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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Annual report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination

Summary

The present report contains an overview of the activities carried out by the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination during the period under review and includes information on the sessions of the Working Group, communications and country visits.

The report presents the findings of the Working Group's ongoing global study of national laws and regulations relating to private military and security companies. The Working Group focuses on the laws and regulations of eight countries in Central America and the Caribbean (Costa Rica, Cuba, El Salvador, Guatemala, Honduras, Mexico, Nicaragua and Panama), eight countries in South America (Argentina, Bolivia (Plurinational State of), Brazil, Chile, Colombia, Ecuador, Peru and Uruguay) and four countries in Europe (France, Hungary, Switzerland and the United Kingdom of Great Britain and Northern Ireland). The Working Group's global study aims to assess existing national laws regarding private military and security companies and their effectiveness in protecting human rights and promoting accountability for violations. Furthermore, it aims to identify any commonalities, good practices and regulatory gaps that may exist.

The Working Group notes that, while there are common elements in the laws of these countries, their regulatory approach to private military and security companies varies. The Working Group reiterates the need to effectively regulate the activities of private military and security companies and invites all Member States to facilitate its study, which aims to guide them in exercising effective oversight of the activities of such companies.

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I. Introduction

1. The present report covers the activities of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination since its previous report to the Human Rights Council (A/HRC/27/50). In addition, it contains the results of the Working Group's study on national legislation concerning private military and security companies in Central America and the Caribbean, South America and Europe.
2. The report is submitted pursuant to Commission on Human Rights resolution 2005/2, which established the mandate of the Working Group, and Human Rights Council resolution 27/10, which further extended the mandate.
3. The Working Group comprises five independent experts: Patricia Arias (Chile), Elzbieta Karska (Poland), Anton Katz (South Africa), Gabor Rona (United States of America) and Saeed Mokbil (Yemen). During its twenty-third session, held in December 2014, Ms. Karska was elected Chair-Rapporteur for the period from January to December 2015.

II. Activities of the Working Group

4. A private military and security company is defined as "a corporate entity which provides, on a compensatory basis, military and/or security services by physical persons and/or legal entities". Military services refer to "specialized services related to military actions, including strategic planning, intelligence, investigation, land, sea or air reconnaissance, flight operations of any type, manned or unmanned, satellite surveillance, any kind of knowledge transfer with military applications, material and technical support to armed forces and other related activities". Security services refer to "armed guarding or protection of buildings, installations, property and people, any kind of knowledge transfer with security and policing applications, development and implementation of informational security measures and other related activities".¹

A. Twenty-second to twenty-fourth sessions of the Working Group

5. From 1 July 2014 to 31 March 2015, the Working Group held three sessions. During its twenty-second session, held in New York from 14 to 18 July 2014, it met with United Nations officials to discuss the study on the use of private security companies by the Organization, which was the basis of a Working Group report to the General Assembly (A/69/338). It also held an expert meeting on a possible international legally binding instrument on private military and security companies.
6. At its twenty-third session, held in Geneva from 1 to 5 December 2014, the Working Group held an expert meeting on foreign fighters and met with representatives of Member States on country visits and issues concerning the mandate.
7. At its twenty-fourth session, held in Geneva from 2 to 6 March 2015, the Working Group convened a second expert meeting on foreign fighters. It also considered a revised draft convention on private military and security companies and a corresponding concept paper.

¹ Draft convention on private military and security companies (see A/HRC/15/25, annex).

B. Communications

8. Since its last report to the Human Rights Council, the Working Group sent communications jointly with other special procedures mandate holders to the World Bank and to the Governments of Australia, Indonesia and Papua New Guinea.²

C. Country visits

9. The Working Group conducted an official visit to Côte d'Ivoire from 7 to 10 October 2014 (see A/HRC/30/34/Add.1).

D. Information on individuals convicted of mercenary activities

10. The Human Rights Council, in its resolution 21/8, requested the Working Group to establish a database of individuals convicted of mercenary activities. The Working Group sent a note verbale to all Member States on 22 January 2013, requesting information on cases of mercenaries convicted by national courts. Reminders were sent on 6 March 2013. No responses were received during the reporting period.

E. Other activities of Working Group members

11. From 5 to 6 November 2014, Ms. Karska was a panellist at a conference in Doha on security and human rights. As Chair of the Working Group, she made a presentation at the fourth session of the open-ended intergovernmental working group to consider the possibility of elaborating an international framework to regulate, monitor and oversee the activities of private military and security companies, held from 27 April to 1 May 2015.

12. Ms. Arias participated in a seminar on private military and security companies in Guatemala, held from 4 to 8 May 2015.

13. Mr. Gabor Rona made a presentation on the Working Group's application of the Guiding Principles on Business and Human Rights at a workshop on United Nations guiding principles, post-conflict situations and fragile States, held at the University of Nottingham, United Kingdom of Great Britain and Northern Ireland, on 20 and 21 May 2015.

14. Mr. Mokbil met with senior officials of the Saudi counter-terrorism committee on 25 May 2015, in Riyadh. He also cooperated with the preparatory committee for the international conference on the theme "Security and privacy versus terrorism", to be held in Venice, Italy, in September 2015.

² Summaries of the communications will be included in a report to be submitted to the Human Rights Council at its thirtieth session.

III. Research on national legislation concerning private military and security companies

A. Introduction

15. The Working Group continued its global study of national laws regarding private military and security companies to assess their effectiveness in protecting human rights and promoting accountability for violations. The study aims to identify any commonalities, good practices and regulatory gaps that may exist. The present report focuses on the laws and regulations of eight countries in Central America and the Caribbean (Costa Rica, Cuba, El Salvador, Guatemala, Honduras, Mexico, Nicaragua and Panama), eight countries in South America (Argentina, Bolivia (Plurinational State of), Brazil, Chile, Colombia, Ecuador, Peru and Uruguay) and four countries in Europe (France, Hungary, Switzerland and the United Kingdom). In its 2014 report to the Human Rights Council, the Working Group focused on eight francophone African States³ and eight Asian States (A/HRC/27/50);⁴ in its 2013 report, it focused on 13 Anglophone African States (A/HRC/24/45).⁵ In its next report to the Council, to be submitted in 2016, the Working Group intends to focus on the national legislation of countries in Eastern Europe, the Pacific and North America.

16. The Working Group hopes that its global study will result in guidance that will help Member States to regulate the growing number of private military and security companies. The national laws on such companies in the present report were analysed using the following elements: (a) scope of the legislation; (b) licensing, authorization and registration; (c) selection and training of personnel; (d) permitted and prohibited activities; (e) rules on the acquisition of weapons; (f) use of force and firearms; (g) accountability for violations and remedies for victims; and (h) ratification of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries.

