

## **National Legislation on Private Security Services in Central America, Cuba and Mexico**

### **Introduction**

As in the two previous years in preparing reports for submission to the Human Rights Council (A/HRC/24/45 and A/HRC/27/50), the Working Group has continued the comparative survey of national legislation governing the activities of private military and security companies (PMSCs). The Working Group is convinced of the need to assess the various legislative approaches to this issue in order to evaluate the suitability of these regulations for the protection of human rights and related aspects of prevention, supervision and compensation of possible violations. In this context, we have continued the survey of legislation of additional regions in order to identify common aspects, legal gaps and good practices in national legislation regulating PMSCs. The Working Group wishes to thank all the member States that submitted relevant laws and regulations. After the first and second phases of the survey, focused on samples of English-speaking countries (A/HRC/24/45, paragraphs 19–52), French-speaking countries in Africa and a group of countries in Asia (A/HRC/27/50), this report covers the analysis and conclusions of the Working Group on the legislation of eight countries in Central America and the Caribbean, including Mexico.

This report covers the special regulations governing PMSCs and their activities in a sampling of eight countries, six in Central America, (Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama), Cuba in the Caribbean and Mexico. The analysis focuses on the application of laws, the granting of authorizations and permits, the requirements for keeping records, training requirements, prohibited and permitted activities, rules for acquiring and possessing firearms, the use of force and firearms, accountability and compensation to victims of the activities of providers of private security services. A check was also made whether the countries have ratified the International Convention against the Recruitment, Use, Financing and Training of Mercenaries (1989).

Even though all regulations take into account most of the aspects mentioned, there are divergences as to the importance given to each aspect, which is manifest in the greater or lesser detail with which the issues are treated. The focus of this survey is specifically to learn whether regulations governing the activities of private security companies include or make reference to international human rights provisions as a standard approach and how to verify whether the countries of a single region share certain minimum standards concerning the protection of those rights in the special regulations governing this activity. There are important differences in the regulations governing these issues, and most of the regulations of these countries do not establish specific requirements that guarantee respect for and protection of human rights. A few countries make explicit mention of human rights, either as guiding principles, guidelines or as a standard for carrying out activities, but in most cases they are not linked to either infractions and sanctions or clarifications in the specific areas regulated. There is no mention of international humanitarian law.

The main gaps in this group of eight countries are in the requirements for reporting on the respect and protection of the rights of persons within the framework of private security functions. None of the special regulations establish mechanisms for compensating victims, and very little reference is made to victims. Another frequent absence is mention of irregular military activities and the activities of military and private security companies. Most regulations deal only with the provision of civilian services specific to the protection of persons and property within one country. Also, provision of services abroad—except in the case mentioned—are not included and are not prohibited. There are no regulations that are

applicable extraterritoriality. Concerning mercenaries, only three of the eight countries have ratified the International Convention against the Recruitment, Use, Financing and Training of Mercenaries (1989). None of the countries incorporate human rights into regulations governing private security.

## I. Analysis

This analysis covers the legislation that governs the activities of private security companies (PMSCs) in the eight countries surveyed, as well as the regulations implementing that legislation. Laws governing firearms, ammunition and explosives are also analysed when found pertinent because a specific law governing private security provides no details on the use of firearms or does not refer to that aspect. In the case of Honduras, the organic law governing the national police (Act 67/2008) was reviewed because there is no specific law regulating private security. It is this organic law that regulates private security activities. In the case of Nicaragua, there is also no specific law dealing with private security, and the organic law governing the national police does not regulate these services, but empowers the national police to supervise private security activities. In Nicaragua, regulations are codified in the Manual on Security Services (Manual de Vigilancia Civil), but which does not have the status of a law or an act. Mexico is a federal government and has a federal law regulating the provision of private security services in two or more federal states. Therefore, it is that law that is included in this analysis.<sup>1</sup>

The following legislation and regulations in force in the eight countries are reviewed.<sup>2</sup>

- Costa Rica: Regulations regarding private security services No. 8395/2003 and Regulation No. 33128-SP/2006;
- Cuba: Act No. 186/1998 governing the security and physical protection system and Act No. 52/82 on the issuing and administration of gun permits;<sup>3</sup>
- El Salvador: The law on private security services contained in Act No. 227/2000 and Act No. 1124/2003, which amends Act No. 227/2000;
- Guatemala: The law regulating private security services, Act No. 52/2010 and its regulations set out in Agreement No. 417/2013;
- Honduras: The organic law establishing the national police, Act No. 67/2008, and regulations for supervision of private security services, Agreement No. 013/2009;
- Mexico: The federal law on private security of 2006 (including amendments, DOF of 17 October 2011) and regulations for the federal law on private security, DOF of 18 October 2011. Federal law regulates the provision of private security services throughout Mexico when provided in two or more federal units, but when the services take place in a single federal entity local law is applied.
- Nicaragua: The law on the national police and its amendments (Act No. 228/1996) and the Manual on Security Services No. 001 of the Office for Public Security (a department of the national police);
- Panama: Executive Order No. 21 of 31 January 1992, which governs the functioning of private security agencies, and Executive Order No. 22 of 1992, which establishes requirements concerning the abilities, rights and duties of security guards;

<sup>1</sup> If a service is provided in just one federal state, it is subject to the regulations of that specific state.

<sup>2</sup> The Dominican Republic, a Spanish-speaking country, has not been included in this report because of the difficulty in accessing regulations governing private security activities and the uncertainty of what is currently in force.

<sup>3</sup> In the case of Cuba, it was impossible to access the Regulation of the Security System and Physical Protection (Act No. 186 of 1998) and Resolution No. 2 of 5 March 2001.

In Panama, Act No. 56 of 2011 was suspended in 2013 and revoked shortly after entering into force. It was replaced by Acts Nos. 21 and 22 of 1992.<sup>4</sup> The revoked act imposed economic sanctions on private security companies that did not cooperate with law enforcement as established in those acts, but without economic sanctions. That act also established mandatory theoretical and practical training for staff to be provided by the Ministry of Public Security. According to information in the media, suspension of Act No. 56/2011 was the result of a general request aimed at establishing better supervision over private security companies and the selection of guards.

Costa Rica, Cuba, El Salvador, Guatemala, Mexico and Panama have special laws regulating private security. The exceptions are Honduras and Nicaragua, as already pointed out.

### 1. Scope of application of the laws

All the legislation surveyed lists the types and approaches of private security services and the persons who can carry them out, establishing for each of type the requirements, deadlines and details. Nevertheless, there are significant differences in the details contained in each regulation and its scope.

The regulations in the eight countries analysed regulate domestic armed and unarmed private security in the area of public security and as support to police activities. There is no mention of military services or military personnel participating in private security companies. The concept of “military” is absent from the regulations. There is no mention of defence activities or related functions. There is also no mention of the import or export of private security services, whether military or civilian. Exceptions are to be found in the organic law of the national police in Honduras, which in its article 140, paragraph 2 provides that “In no case shall the training or drilling of national or foreign staff for private security services abroad be authorized”. This law dates from 2008, which means that that restriction is probably a consequence of what happened in the first years of the Iraq War when there was a scandal because of the denunciation of the sending of private guards from Honduras to Iraq, after training in Honduras and Chile, involving primarily former military personnel. The participants were recruited by subsidiaries of transnational PMSCs in Latin America—for instance Red Táctica in Chile—with contracts in Iraq for service in the Green Zone of Baghdad.

Those regulations are applicable only within each country, and none of the regulations include provisions with extraterritorial application.

