

National Legislation on Private Security in the Countries of South America

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Introduction¹

Following on the reports made in the two previous years to the Human Rights Council (A/HRC/24/45 and A/HRC/27/50), the Working Group has continued its comparative analysis of national legislation on the activities of private military and security companies (PMSCs). The Working Group is convinced of the need to study the various legislative approaches to this issue in order to evaluate the suitability of these regulations for the protection of human rights from the perspective of prevention, supervision and compensation of victims. In this context, progress has been made in the analysis of the legislation of additional regions aimed at identifying common aspects, legal gaps and good practices in that legislation. The Working Group wishes to thank all the member States that provided access to their relevant laws and regulations. After the first and second phases of the survey, focussed on samples of English-speaking countries (A/HRC/24/45, paragraphs 19–52) and 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 national legislation in countries in South America.

This report examines existing legislation in eight countries in South America: Bolivia, Brazil, Chile, Colombia, Ecuador, Peru, Uruguay and Argentina, although in the latter case regulations of the Province of Buenos Aires are analysed because Argentina is a federation of provinces, where the regulation of private security services is a competency of the provinces. Argentina does not have national regulations covering this issue. Brazil, which is also a federation of states, does, however, have a national regulation. This analysis covers special legislation and their regulations governing the activities of PMSCs when they exist. Exceptionally, pertinent aspects of laws on the control of firearms and ammunition were reviewed, when laws on private security referred to them. In cases like that of Uruguay, only basic legislation was surveyed—that which establishes definitions and regulations for issuing authorizations and permits, regulating operations and supervision and inspection—given the wide variety of regulations in force and the hierarchical differences of those regulations.¹

I. Analysis

The aspects analysed are the scope of application of laws, the granting of authorizations and operating permits, the records required, selection and training of employees, prohibited and permitted activities, and regulations governing the acquisition of firearms and the possession and use of firearms. The Working Group also looked at regulations on accountability and the existence of mechanisms for compensating victims of violations of their rights by providers of private security services. Finally, it was determined whether the States have ratified the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, in the absence of bilateral and multilateral agreements dealing with that issue in the Region.

The following legislation and regulations are surveyed in this report. In Bolivia, the organic law governing the national police (Act No. 734/1995), regulations on private security companies (Act No. 222544/2004) and Resolution No. 324/2002 of the national police, which creates the Department for Supervision of Private Security Companies (Departamento de Control de Empresas de Seguridad Privada) (DENCOES). In Brazil, Act No. 7.102/1983, which regulates private security primarily in financial institutions and Ordinance (*Portaria*) No. 3.233/2012-DG/DPF, which establishes regulations governing the functioning

¹ This report was prepared by Patricia Arias, a member of the Working Group on the use of mercenaries. The regulations of Paraguay and Venezuela have not been included in this report, because at the time of the preparation of this analysis, Paraguay lacked a special law, although a bill was being discussed. According to public information, Act 23/1992 on private security was repealed on 5 June 2014 by Act No. 5/2014 of 4 April (B.O.E. 5 April). See http://noticias.juridicas.com/base_datos/Admin/l23-1992.html. Venezuela has a law (Providencia Administrativa No. MPPD-VS-DAEX-002-2009) (Gaceta Oficial No. 39.251 of 27 August 2009), which contains regulations and general procedures for regulating the operations of companies providing private guard, protection and armoured transportation services. It was impossible to confirm whether that regulation is in force.

and operation of armed and unarmed private security companies.² In the province of Buenos Aires, Act No. 12.297/1999 on activities of companies providing private security services and Act No. 1897/2002 creating regulations for implementation of the law on private security. In Chile, Act No. 3.607/1981, establishing new regulations on the activities of private guards, Act No. 1.773/1994, regulating Act No. 3.607 and Act No. 93/85, regulating Art. 5(bis) of Act No. 3.607. In Colombia, Act No. 356/1994, which establishes the statute on guard and private security services, Act No. 2187/2001, which creates regulations for the statute on guard and private security services, Act No. 2355/2006, which changes the structure of the Superintendencia de Vigilancia y Seguridad Privada, Act No. 2535/1993 on firearms, ammunition and explosives and Act No. 2974/1997 which regulates special services and community guard and private security services. In Ecuador, the law on guard and private security services, Act No. 012/2003 (Registro Oficial No. 130/2003), regulations for the law on guard and private security services (Act No. 1181 of 17 July 2008). In Peru, Act No. 28.879/2006 on private security services, which has been in force since 2011, and Act No. 003/2011-IN, which establishes regulations for the law on private security. In Uruguay, Act No. 275/1999, which establishes regulations governing services provided by individuals and companies and Act No. 237/2004, which amends the law governing private security activities (Act No. 275/99), including the activities of producers or importers of technology used in security systems.

In half of those cases, the regulations have the status of laws issued by the legislature. In the other cases, the situation varies. In Colombia, Act No. 356—like most of the regulations dealing with private security—was issued by the president with the approval of the minister of defence.³ Uruguay also has an act issued by the executive branch. Bolivia has only the regulations of an act, namely the organic law governing the national police, which refers generically to these activities in its article 136. In Chile, the main regulation dates from the period of dictatorship—a period of constitutional abnormality—issued by the executive branch without intervention of congress, which had been disbanded at that time.⁴ All the cases examined have regulations that establish details for application of substantive regulations. Several countries, namely Chile, Colombia and Uruguay, have a diversity of regulations that have been established and amended by more specific provisions over time, which have made their legal architecture very complex.

1. Scope of application of legislation

All the regulations cover the types and methods of providing private security services and the persons who can be employed, listing the requirements that must be met. However, there are major differences as to their details and the extent to which various aspects are covered. In the seven countries of South America and the Province of Buenos Aires, regulations cover the provision of civilian private security within that country. There are no laws applicable beyond national borders and no mention of extraterritoriality. There is also no regulation of the export and import of private security services.⁵

Regulations do not regulate the participation of military personnel in private security services and do not mention military private security companies. In Colombia, Act No. 356 covers “special guard and private security services”, which can be military in nature, even though they are not thus labelled. Authorization

² *Portarias* are ordinances of a lower hierarchical level than regulations and acts and are issued by ministers and other federal authorities. They complement and provide details of the regulations that govern the activities of private security companies. This ordinance of 2012 was amended by Ordinance No. 3 258/2013 DG/DPF and Ordinance No. 3.559/2013, included in this analysis.

³ Based on the law that granted him special attributions in this issue (Act No. 61/1993).

⁴ An act which was modified in February 2011 by Act No. 20.502. In Chile, a bill has been introduced in Congress, but is currently stalled.

⁵ The Colombian regulation mentions this, pointing out that bodyguard services can be provided—occasionally to persons working for companies that have headquarters outside Colombia, but without further details. Art. 19, Act No. 356/1994.

is issued by the Office of the Superintendent for Guard Services and Private Security (Superintendencia de Vigilancia y Seguridad Privada) “expressly, definitively and temporarily” for companies that “provide their own security in areas of high risk or public interest that require high security”.⁶ These services can be authorized with the use of firearms of restricted use and with techniques and procedures different from other services.⁷ They are authorized by the Committee on Firearms of the Ministry of National Defence, and the office of the Superintendent—the supervisory agency—ensures compliance with regulations. Given the special situation existing in Colombia because of the guerilla and organized crime, this private security activity is quite similar to military activities.

Types of private security services and activities

In general terms, the provision of private security is in the form of guard services for the protection of property and persons, including public events, and may be in the form of personal body guards, detectives or private investigators, consulting services, guard services with firearms, the sale of equipment for guard duty and private security and armoured transportation. The training of guards who do that work is also included in private security services. In the case of armoured transportation, Act No. 12.297/1999 of the Province of Buenos Aires covers only the transportation, guarding and protection of legal transfers, except the transport of funds.

Several regulations classify private security services by whether they are armed or unarmed. This is the case of Colombia, which stipulates that services can be provided by individuals without firearms.⁸ Others, Ecuador for instance, classify services into categories of fixed guard duty, mobile guards and private investigation.⁹ The trend is to permit armed and unarmed guard services. In Bolivia, guards cannot carry firearms. In addition to these services, there are private services covered by the law of the Province of Buenos Aires, which includes obtaining evidence for civil lawsuits and evidence for incrimination or proof of innocence among private security activities. Also included are activities in cases of penal litigation involving a crime and services contracted in light of a legitimate interest in a penal trial.¹⁰

Several regulations also recognize private security services that are part of a company's own security provisions. This is the case in Colombia where security departments are frequently established in companies to provide guard and private security services for property, installations and persons associated with that company. A security department must be created for the organization of guard and private security services with firearms for their own protection.¹¹ There are also special guard services and community private security services that provide their own security. Chile requires that banking and financial institutions, public entities, armoured transportation companies, strategic companies and services of public benefit maintain their own private guard services.¹² Guards are the only persons who can and must carry weapons and are employees of the company for which they provide services. In this same line, the Peruvian regulation refers to “self-protection services” organized by any public or private entity to meet their own internal security needs with their own employees.

⁶ Art. 39, Act No. 356/1994.

⁷ Which are combat weapons for the exclusive use of the police; including automatic pistols and sub-machine guns. Art 9, Act No. 2535/1993.