B. Analysis

Western Europe

Scope of the legislation

17. France, Hungary, Switzerland and the United Kingdom have national legislation on the private security industry. The United Kingdom, however, has only some provisions related to licensing and authorization, and adopts a self-regulatory approach within the framework of the British Association of Private Security Companies that covers such aspects as financial sanctions, compulsory training courses, site inspections and the suspension or withdrawal of membership rights.⁶

³ Burkina Faso, Cameroon, Côte d'Ivoire, the Democratic Republic of the Congo, Mali, Morocco, Senegal and Tunisia.

⁴ China, India, Malaysia, Pakistan, the Philippines, Singapore, Sri Lanka and the United Arab Emirates.

⁵ Botswana, Ghana, the Gambia, Kenya, Lesotho, Mauritius, Namibia, Nigeria, Sierra Leone, South Africa, Swaziland, Uganda and Zimbabwe.

⁶ Kerry Alexander and Nigel White, "The regulatory context of private military and security services in the UK", (University of Sheffield, 30 June 2009), pp. 16-18.

18. All four countries have national legislation covering the activities of private security companies,⁷ including surveillance, the protection and guarding of persons and property or goods, the transportation, protection and shipment of cash, jewels, precious metals and other valuables, and the conduct of investigations. The regulation of the United Kingdom covers services provided by security consultants. In Switzerland, activities related to traffic management, assistance to public authorities, the transport of detainees and private detective services are also regulated.

19. In terms of geographical scope, legislation varies in range and content. The legislation of France and Hungary does not have extraterritorial application.⁸ Swiss legislation, however, covers not only the activities of local and private security companies⁹ but also the services provided by such companies hired locally or abroad by the Government¹⁰ and by private security companies abroad as well.¹¹ The legal system of the United Kingdom is based on the principle of territoriality, which means that individuals cannot be prosecuted in the United Kingdom for crimes committed abroad (see A/HRC/10/14/Add.2).

Licensing, authorization and registration

20. In France and the United Kingdom, the entities that issue authorizations and licences are appointed by or exist within the ministry responsible for internal security. In France, that entity is the departmental prefect (or, in Paris, the police prefect),¹² which is accredited by the Council of State, whereas in the United Kingdom, the Security Industry Authority issues licences for the domestic activities of security operatives.¹³

21. Regarding criteria for authorization, the laws of France and Hungary do not require adherence with human rights standards. However, executives and employees who have been convicted for a misdemeanour or a crime cannot be accredited.

22. In the law of United Kingdom, there is no reference to human rights standards. As the Working Group noted in a 2008 report (A/HRC/10/14/Add.2), companies are chosen according to criteria determined by government procurement services. All contracts contain clauses allowing for the termination of a contract if a human rights violation has been committed. However, there is no formal system specifically to review contracts.

23. According to Swiss legislation, the “competent authorities” can decide to prohibit, wholly or partially, certain activities because they may be contrary to the aims of the law, including services that may be used to commit human rights violations.

24. With regard to registration, none of the countries analysed in the present report require a private military and security companies to undergo a special registration; they just need to undergo general registration in trade and commerce registers.

⁷ France has Law No. 83-629; Switzerland has the Concordat on Security Companies of 1996 and the decree on the hiring of private security companies of 2007; Hungary has Act No. CXXXIII of 2005; and the United Kingdom has the Private Security Industry Act of 2001.

⁸ Geneva Centre for the Democratic Control of Armed Forces, *Report on Swiss-based Military and Security Service Providers Operating in Crisis and Conflict Regions, Phase II: Comparative Study of Regulatory Approaches* (2007). Available at <https://www.bj.admin.ch/dam/data/bj/sicherheit/gesetzgebung/sicherheitsfirmen/ber-dcaf-teil2-e.pdf>.

⁹ Concordat on the Services of Private Security Companies of 2010.

¹⁰ Decree on the hiring of private security companies of 2007.

¹¹ Federal Act on Private Security Services Provided Abroad of 2013.

¹² See Law No. 83-629, arts. 7 and 25.

¹³ See Private Security Industry Act of 2001, art. 7.

Selection and training of private military and security company personnel

25. Swiss law includes the most references to human rights-related standards. It requires companies to train their personnel in applicable national and international law, including on fundamental rights, except when no such company is available, stipulating a maximum of six months for such contracts.

26. The laws of France, Hungary and the United Kingdom make no reference to human rights training.

Permitted and prohibited activities

27. French law emphasizes that the only activities to be carried out by security providers must be the guarding and protection of persons and property or goods and the provision of protection to transport funds, jewels and precious metals.¹⁴ Private security companies are obliged to clearly indicate the private nature of their work in order to avoid confusion with public security entities such as of the police. Similarly, in the Hungarian legislation it is noted that those involved in private security activities have no public authority powers, must use a uniform, cannot use the titles and insignia of the authorities and cannot prevent the authorities from carrying out their activities. The relevant law in the United Kingdom does not contain a list of prohibited activities but notes that it is an offence to engage in conduct for which a licence is required.¹⁵

28. Swiss law clearly prohibits direct participation in hostilities in an armed conflict abroad, including through the hiring, training and provision of security personnel for direct participation in hostilities abroad or the establishment, management or control of a company in Switzerland involved in such activities.¹⁶ United Kingdom law does not define what military or security activity can be outsourced to private companies, but there is an understanding that military activity in situations of armed conflict can be delivered only by military personnel under the command of a commissioned officer.¹⁷ Hungarian legislation does not rule on the direct participation of company personnel in hostilities, but its provisions are not applicable to members of the armed forces and State law enforcement agencies.¹⁸ French law contains no provisions on the direct participation of private military and security company personnel in hostilities.

29. In terms of the participation of law enforcement agents in the activities of private military and security companies, in France, as a general rule, no former police or military personnel can take up positions in such companies.¹⁹ In Hungary, the law emphasizes that staff members of the police and civil national security services performing official duties, and individuals who are not staff but contribute to related official duties, cannot be members or managers of companies providing private security services. Swiss and United Kingdom laws contain no provisions on this question.

¹⁴ Law No. 83-629, arts. 1, 2 and 21.

¹⁵ Private Security Industry Act of 2001, art. 3 (1).

¹⁶ Federal Act on Private Security Services Provided Abroad of 2013, art. 8.

¹⁷ See A/HRC/22/41, para. 53, and the response of the Government of the United Kingdom to the Working Group's request for national legislation and regulations on private military and security companies.

¹⁸ Act CXXXIII of 2005, art. 2.

¹⁹ Law No. 83-629, art. 9.