### Types of services, activities and methods for providing private security

As for the concepts used in these countries when dealing with private security, the trend is to regulate “private security services” (Costa Rica, El Salvador, Guatemala, Honduras and Mexico). Nicaragua speaks of “security services” (*vigilancia civil*). In Cuba, the law refers to “security and physical protection”. Panama regulates “private security agencies”. Honduras sub-classifies private security companies by the

<sup>4</sup> Act No. 56 of 2011, which regulated private security services, was derogated in May 2013. The Executive's decision was published in the *Gaceta Oficial*. Private security activities are regulated by former Executive Order No. 21/1992. During the suspension of this regulation, the Legislature discussed a proposal to replace Act No. 56, which was criticized because it created a monopoly that prevented various local companies from having their own security staff and forced them to hire private services. See [www.prensa.com/impreso/panorama/ley-de-seguridad-privada-suspendida-por-seis-meses/163469](http://www.prensa.com/impreso/panorama/ley-de-seguridad-privada-suspendida-por-seis-meses/163469). Suspension of this law was extended three times. The Legislature adopted derogation of Act No. 56 of 2011 at its first reading. See [www.anpanama.com/2193-Panama-deroga-ley-de-agencias-privadas-de-seguridad.note.aspx](http://www.anpanama.com/2193-Panama-deroga-ley-de-agencias-privadas-de-seguridad.note.aspx) (24 November 2014). [www.asamblea.gob.pa/main/ComunicacionesyPrensa/tabid/84/articleType/ArticleView/articled/5417/Derogan-ley-que-regula-agencia-de-seguridad-privada.aspx](http://www.asamblea.gob.pa/main/ComunicacionesyPrensa/tabid/84/articleType/ArticleView/articled/5417/Derogan-ley-que-regula-agencia-de-seguridad-privada.aspx)

number of employees authorized.<sup>5</sup> Several countries—Honduras and Cuba—recognize the possibility of a company providing its own security after obtaining a permit and subject to regulations. Costa Rica, El Salvador and Honduras also recognize associations or independent individuals acting as “community or neighbourhood guard groups...”, which operate in specific areas or neighbourhoods with proper authorization.<sup>6,7</sup>

Even though the approach to providing private security services is varied, there are certain activities recognized in all legislation; for instance the guarding and protection of property and persons, maintaining order at public events (Panama and Costa Rica mention this specifically), acting as a bodyguard, providing armoured transportation, manufacturing and marketing security equipment and systems as well as providing security advice. Most legislation mentions private investigators, except in Nicaragua where private investigators are not regulated. Cuban legislation stipulates that bodyguards may be provided only for foreigners and only with the authorization of the Ministry of the Interior. Mexican federal law establishes services for protecting information, for preventing abuses and for identifying responsibilities, along with services for obtaining information on backgrounds, solvency, location and activities of persons as well as activity related to the installation or sale of armour systems.<sup>8</sup> The law in Guatemala provides for the provision of a service that the other laws do not mention, namely guard services or bodyguards, protection and defence in transporting persons and property by land, air, river or sea and monitoring by electronic satellites or global positioning, as well as technology for the protection of persons and property.<sup>9</sup> It is pertinent to ask whether this regulation covers, in fact, a military service in kind. The line between military services and those which are not can be very vague.

As for legislation that refers to human rights, a law of El Salvador (2000) makes reference to the peace agreements signed at Chapultepec in 1992 and a law of Guatemala (2010) refers to the Guatemalan Peace Accords (1991–1996).<sup>10,11</sup> The law of Guatemala mentions human rights as something to be protected together with personal and collective security rights with adequate regulation that “promotes the government's combat against illegal armed groups and unlawful security groups”. This is also a major focus of public security in El Salvador. In its general provisions, Guatemala subjects individuals and companies providing private security services to the provisions of the Constitution and laws and treaties on human rights in force (Art. 4). The “use of procedures for their operations and investigations, which threaten the right to dignity, personal and family privacy, the confidentiality of communications and any

<sup>5</sup> Art. 137(1) of the organic law of the national police (Act No. 67/2008).

<sup>6</sup> The law governing the national police in Nicaragua (Act No. 228/1996) and its amendments create a “voluntary police”, which is not regulated in the Manual on Security Services. The voluntary police is defined as “an auxiliary body in support of the national police that is affiliated with and subordinated to the police”. It is a body of Nicaraguan citizens who, after a process of selection, training and swearing in, serve voluntarily, temporarily and without remuneration (Art. 43). Their activities focus on supporting, preventing, guarding, providing public security and regulating traffic in uniform, and they are subject to the same basic principles of operation and disciplinary regime as the national police.

<sup>7</sup> Art. 2(b), Act No. 227 of El Salvador and Art. 148 of Act No. 67/2008, the organic law of the national police.

<sup>8</sup> This includes the preservation and maintenance of the integrity and availability of information about providers of private security with systems of administration of security, databases, local business networks and global, electronic transactions, etc. (Art. 15).

<sup>9</sup> Art. 41(b and f). Act No. 51/2010.

<sup>10</sup> These agreements were signed in January 1992 between the government of El Salvador and the Frente Farabundo Martí National Liberation Front (FMLN), which put an end to 12 years of civil war in El Salvador. Those agreements recognize the need to regulate the activity of all institutions, groups or persons that provide security services or protection to private persons, whether private or government institutions, autonomous or municipal, to guarantee that their activities fall within the law and with “strict respect for human rights” Preamble III, Act No. 227/2000.

<sup>11</sup> A series of agreements signed by the government of Guatemala and the Guatemalan National Revolutionary Unity between 1991 and 1996 in the search for peaceful solutions to the domestic armed conflict that had been going on for almost 30 years, leaving approximately 200,000 persons dead or missing.

other right protected by the Constitution of the Republic of Guatemala and international human rights treaties” is considered to be a very serious infraction.<sup>12</sup> El Salvador requires management and operational employees of private security services to have an understanding of the laws in force affecting human rights, procedural guarantees, public and private security and of the background of those considerations, which must be tested by the national police.<sup>13</sup>

The special laws of Panama and Cuba, plus the Manual on Security Services in Nicaragua, do not mention the concept of human rights.<sup>14</sup> Although human rights are not mentioned in Honduras in a special regulation, the principles governing police involvement in arbitrary acts is considered to also cover private security. The regulations of Mexican federal law and those of Costa Rica mention the protection of human rights among the principles governing the activities of operational personnel.<sup>15</sup> The regulations of Honduras spell out the rights and obligations of guards and provide that they must respect human and fundamental rights as established in the Constitution.<sup>16</sup>

There is no mention of international humanitarian law in any of the regulations reviewed, and there is even less mention of the possibility that providers of private security might participate in hostilities. Exceptionally, Panama refers to situations of domestic conflict and a declaration of war, stating that the firearms of private security agencies can be placed under the executive branch's direct supervision by decision of the president and the minister of government and justice.<sup>17</sup>

As for conventions and international treaties, the law of Costa Rica mentions them only when referring to the security of diplomatic representations whose personnel is duly accredited and covered by them and, in the absence of agreements, by the provisions of domestic laws. Cuba, on the other hand, alludes to conventions and treaties, recalling that the Ministry of the Interior is the competent authority for matters dealing with security and physical protection and for all activities in which the Cuban government enters into international treaties in that field.<sup>18</sup>

Most of the countries lack specific rules that permit including human rights in private security activities in practice, but that could be achieved by establishing them as standards for the evaluation of activities and associating them with specific infractions and concrete sanctions. There is also an absence of precise requirements on this in training curricula. Taking into consideration the social and legal space in which private security operates and the poor visibility of these rather opaque activities—especially in countries with high indices of violence and delinquency plus the lack of confidence in the police in general, the possible violation of rights is high. Precise regulations are required to protect basic rights. In addition, there is a low level of education required for the operational staff and shortcomings in their training make a sound understanding and internalization of legal norms and abstract principles more difficult.

### **From the point of view of the providers of services**

<sup>12</sup> Art. 58, Act No. 52/2010.

<sup>13</sup> Art. 14, Act No. 227/2003.

<sup>14</sup> Honduras does not mention human rights in the organic law establishing the national police related to the part that regulates private security activities, but the last paragraph of article 141 stipulates that private security activities and services must act correctly towards persons and avoid abuse and arbitrary or violent activities and assume the same responsibility established in this act for career members of the police (Act No. 67/2008).