⁸ The Colombian law permits the use of armoured vehicles for guard duty and security, which reflects the reality of insecurity and violence in Colombia, especially because of organized crime and the existence of large drug cartels that were finally disbanded and the conflict with the guerillas.

⁹ Art. 2, Act No. 2003/12.

¹⁰ Art. 2(5), Act No. 12.297/1999.

¹¹ Art. 17, Act No. 356/1994.

¹² The strategic companies are to be determined by a confidential decision (Art. 3, Act No. 3.607). The study of security referred to shall be secret and shall remain with the appropriate police prefecture of the Carabineros.

Most legislation does not mention international conventions and treaties on human rights. The exceptions are Brazil, Colombia and Peru.¹³ Peru prohibits the activities of mercenaries in compliance with its obligations under existing international treaties and agreements. Brazil, in an ordinance of 2012, mentions human rights on several occasions in annexes covering training curricula. Colombia, in the regulations governing special services and community guard and private security services, states that “citizens must have legal recourse for the exercise of their constitutional rights that are guaranteed by the Constitution, international treaties and conventions on human rights and existing legislation and regulations”.¹⁴ As for international humanitarian law, the only mention is in Colombia's regulations on the special and community services mentioned above, which provide that they have an obligation to inform the competent authorities opportunely when they learn of any criminal act or violation of human rights and international humanitarian law while carrying out their activities.¹⁵

From the point of view of service providers

Chile, Colombia, Peru and Uruguay recognize both individuals and companies as providers of private security services. Private security for armoured transportation is always done by companies. In Colombia, Act No. 356 restricts the activities of individuals to the sale of unarmed security equipment, provision of consulting services and investigations. The regulations of Bolivia, Brazil, Ecuador and the Province of Buenos Aires recognize only companies as providers of private security services and prohibit guards of these companies from providing services independently or autonomously.¹⁶

There are cases in Colombia where special institutions, such as community guard services and private security services, are recognized as providers of private security. They operate as a cooperative, community action group or community enterprise, providing security to their members within the area of that community. They provide fixed or mobile services and armed or unarmed services. Cooperatives provide guard and private security services with a permit issued by the appropriate city office. They are non-profit associations of guards and managers and provide guard and security services for third parties against remuneration. They offer fixed and mobile guard services and bodyguard services.^{17,18}

Most of these countries expressly prohibit active members of the police and armed forces from carrying out private security activities. In Uruguay, Act No. 275/1999 prohibits management-level police officers from participating as owners, partners or representatives of companies providing security and from having any relationship with private security companies. Only instructors approved by the Ministry of the Interior are allowed to work at private training centres.¹⁹ Ecuadorian law extends the prohibition on participation as partners, management and administration of private security companies to spouses and relatives to the second degree. Active members of the police and civil servants working for the Ministry of National Defence, the Ministry of Government, the national police, the armed forces and the Office of the Superintendent of Companies (Superintendencia de Compañías) are not eligible to work for private security companies.²⁰ In Colombia, members of the military and police officers in active service, the staff of the Ministry of National Defence and the Police, the Departamento Administrativo de Seguridad (DAS)

¹³ Ecuador mentions international treaties in its regulations referring to the regulations that govern private investigations (Art. 7, Act No. 1181/2008).

¹⁴ Act No. 2974/1997.

¹⁵ These special services are those expressly, definitively and temporarily authorized by the Office of the Superintendent to companies for the exclusive purpose of providing their own security for activities in high risk areas or areas of public interest that require a high level of security (Art. 1. Act No. 2974/1997). Article 3 stipulates that these special services will not be authorized in areas of conflict. Community services are the organization of the community into a cooperative, community action group or community enterprise that provides security to its members within the area of that community (Art. 8).

¹⁶ Art. 6(e), Act No. 12.297/1999.

¹⁷ Art. 42, Act No. 356/1994.

¹⁸ Art. 23, Act No. 356/1994.

¹⁹ Art. 8, Act No. 275/1999.

²⁰ Including active members of the Comisión de Tránsito in the Province of Guayas. Art. 3(b).

and the Superintendencia de Vigilancia y Seguridad Privada cannot be partners or employees of private security companies.²¹ The law of the Province of Buenos Aires extends this ineligibility and incompatibility to employees of the intelligence and prison services.²² Chile and Peru do not have this prohibition, which in the case of Chile could be explained because that provision dates from 1981, when Chile was under military dictatorship. That restriction has remained in force until now.²³

The case of Bolivia merits special mention, because Bolivia prohibits not only the members of the armed forces and the national police from participating in private security companies but also public officials in active service at any level.²⁴ However, the situation in Bolivia is unique in this group of countries, because of the existence of the so-called Battalion of Private Physical Security (Batallón de Seguridad Física Privada) (BSFP), which is part of the national police and hires out police services for security services in competition with private security companies. Public servants are available to whoever pays them. The existence of the BSFP is controversial because the national police directly participates in private security as the institution that authorises, supervises and inspects private security companies. Another criticism is that the BSFP was involved earlier in unfortunate events. In addition, private security companies claim that because they are not authorized to carry firearms, they are at a disadvantage in competing with BSFP in the private security market.²⁵

Another common prohibition on participation in private security services concerns ex-members of the police and armed forces who have been discharged for having committed infractions or crimes. Peru prescribes those who have been discharged because of a disciplinary action, and the Province of Buenos Aires excludes those who have been discharged because of a felony linked to activities governed by the law on private security. The exception to this rule among the legislation analysed of the eight countries is Chile, which does not mention this.

As to where private security activities may be carried out, the trend is to limit activities to the sites, buildings and private spaces specified in contracts, because activities in public areas are reserved for the official security forces.²⁶ This restriction becomes less precise for activities that are carried out over a large area, such as community guard services and armoured transportation in Colombia.

Relations with the police

The general rule is to consider that private security activities are complementary and subordinate to the security work of the police. Chilean regulations do not explicitly state so, but that is a consequence of the police's regulatory role. Several regulations establish an obligation for providers of private security to cooperate with the police in cases determined by law. In Colombia, there is an obligation for private security services to cooperate with the national authorities, making a contribution to crime prevention and supporting the police when requested in the event of a general disaster.²⁷ Uruguay creates an obligation for private security companies to support and cooperate with the police, providing them with useful information.²⁸

²¹ Art. 78, Act No. 356/1994.

²² Art. 8 on ineligibilities and incompatibilities, Act No. 12.297/1999.

²³ The prohibition, according to the Carabineros, would be a practice in that institution, although there is no formal regulation.

²⁴ Art. 38, Act No. 222544/2004.

²⁵ This involved money paid irregularly by the BSFP between 2000 and 2002 through phantom companies to personal accounts. Another case occurred in 2007 in which the army accused three police officers of theft of tin from the mining company where they were providing services. See Arias, Patricia. *Seguridad Privada en América Latina: el lucro and los dilemas de una regulación deficitaria*. FLACSO-Chile 2008. p. 34.

²⁶ Chile stipulates that private guards may provide protection only within buildings and areas that they are protecting, Art. 1, Act No. 3.607.

²⁷ Art. 74(6 and 12), Act No. 356/1994.

²⁸ Art. 2(2.3), Act No. 275/1999.

Peruvian law states that it is an obligation of companies specialized in private security to cooperate with the police at the request of the executive branch in the event of the declaration of a state of emergency as defined by the Peruvian constitution.²⁹ In Ecuador, private security companies must immediately cooperate with the national police. In addition, similar to the case in Peru, private security guards are placed under the orders of the armed forces in the event of the declaration of a state of emergency—“Because of their training and abilities they are in a position to support and help the national police with the gathering of information for crime prevention”.³⁰ These provisions are reason to consider the implications this could have should these companies share activities or cooperate with public security forces in the event of the declaration of a state of emergency and the impact that could have on human rights, given the gaps observed in training received by private security guards—as will be shown further along—and the complex situations created by any state of emergency.

In the law of the Province of Buenos Aires, the activities of private security companies are subject to public security policies, and providers of these services must cooperate and assist the police in its activities in relation to the persons and property they are guarding.³¹ They must also make their equipment and human resources available to the police in the event of a catastrophe or emergency.³² The regulatory authority determines under which circumstances there is an obligation to cooperate and provide assistance.³³ Bolivian regulations create the obligation for private security companies to cooperate with the police when required and add that they must temporarily suspend their services when ordered by the departmental head of the police or any competent authority and carry out emergency activities.³⁴ The Chilean regulation makes no reference to an obligation to cooperate with the police.³⁵

2. Operating authorization and permits

Supervisory authority

In most of the countries, the regulatory and inspection authority, which grants authorizations and permit, lies in the ministry responsible for public security. In the Province of Buenos Aires, the supervisory authority is the provincial Ministry of Justice and Security through the Secretaría de Seguridad Pública. In Bolivia, it is the Ministry of the Interior through the head of the national police and the departmental police. In Brazil, it is the Ministry of Justice through the Federal Police. In Chile, it is the Ministry of the Interior and Public Security through the Carabineros and its department for order and security on private security (OS10).³⁶ In Peru, it is the Ministry of the Interior through the Office for Supervision of Security Services and Control of Firearms, Ammunition and Explosives for Civilian Use (DICSCAMEC). In Uruguay, these activities are subject to the inspection and permanent supervision of the Ministry of the Interior through its permanent office.³⁷ In Ecuador, it is the Ministry of Government and Police and the Office of the Superintendent for Companies (Superintendencia de Compañías). The exception is Colombia, where the authority is the Superintendencia de Vigilancia y Seguridad Privada, a

²⁹ Art. 23(j), Act No. 28.879/2006.