Rules on the acquisition of weapons

30. In France, Hungary and Switzerland there are no rules on the illegal acquisition of weapons. In the United Kingdom, the Export Control Act of 2002 envisages controls for trade in military, paramilitary and certain other goods between countries outside the United Kingdom (controls apply to United Kingdom nationals anywhere in the world and to activities carried out wholly or partially in the United Kingdom),²⁰ which could also be applied to private military and security company personnel, although the law does not explicitly aim to regulate the private military industry.

31. The absence of specific provisions on the illegal acquisition of weapons and on trafficking in arms by personnel is a clear gap in regulation.

32. In France, employees of public security companies that carry out surveillance activities or guard property or goods can be armed as long as they adhere to the conditions laid down in a Council of State decree. Similarly, in Hungary security guards can carry firearms, but these can be used only for self-defence and in an exigency.²¹

Use of force and firearms

33. In Switzerland, personnel of public security companies cannot be armed abroad,²² but if the situation exceptionally requires that personnel bear arms in cases of legitimate self-defence or necessity, the contracting authority must stipulate it in the contract. In contrast, in the United Kingdom there are no legislative provisions on the use of force and firearms by private military and security company employees.

Accountability for violations and remedies for victims

34. None of the legislation reviewed contained provisions on reporting obligations for violations of the law committed by public security company personnel or on effective remedies for victims of human rights violations committed by such personnel.

35. Furthermore, laws regulate the monitoring of private military and security companies differently. In France, a permanent control of such companies is exercised by police officers and gendarmes.²³ In Switzerland, it is the authorizing competent authority that controls the activities of such companies abroad.²⁴ Swiss law stipulates specific sanctions, including fines and imprisonment, for violations such as direct participation in hostilities and serious human rights violations. The law requires civil liability insurance for risks related to the activities of the company. These may be deemed good practices.

36. In Hungary, companies carrying out private security services are controlled by the police, who monitor the lawfulness of the companies' activities.²⁵ In the United Kingdom, there are no legal provisions at the national level to address reporting requirements for alleged offences and violations, but it is understood that the liability that international humanitarian law applies to soldiers committing war crimes would also apply to employees of private military companies who become involved in armed conflict.

37. The monitoring mechanisms vary in form and content and, with the exception of Switzerland, the laws contain no provisions on a company's or its personnel's compliance

²⁰ Export Control Act of 2002, provisions 1-4.

²¹ Act No. CXXXIII of 2005, art. 27 (4).

²² Federal Act on Private Security Services Provided Abroad of 2013, art. 34 (1).

²³ Law No. 83-629, arts. 13 and 30.

²⁴ Federal Act on Private Security Services Provided Abroad of 2013, art. 37.

²⁵ Act No. CXXXIII of 2005, art. 8 (5).

with international human rights standards. It is essential to ensure the accountability of private military and security companies and their personnel to the Government of their country of origin, registration or operation. Standardized and effective accountability mechanisms need to be established to ensure the enforceability of regimes regulating the activities of private military and security companies, as well as the necessary penal accountability and civil liability of both individuals and corporate actors²⁶ for human rights violations.

Ratification of conventions on mercenaries

38. While none of the four countries have signed or ratified the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, all are party to the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), article 47 of which defines the term “mercenary”.

Central America

Scope of the legislation

39. The relevant laws are applicable only within the country (none provide for extraterritorial application).

40. Certain activities are stipulated in all legislation, such as the guarding and protection of property and persons, the maintenance of order at public events, the provision of bodyguard services, the provision of secure transportation, the manufacture and marketing of security equipment and systems, and the provision of security advice.

41. With respect to human rights references, in the law of Guatemala human rights are to be protected together with personal and collective security rights. This is also a major focus of public security in El Salvador.

There is no mention of international humanitarian law in any of the regulations reviewed. International human rights treaties are referenced in Guatemalan law, while Costa Rican law mentions international treaties in the context of the security of diplomatic representations.

Licensing, authorization and registration

42. Although all countries have provisions for obtaining authorization and operating permits, most do not make reference to specific human rights law as a prerequisite for obtaining them. Exceptions are Costa Rica, El Salvador and Guatemala, which do not, however, include human rights violations in the list of infractions.

43. Supervisory authority is exercised by the ministries responsible for public security and, in a few cases, by the police. These entities are responsible for ensuring compliance with the laws that regulate the activities of private security companies. They generally monitor compliance with requirements, grant authorizations and issue permits. In the event of non-compliance, they apply sanctions, which range from a warning and a fine to the suspension or cancellation of a permit. They also renew authorizations and permits. In certain cases, they define and authorize training programmes and curricula (Guatemala). They also carry out periodical inspections and keep records submitted by private security providers.

²⁶ See the Guiding Principles on Business and Human Rights.

44. All reviewed countries require a written request to be made to the competent authority and the submission of documentation, depending on the type of service and whether it is for an individual or a company. A company's charter, background information on employees and management, the type of proposed activities and personnel, are all required to obtain a permit. All regulations include the payment of fees, insurance for damages to third parties and health insurance for staff. If a private security company has firearms, it must have a secure place for storing them and certify that staff have completed the required training. Additional information must be submitted regarding the company's installations, equipment and firearms. Operational manuals must be approved by the authority. Permits are renewable for prescribed periods (two years in Nicaragua and Honduras, three years in Guatemala and El Salvador and five years in Costa Rica and Cuba) and can be denied, suspended, revoked or cancelled for non-compliance with legal requirements and obligations.

45. Cuban law differs in important ways from the other regulations. In particular, article 3 of Act No. 186/1998 establishes and regulates the system of security and the services that can be provided in this sector.

46. Panama requires that nationals be the owners of companies (Act No. 21/1992, art. 4) and foreigners require special authorization from the Ministry of Government and Justice. Mexican federal law requires Mexican nationality for individuals who want to operate companies (art. 25, I and VI). Costa Rica allows resident foreigners to provide services as guards, while foreign companies in Honduras requesting authorization must join with Honduran companies involved in the same activity and name a Honduran-born manager (art. 138).

47. All the reviewed countries have a supervisory authority that maintains a register of private security service providers with information on their activities and personnel.²⁷

Selection and training of private military and security company personnel

48. Generally, there is no description of the selection processes in the countries reviewed but there are requirements for management and personnel. These differ depending on whether the staff is armed or unarmed, and on the services involved.

49. Private military and security company personnel must be adults with a minimum level education, usually primary or basic education. In Cuba and Honduras, regulations do not mention this element. Staff need to be nationals in Honduras, Mexico and Nicaragua.²⁸ In Cuba, they must be resident in the country. In Costa Rica and El Salvador, personnel of such companies may be resident foreigners, while Guatemalan law makes no reference to nationality. Resident foreigners must be registered in their country of origin and have resided in the country during the past five years.