<sup>15</sup> Art. 27 of the regulation of Mexican federal law and Art. 5(4) of the regulations of the law governing private security services (Act No. 33128/2006 of Costa Rica).

<sup>16</sup> Art. 52(l and q), Agreement No. 013/2009.

<sup>17</sup> Art. 18, Executive Order No. 21/1992.

<sup>18</sup> This is unrelated to the roles of other government agencies (Art. 4, Act No. 186/1998).

Costa Rica, El Salvador, Mexico and Nicaragua recognize the participation of individuals and companies in the private security sector, whether providing services individually or collectively. Guatemala allows individuals to work as bodyguards and private investigators. Honduras allows only private investigators. In Panama, this applies only to security agencies, and there is no mention of individuals as independent providers. In Cuba, the law refers to companies and groups of guards, workers and students doing guard duty for a security and protection service and are considered to be part of the security and physical protection system, which is “complementary to the security and the country's internal security”.<sup>19</sup> This includes physical protection, security and protection of official information, IT security, the supervision of industrial explosives and their chemical components, ammunition, explosives, toxic chemicals, as well as protection against fires and physical protection from radioactive substances and other sources of radiation.<sup>20</sup> In Cuba, the management of companies and internal security groups has the obligation to harmonize missions with the interests of defence in their area.

In the case of public security forces, most countries expressly prohibit the participation of active service personnel—police and armed forces—in activities and PMSCs, as well as former agents of these institutions that have been discharged for disciplinary reasons or for having committed a crime. Panama stipulates that members of the police force and the judiciary police (Policía Técnica Judicial) cannot have any role, whether managerial, administrative, operational, consultative or legal, in these companies.<sup>21</sup> In addition, whoever has been expelled from any government centre, agency or institution or has committed a crime or serious administrative infraction cannot be a security guard.<sup>22</sup> Mexican federal law provides that active members of a public security institution or the armed forces or someone who has been dismissed by these institutions for disciplinary infractions or corruption or has been sentenced for a premeditated crime cannot be members of the management, administration or operational personnel.<sup>23</sup> Even though this restriction is a frequent provision in the regulations reviewed, it is Mexican federal law that contains the most detailed and specific reasons.

Guatemala's regulations are the ones which contain the greatest number of details in this aspect. They extend the prohibition of participating in these companies beyond the police and the armed forces to active members of the ministries responsible for security, the Secretaría de Asuntos Administrativos y de Seguridad of the Presidency, the office of the public prosecutor (Ministerio Público), the prison system or any other institution involved in security.<sup>24</sup> Furthermore, a person who has served in the army or has been a public official involved in public security must wait four years after leaving their most recent position in those institutions before participating in private security services.<sup>25</sup> Founders, partners and administrators who have been condemned for a crime specified in the law against organized crime are denied authorization to form a company providing private security services. The same occurs if they are active army officers or working for an institution involved in security or intelligence. They must wait two years from the time they left those institutions before participating in private security activities.<sup>26</sup> The same requirements apply to the managers of those companies. In addition, managers must prove that their discharge or resignation was not for reasons linked to a crime, non-fulfilment of obligations or

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<sup>19</sup> Arts. 7 and 9, Act No. 186/1998 on the security and physical protection system.

<sup>20</sup> Art. 40, Act No. 186/1998 on the security and physical protection system.

<sup>21</sup> Art. 13, Executive Order No. 21/1992.

<sup>22</sup> Art. 1(f), Executive Order No. 22/1992.

<sup>23</sup> Art. 28(VI), Act 2006.

<sup>24</sup> Art. 42, Act No. 51/2010.

<sup>25</sup> Art. 15, Act No. 51/2010.

<sup>26</sup> Art. 19(e, f), Act No. 51/2010.

violation of human rights.<sup>27</sup> In Costa Rica, nothing is said about this. The organic law of the national police in Honduras provides that police officers discharged for serious offences or having been found guilty of a crime cannot be owners or partners of a private security company. Likewise, it is understood that whoever is not in this situation can be part of the private security company just like in other countries.<sup>28</sup>

## Relations with the police

As for relations with the police, the general rule is that providers of private security must help the police carry out their work, because they are considered to be assistants of the police. Most countries require private security providers to cooperate with the police in the event of an emergency or disaster, upon request of the security authority or when specifically requested by the police, under the police's coordination and supervision. Mexican federal law imposes the obligation to cooperate with the authorities and public security agencies in emergencies, disasters or at other times when requested by a competent federal, state or municipal authority.<sup>29</sup> In El Salvador, private security services must “fully cooperate with requests”.<sup>30</sup> In Costa Rica, that cooperation does not require a specific request, if there is an emergency. In Nicaragua and Guatemala, private security services must not only cooperate with the police but also are subordinate to the police. In Cuba, private security services must carrying out their own activities, “while providing services and support to the security forces and domestic order in the course of their service”.

In Panama, private security agencies must cooperate in their daily activities with the police and provide support whenever requested, for example in order to prevent a crime or misdemeanour and to identify, pursue and apprehend criminals (Arts. 17, 18 and 21 of Act No. 21/1992). Nicaragua, requires that private security services obey and respect the police. When authorized, a company must coordinate with the national police for greater effectiveness and crime prevention, including issues such as protecting children and adolescents and related activities such as the sealing off of a crime site, holding suspects and locating witnesses.<sup>31</sup> It is a very serious infraction not to comply with obligations involving public order agreed on with the national police.<sup>32</sup> In these cases, there is an overlapping of the functions and scope of action of private security and the police, which is a risk to the rights of individuals.

## 2. Permits, authorizations and records

In this area, as in others, regulations differ in their scope and detail. Although all countries establish procedures to follow and conditions and requirements for obtaining authorization and operating permits, most do not make reference to specific standards of human rights or establish standards required for obtaining authorizations and permits. There are exceptions, namely legislation in Guatemala and El Salvador and Costa Rica's regulations, but violations of human rights do not appear in the list of infractions, which is an effective way of stressing their importance and promoting their protection. A generic mention of respect for human rights by private security staff is necessary but insufficient for achieving that goal.

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<sup>27</sup> Art. 29, Act No. 51/2010.

<sup>28</sup> Art. 147, Act No. 67/2008 of the organic law of the national police.

<sup>29</sup> Art 32(VII), Federal Law of 2006

<sup>30</sup> Art. 15, Act No. 227/2000.

<sup>31</sup> Art. 34, Manual on Security Services. This is the country that has the greatest number of regulations governing the relationship between private security and the police.

<sup>32</sup> The relationship of private security companies with the national police is very close in Nicaragua. Private security acts as support and is subordinated to the national police (Arts. 45–53, Manual on Security Services).

## Supervisory bodies

The supervisory authority is exercised by the ministries responsible for public security and in a few cases by the police.

In Costa Rica, the Office for Private Security Services (Dirección de los Servicios de Seguridad Privada) of the Ministry for Public Security is the supervisory authority. In Honduras, it is the State Secretariat in the Office for Security (Secretaría de Estado in the Despacho de Seguridad) through the office supervising private security companies. In El Salvador, this is the function of the Ministry for Security Public and Justice through the División de Registro y Control de Seguridad Privada of the national police, which acts in close coordination with the Division for Firearms and Explosives (División de Armas y Explosivos). Requests for authorization are handled by the director of the civilian national police. In Guatemala, it is the General Direction for Private Security Services (Dirección General de Servicios de Seguridad Privada) under the Ministry of Government, while in Panama it is the Ministry of Government and Justice. In Mexico, that authority is the Federal Secretariat for Public Security (Secretaría de Seguridad Pública Federal). In Nicaragua, authorization is issued by the head of the National Public Security Authority (Autoridad Nacional de Seguridad Pública) with the favourable recommendation of the Ministry of Government. In Panama, it is the Ministry of Government and Justice. In Cuba, it is the Ministry of the Interior, and in matters involving security and protection of strategic goals—as defined by the government—approval of all the management and private security personnel is the responsibility of this ministry.<sup>33</sup> These ministerial and police units are responsible for ensuring compliance with the regulations governing private security activities and PMSCs. In general, they monitor that activities and staff comply with established requirements, grant authorizations and issue permits. In the event of non-compliance, they apply sanctions, which range from a warning and fine to suspension or cancellation of a permit. They also renew authorizations and permits, while monitoring and supervising service providers. In certain cases, they define and authorize training programmes and curricula (the case of Guatemala). They also carry out periodical inspections to monitor authorized activities and inspect installations before authorizing activities. They also keep records submitted by private security providers.