³⁰ In accordance with the law on national defence. Art. 3, Act No. 1181/2008.

³¹ Subordinated to the provincial government. This is expressly stated in the regulation of the Province of Buenos Aires, Art.1, Act No. 12.297/1999.

³² Arts. 9, 10, 11. Act No. 12.297/1999.

³³ Art. 9, Act No. 1897/2002.

³⁴ The authority provided for in Art. 34, Act No. 222.544/2004 is responsible for that.

³⁵ In the facts, the possibilities of cooperation depend on the relationship that the private security companies have with the relevant police prefecture.

³⁶ In the case of guards, they are regulated by a specific act. The OS10 Department of the Carabineros is the supervisory authority in Chile through the prefectures.

³⁷ Arts. 2 and 3(3-2), Act No88888777

national technical agency that is part of the Ministry of National Defence with administrative and financial autonomy.

Authorizations and permits

All the countries require authorization and permits in order to provide private security services. Authorizations and permits are issued by the designated authority, which sets certain requirements for companies and individuals. The requirements can be general (Province of Buenos Aires) or by type of service provided (armed, unarmed, armoured transportation, etc.) or by type of provider—whether an individual or a company—or whether it is an in-house or external service. Security service providers are always required to provide only the activities for which they are authorized and for which they have been granted a permit within the areas and buildings for which their services have been contracted, which must be stipulated in a contract. The trend is to require a police certificate and court records for owners, directors, managers and operational personnel, in order to ensure suitability and moral solvency. In Ordinance No. 3233/2012, Brazil states full details for each means of providing services, including the requirements for obtaining a permit, both for shareholders, directors and managers, requiring certification of the absence of a police record by the federal, state, military and electoral justice systems.

Most of this legislation does not establish specific requirements concerning records of violations of human rights. The exception is the law of the Province of Buenos Aires, which prohibits persons as partners of private security companies, who have benefited from amnesties Nos. 23.492 and 23.521 or who have been indicted for acts that constitute a violation of human rights. This must be proven by a certificate issued by the competent human rights authorities.³⁸ The lack of a police record that would make a person ineligible to exercise private security activities must be proven with a certificate issued by the Registro Nacional de Reincidencia y Estadística Criminal, a certificate issued by the competent department of the Ministry of Justice and Security and a sworn declaration of non-involvement in a court case for felonies or misdemeanours related to security activities.³⁹ These requirements constitute a good practice in the procedure for investigating the background of employees, requiring certificates from the competent authorities, and makes no distinction between felonies and misdemeanours.

Among the requirements for obtaining an operating permit are several requirements common to all the regulations, such as the requirement to contract third-part liability insurance (Bolivia, Colombia, Ecuador and the Province of Buenos Aires) or life or health insurance for employees (the case in Brazil and Chile), submit proposed models of uniforms and credentials, which must be different from those used by the police, and show proof of the availability of offices for deposit of firearms. Bolivia, Brazil and Colombia set a minimum amount of capital required for forming a private security company. In Colombia, the government can set a minimum amount of capital required for forming and operating companies. Several countries require the presentation and approval by the competent authority of an operational manual for an applicant company. In Bolivia, security companies must have a manual covering organization, functions, regulations and procedures approved by the head of the national police at the time of authorization and an internal regulation approved by the Ministry of Labour.⁴⁰ Colombia provides that the government issue operation manuals, carry out inspections and approve uniforms and other aspects that are required to provide guard duty and private security services. In Uruguay, all applicants—companies and individuals—proposing to provide private security must apply in writing to the Ministry

³⁸ Art.8(2), Act No. 12.297; Acts No.23.492 (Ley de Punto Final) and No. 23.521 (Ley de Obediencia Debida), which prevented the sanctioning of crimes against humanity committed by the government during the military dictatorship between 1975 and 1983, and benefited the military officers involved in serious violations of human rights, which were declared unconstitutional by the Supreme Court in 2005.

³⁹ Ibid.

⁴⁰ Art. 17, Act No. 222544/2004.

of the Interior and to the Registro de Empresas and Prestadores Privados de Seguridad for approval. In addition, companies must have a security advisor, who is responsible for the planning, coordination and supervision of security and who is the technical person responsible to the ministry. That person's background must be submitted along with the backgrounds of other employees to the Ministry of the Interior for approval.

Authorizations and permits have a fixed duration, which varies from one to five years, after which they must be renewed. In Bolivia, a permit is valid for three years; in Brazil one year; and in Colombia and Peru for five years.

Records

Most of the legislation surveyed requires maintaining a special register of private security companies, although not always at the national level, and one of individuals who provide services. The exception is Bolivia, which requires that companies keep registers and records of daily activities, contracts, shifts, assistance provided, accidents, hiring and dismissals, transfers and permits, etc.⁴¹

In Brazil, companies must register with the Federal Police, and companies specialized in armoured car services must register with the Army.⁴² In Ecuador, legally formed guard and security companies must be registered in a special ledger of the Registro Mercantil and, before receiving authorization to operate, in the special registers of the Joint Command of the Armed Forces and the Comandancia General of the National Police.⁴³ In Peru, a registry of companies and personnel is kept by the DICSCAMEC, including for training centres. In Chile, the prefectures of the Carabineros keep a registry of all private security companies (unarmed guards, training centres, consultant services, etc.) and a separate register with the complete identification of who is providing guard services and where that takes place.⁴⁴ In Colombia, it is the Superintendencia de Vigilancia y Seguridad Privada, which is the institution that keeps a register of providers of these services, plus any firearms used. The Office of the Superintendent must keep the statistical registers of the guards, staff, clients, armament, training, equipment, vehicles, incidents, sanctions, informal and illegal activities and other useful information up to date.^{45,46}

The Province of Buenos Aires requires that the supervisory authority keep a register of the persons authorized to provide private security services and a register of persons rejected because of infractions to Act 12.297.^{47,48} This register is a good practice, although in this case it is only at the provincial level, if it were established at the national level, because it would make possible supervision of those who have committed infractions in the private security system thus preventing their continuing to provide services by changing company or city, as often occurs nowadays.

In general, all the countries require that companies have and maintain registers of their staff, contracts, inspections carried out by the supervisory authority, users (for example, in Colombia, in the case of armoured car companies), records of issues concerning firearms, namely contracts requiring the carrying of weapons, ammunition, etc.

⁴¹ Art. 26, Act No. 222544/2004.

⁴² Arts. 17 and 31, Act No. 7.102/1983.

⁴³ Arts. 10 and 11, Act No. 2003/12. Art. 12 of the regulation, Act No. 1181/2008.

⁴⁴ Art. 23, Act No. 1773/1994.

⁴⁵ Art. 4(4 and 9), Act No. 2355/2006, which amends the structure of the Superintendencia de Vigilancia y Seguridad and provides other provisions.

⁴⁶ Art. 9, Act No. 2355/2006.

⁴⁷ Art. 19, Act No. 12.297.

⁴⁸ Title III, No. 4, Act No. 1897/2002.

3. Selection and training

There are common requirements for guards in the regulations, such as being at least 21 years of age and proof of moral solvency confirmed by a background check issued by the police or a competent judicial authority. Several countries require certification of physical and psychological aptitude, namely the Province of Buenos Aires, Brazil, Chile, Ecuador, Peru and Uruguay, and certification of not being an ex-member of the police or armed forces discharged for an infraction. All countries except one require completion of training at a training centre or authorized institution. Nevertheless, there are various degrees of differences between the aspects regulated.

Several countries require that operational personnel be a national of that country—Brazil, Chile, Colombia, Ecuador, while other countries do not mention this.⁴⁹ Peru permits that guards have a foreign nationality, as long as they comply with all relevant laws. Bolivia permits foreign advisers—the only case that refers to the possibility of the participation of non-nationals—and requires an Interpol background check. In Colombia, the partners in private security companies and the members of a private security cooperative must be native-born Colombians.⁵⁰ In Brazil, foreigners are not permitted to own or administer training activities.⁵¹

In most cases, the educational requirements for guards are a minimum of basic or primary schooling. Peru requires a complete secondary education. All the regulations require proof of no police record. Peru requires having no criminal, prison or court record. Companies providing guard services must prove through a sworn declaration that the owners and management or their legal representatives have no criminal or legal records, with an exception made for crimes against honour, against the family, injury and infractions not related to property. Individuals providing security services must present a background certificate.⁵² Ecuador excludes anyone who has been sentenced to prison or who has been dismissed by another private security company for proven crimes.⁵³ Uruguay requires certification of good conduct “in the form of a police certificate and background information, if considered necessary by the Ministry of the Interior”. If there is something questionable “the Ministry of the Interior shall evaluate the nature, extent and time of the crime in order to determine whether that constitutes an impediment for granting authorization”.⁵⁴

The regulations in Brazil require having no police record or involvement in a crime as well as not having been sentenced by a federal, military or electoral court. However, it is stated that there is no obstacle to registration or exercise of the profession of guard, if a person has been only accused or tried for a crime or has been sentenced to prison and then rehabilitated as prescribed in the sentence, when at least five years have passed from completion of the sentence and in cases decided by agreement or conditional suspension of proceedings.⁵⁵ Some of these exceptions can be an additional risk in the case of armed guards who work in situations where they must take quick decisions when faced with an immediate

⁴⁹ Regulations in Bolivia mention nationality in relation to permission of a maximum of three foreign advisers per company (with an INTERPOL background check). Art. 17(I), Act No. 222544/2004.