50. A common criterion for the eligibility of personnel is suitability and good moral character, as confirmed by a clean police record. Costa Rican law requires candidates to have had a clean record for the previous 10 years,²⁹ Salvadoran law requires guards to not have police records and Guatemala is the only country that requires candidates to prove that their previous work contract was not terminated because they committed a crime or a human rights violation. In Panama, candidates must not to have been expelled from a public agency for committing a crime or a serious administrative infraction.³⁰

²⁷ Act of 2006, art. 8.

²⁸ Honduras, Agreement No. 013/2009, art. 34 (b).

²⁹ Act No. 227/2000, art. 14 (c).

³⁰ Executive Order No. 21/1992, arts. 1 and 9.

51. Costa Rica, El Salvador and Guatemala require a psychological and a physical exam. El Salvador and Nicaragua require the person to be of sound mental and physical health.

52. Cuban regulations do not spell out the requirements with which operational personnel must comply. The requirements are regulated by the Ministries of the Interior, Labour and Social Security.

53. In general, there are no requirements linked to human rights in the regulations of these countries, except in Guatemala, where candidates who have served in the army, the national civilian police, the government intelligence services or another private security company must prove that if they were dismissed it was not because they committed a crime or a human rights violation.

54. Most regulations require passing courses provided by an institution recognized by law. However, the laws and the regulations do not indicate what should be included in the curriculum or its duration, except in a few cases, where such information is mentioned in general terms. There are no established standards or supervision concerning the quality of the training, although there are some requirements for the use of firearms.

55. Nicaragua prohibits the use of firearms considered to be combat weapons. Panama requires training on the administration and use of firearms and at least two shooting range practices per year.³¹ Costa Rica requires private security personnel to pass a course given by the national police academy.

56. Most countries do not mention curricula relating to human rights, except El Salvador, Guatemala and Mexico. Mexican regulations require a service provider to offer courses to its personnel that follow an authorized model with content on human rights at least once a year. Salvadoran legislation gives certain details about the contents and mentions courses covering procedures for private agents on human rights. Guatemala requires theoretical and practical training on human rights in accordance with international standards and on the use of force and firearms.³²

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

Permitted and prohibited activities

58. Permitted activities include the guarding and protection of property, persons and public events, the provision of body guard services, the provision of secure transportation services, the manufacture and marketing of security systems and the provision of security-related advice. All countries but Nicaragua mention private investigations. Mexican federal law covers security services for obtaining information, including background reports, as well as the installation and sale of armour systems.

59. Private companies are limited to operating only in the places or buildings for which they have been contracted. In exceptional cases, for example in Nicaragua, private security personnel are permitted to work in public places. To avoid confusion, uniforms, credentials,

³¹ Executive Order No. 22/1992, art. 3.

³² Act No. 52/2010, art. 51 (c).

logos and vehicle colours similar to those used by the police or armed forces cannot be used. Using and carrying weapons without proper authorization are also prohibited.

60. A common prohibition concerns activities reserved for the police and armed forces. Costa Rican law prohibits the act of “appearing to or replacing the role played by the administration or judiciary, or interfering in their work”, as well as the provision of services in prisons.³³ El Salvador prohibits investigations that are the exclusive competence of the Public Prosecutor’s Office or the national police.³⁴ Guatemalan law is the most detailed and provides that private security cannot assume functions that are the tasks of the Government.³⁵ Mexican law prohibits private security personnel from doing work entrusted to the public prosecutor and the police, such as obtaining background information on persons.³⁶ Honduras prohibits the use of installations or equipment of the national police for training persons or companies providing private security.

61. Several countries include prohibitions that could be related to activities of a military nature or to militias or mercenaries. In Costa Rica and El Salvador, the law prohibits the existence or functioning of any type of armed private group that is unauthorized and does not comply with legal requirements.³⁷ Honduras prohibits Hondurans or foreigners from training or conducting drills for the purpose of providing private security services abroad.³⁸ Costa Rican law prohibits detaining, interrogating, requisitioning or sequestering, violating a person’s honour and physical integrity, intercepting correspondence and interfering with communications. Mexican law, which contains a prohibition linked to compliance with international human rights standards, provides that security services must avoid, at all times, committing, tolerating or permitting acts of torture and mistreatment, as well as cruel, inhuman or degrading acts, even when in execution of an order of a superior or in supposedly special circumstances, such as threats to public security.³⁹ Similarly, Costa Rican regulations state that in no circumstances may simple obedience be invoked as justification or impunity for torture or other treatment or cruel, degrading or inhuman punishment.⁴⁰

62. Costa Rica and Honduras have specific regulations that limit the number of staff employed by private security companies. Costa Rica prohibits such companies from maintaining a number of security guards that equals more than 10 per cent of the membership of the police force, by type of service.⁴¹ Honduran law states that the number of guards they employ cannot be more than 6 per cent of the national police force. Considering the growth of private security activities in the region and the high number of security personnel compared to the police, this law is considered to be a good practice.

Rules on the acquisition of weapons

63. There are no special provisions on the origin and acquisition of weapons in most of the countries reviewed. In seven of the countries, the acquisition by private security companies of weapons in illegal national or international markets is not regulated, while

³³ Act No. 8395/2003, art. 45 (h) (I).

³⁴ Act No. 227/2000, art. 49 (k).

³⁵ Act No. 51/2010, art. 59.

³⁶ Mexican federal law of 18 October 2011, art. 5 (III).

³⁷ Act No. 8395/03, art. 6, and Act No. 227, art. 60, respectively.

³⁸ Act No. 67/2008, art. 140.

³⁹ Mexican federal law, art. 32 (X).

⁴⁰ Regulation No. 33128, art. 29 (3).

⁴¹ Act No. 8395/2003, art. 19.

Act No. 21 of Panama states that firearms can be purchased only on the domestic market.⁴² The lack of regulation in this area is one of the gaps observed in this region.

Use of force and firearms

64. All legislation permits the carrying and use of firearms by private security personnel, within limits. There are differences not only with regard to the type of weapon authorized but also to the requirements for ownership and use. For example, Panama requires each firearm to be assigned to a specific security guard; failure to do so is an infraction.⁴³ El Salvador permits private security agents to use of their own firearms after informing the national police.⁴⁴

65. Generally, authorized firearms are to be used by personnel when they are on duty. Panama permits the carrying of firearms exceptionally during travel. In Cuba, firearms may be carried in public only with authorization of the Minister of the Interior.⁴⁵

66. Most regulations do not cover the calibre of firearms. Mexican law obliges a provider to use only registered firearms while Cuban law does not specify the calibre that is authorized by the Ministry of the Interior.⁴⁶

67. Nicaraguan regulations provide that persons guilty of a crime against the public order or State security or involved in a terrorist act, narcotic trafficking, domestic violence, human trafficking and sexual crimes cannot own or carry firearms for civilian use.⁴⁷ In Panama, in the case of domestic conflict or a declaration of war, firearms belonging to private security companies come under the direct supervision of the Ministry of Government and Justice.⁴⁸ In El Salvador, in the event of a strike or legal stoppage of private security services, the supervisory body will make weapons, ammunition and other equipment available to the national police and will then return them once the situation has returned to normal.⁴⁹ This type of restriction is considered to be good practice, as it aims to decrease the risk of carrying and using firearms in unstable situations.