## Authorizations and permits

All the regulations require submission of a written request to the competent authority along with documentation depending on the type of service to be provided and whether it is for an individual or a company in order to obtain an authorization. Regulations require submission of a company's charter, information on the background of the employees and management, information about the type of proposed activities and personnel, and insurance coverage in order to receive a permit. In addition, information must be submitted about the company's installations, equipment and firearms, if applicable. Operational manuals must be submitted by the applicant and approved by the authority. The same applies for plans for organization of activities. In the event a private security company has firearms, it must have a secure place for storing them, certify that the staff has completed the required training courses and submit the model of uniforms and credentials for approval. All regulations include the payment of fees and the contracting of insurance, primarily third party liability, and health insurance for staff. Permits are renewable (for between two and five years: two years in Nicaragua and Honduras, three years in Guatemala and El Salvador, and five years in Costa Rica and Cuba) and can be denied, suspended, revoked or cancelled when there is non-compliance with the requirements and obligations

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Art. 29, Act No. 186/1998.

established by law. Operating authorization and credentials are issued to the staff for a limited duration. In Costa Rica, they are issued for two years, in Nicaragua and Mexico for one year.

The law in Cuba has major differences with the seven other legislations. This is because Act No. 186 establishes and regulates the system of security and physical protection and the services that can be provided in this sector. This system is based on a set of measures for organization and supervision that “are adopted to guarantee order and discipline in support of the efficiency of the rest of the components of the security and physical protection system” to guarantee the integrity and guarding of persons, property and resources from possible threats.<sup>34</sup> The Ministry of the Interior establishes criteria and levels of security and physical protection for the “country's basic sectors” and requirements for preparing security and physical protection plans.<sup>35</sup>

Panama requires that the owners of companies be Panamanians (Art. 4 of Act 21/1992), and foreigners require the ministry's special authorization. Mexican federal law requires that individuals and companies be of Mexican nationality (Art. 25, I), which must certified that they have the human, technical, financial and material resources to carry out the proposed activities (Art. 25, VI). Costa Rica allows resident foreigners to provide services as guards. Honduras requires foreign companies requesting authorization to provide these services “to join with Honduran companies involved in the same activity and to name a Honduran-born manager” (Art. 138).

## Records

The regulations of the eight countries provide that the supervisory authority maintain an up-to-date registry of providers of private security services with information on their activities, contracts, operations and personnel. There are other records that must be kept up to date with information on the operational, administrative and managerial personnel and on firearms, ammunition and equipment. Individuals must register in the corresponding registry. In Mexico, the national register covers private security companies, personnel and equipment, with information for supervision and evaluation as a system of consultation and gathering of information in a database.<sup>36</sup> In Panama, the national register is maintained by the Ministry of Government and Justice. Companies providing guard services must submit all contracts to that ministry for registration and technical approval. The number assigned in the registry must appear in all publicity.<sup>37</sup> The appropriate minister approves the registration or cancellation of the authorization of private security companies, and all companies must keep a record of their contracts, approved by the General Office for Public Security (Dirección Institucional de Seguridad Pública).<sup>38</sup>

In Nicaragua, after receiving an operational permit, individuals and companies are registered in the central registry of private security guard companies. Those registries contain information on legal entities providing private guard services, residential guards, bodyguards, carrying of firearms and uniforms. In Honduras, the supervisory body for private security companies maintains a registry of the permits issued and any changes, including personnel and firearms, specifying their type and calibre.<sup>39</sup> In Costa Rica and El Salvador, the Office for Private Security Services (Dirección de los Servicios de Seguridad Privada) and the División de Registros of the national police, respectively, keep records of

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<sup>34</sup> Art. 6, Act No. 186/1998.

<sup>35</sup> Art. 3, Act No. 186/1998.

<sup>36</sup> Art. 8, Act of 2006.

<sup>37</sup> Art. 16, Executive Order No. 21/1992.

<sup>38</sup> Along with other mandatory records (Art. 20, Executive Order No. 21/1992).

<sup>39</sup> Arts. 141 and 153(7) of the organic law of the national police, Act No. 67/2008.

individuals and legal entities with security and administrative personnel and the location of their installations, weapons and equipment.<sup>40</sup> In Costa Rica, regulations provide for the registration of programmes and training schools and their curricula. In Cuba, the Ministry of the Interior registers companies, agencies and groups providing internal security.<sup>41</sup>

### 3. Selection and training

There is usually no description of selection processes, but the special regulations of seven countries establish requirements that must be met for staff and in some cases for the administration, management and shareholders. They have a common basis for operational personnel, but have differences depending on whether the staff is armed or unarmed and the method of providing services. There are divergences between the various legislations in this aspect. The basic requirements are to be an adult and have completed a minimum level of education, usually primary or basic education. The regulations in Honduras and Cuba do not mention this aspect. Several countries require that staff be nationals of that country, including Honduras, Mexico and Nicaragua. Cuba adds that the person must be a resident in Cuba.<sup>42</sup> Costa Rica and El Salvador allow resident foreigners, while Guatemala makes no reference to nationality.

One general criterion for eligibility of operational personnel is suitability and moral solvency, which is confirmed by the police with a certificate of police records. In this aspect, there are also differences between the eight countries. Costa Rica requires the absence of a criminal record over the past ten years and “any entry in the background of having been found guilty will lead to a review of the applicant's life and habits” in order to establish their suitability.<sup>43</sup> Resident foreigners must be registered in their country of origin—the same requirement exists in the regulations in Honduras—and have resided there during the past five years. The Office for Private Security Service (Dirección de Servicios de Seguridad Privada) of the Ministry of Public Security is responsible for requesting information on a person's background from the country of origin. El Salvador requires that independent guards and guards hired by agencies have no police record. Guatemala is the only country in this group that requires that operational personnel that had previously worked for another company or institution (unarmed guards, armed guards, bodyguards and investigators) prove that they were not terminated for having committed a crime or violation of human rights. Panama has a broader regulation that requires not having been expelled from a public agency for having committed a crime or serious administrative infraction. In addition, all management and operational personnel must be morally solvent and submit the police record of its personnel at the time of registration and then annually.<sup>44</sup>

There are other requirements concerning mental and physical health, although only in general terms. Costa Rica, El Salvador and Guatemala require a psychological exam in addition to a physical exam. El Salvador and Nicaragua require a sound state of mental health and physical conditions appropriate for the activities. Guatemala requires that providers of these services implement and maintain “a fact-based process for selecting personnel, supervision and continuous training”.<sup>45</sup> In Honduras, regulations require that all operational personnel and those who are responsible for their activities must undergo annual

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<sup>40</sup> Art. 7, Act No. 8395.

<sup>41</sup> Art. 3(f), Act No. 186/1998.

<sup>42</sup> Honduras requires that individuals providing private investigation services be native born (Art 34(b), Agreement No. 013/2009).

<sup>43</sup> Art. 14(c), Act No. 227/2000.

<sup>44</sup> Arts. 1 and 9, Executive Order No. 21/1992.

<sup>45</sup> Art. 51(b), Act No. 51/2010.

psychometric, anti-doping and other testing as required. Cuba and Panama do not mention these aspects.