⁵⁰ Art. 12, Act No. 356/1994.

⁵¹ Art. 74, ordinance No. 3233/2012.

⁵² Arts. 18(c) and 41(d), Act No. 003/2011.

⁵³ Arts 4 and 5, Act No. 2003/02.

⁵⁴ Arts. 6, 6.2(b), Act No. 275/1999.

⁵⁵ Art. 155(VIII, 4). Ordinance No. 3233/2012.

danger, highly violent scenarios and criminality.⁵⁶ Guards are to be identified by biometric data and fingerprints gathered by the Federal Police in the applicant's home districts in the professional register.⁵⁷

All the countries require a permit to carry firearms, which must figure on the credentials along with an indication of the type of weapon permitted.

The general rule is that no requirements associated with human rights are used in checking the background when selecting guards, except in the Province of Buenos Aires, as already mentioned. There are also no infractions or sanctions associated with a violation of basic rights. This is a serious shortcoming, because that is the type of infraction and sanction that defines the value and importance given to the principles, duties and obligations of companies and their employees and respect for prohibitions.

The authorizations, permits and credentials of guards have varying durations: from five years in Brazil and Chile to up to two years for special services in Colombia and three years for community services.

Training and practice

As for training and practice, the regulations show major differences, although all require special training. The exception is Bolivia, where the regulations contain no mention of training. In the Province of Buenos Aires, it is the supervisory authority which authorizes training centres and approves their curricula. Training must respect the principles of legality, gradualness and reasonableness, and further training must be provided.⁵⁸ The regulations in Chile do not specify curricula or duration, but the Carabineros provide instructions and approve the programmes and content of the courses submitted by private security companies providing training courses.⁵⁹ A final exam given by the regulatory authority must be passed. Peru recognizes specialized private security training centres established by individuals and companies, which must be authorized by the Ministry of Education and the Ministry of the Interior. The Ministry of Education and the DICSCAMEC set the basic curriculum but do not determine the contents or duration, and there is no mention of human rights. Private security companies are required to provide training for their employees trained and evaluate them physically and psychologically. Article 45 of Act 28.879 provides that “specialized training centres are prohibited from providing training and practice for mercenaries, in strict compliance with the obligations contracted by Peru through international treaties and agreements in force”. Peru is the only country among the eight countries that refers to mercenaries in its law on private security.

In Colombia, training programmes are approved by the Office of the Superintendent, and regulations state that training and practice “may in no way provide instruction in the organization, training and equipping of persons for military or terrorist tactics, techniques and procedures...”.⁶⁰ That regulation requires that training place special emphasis on the prevention of crime, respect for human rights, cooperation with the police and respect for persons.⁶¹ In the regulations on special and community guard and security services, Colombia adds that the government will promote special training programmes for training guards to respect human rights and international humanitarian law along with

⁵⁶ First of all, even when a trial decides that there was a crime, in which no exceptions are made, for example in a case of homicide, the reality of the facts can be otherwise, and the lack of caution required or negligence indicates a type of behaviour.

⁵⁷ However, a specialized company that has between 20 and 50 percent of its guards without credentials or with expired credentials is sanctioned with a fine (Art. 170, No. 27). Ordinance No. 3233/2012. The content of Art. 157 weakens the supervision of operational personnel.

⁵⁸ Art. 18, Act No. 12.297/1999.

⁵⁹ Art. 9, Act No. 93/85.

⁶⁰ Subject to the sanctions provided for in Act 2266/1991 (on terrorism and related acts). Art. 63, Act No. 365/1994.

⁶¹ Art. 74, Act No. 365/1994.

other subjects. That regulation asks the Presidential Advisory Body on Human Rights (Consejería Presidencial de Derechos Humanos) to promote and coordinate these activities.⁶² Ecuador requires that the national police establish training centres and stipulates that training courses for guards must be for a minimum of 120 hours over no less than two months and that the curriculum must cover guard duty, security, human relations, personal defence, first aid, the handling of firearms and pertinent legislation, but there is nothing on human rights.⁶³

Brazil requires training and refresher courses based on the type of private security service provided and whether there is use of lethal or non-lethal equipment. Brazil is the only country that specifies which courses and their contents along with requirements on the duration, goals and methodology. Brazil requires that guards pass the required training.⁶⁴ The concept of human rights appears several times in this regulation.⁶⁵ In describing the qualities required of guards, the regulation states that human rights and respect for diversity and individual dignity are an “obligation that Brazil has with the international community and the constitutional principle of the importance of human rights”.⁶⁶ It is understood that human beings have basic rights. The regulations add that theoretical instruction on non-lethal technologies must fully cover all circumstances and scenarios of possible use in order to protect the physical integrity of persons confronted with the use of force, in accordance with the principles of human rights advocated by the United Nations.⁶⁷

4. Permitted and prohibited activities

Permitted activities are the guarding and protection of persons and property as established by regulations by bodyguards, electronic means, guard services and armoured car services (except in the regulations of the Province of Buenos Aires). This includes provision of security advice, the training of guards and the sale of related equipment. All these activities are permitted as long as they are carried out as authorized, are clearly defined in contracts and are in compliance with all the requirements and procedures stated in authorizations and permits.

As to the steps that private security guards can take in the event of a flagrant crime, the legislation examined does not usually refer to this point, although in general guards have the same possibilities as any citizen. They can temporarily hold someone caught committing a crime and then inform the police and place them immediately in the hands of competent authorities. As for the obligation to report on infractions committed by private security personnel in the exercise of their duties, most of the legislation examined does not make reference to this. Brazil requires private security companies to communicate crimes in which their guards are involved during their work and to cooperate with investigations.⁶⁸

A common restriction on activities is that guards refrain from activities reserved for public security institutions in both substance and extent. There is general mention in most of the regulations concerning the difference between the activities of private services and the activities of the police. The organic law governing the national police in Bolivia prohibits the creation and functioning in Bolivia of private services that carry out public functions in parallel or of a similar nature to those of the national police.⁶⁹ Uruguay provides that the activities of individuals and companies authorized to provide security services are limited to the activities that laws grant to private individuals, such as the temporary detention in the

⁶² Art. 21, Act No. 2974/1997.

⁶³ For private investigators this requirement is 480 hours in at least six months. Art. 9, Act No. 1181/2008.

⁶⁴ For guards, armoured transport, armed bodyguards, security personnel, with lethal and non-lethal equipment and important public events. Art. 156, Ordinance No. 3233/2012.

⁶⁵ In annexes to Ordinance No. 3233; Art. 16, Act No. 7.102/1983; Art. 155(VI), Ordinance No. 3233/2012.

⁶⁶ Ibid. Annex I(1e).

⁶⁷ Ibid. Annex I(4-4.1).

⁶⁸ Art. 165, Ordinance No. 3233/2012.

⁶⁹ Art. 135, Act No. 734 organic law of the national police.

case of flagrant crime.⁷⁰ Peru prohibits companies from activities that compete with the armed forces or the national police and adds that “guards must not act as public authorities” even when cooperating with the police during a state of emergency.⁷¹ In Ecuador, private security activities must not encroach on the police’s sphere of action. Regulations stipulate that private security companies cannot interfere with police activities or obstruct public spaces.⁷² Colombia has a similar regulation, which adds that private security companies must abstain from activities reserved for the police.⁷³

As to prohibited activities, there is considerable divergence among these countries, as to treatment by type of prohibited activities. In addition, express prohibition is not always contained in the regulations. Peru has very detailed regulations on activities prohibited to companies providing specialized private security services, including provision of services that endanger national security, use of equipment and means that harm third parties and the carrying-out of activities that compete with the armed forces and national police.⁷⁴ Peru prohibits the creation of information networks for investigation of infractions and crimes, the carrying-out of industrial or commercial espionage activities and use of privileged client information for purposes other than those established in the contract for those services. These prohibitions are possibly the result of a scandal involving FORZA.⁷⁵ That regulation prohibits private security companies any activity that violates the individual rights enshrined in the Constitution of Peru.⁷⁶ This is the only legislation that prohibits activities by mercenaries. Article 24 of Act 28.879 prohibits private security companies from “hiring, training and instructing mercenaries in contravention of international treaties and agreements in force ratified by Peru”. Article 45 of that act prohibits training centres from training and drilling mercenaries. Other regulations provide that non-compliance will be sanctioned by the definitive closing of that training centre. Persons acting as mercenaries are not specifically prohibited or sanctioned.