68. It is prohibited in Guatemala to use undue force, and steps must be taken to prevent harm to life and physical integrity and the violation of other rights of individuals.⁵⁰ In Costa Rica, the ethical-legal principles governing police activities, including the principle of using force only when strictly necessary, apply to private security companies.

69. The lack of regulations governing the use of firearms and provision of sanctions is a gap that places persons at risk. In the light of permitted use of firearms by private security personnel, consideration should be given to addressing this.

Accountability for violations and remedies for victims

70. Concerning sanctions against human rights violations, there are differences in the laws reviewed. Guatemala considers it a serious infraction to infringe on the right to

⁴² Act No. 21/1992, art. 8.

⁴³ Executive Order No. 21/1992, art. 27 (d).

⁴⁴ Act No. 227/2000, art. 27.

⁴⁵ Decree No. 186/1998, art. 34.

⁴⁶ Act No. 52/1982, art. 6.

⁴⁷ Act No. 510/2005, art. 15.

⁴⁸ Executive Order No. 21/1992, art. 18.

⁴⁹ Act No. 227/2000, art. 16.

⁵⁰ Act No. 51/2010, art. 59 (j).

dignity, personal and family intimacy and confidential communications, or any other right protected by the Constitution and international human rights treaties.⁵¹

71. Guatemala is the only reviewed State that prohibits private security companies from recruiting a person who has worked for another such company and was dismissed for human rights violations. Costa Rica sanctions an individual or a company that violates the prohibition on detaining someone and depriving him or her of his or her freedom.

72. Mexican law provides criteria to determine the appropriate sanction applicable to an infraction. Guatemala has established the crime of “illegal provision of private security services” when such services are provided without authorization and made it punishable by a 6–12 year prison sentence and a fine.⁵² In Costa Rica, private security personnel who operate with suspended or cancelled permits can receive a prison sentence of between three months and two years.⁵³

Ratification of conventions on mercenaries

73. Only three of the eight countries studied have ratified the International Convention Against the Recruitment, Use, Financing and Training of Mercenaries: Cuba (2007), Costa Rica (2001) and Honduras (2008). This convention has not been referred to in the laws reviewed.

South America

Scope of the legislation

74. For Argentina, which has a federal system wherein regulations are implemented by each province, the regulations of the Province of Buenos Aires are analysed.

75. All regulations reviewed cover the provision of private security within that country. There are no laws applicable beyond national borders and no reference to extraterritorial application. The export and import of private security services are not regulated.

76. The rules do not regulate private military security services or mention military and private security companies.

77. In general, private security services are provided for guarding property and persons, including at public events, by personal body guards, detectives or private investigators, through consulting services, technological surveillance and alarm services, the marketing of equipment for guarding and private security and for the transport of valuables. Regarding armoured transportation in Argentina, Act No. 12.297/1999 (Buenos Aires) covers the transportation, guarding and protection of any legal transfer, except the transport of funds. It also covers private services, such as obtaining evidence for civil law suits.

78. Several regulations classify private security services as armed or unarmed. Colombian law stipulates that services can be provided by individuals without firearms. Ecuador classifies services as fixed guard duty, mobile guards and private investigation.⁵⁴ Guards cannot carry firearms in the Plurinational State of Bolivia.

79. Several regulations, like those of Colombia, also recognize private security services that are part of a company’s own security provisions.⁵⁵ There are also special guard services

⁵¹ Act No. 51/2010, art. 58 (3b).

⁵² Act No. 51/2010, art. 66.

⁵³ Act No. 8395/2003, art. 53.

⁵⁴ Act No. 2003/12, art. 2.

⁵⁵ Act No. 356/1994, art. 17.

and private community security services that operate as cooperatives, community action groups or community enterprises, providing security to their members. Chile obliges banking and financial institutions, public entities, armoured transportation companies, strategic companies and public services to maintain their own private guard services.⁵⁶

80. Most legislation does not mention international conventions and treaties on human rights except for in Brazil, Colombia and Peru.⁵⁷ Peru prohibits mercenary activities. A Brazilian 2012 ordinance mentions human rights, in the annexes covering the training curriculum. Colombian law states that “citizens must have sufficient legal recourse for the exercise of their constitutional rights that effectively guarantees and preserves observance of ... international treaties and conventions on human rights”.⁵⁸

81. Colombian regulations require private security personnel to inform the competent authorities when they learn of any criminal act or violation of human rights while carrying out their activities.

82. Most of the reviewed countries expressly prohibit active members of the police and armed forces from undertaking private security activities. In Uruguay (Act No. 275/1999), management-level police officers are prohibited from participating as owners, partners or representatives of companies providing security, or from having any link or relationship with private security companies. Ecuadorian law extends the prohibition to the spouses and relatives to the second degree of consanguinity, to active members of the police and officials, employees and civil servants who work for the Ministry of National Defence, the Ministry of Government, the national police, the armed forces and the Office of Business Oversight. In Colombia, members of the military, police officers in active service, staff of the Ministry of National Defence and the Police, the Administrative Department of Security and the Office of Surveillance and Private Security cannot be partners or employees of security guards.⁵⁹ Buenos Aires extends this ineligibility to security personnel and employees of intelligence and prison services.⁶⁰ Chile and Peru do not have this prohibition.

83. The Plurinational State of Bolivia merits special mention, because it prohibits not only the members of the armed forces and the national police from participating in private security services, but also public officials at any level in active service.⁶¹ This is unique, and due to the existence of the so-called battalion of private physical security, which is part of the national police and which hires out police officers as security officers. Criticisms of the battalion are based on the national police being the institution that authorizes, supervises and inspects private security companies, which claim that because they are not authorized to carry firearms, they are at a disadvantage in competing with the battalion.⁶²

84. Except for Chile, ex-members of the police and the armed forces who have been discharged for having committed infractions or crimes are prohibited from providing private security services.

85. Private security activities are generally limited to the sites, buildings and private spaces specified in the contracts.⁶³ This restriction becomes less precise in activities such as

⁵⁶ Act No. 3.607, art. 3.

⁵⁷ Ecuador in its regulations on private investigations (Act No. 1181/2008, art. 7).

⁵⁸ Act No. 2974/1997.

⁵⁹ Act No. 356/1994, art. 78.

