. Conclusions**

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

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

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<sup>116</sup> See Guiding Principles on Business and Human Rights, available at: [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)



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

The research showed a regulatory emphasis on protection provided to persons and goods in the domestic sphere, without addressing private military companies, the issue of military and security services provided abroad or the extraterritorial applicability of relevant legislation. While in general States have detailed regulations on licensing and authorisation of private security services, as well as on the procedure of selection and training of personnel, the relevant laws do not include any references to a single dedicated body responsible for licencing and monitoring the activities of PMSCs and to international human rights and humanitarian law in the selection criteria or the training materials. Considering the diverse activities and the broad geographical scope covered by PMSC services, the lack of regulation in these crucial fields may result in ineffective control over the private security industry and its personnel's activities, and a lack of familiarity with human rights standards among PMSC personnel. An international convention on licensing, authorisation, selection and training of PMSC personnel would promote national implementation of common and consistent regulation that is desirable to ensure effective scrutiny, accountability and the availability of remedies for violations.

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

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

Further research into national regulatory strategies is clearly needed in order to identify trends, gaps and good practices in regulating PMSCs. To this end, the Working Group encourages Member States

which have not yet responded to its request to share with it laws and regulations relating to PMSCs to do so.

Finally, the Working Group notes that the research also showed that while the reviewed States show commitment to certain international or regional instruments related to mercenaries, according to the legislation available for the analysis, none of them prohibit mercenary activities at a national level. The Working Group calls on those States that are Parties to international and regional instruments on mercenaries to prohibit mercenary related activities in their national legislation, and introduce relevant enforcement and accountability mechanisms. The Working Group also encourages Signatory States to ratify, and the remaining States to become Parties to the relevant instruments.