Colombia prohibits concrete activities in the regulations on special security services and community guard services, including intelligence activities, provision or receiving of combat training, surveillance, confiscations, searches, interceptions and any other illicit activity or violation of the rights to privacy, domicile and free circulation of persons, changes to the conditions for the exercise of the rights and public freedoms of citizens and the use of coercion.⁷⁷ The Chilean regulations do not mention activities prohibited to providers of private security services, with the understanding that anything not expressly permitted is prohibited.

There are certain prohibitions contemplated in the laws of the Province of Buenos Aires and in Act No. 275 of Uruguay protecting constitutional guarantees and rights, including the rights to privacy, opinions

⁷⁰ Op. cit. Art. 2, 2-2.

⁷¹ Arts. 24(c) and 28, Act No. 28.878/2006.

⁷² General provision No. 9, Act No. 2003/12.

⁷³ Arts. 73, and 74(2), Act No. 356/1994.

⁷⁴ Art. 24, Act No. 28.879.

⁷⁵ A company created in 1991 by retired members of the Peruvian armed forces specialized in subversion and espionage were then bought by the transnational SECURITAS, one of the most important in the international market. After revelation of scandal for serious violations of human rights involving rural communities on whose land the Mineras Majaz and Yanacocha companies began operations—the Majaz and GRUFIDES case, the latter being the company specialized in providing security to the mining, energy and industrial sectors. Act No. 28.879 was promulgated in 2006, after the violation of human rights that the company was involved in with the participation of police officers. In the case of Business Track, a company registered in 2004 to provide counter-espionage services and intelligence, including “tapping of telephone lines and provision of information technology. In 2009, the Peruvian authorities arrested the managers and employees of Business Track and charged them with illegal tapping of telephone lines, installation of wire tapping equipment and interception of e-mail that benefited third parties. See: Dialnet-LaExtractionDeRecursosMinerosPorEmpresasExtranjera-3836257.pdf desde dialnet.unirioja.es (www.google.cl/#q=FORZA+y+el+esc%C3%A1ndalo+de+las+escuchas+ilegales+en+Per%C3%BA).

⁷⁶ Art. 60(j), Regulations for Act No. 28.879. This prohibition is added in accordance with what is provided for in Art. 24(h) of Act No. 28.879, which among the prohibitions to companies establishes “others as determined by regulations”.

⁷⁷ See the definition of these services on page 8, paragraph 3. Art. 22, Act No. 2974/1997.

and non-discrimination, without mention of the concept of human rights.^{78,79} While providing private security service, companies must not intervene in political, labour or religious conflicts and must not influence political, trade union or religious opinions, hinder the expression of those opinions and create databases for those purposes. The laws of the Province of Buenos Aires add that there can be no investigation of racial origin, ethnicity, health, sexuality, sexual orientation, and no interception of the communications of third parties, the hacking of computerized information without authorization, the interrogation of persons accused of a crime and persons in general and no confiscation of personal documents. The Province of Buenos Aires also prohibits the protection or guarding of the storage or transportation of explosives, except with the special approval of the supervisory authority or the national authorities.

An interesting prohibition is that contemplated in Act 3.607 of Chile, which in its article 5(bis) states, “if required by the national interest”, all individuals and companies are prohibited from providing security services or training private guards and from “providing or offering private guards (*vigilantes privados*) in any form or denomination”. Infraction of this regulation is a crime sanctioned by prison of half the minimum sentence and a fine.⁸⁰ It should be pointed out that it was under this regulation that Chile tried and sanctioned the owner of the company Red Táctica, which recruited and trained Chileans for guard duty in Iraq during the first years of the war. The basis for that sanction was that that activity was prohibited by law. Chilean legislation permits companies to provide only unarmed guards, who are unarmed by definition. Armed private guards (*vigilantes privados*) must be employees of companies or institutions expressly authorized to have them.

5. Regulations on the acquisition of firearms

The regulations in seven of the eight countries that permit the carrying of firearms require a permit for authorized firearms, both for companies and for guards—for possession and for carrying them—and the owners must comply with the requirements as to their use and custody. It is prohibited to carry unauthorized firearms in services provided with firearms. There is a general rule that prohibits firearms restricted to use by the police or the armed forces. Identification credentials must always be worn by guards and must indicate whether that person is authorized to carry firearms and which type. Bolivia is the only country of those surveyed that does not permit providers of private security services to carry firearms. Bolivia's law on the control of firearms sanctions the use of firearms with three to six years of prison.⁸¹

Each legislation establishes which services may be carried out with or without firearms, and in some cases an option is given to the provider. For example, article 41 of the Peruvian regulations prohibits the use of firearms by an individual guarding property for third parties. The law of the Province of Buenos Aires recognizes private security agents with and without weapons, and bodyguards may be armed.⁸² Colombia allows individuals to provide private security services, but only unarmed.⁸³ The case of Chile is different, because—as discussed above—companies cannot provide armed guards. Armed guards must be properly trained and licensed. They must also be employees of the company for which they work. In Brazil, a guard has the right to carry a firearm while on duty.⁸⁴

⁷⁸ Art. 14, Act 12.297/1999. There is a similar situation in Uruguay, Art. 4(4-2), Act 275/1999.

⁷⁹ Art. 4(4-2), Act 275/1999.

⁸⁰ The shortest prison sentence is 61 to 541 days. The company recruited and trained former Chilean military a ex-military personnel. The owner of the company was also permanently prohibited from holding any function under the law on private guards.

⁸¹ Art. 141, Treceter, Act No. 400. This act confirms what was already stipulated in the regulations on private security companies, Act No. 222544 of 2004.

⁸² Art. 33, Act No. 12.297/1999.

⁸³ Art. 2, Act No. 2187/2001.

⁸⁴ Art. 164, Ordinance No. 3233/2012.

In Uruguay, article 6(d) of Act 275/1999 provides that if an individual requests authorization to provide armed services, that individual must submit documented proof of their ability to use a weapon issued by a public or private institution authorized by the Ministry of the Interior or a certificate of training, which in the opinion of the ministry exempts them from additional training (the case of ex-officials of the police or military). The regulations of Ecuador state that the authorization for possession and carrying firearms and registration for companies are issued by the Joint Command of the Armed Forces, which determines the characteristics, calibre and other technical specifications of the firearms. These regulations require an annual report on the stock of firearms, their characteristics and condition to be submitted to the Joint Command.⁸⁵ Furthermore, the law on control of firearms requires the acquisition of firearms, ammunition and other accessories only with prior authorization of the Ministry of National Defence.⁸⁶ In Ecuador, the supervisory authority must submit and keep an up-to-date a register of firearms and can suspend or cancel permits. The legal representatives of companies must submit an annual report on firearms in their possession and their conditions.

In Peru, authorizations and permits for firearms are issued for private security services by the Direction de Control de Servicios de Seguridad y Control de Armas de Fuego, Municiones y Explosivos de Uso Civil (DICSCAMEC). Act No. 28.879 establishes among other obligations that specialized companies providing private security services must have permits for their non-combat firearms and ammunition, identifying the types and ammunition used in function of the type of services they provide. Guards must have a permit for the possession and use of non-combat firearms, identifying the types of firearms for which they are trained and the type of service they carry out. This permit will be issued only when guards provide services through private security companies or individuals.⁸⁷ The regulation adds that in accordance with the number of firearms authorized, a private security company, must have a secure place of storage, registration and assignment of firearms and ammunition—or safe if there are no more than 10 firearms. Private security companies must maintain a system of supervision and control of their firearms.

In its federal laws, Brazil provides that the Ministry of Justice (itself or by agreement with the Secretariats of public security) determines the nature and number of firearms allowed for specialized companies and financial institutions, authorizes the acquisition of firearms and ammunition, inspects them and supervises their use. The regulations also state that various non-lethal weapons can be authorized for specialized security companies and those that have their own security services.⁸⁸ Legislation on private security in Chile requires that in the event of institutions that are not banks, namely financial institutions, strategic companies and others that are required to have private armed guard services and which have been authorized by the Ministry of the Interior to provide these services, the Ministry of the Interior shall determine the firearms authorized, in accordance with the special law on their supervision. Among the requirements for obtaining authorization to carry firearms is that of certifying physical and psychological aptitude every five years, having received training in their use, not having been sentenced for a crime or misdemeanour or having been found guilty of domestic violence.⁸⁹

In Colombia, having third-party insurance to cover the risks of incorrect use of firearms and other elements of private security is among the requirements for obtaining an operating permit for guard and private security companies, in-house security departments, guard and security cooperatives and training

⁸⁵ Act No. 2003/12, and Art. 4 No. 3 of Executive Order No. 169. Act 32 of 27 March 1997. Regulations of the law on firearms, ammunition, explosives and accessories.

⁸⁶ Art. 4(3), Act No. 357.

⁸⁷ Art. 28, Act No. 28.879.

⁸⁸ In authorizing, the General Coordinator of Private Security shall take into consideration the strategic characteristics of the proposed activities and the national interest. Art. 114, Ordinance No. 3233/2012.