⁶⁰ Act No. 12.297/1999, art. 8.

⁶¹ Act No. 222544/2004, art. 38.

⁶² See Patricia Arias, “Seguridad privada en América Latina: el lucro and los dilemas de una regulation deficitaria”, FLACSO-Chile (2008), p. 34.

⁶³ Chile, Act No. 3.607, art. 1.

community guard services in Colombia and armoured transportation, which cover larger areas.

86. Generally, private security activities are complementary and subordinate to the work of the police. Several regulations establish the duty of private security companies to cooperate with the police in cases determined by law. In Colombia, such companies are required to cooperate in crime prevention and to support the police in the event of a disaster.⁶⁴ Uruguay stipulates that they must support and cooperate with the police, for example by providing them with information.⁶⁵ Peruvian law requires cooperation at the request of the executive branch in the event of a state of emergency.⁶⁶ In Ecuador, private security companies must immediately cooperate with the national police and will be under the authority of the armed forces during a state of emergency. In Buenos Aires, providers of private security services must assist the police in its activities⁶⁷ and make their material and human resources available to the police in the event of a catastrophe or emergency.⁶⁸ Under Bolivian regulations, private security companies must cooperate with the police when required.⁶⁹ The human rights implications that these provisions have in the sharing of activities with national security forces need to be considered carefully.

Licensing, authorization and registration

87. In most of the countries, the supervisory and inspection authority for licensing private security companies is within the ministry responsible for public security. The exception is Colombia, where the authority is the Office for Surveillance and Private Security, a national technical agency with financial and administrative autonomy that is part of the Ministry of National Defence.

88. In all the countries under review, companies require authorization and permits in order to provide private security services. The requirements can be general (Buenos Aires) or specific to the service provided. Security service providers are always required to carry out only the activities for which they are authorized and have a permit, which are stipulated in contracts.

89. A certificate of police and court records for private security personnel is a common requirement to ensure suitability and good moral character. Brazil provides full details on requirements for obtaining a permit, including certification of the absence of a police record by the federal, state, military and electoral justice systems.

90. Most legislation does not provide specific requirements concerning records of violations of human rights. The exception is Buenos Aires, where private security companies are prohibited from having partners that have benefited from amnesties No. 23.492 and No. 23.521 and been indicted for human rights violations. A certificate issued by the competent human rights authorities is required as proof.⁷⁰ The absence of a police record must be proven with a certificate from the National Registry of Recidivism and Criminal Statistics, a certificate issued by 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. These requirements constitute a good practice in vetting the background of employees.

⁶⁴ Act No. 356/1994, art. 74 (6) and (12).

⁶⁵ Act No. 275/1999, art. 2 (2.3).

⁶⁶ Act No. 28.879/2006, art. 23 (j).

⁶⁷ Act No. 12.297/1999, art.1.

⁶⁸ Act No. 12.297/1999, arts. 9–11.

⁶⁹ Act No. 222.544/2004, art. 34.

⁷⁰ Act No. 12.297, art.8 (2); Acts No.23.492 and No. 23.521.

91. A common requirement for obtaining a permit is the obligation to contract third-part liability insurance (Bolivia (Plurinational State of), Colombia and Ecuador, and the Province of Buenos Aires) or insurance for employees (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. Authorizations and permits have a fixed duration, which varies among countries.

92. Most of the legislation requires a special register for private security companies (not always at the national level) and another for individuals who provide security services. In general, private security companies must keep registers of their staff, contracts, inspections carried out, users and records of issues concerning firearms and ammunition. The exception is the Plurinational State of Bolivia, which only requires registers and records of daily activities, contracts, accidents, hiring and dismissals, transfers and permits.⁷¹

93. In Brazil, companies have a register with the federal police and companies specialized in armoured car services must be registered with the army.⁷² In Ecuador, companies must be registered in a special ledger of the business register.⁷³ In Peru, the registry of companies and personnel is kept by the Office for the Control of Security Services, Firearms, Ammunition and Explosives for Civilian Use. In Chile, the prefectures of the *carabineros* keep a registry,⁷⁴ while in Colombia, it is the Office for Surveillance and Private Security.⁷⁵

94. Buenos Aires requires the supervisory authority to keep a registry of the persons authorized to provide private security services and also of persons rejected for infractions of Act No. 12.297. The maintenance of such a register is a good practice and, if established at the national level, would result in better monitoring of private security personnel who have committed infractions.

Selection and training of personnel

95. Common requirements for private security personnel include having reached the age of majority and having a clean police record. A certification of physical and psychological aptitude (Brazil, Chile, Ecuador, Peru and Uruguay, and Buenos Aires) is also required. Personnel cannot be an ex-member of the police or armed forces discharged for infractions.

96. Several countries require that personnel be a national of that country (Brazil, Chile, Colombia and Ecuador). Peru permits guards to have foreign nationality, while the Plurinational State of Bolivia permits foreign advisers and requires an INTERPOL background certificate. In Colombia, partners of private security companies and members of a private security cooperatives must be native-born.⁷⁶

97. In most cases, guards must have completed basic or primary schooling. In Peru, they are required to have completed secondary education.

98. All countries require proof of a clean police record.⁷⁷ Ecuador excludes anyone who has been sentenced to prison or who has been dismissed by another private security company for proven crimes.⁷⁸ In Brazil, personnel must have no record of involvement in a

⁷¹ Act No. 222544/2004, art. 26.

⁷² Act No. 7.102/1983, arts. 17 and 31.

⁷³ Act No. 2003/12, arts. 10 and 11, and Act No. 1181/2008, art. 12.

⁷⁴ Act No. 1773/1994, art. 23.

⁷⁵ Act No. 2355/2006, art. 4 (4) and (9).

⁷⁶ Act No. 356/199, art. 12 (4).

⁷⁷ Act No. 003/2011, arts. 18 (c) and 41 (d).

⁷⁸ Act No. 2003/02, arts 4 and 5.

crime or of having been sentenced by a federal, military or electoral court. This, however, is not an obstacle to registration if the person has only been accused or tried for a crime, sentenced to prison and been rehabilitated, when at least five years have passed from completion of the sentence and in cases of conditional suspension of the procedure.⁷⁹

99. All the countries reviewed require a permit to indicate the firearm's type and authorise its carriage.

100. Reference to human rights is not commonly associated with the vetting of private security personnel, except in Buenos Aires. The violation of basic rights by personnel is not covered, which is a serious shortcoming.

101. Authorizations, permits and credentials of guards have varying durations: from two years for special services in Colombia to five years in Brazil.