Cuba, in line with its very distinct style of organizing and regulating private security activities within the system of security and physical protection, does not spell out the requirements with which operational personnel must comply. In addition, their approach is quite distinct from what is observed in the regulations of other countries in this group. Cuba requires that the selection, approval and training of the personnel of security and guard companies and internal protection groups correspond to the same entities that organize the internal security groups in accordance with the requirements established by the Ministry of the Interior. There is a difference for persons working in security and protection of sites that the government designates as strategic, because they are approved by the Ministry of the Interior. The requirements of suitability of all the personnel is regulated by the Ministries of the Interior, Labour and Social Security.

In general, there are no requirements linked to human rights in the regulations of these countries. The exception is the regulations in Guatemala which in establishing the requirements for various categories of individual providers of these services—shareholders and executives of companies and all the employees—requires that whoever has served in the Guatemalan army, the national civilian police, the government intelligence services or another private security company must certify that their dismissal was not because of their having committed a crime or violation of human rights.

### **Training and practice**

Training requirements are rather general and are limited to what the relevant supervisory agency requires (national police or ministry responsible for security). The exception is Cuba, as is explained below.

Most of the regulations (in six out of eight countries) require that training and practice requirements be fulfilled by passing courses given by an institution recognized by law. However, neither the laws nor the regulations indicate what should be included in the curriculum and its duration, except in a few cases that mention that in very general terms. They also do not establish standards or supervision of the quality of the training or drilling, except a few requirements in practice in the use of firearms. Most do not mention curricula dealing with human rights, except Guatemala, which requires “theoretical and practical training in human rights in accordance with international standards, the use of force and the use of firearms”.<sup>46</sup> Mexico's regulations, which provide that a provider of services must offer all operational personnel courses following an authorized model with content dealing with human rights at least once a year. Federal law requires submission of plans and training programmes and proof of registration with the Secretariat for Labour and Social Security (Secretaría del Trabajo y Previsión Social), before obtaining a permit.<sup>47,48</sup> Salvadoran legislation provides certain details about content and mentions courses covering procedures for private agents on human rights among other related subjects for training purposes.

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<sup>46</sup> Art. 51(c), Act No. 51/2010.

<sup>47</sup> In order to comply with the need to permanently update, which will be approved in light of the labour permits issued by trainers or training centres, in accordance with the provisions issued by the Secretariat for Labour and Social Security (Secretaría del Trabajo y Previsión Social) (Art. 42 of the federal regulations).

<sup>48</sup> Art. 25(VIII), federal law of 2006.

Honduras indicates that operational personnel must be trained in “relations with people and society”, without further details.<sup>49</sup> Training programmes are submitted by the private security companies and are approved and monitored by the national police. Panama requires very brief training on the administration and use of firearms and laws regulating their use and requires at least two shooting range practices per year.<sup>50</sup> Nicaragua's Manual on Public Security requires training only in the speciality of public security. Costa Rica requires private security personnel to pass a basic course in private security given by the National Police Academy (Escuela Nacional de Policía), and in the event that that academy authorizes another institution to do so the curricula and instructors must be approved.<sup>51</sup> In Guatemala, “guards”—unarmed guards—are required to take a training course organized by the provider of security services “that must be completed within one year after joining the company”.<sup>52</sup> This means that a guard begins working before completing training.

As for the entity responsible for training, in Costa Rica it is the National Police Academy (Escuela Nacional de Policía), which can authorize another institution. In Guatemala, training and practice are provided by training centres or authorized institutions. They must submit the plans of the physical training installations and shooting ranges in the application for authorization to operate.<sup>53</sup> In Panama, a candidate must pass an official exam at a centre designated by the Ministry of Government and Justice in order to be hired as a security guard. Honduras and El Salvador require psycho-technical testing in order to receive training at the National Academy for Public Service (Academia Nacional de Seguridad Pública). In Nicaragua, training and practice are given by the police academy and other institutions accredited by the national police. Operational permits specify the training that is required for guard services.<sup>54</sup> Mexico stipulates that training can be authorized annually in educational institutions of the Secretariat for Public Security (Secretaría de Seguridad Pública), government academies or authorized private training centres. The Cuban regulations make no mention of this.

Shortcomings in the requirements regarding training content and its duration constitute a risk for the respect and protection of human rights, especially when only a relatively low level of education is required for guards. It is essential to have minimum standards in both aspects, which ensure mastery of basic knowledge that allows operational personnel and companies to internalize human rights standards as the ethical and legal framework for private security activities. They must act responsibly in situations involving possible legitimate use of force, especially when all regulations permit the use of weapons.

#### 4. Prohibited and permitted activities

Regulations cover obligations and prohibitions related to activities and behaviour in the exercise of private security activities. Legislation in the eight countries analysed regulate armed and unarmed domestic private security in relation to public security. The activities permitted are the guarding and protection of property, persons and public events (Panama and Costa Rica mention this specifically), provision of body guards, armoured transportation, the manufacture and marketing of elements and security systems and provision of advice in security. Most regulations mention private investigations, except Nicaragua which makes no mention of this. Mexican federal law covers security services for

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<sup>49</sup> Art. 153(11), Act No. 67/2008 of the organic law of the national police.

<sup>50</sup> Art. 3, Executive Order No. 22/1992.

<sup>51</sup> This regulation authorizes the National Police Training Academy to sell these courses to private individuals. Art. 54, Act No. 8395

<sup>52</sup> Art. 54(d), Act No. 51/2010.

<sup>53</sup> Arts. 19(i) and 51, Act No. 51/2010.

<sup>54</sup> Art. 7(4), Manual on Security Services.

information and services for obtaining background reports and information on solvency, location and individual activities as well as activities involving the installation and sale of armour systems.<sup>55,56</sup>

As for the permitted and prohibited activities, the general rule is to establish the initial requirement that activities focus on the specific service for which they are authorized; then, depending on each contract, what is to be done, when and how. Another limitation on private security work is that the work must be carried out at the places or buildings for which they have been contracted. In exceptional cases, private security personnel are permitted to work in public places, for example in the case of activities which by their nature cannot be limited to a private space or, in the case of Nicaragua, where, because of their cooperation with the national police, they are even required to provide support for police patrols in public in the sectors and streets where they carry out guard duties. Private guards also participate in the regulation of traffic at schools.<sup>57</sup> Panama permits security guards to work “exceptionally in public places”.<sup>58</sup>

Among the basic prohibitions are those on using uniforms, credentials, logos and the colour of vehicles similar to those used by the police or armed forces, which would allow them to be confused with those of public services. The use of unauthorized weapons and carrying them without proper authorization are also prohibited.

As for relations with the police, a frequent prohibition is that of carrying out activities reserved for the police and armed forces. Costa Rican law prohibits “appearing to or replacing the role played by the administration or judiciary or interfering in their work”, and providing services in prisons.<sup>59</sup> El Salvador prohibits carrying out investigations that are the exclusive competence of the Public Prosecutor's Office (Fiscalía General de la República) or the national police.<sup>60</sup> Guatemala's law has the most details and provides that private security services cannot assume functions that are the government's. It sets out prohibitions related to the protection of rights, such as participation, freedom of expression, trade union membership and freedom of religion. It prohibits private security personnel from intervening in activities that affect public order or place national security at risk, exerting influence over political opinions, trade unions and religions, and participating in meetings or political demonstrations. It is also prohibits carrying out electronic, technical, clandestine and surveillance “of any type that is the work of the government”.<sup>61</sup> In Mexico, the regulations of the federal law require that security service providers do not assume the work entrusted to the public prosecutor and the police in reference to services for obtaining information on background, solvency, location or activities of persons.<sup>62</sup> Honduras prohibits participation in the installations or equipment of the national police in any way and provision of services of the national police for training persons or companies providing private security.

Several countries include prohibitions related to activities of a military nature or militia or even mercenaries in the regulation of private security. For example, in Costa Rica and El Salvador the law prohibits the existence or functioning of any type of armed private groups that are unauthorized and do

<sup>55</sup> This consists in the storage, trustworthiness and availability of information about the provider with systems of security administration, databases, local networks of cooperation and global, electronic transactions, etc. (Art. 15).