⁸⁹ Art. 5(f). Act No. 17.798/1977 on firearms control.

institutions.⁹⁰ The law on firearms distinguishes between a permit for possession by individuals and companies and a permit for individuals and guard and private security services to carry firearms. Guard and private security services must comply with the requirements for company possession, which includes having the approval of the Office of the Superintendent (Superintendencia).⁹¹ Title IX of this law covers guard and private security companies and allows them a maximum of one firearm for personal defence (revolvers and pistols, calibre 22 rifles and shotguns of up to 22 inches) for every three guards in the company's employment. Exceptionally, restricted firearms authorized by the Firearms Committee of the Ministry of National Defence and the Office of the Superintendent are allowed. Ammunition must be acquired from a competent authority. In Ecuador, the number of weapons is authorized in proportion to a company's service possibilities and the limit is "in strict proportion to a company's operational abilities".^{92,93,94} The regulations allow one firearm for every two guards working as watchmen, and one for each private investigator and one for each guard in mobile guard service.⁹⁵ Other countries allow one firearm for each private guard, Chile for instance.

A common requirement is that private security companies have adequate infrastructure for storing firearms and ammunition, where weapons can be stored when a guard goes off duty. There must also be a register of the entry and exit of firearms. Armoured car service is always provided with firearms.

It is interesting to observe whether there are regulations on the disposal of firearms when a private security company decreases the number of its employees or ceases to exist and whether there is supervision of the firearms in possession of companies, guards and private watchmen. The law of the Province of Buenos Aires requires that when a private security company closes, its firearms and ammunition must be turned in to the supervisory authority until the private security company justifies another use and the supervisory authority authorises it.⁹⁶ Regulations in Ecuador require that firearms not in use must remain in storage at the company and may be inspected at any moment by the Joint Command of the Armed Forces (Art. 17). In the event a company goes out of business or an operating permit is cancelled, Colombian regulations require that firearms, ammunition and credentials be handed over to the Army General Command. When work is suspended, firearms and ammunition must be handed over to an appropriate military unit, which will return them once operations are re-established. The Peruvian regulations provide that in the event of the cancellation or expiration of an authorization, the company must transfer their weapons in accordance with the law or deposit them with the DICSCAMEC (Art. 70).

In the regulations on private security activities, there is no mention of firearms acquired illegally or of trade in unregistered weapons. There are also no regulations that sanction the acquisition or the carrying of firearms of illegal origin.

The following practices concerning the possession and carrying of firearms constitute good practices: the setting by law of the maximum calibre and type of firearms permitted, the requirement that training institutions be accredited by the supervisory authority, the keeping of an up-to-date register of firearms

⁹⁰ Art. 11, 18, 27, Act No. 356/1994.

⁹¹ Art. 33, Act No. 2535/1993 establishes regulations on firearms, ammunition and explosives. It distinguishes between requirements for ownership and for carrying firearms. To obtain an authorization to carry a firearm, a person must first comply with the requirements for possession. There are different requirements for individuals and for companies. Article 34 sets requirements for authorizing an individual to use firearms of restricted use, as long as that person faces a danger of death or serious personal harm, for special circumstances of that person's profession, duties or economic activity.

⁹² Pistols and revolvers may be a maximum of 9.652 mm calibre with a maximum length of six inches for revolvers or semi-automatic pistols. Calibre 22S, 22L, 22LR non-automatic rifles or shotguns with a maximum length of barrel of 22 inches (Art. 11, Act No. 2535/1993.) are allowed. Combat weapons or weapons for the exclusive use of the police cannot be used.

⁹³ Art. 9, 10, 77–82, Act No. 2535/1993 on firearms, ammunition and explosives.

⁹⁴ Art. 14, Act No. 2003/12.

⁹⁵ Art. 16, Act No. 1181/2008.

⁹⁶ Art. 30, Act No. 12.297.

and ammunition with periodical reports on the number, type and condition of the firearms, regulations on the storage of firearms should there be a reduction in staff or a closing of the company, limiting the carrying of firearms to areas of work defined by contract, periodical inspection of the storage of firearms and ammunition, and mandatory reports when a firearm has been used. Permits for the possession and carrying firearms must be renewed, which requires the presentation of a new psychological exam and certification of the absence of a police record and not having participated in acts of violence (for example domestic violence).

6. Use of force and firearms

Possession and the carrying of firearms is restricted to the places at which security and guard services are provided by contract. Outside those places, carrying and using them is not permitted (Province of Buenos Aires, Chile, Colombia, Ecuador). Non-compliance with this requirement leads to confiscation of the firearm and application of other sanctions provided for by law. This is the case of Colombia and Ecuador.⁹⁷ The Province of Buenos Aires, for example, stipulates that those deposits must be “without public access”.⁹⁸ Firearms must be returned to storage duly provided by the company when guards are off duty and remain there.

All eight countries require training and practice in the use of firearms in duly authorized specialized training centres. Requirements, however, differ from country to country. Specific laws and regulations on private security often refer to laws on the control of firearms as an additional source of regulations. Firearm laws complement and provide details on the rules governing the carrying and use of firearms. When laws on private security do not indicate a maximum calibre, they do mention general limits, such as “non-combat weapons” or “firearms for private use” or “for civilian use”.

In regulations of Buenos Aires and Chile, calibre 38 is stated as the maximum possible calibre for use by private security guards, but both permit authorization of larger calibres exceptionally. The law of the Province of Buenos Aires provides that the supervisory authority can exceptionally permit the use of firearms of larger calibre, including rifles, shotguns and automatic pistols, when justified. The use of non-lethal firearms is also permitted.⁹⁹ Brazil allows private security companies to carry calibre 32 or 38 revolvers, and in the case of armoured transport a calibre 38 pistol or a 12 or 16 gauge shotgun and calibre 22, 380 and 7.65 semi-automatic rifles.¹⁰⁰ Companies providing personal security services may also use rifles. In addition, private security companies provide their guards with non-lethal firearms, such as tear gas, Tasers or dart guns, and plastic and rubber ammunition (12 gauge). Brazil has detailed regulations on training in the use of firearms. In the annexes to regulations of 2012, there is a study plan for guards, which includes eight hours of instruction on the progressive use of force, whose goals are to provide general knowledge about concepts and legislation in the use and graduated use of force, using the least lethal firearms. This encourages making progressive use of force, and reinforces knowledge about guard and personal security activities. Among the topics covered are a code of conduct for officials charged with law enforcement and pertinent parts of the penal code, among others.¹⁰¹ As for non-lethal technologies, theoretical classes must cover all the circumstances and scenarios of possible use, in order

⁹⁷ Art. 4, Act 1181 of Ecuador and Art. 97, 2 Act 365 of Colombia.

⁹⁸ Art. 41, Act No. 12.297/1999.

⁹⁹ The law on the control de firearms of the Province of Buenos Aires (Art. 4, Act No. 20.429) provides that firearms for civilian use are “...handguns: de repetition or semi-automatic pistols up to calibre 6.35 mm (.25 inches) including automatics up to calibre 8.1 mm (.32 inches), but not magnums and similar revolvers up to calibre 8.1 mm (.32 inches). Pump hunting guns with one or two barrels, calibres 14.20mm (28), 14 mm (32) and 12 mm (36)... Chemical weapons contained in sprays, powders, gases or similar that produce only momentary effects in the human body without causing loss of consciousness and in doses of up to 500 cc. electronic firearms that produce only momentary effects on the human body and without causing of consciousness...”. Art. 41, Act No. 12.297.

¹⁰⁰ Art 22, Act No. 17.102.

¹⁰¹ Adopted by the Assembly in its Act 34/169 of 17 December 1979.

to preserve the physical integrity of the persons confronted with the use of force involved in private security, in accordance with United Nations standards on human rights.

Peru—which permits firearms that are not combat weapons—has detailed regulations on the formalities that must be followed, but does not refer to content. Its regulations limit the use of rifles to urban areas, with exceptions determined by DICSCAMEC (Art. 74). Ownership, possession and use of firearms and ammunition used at specialized private security training centres are subject to the relevant regulations in force. Among the prohibitions affecting specialized companies is the use of equipment and other means of harming third parties.¹⁰²

In Colombia, Act 365, although it contains various references to firearms, does not specify type or calibre but it does establish a general limit on the means and firearms used by private security services. There are no precise regulations on the use of force. The law on firearms control spells out regulations related to guard and private security services and provides that the Ministry of Defence (Comité de Armas de Fuego) can authorize armoured car companies, in-house security departments and special security services to possess and carry firearms of restricted use with the approval of the Superintendencia.¹⁰³ This regulation requires that guards providing these services be trained in the use of firearms and approved by the Superintendencia (Art. 78).

It is important to take note of certain special restrictions contained in several regulations governing private security companies that have the clear goal of avoiding escalation of social conflicts. In Colombia, Act No. 356 establishes that in the event of labour conflicts in private security companies, the Superintendencia shall withdraw weapons and immobilization equipment. In addition, it is prohibited that those involved carry firearms or equipment during meetings in the exercise of their rights, whether political, trade-union related or another type. Also, in the event of a work stoppage by persons providing guard services with firearms, the Superintendencia must be informed in writing and will provide for the transfer of the weapons, ammunition, permits, etc. to the nearest military unit.

It should be mentioned that private security companies are subject to mechanisms of accountability like any other entity. There are no regulations that sanction their behaviour with anything greater than that for ordinary citizens. This, despite their being individuals authorized to carry firearms and act within the framework of the delegation of the legitimate use of force, to the point that their work is considered complementary, although subordinated, to the work of the public security forces.