102. Except in the Plurinational State of Bolivia, private security personnel require special training. In Buenos Aires, it is the supervisory authority that authorizes training centres and approves their curriculum.⁸⁰ The regulations in Chile do not specify the curriculum or duration, and it is the *carabineros* who provide instructions and approve programmes and content.⁸¹ Ecuador allows the national police to establish training centres, but human rights is not in the curriculum.

103. Peru recognizes specialized private security training centres, which must be authorized by the Ministry of Education and the Ministry of the Interior. There is no mention of human rights in the training course but specialized training centres are prohibited from training and providing practice for mercenaries, in strict compliance with the obligations contracted by Peru through international treaties and agreements in force. Peru is the only one of the reviewed countries to refer to mercenaries in its law on private security.

104. In Colombia, training must place special emphasis on respect for human rights.⁸² For special and community security services, the Government will promote special training programmes on human rights and international humanitarian law along with other subjects.⁸³ The term "human rights" appears several times in Brazilian legislation.⁸⁴ The regulations add that training must cover preserving the physical integrity of persons confronted with the use of force in their work, in accordance with the principles of human rights advocated by the United Nations.

Permitted and prohibited activities

105. Activities permitted by law are the surveillance and protection of persons and property as established by regulations. All these activities are permitted if carried out according to law and as defined in the contracts.

106. A common limit to private security companies is that they refrain from engaging in activities reserved for public security institutions. The law on the Bolivian national police prohibits activities that are similar to those of the national police.⁸⁵ Uruguay provides that

⁷⁹ Ordinance No. 3233/2012, art. 155 (VIII, 4).

⁸⁰ Act No. 12.297/1999, art. 18.

⁸¹ Act No. 93/85, art. 9.

⁸² Act No. 365/1994, art. 74.

⁸³ Act No. 2974/1997, art. 21.

⁸⁴ Ordinance No. 3233, annexes; Act No. 7.102/1983, art. 16; and Ordinance No. 3233/2012, art. 155 (VI).

⁸⁵ Act No. 734, art. 135.

the public order attributions of individuals and companies authorized to provide these services are limited to those that the law grants to private individuals. Peru prohibits companies from carrying out the kind of activities that are carried out by the armed forces or the national police.⁸⁶ In Ecuador, private security activities cannot encroach on the police's sphere of action.⁸⁷ Colombia has a similar regulation.⁸⁸

107. Peru has detailed regulations on prohibited activities, including those that compete with the armed forces or national police.⁸⁹ These prohibitions are possibly the result of the scandal involving the FORZA Company. The regulation adds a general provision prohibiting such companies from carrying out activities that violate the individual rights enshrined in the Constitution of Peru.⁹⁰ Colombia prohibits private security companies from engaging in activities involving special and community guard services, intelligence activities, combat training, confiscations, searches, interceptions or other illicit activity.⁹¹ By article 5 of Act No. 3.607, Chile, "if required by the national interest", prohibits all individuals and companies from providing armed guards.

108. There are prohibitions covered in the laws of Uruguay and Buenos Aires aimed at protecting constitutional guarantees and rights,⁹² such that companies cannot intervene in political, labour or religious conflicts and cannot exercise influence over political, trade union or religious opinions.

Acquisition of weapons

109. All seven countries that allow the carrying of firearms require a permit for carrying authorized firearms, both for companies and guards. This covers both the possession and bearing of firearms. Companies must comply with the requirements as to their use and custody. The general rule is that prohibited firearms cannot be used, or that the use of certain firearms is restricted to the police or the armed forces. Identification credentials must always be worn by guards and must indicate the type of firearm that is authorized. The Plurinational State of Bolivia is the only country of those surveyed that does not permit providers of private security services to carry firearms.

110. All legislation establishes which services may be carried out with or without firearms; in some cases, an option is given to the provider. For example, the Peruvian regulations prohibit the use of firearms when an individual performs guard services for third parties. Colombia allows individuals to provide private security services, but only unarmed.⁹³ Chile does not allow companies to have armed guards. In Brazil, a guard has the right to carry a firearm while on duty.⁹⁴ In Peru, Act No. 28.879 establishes that specialized private security companies must have permits for their non-combat firearms and ammunition. In Colombia, the firearms law distinguishes between a permit for possession by individuals and companies and a permit to carry firearms for individuals and guard and private security services. It also stipulates that a private security company can have a maximum of one firearm for personal defence for every three guards in the company's employment. In Ecuador, the number of weapons is authorized in proportion to the

⁸⁶ Act No. 28.878/2006, arts. 24 (c) and 28.

⁸⁷ General provision No. 9, act No. 2003/12.

⁸⁸ Act No. 356/1994, arts. 73 and 74 (2).

⁸⁹ Act No. 28.879, art. 24.

⁹⁰ Regulations for Act No. 28.879, art. 60 (j).

⁹¹ Act No. 2974/1997, art. 22.

⁹² Act No. 12.297/1999, art. 14. In Uruguay, Act No. 275/1999, art. 4 (4-2).

⁹³ Act No. 2187/2001, art. 2.

⁹⁴ Ordinance No. 3233/2012, art. 164.

companies' service possibilities.⁹⁵ Others, for example Chile, allow one firearm for each private guard.

111. Private security companies are commonly required to have adequate infrastructure for storing firearms and ammunition, for example for when guards go off duty. They must also maintain a register of the entry and exit of firearms.

112. In the regulations reviewed, there is no mention of firearms acquired illegally or of trade in unregistered weapons. There are also no infractions that sanction the acquisition or carrying of illegally acquired firearms.

Use of force and firearms

113. The possession and carrying of firearms are restricted to those places where security and guard services are provided by contract, and non-compliance with this leads to the confiscation of the firearm and other sanctions as prescribed by law.⁹⁶ Firearms must be stored while guards are off duty.

114. All eight countries require training in the use of firearms, although requirements differ from country to country. Firearm laws complement and provide details on the rules governing the carrying and use of firearms. When laws on private security do not indicate the maximum calibre, they mention general limits, such as "non-combat weapons" or "for civilian use".

115. Private security companies are subject to mechanisms of accountability like any other entity. There are no norms that sanction the behaviour of their personnel more severely than they do the behaviour of ordinary citizens. This, despite the fact that private security personnel are individuals who are authorized to carry firearms, in most cases, and act within the framework of the delegation of the legitimate use of force.

116. In most legislations, there are very few concrete regulations on the use of force and firearms in the light of human rights standards. An outstanding practice is reflected in a Brazilian regulation (2012) that sets out in detail a study plan for private security guards that includes human rights.

Accountability for violations and remedies provided for victims

117. There are no specific procedures for human rights violations in the laws that were reviewed. There is no mention of human rights violations in any of the sections that deal with inspections and sanctions, and no mention of compensation for victims of violations.

118. Infractions are classified from less serious to very serious in most of the countries reviewed. Established sanctions can range from a warning to fines, suspension and cancellation of the operating permit. Infractions are primarily associated with non-compliance with formalities and requirements regarding permits and authorizations, 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.