<sup>56</sup> Additional information on the activities permitted are to found in section 1 of this report, “Scope of application of the laws”.

<sup>57</sup> Art. 48, Manual on Security Services.

<sup>58</sup> Art. 10, Executive Order No. 22/1992.

<sup>59</sup> Art. 45(h, l), Act No. 8395/2003.

<sup>60</sup> Art. 49(k), Act No. 227/2000.

<sup>61</sup> Art. 59, Act No. 51/2010.

<sup>62</sup> This is the approach of systems of prevention and responsibilities, using proof of transparency and reliability, as well as a lie detector (Art. 5(III) of Mexican federal law (DOF of 18 October 2011)).

not comply with the requirements set forth in these regulations (Art. 6, Act No. 8395/03 and Art. 60 of Act No. 227, respectively). Furthermore, in light of the possibility that there are ties with these activities abroad, Honduras prohibits authorization of “the training or drilling of Hondurans or foreigners for providing services in the form of private security abroad”.<sup>63</sup> Likewise, it prohibits using means of transportation with foreign registration (Art. 154(5)). There are also prohibitions with direct reference to human rights, such as the Costa Rican law which prohibits detaining, interrogating, requisitioning or sequestering (except when caught in the act, temporarily and immediately informing the proper authority), violating the right to honour, personal privacy, physical integrity, intercepting correspondence and interfering with communications. Costa Rica also prohibits renting or lending an authorization for whatever reason and selling actions in companies authorized to provide private security services to foreigners or to persons who have been condemned for international crimes.<sup>64</sup> Mexican federal law requires compliance with international human rights standards and provides that security services must “avoid at all times committing, tolerating or permitting acts of torture, mistreatment, as well as cruel, inhuman or degrading acts, even when it is in execution of an order of a superior or in supposedly special circumstances, such as threats to public security”.<sup>65</sup> Similar precautions are contained in Costa Rica's regulations, which state that under no circumstances may simple obedience be invoked as justification or impunity for cruel, degrading or inhuman punishment, torture or other treatment.<sup>66</sup>

In El Salvador, the national police can suspend operations of services that disrupt public order or internal security. In the event of serious abnormalities in carrying out activities, staff are placed under the orders of the national police until the situation returns to normal.

Costa Rica and Honduras have a special regulation limiting the number of staff of private security companies. Costa Rica requires that “Individuals and legal entities authorized to provide the services described in article 2 of that act, individually considered and even though they are authorized to provide various types of services, cannot have more security guards than 10 percent of the total number of members of the police force by type of service, based on annual budget estimates”.<sup>67</sup> The law of Honduras states that private security companies cannot employ a total number of guards greater than 6 percent of the total number of the national police force. Taking into account the exponential growth of these activities in the region and the numerical superiority of private security agents compared to the number of police, this requirement is considered to be a good practice, provided it is effectively applied.

## 5. Regulation of the acquisition, carrying and use of firearms

All legislations permit the carrying and use of firearms by private security personnel within limits prescribed by law, whether they are individuals or working for companies, and always if duly authorized and with the proper permit. However, there are differences in the regulations, not only as to the type of weapon authorized and its calibre but also as to the requirements for ownership and use. For example,

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<sup>63</sup> Art. 140, Act No. 67/2008.

<sup>64</sup> Art. 45, Act No. 8395/2003.

<sup>65</sup> Art. 32(X) of Mexican federal law.

<sup>66</sup> Private security agents are prohibited from making confiscations or body searches of a person caught in the act. They can confiscate from the assumed perpetrator only objects or firearms which could create a dangerous situation or real or imminent risk for the physical integrity of the culprit, the agent or third parties (Art. 29(3) of the regulations of the law on private security services No. 33128).

<sup>67</sup> Art. 19, Act No. 8395/2003.

Panama requires assigning a specific firearm to each security guard and not to do so is an infraction.<sup>68</sup> El Salvador permits always carrying and the use of firearms, including by private investigators, and permits private security agencies to use firearms of their own property, after informing the national police.<sup>69</sup> The same situation occurs in the case of associations of guards and independent guards.

Ownership of firearms must always be registered, a registry and inventory maintained and that registry kept up to date, duly informing the competent authority of any changes, as well as requiring private security companies to have adequate installations for the storage of firearms and ammunition as well as an individual permit to carry after showing proof of having received training in its use. Regulations in this region usually require carrying a credential confirming that. In order to issue an operational permit, regulations require proof of ownership of a weapon and an inventory of weapons and ammunition.

The general rule is that only authorized firearms can be carried in places where a service is being provided while on duty. Panama authorizes carrying firearms exceptionally when travelling. In Cuba, firearms may be carried in public only with authorization of the Minister of the Interior.<sup>70</sup> Most of the special regulations (seven) on private security of the eight countries surveyed provide no details on the calibre of these firearms. El Salvador does not specify a type or calibre of firearms and considers it a serious infraction to use firearms and ammunition that are not permitted by law. There are also provisions in the law regulating firearms that “no more than one firearm per individual or legal entity may be purchased every two years”, although among the exceptions to this rule are companies that provide private security services.<sup>71</sup> Mexican federal law establishes the obligation of a provider to use only registered firearms and stipulates which are for the exclusive use of the armed forces—in general combat weapons—but gives no details on those used by private security services. Cuba, in its legislation regulating firearms, refers to owning and carrying a revolver or automatic pistol, without specifying the calibre that is authorized by the Ministry of the Interior.<sup>72</sup> In Panama, it is the Office for Public Security (Dirección Institucional de Seguridad Pública) that determines whether security guards can carry a pistol or rifle. A pistol must be a calibre 38 revolver, and a rifle must be a 12-gauge pump shotgun. That law also stipulates that guards must carry a 50-cm-long rubber-covered hose and handcuffs, which is exceptional in the eight legislations analysed. The weapons remain the company's property.<sup>73</sup> Nicaragua prohibits the use of firearms considered to be combat weapons and prohibits their use by civilians. In Honduras, the general rule is that every person can own a firearm.

As for specific prohibitions on the carrying and use of firearms, in Nicaragua the regulations provide that whoever has been found guilty of a crime against public order, State security, a terrorist act, narcotic trafficking, domestic violence, human trafficking and sexual crimes cannot own or carry firearms for civilian use.<sup>74</sup> In other cases, regulations establish restrictions for special situations. In Panama, the weapons of private security companies may revert to the direct supervision of the Executive Branch of government by decision of the president and the Ministry of Government and Justice in the case of domestic conflict or declaration of war.<sup>75</sup> In El Salvador, in the event of a strike or legal stoppage of private security services, the supervisory body must make weapons, ammunition and other equipment

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<sup>68</sup> Art. 27(d), Executive Order No. 21/1992.

<sup>69</sup> Art. 27, Act No. 227/2000.

<sup>70</sup> Art. 34, Act No. 186/1998.

<sup>71</sup> Art. 21(c), Act No. 655 on the supervision and regulation of firearms, ammunition, explosives and similar material.

<sup>72</sup> Art. 6, Act No. 52/1982.

<sup>73</sup> Art. 139, Executive Order No. 22/1992.

<sup>74</sup> Art. 15, Act No. 510/2005.