In most of this legislation, there are very few concrete regulations on the use of force and firearms that take into account human rights standards. An outstanding good practice is a Brazilian regulation (2012), which sets out in detail a study plan for private security guards with content dealing with human rights.

7. Accountability and compensation

As for accountability, there are no specific procedures in cases of violation of individual rights, whether direct beneficiaries or not of private security services. In general terms, in the case of possible crimes by private security guards, the special regulation refers to the formula “without affecting mandatory civil and penal prosecution”. The trend in the region is to establish a classification of administrative infractions—from less serious to the very serious—and establish sanctions that can range from a warning, fines, suspension to cancellation of the operating permit.

¹⁰² Art. 24(b), Act No. 28.879/2006.

¹⁰³ Art. 27, Act No. 2535 classifies firearms in (a) combat firearms or of the exclusive use of the police; (b) firearms of restricted use and (c) firearms for civilian use.

Infractions are primarily associated with non-compliance of formalities and requirements regarding permits and authorizations of companies and guards, regulations that govern the possession and carrying of firearms, requirements on the use of uniforms and installations, as well as acts and omissions in duties, and non-respect of prohibitions. There are no regulations that establish procedures of accountability for possible violations of human rights committed by providers of private security services. Monitoring and inspections are not aimed at checking the quality of the services or their conformity to regulations on human rights, but are aimed at verification of compliance with administrative formalities and requirements. There are gaps in the legislation concerning mechanisms for providing compensation to victims of the activities of private security guards.

In the Province of Buenos Aires, the supervisory authority audits and applies sanctions. Whenever judged necessary, it can examine registers, information and documentation to check compliance with the law and existing regulations, and must make at least one annual inspection. Inspections can be partial or full and must certify in a register of inspections the “information and registers audited”.¹⁰⁴ Any irregularities encountered must be indicated along with the deadline for their rectification. In the event a private security company obtains exceptional authorization to use firearms of a calibre larger than 38, the company and the beneficiary must expressly assume all the risks involved.¹⁰⁵ Hearings follow a specific administrative procedure and are public. They do not affect civil responsibilities and penalties.

In Ecuador, the law on guards and private security provides for monitoring and regulation of private security companies by the Ministry of Government and Police together with the Superintendencia de Compañías, which is the instance that informs the ministry of companies that have ceased to operate. After the Ministry of Government and Police grants an operating permit, inspections may take place at any time and under any circumstances by the Departamento de Control y Supervisión Especial of the Inspectoría General de la Policía Nacional, which inspects staff with or without instructions from the Ministry.¹⁰⁶ Inspections cover installations, documents and the checking for any illegal activities by companies and individuals. The Ministry of Government and Police decides and applies sanctions for infractions committed upon information from the police. Private security companies are responsible for damage to third parties and users through acts or omissions of their staff. The Joint Command of the Armed Forces carries out checks and monitors authorized armament.

Colombia's regulations state that the purpose of private security services is to prevent and decrease threats to life, physical integrity and the exercise of the rights and property of individuals, without affecting the conditions for exercise of public rights and freedoms, and without encroaching on the area of competence reserved for the authorities. They must respect the public's basic rights and freedoms.¹⁰⁷ The Superintendencia issues circulars to inform, educate and establish technical criteria that facilitate compliance with regulations, sets procedures and gives orders for compliance with the duties of inspection and supervision. Providers of guard and security services have a duty to cooperate with the Superintendencia in its inspections, providing all required information. They must also establish internal control mechanisms to prevent guards and private security services from becoming directly or indirectly involved in criminal activities and manage any misbehaviour by staff providing services.¹⁰⁸ In the case of special services and community guards providing private security, the regulations also provide that they must inform the authority of any criminal acts and violations of human rights and international humanitarian law that they learn about during the course of their work. Third-part liability insurance is required to cover risks due to the incorrect use of firearms or other elements and from their activities.¹⁰⁹

¹⁰⁴ Art. 27 and 43, Act No. 1.897/2002.

105 Art. 41, Act No. 12.297.

¹⁰⁶ Art. 20, Act No. 25 of Regulation No. 1181/2008.

¹⁰⁷ Art. 72 and 74(2), Act No. 365/1994.

¹⁰⁸ Art. 74(16, 21, 29), Act No. 356/1994.

¹⁰⁹ Art. 6(2e), Act No. 2974/1997.

Departmental monitoring committees (*comités de seguimiento*) are created for these services to evaluate and inform on their activities. The Superintendencia carries out inspections and makes all required adjustments.¹¹⁰ In the case of community services, a Consejo de Veeduría Comunitaria is created, whose members are elected at public assemblies. The councils submit quarterly reports to the Superintendencia with recommendations for improvement in the activities of the community services, recommend measures and policies to local and the national governments to ensure public security. They also give an opinion on the need to carry firearms.¹¹¹ This type of mechanism submits these activities to public scrutiny and provides effective monitoring. This is a good practice, if it aims to protect human rights and humanitarian law.

In Bolivia, DENCOES, through departmental offices, JEDECOES, supervises and monitors the operations of companies, ensures compliance with regulations and efficient and transparent operations, supervises, periodically inspects private security companies and gives warnings.^{112,113} The JEDECOES submit monthly reports on these activities and request DENCOES to suspend temporarily or definitively authorization in the event of recidivism or serious infraction by a company. Companies must provide information on all aspects of their operations requested with the required frequency and format. Company directors have the obligation to plan and manage company activities within the law, regulations, respect for morality and good habits.¹¹⁴ Regulations establish civil responsibility for the management and directors of the private security companies, jointly with their employees, for any negligent activities or commission of crimes during their work. In addition, company directors, management and employees of private security companies who in the exercise of their duties are involved in crimes, must be turned in to the public prosecutor and included in the company's files.¹¹⁵ Furthermore, the regulations (article 29) stipulate that companies and their employees must denounce improper conduct affecting public security and involving crimes, without specifying whether that involves third parties or employees.

In Peru, the Ministry of the Interior regulates, inspects and supervises through the Dirección General de Control de Servicios de Seguridad, Control de Armas, Municiones y Explosivos de Uso Civil (DICSCAMEC). This agency carries out random inspections of private security companies, a duty which it can delegate to the national police, which reports its findings to the DICSCAMEC. Companies must have internal regulations approved by the Autoridad Administrativa de Trabajo and by the supervising authority. The company's employees must be informed about those internal regulations.¹¹⁶ Direct supervision of a company's employees is the responsibility of an official trained in private security with the position of supervisor. This work can be carried out by duly trained and certified civilians, retired officers of the Peruvian armed forces or national police.¹¹⁷ A regulation adopted in 2011, when Act No. 28.879 entered into force, establishes the obligation for private security companies to keep a register of inspections and comments made by DICSCAMEC. Inspections must be carried out at least once a year and there can be

¹¹⁰ Authorised by a governor, a *superintendente*, a departmental public prosecutor, a brigade commander, a commander of the police department, a departmental public defender. Art. 7, Act No. 2974/1997.

¹¹¹ Mayors and governors are to promote these public assemblies. Local councils (Consejos de Veedurías) shall have between five and 15 members representing the community. Art. 13, Act No. 2974/1997.

¹¹² Departamento Nacional de Empresas de Seguridad Privada (DENCOES), the national police and the departmental heads of DENCOES (JEDECOES).

¹¹³ Art. 7, Act No. 222544.

¹¹⁴ Art. 31(c), Act No. 222544.

¹¹⁵ This regulation, except the obligation to include the client in the company's address list, does not bring anything new to the general obligation to inform the public prosecutor of a possible crime and does not mention the existence of a national registry of these situations. Art. 47 and 48. Act No. 222544.

¹¹⁶ Art. 23(c), Act No. 28.879/2006.

¹¹⁷ On condition that they have not retired because of disciplinary measures or a penal sentence. In all cases, they must receive training and have the standing of instructor in private security at a duly authorized specialized centre. They can have courses completed in military or police service validated as basic courses (Art. 27, Act No. 28879/2006).

other random inspections as determined by that authority. Among prohibitions are activities that violate the human rights enshrined in the constitution.¹¹⁸

Out of this group of countries, only the Peruvian law prohibits mercenaries, although two countries have ratified the relative convention. Article 45 of the Peruvian law states that training centres are prohibited from “instructing, training and providing practice for mercenaries, in strict compliance with the obligations contracted by Peru through existing international treaties and agreements”.¹¹⁹

In Uruguay, the Ministry of the Interior is responsible for regulating and inspecting private security companies. The guiding principles on which private security activities are based—also for individuals providing these services—is that of “integrity and dignity, providing protection and proper treatment of persons rationally with all available means”.¹²⁰ The national register of individuals and companies, which is part of the Direction General de Secretaría of the Ministry of the Interior, regulates and inspects the activities of the companies and proposes sanctions in the event of infractions. It also proposes regulations required for managing activities to the ministry.¹²¹ There is no mention of international treaties ratified by Uruguay, nor of mercenaries, even though Uruguay has ratified the relevant convention.

Media reports state that a working group to draft a law on private security was created in Uruguay during January 2015, given the gaps found in current regulations.¹²²

In Brazil, armed and unarmed private security activities are supervised by a department of the federal police. Among the goals of public security are dignity of the person and security of citizens. Monitoring and inspection correspond to the Comisión Consultiva de Asuntos de Seguridad Privada (CCASP), the Coordination General de Control de la Seguridad Privada (CGCSP) and the Delegaciones de Control de la Seguridad Privada, all part of the federal police. This regulation requires that private security companies immediately inform the Delegaciones Especializadas de Seguridad Privada (DELESP) or Comisiones de Inspección (CV) in their area, of any illegal activities in which their guards are involved, cooperate in investigations and carry out an internal investigation submitting a copy of the report and other documents that help clarify facts to the DELESP or CV.¹²³ This regulation, together with that of Colombia in the case of special and community services, is an exception in the region, because in general the laws refer to facts involving third parties that guards learn about during their activities, but not their own activities. There is no mention of violations of human rights in any of the sections that deal with inspections and sanctions and no mention of compensating victims.

In Chile, it is the Prefectura de Carabineros which supervises, inspects and regulates companies with armed private guards, as well as private security companies that provide unarmed guards. The Carabineros authorise each contract with full details of the service, including the number of guards, the place to be guarded, physical location where the activities take place, shifts, etc. There are random inspections.

8. Ratification of international instruments on mercenaries

Out of the countries reviewed in this analysis, only two have ratified the International Convention against the Recruitment, Use, Financing and Training of Mercenaries: Uruguay in 1999 and Peru in 2007.

¹¹⁸ Arts. 55, 59 and 60(j), Act No. 003/2011.

¹¹⁹ Art. 88, Act No. 003/2011.

¹²⁰ Arts. 2(2.4) and 4(4.2), Act No. 275/1999.

¹²¹ Art. 11, Act No. 275/1999.

¹²² See www.elpais.com.uy/informacion/crearon-grupo-elaborar-ley-seguridad.html

¹²³ Art. 165, Ordinance No. 3233/1012.

In Latin America, there are no regional regulations governing the activities of mercenaries. The concept of mercenary activities is mentioned only in the legislation of Peru (Act No. 28.879), which regulates private security services. Article 24 of this act, referring to prohibitions affecting private security companies, states in article 24(g) that it is prohibited “to hire, train, provide practice and help mercenaries in contravention of international treaties and agreements in force and ratified by Peru”. This same prohibition is repeated in Article 45 of the law on private security training centres specialized in private security which are prohibited from training them.

In this respect, it must be pointed out that, although there are no regulations covering mercenaries, two countries—Chile and Colombia—have regulations that refer to armed groups (militias)—without mentioning their nationality or the existence of a remuneration, which are not guards or watchmen recognized in regulations on private security services. This is the case of Act No. 356/1994 of Colombia which states that training and practice in guard duty and private security may in no case consist in the organization, instruction or equipping of persons involved in military or terrorist tactics, techniques or procedures.¹²⁴ Chile, in Act No. 17.798 on the control of firearms, stipulates that those who organize, belong to, finance, back, instruct, incite or promote the creation and functioning of private militia, combat groups or militarily organized armed groups (with weapons regulated by law) will be sanctioned with prison sentences and those who knowingly help in their creation or operations will also be sentenced.¹²⁵

II Conclusions

From the analysis of the special regulation on private security in these seven countries and the Province of Buenos Aires (Argentina has no federal law and private security is regulated by each province), it is possible to observe important differences and similarities in the main gaps.

As in the earlier studies, the aim of this report has been to identify and compare common elements, gaps and good practices contained in the legislation analysed. The Working Group's interest has been to determine whether national regulations governing military activities and private security companies are sufficiently solid and complete from the point of view of the protection of human rights.

The legislation surveyed regulates civilian private security services internally in each country. In general terms, the services regulated are the guarding and protection of property and persons, which includes services in guard technology, the sale of guard-related equipment, the guarding and protection of persons, property, installations and public events, armoured transportation, detectives and private investigations, provision of advice on security and training services in private security. Several countries recognize individuals and companies as providers of private security, while other countries recognize only companies. As for prohibited activities, there are important differences, both in extent and type of prohibited activity. In addition, express prohibition is not always contained in the regulations.

The supervisory authority lies within the ministry responsible for public security and takes place through police institutions or specialized services in that ministry. Exceptionally, the supervisory authority is an autonomous institution. All the legislation requires the issuing of authorizations and permits by the competent authority in order to provide private security services, in compliance with certain requirements that can be designated generically or specifically, depending on their type and the method of service they provide (armed or unarmed, armoured transportation, etc.). The regulations (seven) that permit armed services require permits for authorized firearms, and companies must also comply with certain requirements concerning their use and storage. The legislation—national and provincial—has gaps in regulating and creating standards of human rights and the use of force and firearms. There is one

¹²⁴ Art. 63.

¹²⁵ Art. 8, Act No. 19.798.

country in which regulations (in annexes) require training in the use of gradual and progressive force in order to preserve the physical integrity of persons confronted with the use of force during private security activities, in accordance with United Nations principles of human rights.

As for selection and training, there are differences and gaps. The educational level required for guards and watchmen is—in most cases—basic or primary schooling. Training and practice do not place demands on curricula and duration. There are also no requirements regarding human rights. One country, exceptionally, describes the curriculum—goals, curricula and intensity, incorporating human rights instruments.

As to relationships with the police, the general rule is to consider private security services as complementary and subordinate to the work of public security. Most of the regulations require that private security abstain from conduct and activities reserved for public security institutions, although there is not always a sufficiently precise regulation. Furthermore, the obligation of cooperating with public security is stipulated in national and provincial legislation, except in one case. That obligation varies from the duty to cooperate with the police in cases that the law determines or the authorities request to that of cooperating with the police permanently, providing them information that they need. That cooperation can take place in various contexts, from situations of public calamity to cases of a state of emergency, as determined by the president. In addition, it is expressly prohibited in most of these regulations that active members of the police and the army perform private security activities.

The regulations surveyed do not cover military and private security services and do not mention military and private security companies. They also do not regulate the export or import of these services. Given the transnational character of private security services as well as a broad diversity of activities carried out by private security companies, the gaps identified require inclusion in national regulations. In several countries surveyed, there have been serious violations of human rights by guards and private security companies in various scenarios, such as combating organized crime and drug trafficking and the protection of extractive activities of transnational companies. In one case, foreign subcontractors operated while enjoying diplomatic immunity, allowing them to evade litigation. In another case, guards working for private security companies—domestic companies and subsidiaries of transnational companies—have detained, sequestered, tortured, assassinated and seriously violated the rights of members of local communities, human rights activists and environmentalists. The difficulties in preventing and regulating these incidents demonstrate the urgent need to have coherent regulations that guarantee the protection of basic rights, the persecution and sanctioning of those responsible for violations and compensation to victims.

No regulations were found on the acquisition of firearms in domestic or international illegal markets by private security companies. There is also no mention of traffic in firearms. There are no regulations with extraterritorial application. In the case of crimes committed by providers of private security in the exercise of their activities, there is a deficit, not only in this sub-region, in that the mechanisms of accountability for persecuting those responsible are the same as those for persecuting crimes committed by an individual. Because private security guards carry out activities with authorization to use legitimate force—including using firearms, there is reason to require greater punishment than that for a simple individual when rights are violated.

There are also gaps and shortcomings precisely in the aspects most relevant for the prevention and regulation of violations of human rights by private security companies. That occurs in the case of mechanisms of accountability. Regulations are weak, and there is no system of monitoring to verify the quality of the services provided, using human rights standards. It is difficult to increase awareness and render responsibilities real opportunely. Of equal importance is the gap in compensation to victims. Most legislation establishes controls and inspections focused on checking compliance with formalities

and requirements concerning permits, installations, firearms, prohibitions and other administrative requirements.

There is that plus the absence of mechanisms for compensating victims. As for infractions and sanctions, again, the trend is not to establish specific sanctions on violation of basic rights. These gaps are especially serious if it is taken into consideration that in several of these countries there have been serious violations of human rights by private security companies, where those responsible have remained unpunished and the victims are without any possibility of receiving any reparation. Legislation requires specific regulations with standards for carrying out activities in accordance with international law on human rights and humanitarian law. The effective protection of basic rights requires implementation of mechanisms of accountability and compensation of victims.

Most countries lack rules that would effectively protect human rights. The weaknesses of selection systems and the checking of backgrounds, as well as the training of guards make a good understanding and internalization of legal regulations and abstract principles by them more difficult. The precarious working conditions under which guards usually work also does not help the carrying out of activities in strict compliance with the law. In facing these challenges, standards of evaluation of activities, focused on guaranteeing respect for basic rights. As for international humanitarian law, there is one mention in the regulations of a certain type of guard and private security service and reference to the obligation to inform the authorities about crimes and violation of human rights and international humanitarian law.

The differences observed in legislation, plus inconsistencies and gaps, make us believe that an international convention on military and private security companies is necessary to promote a common and effective regulation in order to guarantee supervision of these activities, implementation of mechanisms of accountability and compensation to victims.

In this survey, the Working Group observed that only two countries surveyed have ratified the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, although only one prohibits these activities in its legislation on private security. The Working Group calls on the countries to adhere to this convention and to incorporate the prohibition on mercenary activities into their national legislation.

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