<sup>75</sup> Art. 18, Executive Order No. 21/1992.

available to the national police, which will be returned once the situation has returned to normal.<sup>76</sup> This type of restriction is considered to be good practice, because it aims to decrease the risk of carrying and using firearms in unstable situations. Other legislation stipulates what must be done with firearms in the event of a conflict or war and in the event of termination or suspension of a company's activities. In El Salvador, in cases of self-protection of property, the regulation indicates that if there is a labour conflict in which at least part of the guards participate, the company must inform the police and make the weapons, ammunition and equipment available to the national police.<sup>77</sup> In Guatemala, if a provider of private security service ceases operations, the Office of Firearms and Ammunition (Dirección General de Control de Armas and Municiones) (DIGECAM) intervenes and can authorize the sale of firearms, ammunition and equipment. If an operating permit is cancelled, the company must return all credentials issued to DIGECAM, along with the firearms and ammunition for temporary storage. In the event of the suspension of a permit, only the carnets and credentials are to be returned temporarily.<sup>78</sup>

As for the origin of firearms and their acquisition, there are no special provisions in the regulations on the activities of private security companies. In Panama, Act No. 21 states that firearms can be purchased only on the domestic market.<sup>79</sup> There are no regulations concerning the acquisition of weapons in illegal domestic or international markets by private security companies, which means that there are no specific sanctions for this behaviour in cases involving private security companies. This is usually one of the gaps in the region involving infractions or crimes committed by private security providers, especially companies, because the accountability mechanisms are usually the same as those for prosecuting infractions and crimes committed by individuals, without setting a greater penalty for companies specialized in armed security services.

## 6. Use of force and firearms

There are not many regulations covering the use of force and firearms by the providers of private security. Regulation of this is rather rare and brief, general and scattered. That is the case in Mexico, where federal law provides “using firearms responsibly”, and that services “shall be provided taking into account the principles of integrity and dignity and protection and proper treatment of persons, avoiding at all times arbitrary acts and violence, acting coherently and proportionality in the use of their abilities and available means”.<sup>80,81</sup> In Guatemala, the regulation is clearer, and among the prohibitions on guards is “the use of force and firearms incorrectly and in disproportion to the functions and levels of the security required, goals and type set out in this law, as well as not taking steps to prevent harm to life, physical integrity and other rights of individuals”.<sup>82</sup> In the event of the use of firearms, providers of services must immediately inform the Office of Private Security Services (Dirección General de Servicios de Seguridad Privada) and indicate the protection measures used to ensure the rights of the persons involved.<sup>83</sup> Non-compliance with this obligation leads to dismissal of the perpetrator, independent of penal and civil responsibilities. Thus, the responsibility is that of the person who uses the firearm improperly and disproportionately, and, in accordance with the general rules, the company is responsible only in the event of not having taken all necessary protection measures. This is the most complete

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<sup>76</sup> Art. 16, Act No. 227/2000.

<sup>77</sup> Art. 46, Act No. 227/2000.

<sup>78</sup> Arts 28 and 57, Act No. 51/2010.

<sup>79</sup> Art. 8, Act No. 21/1992.

<sup>80</sup> Art. 33(VII), Federal law of 2006.

<sup>81</sup> Art. 1, Federal Law of 2006.

<sup>82</sup> Art. 59(j), Act No. 51/2010

<sup>83</sup> Art. 56, Act No. 51/2010.

regulation dealing with this aspect and it also requires theoretical and practical training on human rights in accordance with international standards concerning the use of force and the use of firearms.<sup>84</sup>

Nicaragua considers it a serious infraction to “make ostensible use and intimidation with an assigned firearm”, and that is sanctioned with confiscation of the firearm and a fine.<sup>85</sup>

In Costa Rica, the law stipulates that the ethical-legal principles governing police activities—contained in the general law governing the police—apply to private security services. Among them is the use of force only when strictly necessary and in the measure in which force is required for carrying out activities. Under no circumstances may mandatory obedience be invoked in special situations, such as state of war or threat to national security or the government, an exceptional situation or any other public emergency as justification, excuse or impunity for torture or other cruel, inhuman or degrading treatment or punishment. A similar provision is found in the Mexican regulation stipulating that providers of private security have the obligation not to carry out, tolerate or permit acts of torture, mistreatment and cruel, inhuman or degrading acts “even in the case of a command or supposedly special circumstances such as threats to public security”.<sup>86</sup>

The lack of regulations governing situations and placing limits on the use of firearms and possible sanctions on someone who uses firearms or that person's company is a gap that places the integrity of persons at risk, even more so given that the countries reviewed allow the use of firearms both for persons providing services in a company and for persons acting individually or in groups or associations that are not specialized or professional companies providing those services. Once again, it is not enough to have general regulations applicable to individuals, because it is the case of individuals and companies that might use the right to use legitimate of force delegated by the government.

As always, a risk analysis must be made in the general context of this region, where several of the countries studied show a high incidence of violence and delinquency, and where private security companies have more employees than the police and more firearms than the police.

## **7. Accountability and compensation for victims**

The supervision of private security, as pointed out in the section dealing with that, is the responsibility of the public security supervisory body, the ministry responsible or the police, so that those responsible for issuing authorizations and permits are those that are responsible for supervising the activities of those services.<sup>87</sup>

Regulations tend to require periodical inspections of installations and activities and stress the keeping of required records up to date. Several also mention unexpected and random inspections. However, the

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<sup>84</sup> Art. 51(c), Act No. 51/2010.

<sup>85</sup> Art. 54, Manual on Security Services.

<sup>86</sup> Art. 32(X), Federal Law of 2006.

<sup>87</sup> In accordance with available information, supervision and regulation of private security corresponds to the Ministry for Public Security through the Office for Private Security Services (Dirección de Servicios de Seguridad Privada) in Costa Rica, the Ministry of Government and its Office for Private Security Services (Dirección General de Servicios de Seguridad Privada) in Guatemala, the national police and the Office for National Security in Nicaragua. In El Salvador, it is the Ministry for Public Security and Justice through the national civil police. In Cuba, the supervisory body is the Ministry of the Interior. In Mexico, it is the Sub-secretariat for Public Security (Subsecretaría de Seguridad Pública) through the Dirección General de Registro y Supervisión a Empresas and Servicios de Seguridad Privada (DGRSESSP). In Panama, it is the Ministry of Government and Justice, and in Honduras it is the Secretaría de Estado in the Despacho de Seguridad and the national police backed by the supervisory body of private security companies.

supervision and inspection described do not make specific mention of the quality of the activities and whether they comply with and respect human rights standards. The regulations do not establish this goal, and supervision is focused on checking compliance with the required formalities. It is an obligation of private security companies to permit and facilitate inspections by the supervisory authority. Non-compliance is considered an infraction.

The law in Cuba is the only one that refers to the quality of services. That law requires the Ministry of the Interior to determine the level of security required in basic sectors of the country, to set security requirements, plans and procedures, and to inspect, supervise and certify quality.<sup>88</sup> However, that law does not contain specifications on how to measure quality and makes no reference to human rights.

As to which infractions and sanctions are directly associated with the violation of human rights, there are great differences between the legislations of the eight countries analysed. Guatemala includes among very serious infractions the use of procedures that infringe on the right to dignity, personal and family privacy and confidential communications, or any other right protected by the Constitution and international treaties dealing with human rights.<sup>89</sup> As for concrete measures that prevent those who have violated regulations from continuing to carrying out these activities, Guatemala is the only country whose regulations exclude from private security activities those who have worked for another security company and have been dismissed for violation of human rights. Costa Rica sanctions an individual or company that violates the prohibition of detaining, arresting, interrogating, sequestering, or in any way depriving a person of freedom with cancellation of the authorization.<sup>90</sup>

Mexican federal law provides certain criteria that permit the supervisory body—the Office for Public Security—to determine the appropriate sanction applicable to an infraction. It is impossible to associate a priori a specific sanction with an infraction, regardless of its seriousness. It provides that when deciding on administrative sanctions the Secretariat for Public Security must take into account the background and personal conditions of the offender, their length of service, any second offence and the amount of the benefit obtained, among others.<sup>91</sup> That law also stipulates that the Under-secretariat for Public Security must receive and pursue complaints launched by citizens against the provider of services and hold coordination meetings with providers of private security in order to coordinate efforts and evaluate and monitor activities.<sup>92</sup> Guatemala also has a regulation that establishes the Office of the Director General for Private Security Services to deal with complaints made against providers of these services. El Salvador considers it a minor infraction that a company searches persons or their property. It is a serious infraction that guards inflict inhuman treatment or make arrests.<sup>93</sup> In its manual, Nicaragua considers the carrying out of activities that endanger the life of the police or citizens in general to be a very serious infraction and establishes a sanction of six months of suspension of the operating permit.<sup>94</sup> Honduras and Panama do not mention infractions involving the violation of human rights. In Cuba, regulations make no reference to infractions and sanctions.

Only two countries provide for specific crimes involving the provision of private security services. Guatemala establishes the crime of “illegal provision of private security services”, when those services are provided without authorization or without an operating permit. Whoever knowingly contracts them

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<sup>88</sup> Art. 3, Act No. 52/82.

<sup>89</sup> Art. 58(3b), Act No. 51/2010.

<sup>90</sup> Except in the case of flagrant crimes, only temporarily and within legal limitations (Art. 51, Act No. 8395/2003).

<sup>91</sup> Art. 40, Act 2006.

<sup>92</sup> Arts. 5(IX, XI) of the federal law on private security.

<sup>93</sup> Art. 48(o) and 49(i, m).

<sup>94</sup> Art. 54(2), Manual on Security Services.

without authorization is also responsible, Guatemala establishes a sanction of a six-to-twelve-year prison sentence and a fine.<sup>95</sup> In Costa Rica, in the case of provision of these services by agents or companies with suspended or cancelled permits, the punishment can be prison for three months to two years.<sup>96</sup>

All regulations require that any crime of which knowledge is learned during work must be reported to the police, but only a few regulations refer to crimes or infractions committed by operational, administrative or managerial staff. In its regulation, Honduras considers the committing of proven crimes by partners and company officials to be a serious infraction.<sup>97</sup> Nicaragua's Manual on Public Security provides that a guard company must withdraw the permit of a person involved in any illegal activity or disturbance of public order and turn that person over to the police.<sup>98</sup>

## **8. Ratification of international instruments on mercenaries**

Only three of the eight countries studied have ratified the International Convention Against the Recruitment, Use, Financing and Training of Mercenaries: Costa Rica in 2001, Cuba in 2007 and Honduras in 2008. However, this convention has not been included or referred to directly in the special laws on private security studied.

There are no other international regulations in the region dealing with the phenomenon of mercenaries. Regional institutions have not formally dealt with the phenomenon of private security, its activities and companies, or established agreements in this aspect.

## **II. Conclusions and recommendations**

As in the earlier studies, the goal of this report has been to identify and compare common elements, gaps and good practices contained in the regulations of the eight countries analysed. The interest of the Working Group has been to establish whether national regulations covering the activities of military and private security companies are sufficiently solid and complete from the point of view of the protection of human rights, from the perspectives of effective prevention of possible violations of these rights by the staff of private security and companies and from the possibility of prosecuting and sanctioning perpetrators and providing compensation to victims.

In general terms, the activities permitted are those aimed at protecting the life of persons, property and assets through guard services, armoured transportation, electronic surveillance, guard services and protection of persons, property, installations, public events, assets, private investigations, training in private security, advice and consulting services and sale of security equipment. National legislation regulates companies, personnel and private security activities within each country, and in the case of human rights although mentioned in most countries—with large differences—they are not always duly protected or stressed as guidelines for the provision of private security.

The analysis shows that there are differences in these eight countries in the role recognized as appropriate for private security companies, even when all basically consider them to be supporting participants in providing public security. Several include them in their country's security and protection system, while others consider them as companies with the obligation of providing help to the police under certain circumstances. In several cases, they are even allowed to carry out activities that in most

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<sup>95</sup> Art. 66, Act No. 51/2010.

<sup>96</sup> Art. 53, Act No. 8395/2003.

<sup>97</sup> Art. 48, Agreement No. 013/2009.

<sup>98</sup> Art. 15, Manual on Security Services.

countries are reserved for public institutions, for example guarding a crime site. The differences in the role recognized for private security are associated with recent history and the particular situation in each country, goes hand in hand with the exponential growth that has occurred in the two most recent decades.

The eight countries have regulations governing private security, services whose status ranges from a special law—the situation in most of the countries—to including regulations in a manual. There are also important differences in the content of the regulations, and only three of them have a regulation. However, taking into account the differences in the reality of each country, it is possible that a country with a more complete and adequate substantive law protecting human rights does not necessarily achieve more effective protection, because that depends on the degree of implementation and application. In Latin America, there are often shortcomings in this aspect. Furthermore, national scenarios must be taken into account from the point of view of violence and criminality, as well as the strength or weakness of the institutions in each country. Because Latin America and the Caribbean is the region with the highest incidence of violence and homicides in the world, plus a lack of confidence in police institutions and the judicial system in several countries analysed, it is clear that it is not enough to observe the quality of existing legal texts. Furthermore, some laws analysed have major gaps, and supervisory authorities are not always trained to carry out their work effectively throughout the country.

The rapid growth of private security activities and companies in this region, along with the possibility granted to them by law to use firearms plus many illegal or irregular entities that function without authorization or permits are elements that in several countries make up an extremely complex scenario. This situation requires ostensible improvement of the system of regulation and supervision of private security, especially of the transnational companies and their subsidiaries established in the region.

The legislation analysed has major gaps and weaknesses precisely in those aspects most relevant for the prevention and supervision of possible violations of human rights by providers of private security services. For example, none of them have mechanisms for accountability or compensation for victims. Most do not establish specific and sufficiently serious sanctions related to the violation of basic rights. These gaps are especially serious taking into account that in several of these countries there have been violations of human rights that have led to true scandals, without any tracking down and sanctioning of those responsible. Human rights must be established clearly as the legal and ethical framework for services and private security companies.

Another important gap in these regulations is that they do not deal with military-like activities or even less with military and private security companies. The transnational character of private security companies and military services provided in scenarios of armed conflict, plus other complex scenarios such as the so-called war on drugs, increase the probability of the use of firearms by guards of PMSCs and the risk of violation of human rights. Precise regulations governing the use of force and firearms are required, therefore, as well ensuring the possibility of pursuing those responsible beyond national borders. In contexts in which borders between countries are porous, it is necessary to fill in the gaps in regulations that increase the risk of violation of human rights, and promote regional and subregional agreements for the regulation of PMSCs, in order to protect effectively the rule of law, human rights and the exercise of the right to self-determination of peoples. International humanitarian law is not referred to in the regulations analysed.

Among the regulations analysed, none were found concerning the acquisition of weapons in domestic or international illegal markets by private security companies. In the case of crimes committed by providers

of private security during the exercise of their functions, there is a general lack, not only in this region, regarding mechanisms of accountability in order to assign responsibilities. The mechanisms of accountability are usually the same as those for prosecuting crimes committed by individuals. In circumstances where private security personnel is carrying out functions authorized with recourse to the use of legitimate use of force, including the use of firearms, deserves greater punishment than a simple private individual who has violated rights.

Most countries lack rules that permit the protection of human rights effectively. Taking into account the social and legal space in which private security operates and the low visibility of these activities, often very obscure, the possibility of violating rights is high and precise regulations that protect them are needed. The weaknesses of the systems of selection and checking of backgrounds, as well as the training and drilling of operational personnel, make more difficult for them a good understanding and internalization of legal norms and abstract principles. The precarious working conditions under which the operational personnel work in several countries, also does not help in carrying out these services within the law. In order to deal with these challenges, standards for evaluating activities that go beyond mere compliance with formalities must be established, instilling respect for rights and concrete infractions with their respective sanctions. Selection procedures and background checks must be improved, and training required that meets the minimum requirements of duration and with specific content on human rights.

In this study, the Working Group observed that only three of the countries studied have ratified the International Convention Against the Recruitment, Use, Financing and Training of Mercenaries, although none of them prohibit the activities of mercenaries domestically. The Working Group calls on the countries that are parties to this convention to incorporate the prohibition of those activities into their domestic legislation.

The Working Group also encourages governments in this subregion to promote incorporation of discussion of the role of private security companies in the context of regional security into the agendas of intergovernmental regional and subregional organizations.