119. Colombian regulations state that private security providers must respect the public's basic rights and freedoms.⁹⁷ Providers of guard and security services have a duty to cooperate with the Office of Surveillance and Private Security in its inspections and must also establish internal control mechanisms. In the case of special services and community

⁹⁵ Act No. 2535/1993, art. 11.

⁹⁶ Act No. 1181 of Ecuador, art. 4, and Act No. 365 of Colombia, art. 97 (2).

⁹⁷ Act No. 365/1994, arts. 72 and 74 (2).

guards, the regulations 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. For community services, an oversight council is created, which submits quarterly reports to the Office with recommendations to ensure public security, opens activities to public scrutiny and provides effective monitoring.⁹⁸ This is a good practice.

120. In Brazil, activities are supervised by a department of the federal police. The regulation requires private security companies to communicate immediately to the specialized private security delegations or the inspection commissions in their area about illegal activities in which their guards are involved.⁹⁹

121. In Buenos Aires, the supervisory authority audits and applies sanctions, and must make at least one annual inspection. In Ecuador, the law provides for monitoring and regulation of private security companies by the Ministry of Government and Police together with the Office of Business Oversight, and inspections may take place at any time and under any circumstances, with the Ministry applying sanctions for infractions committed. In the Plurinational State of Bolivia, the national authority responsible for private companies supervises and monitors the operations of such companies and ensures compliance with regulations, efficient and transparent operations, periodically inspects the companies and issues warnings.¹⁰⁰ Regulations establish the responsibility for management of the companies and their personnel, for any negligent activities or for the commission of crimes during their work.

122. In Peru, the Office for the Control of Security Services, Firearms, Ammunition and Explosives for Civilian Use supervises private security activities and prosecutes those that violate the human rights enshrined in the constitution.¹⁰¹ In Uruguay, the Ministry of the Interior is responsible for regulating and inspecting private security companies, and proposes sanctions in the event of infractions. In Chile, it is the prefecture of *carabineros* that supervises, inspects and regulates companies with armed and unarmed guards.

Ratification of conventions on mercenaries

123. Only two countries have ratified the International Convention against the Recruitment, Use, Financing and Training of Mercenaries: Uruguay (1999) and Peru (2007). There are no regional regulations governing the activities of mercenaries. The concept of mercenary activities is mentioned only in the legislation of Peru on private security services.

IV. Conclusions and recommendations

124. The research revealed that while all analysed countries have legislation regulating private security companies, each country approaches the privatization of the security industry differently, which results in patchy and inconsistent regulation. The Working Group stresses that the different approaches and regulatory gaps demonstrated in the study may result in a serious undermining of the rule of law and the accountability of private military and security company personnel for violations of the law. Furthermore, regulatory gaps create potential risks to various fundamental

⁹⁸ Act No. 2974/1997, art. 13.

⁹⁹ Ordinance No. 3233/1012, art. 165.

¹⁰⁰ Act No. 222544, art. 7.

¹⁰¹ Act No. 003/2011, arts. 55, 59 and 60 (j).

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

125. Few countries have national legislation that covers the activities of private military and security companies abroad. Considering the transnational nature of private security and military services, the insufficient regulation regarding the scope of the analysed legislation seriously weakens the rule of law. In contexts in which borders between countries are porous, it is necessary to fill the gaps and promote regional and subregional agreements for the regulation of private military and security companies, to effectively protect the rule of law, human rights and exercise of the right of peoples to self-determination.

126. Another important gap is that these regulations do not directly address military-like activities or private military and security companies. The transnational and military services provided, in armed conflict and other complex scenarios such as the so-called war on drugs, increase the probability of the use of firearms by personnel of private military and security companies, and the risk of violation of human rights. Precise regulations governing the use of force and firearms are thus required, as is ensuring the possibility of pursuing those responsible beyond national borders. Brazil has regulations requiring 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. The Working Group recommends this as a good practice.

127. The research also indicates that there are serious regulatory gaps concerning the illegal acquisition of weapons and trafficking in arms by private military and security company personnel and their consequences, and there are divergent approaches regarding the use of force and firearms. The example of El Salvador, involving making weapons, ammunition and other equipment available to the national police in the event of a strike or legal stoppage of private security services, is a recommended good practice at the national level. An international convention would provide for private military and security company personnel some standard rules and methods for acquiring, exporting, importing, possessing and using weapons and would ensure that the staff of private military and security companies are held accountable for the illegal acquisition of weapons, trafficking in arms and prohibited use of force in all parts of the world.

128. In general, across regions, legislation lacks references to company or personnel compliance with the standards of international human rights law and humanitarian law, penal accountability and civil liability of individuals and corporate actors, as well as effective remedies to victims. Given the right of victims of human rights violations to effective remedies, the lack of relevant rules results in ineffective regulation of the private security industry. An international convention would ensure the accountability of private military and security companies by providing standardized and effective accountability mechanisms. Such mechanisms would also ensure the enforceability of the regimes regulating the activities of private military and security companies, as well as the necessary penal accountability and civil liability of both individuals and corporate actors for human rights violations.

129. The weaknesses of the systems of selection and background checking, as well as the training of operational personnel, make more difficult for them a good understanding and internalization of legal norms and principles. In order to deal with these challenges, standards for evaluating activities that go beyond mere compliance with formalities must be established, instilling respect for rights and concrete

infractions with their respective sanctions. Selection procedures and background checks must be improved, with specific reference to international human rights and humanitarian law in the selection criteria, and training requirements that meet the minimum standards of duration and with particular content on human rights.

130. While in general States have detailed regulations on private security services, the relevant laws do not include any references to a single dedicated body responsible for licencing and monitoring the activities of private military and security companies, or specific rules on the content of monitoring activities and inspections.

131. The Working Group reiterates its view that a comprehensive, legally binding international regulatory instrument is the best way to ensure consistent regulation worldwide and adequate protection of the human rights of all affected by the activities of private military and security companies. The Working Group emphasizes the critical need for States to establish minimum international standards to regulate the activities of private military and security companies and their personnel in pursuing the realization of these fundamental human rights, in accordance with international human rights and humanitarian law standards. An international convention would provide a standard regulatory framework and single dedicated body on various essential issues related to the activities of private military and security companies, ensure the accountability of private military and security company personnel, and guarantee the right to effective remedies of all victims worldwide. The provisions of an international convention on licensing, authorisation, selection and training of private military and security personnel would contribute to the establishment of common and consistent regulation that is desirable to ensure effective scrutiny of the conduct of private military and security companies and the implementation of the necessary international human rights standards, as well as to ensure the accountability of private military and security company personnel for violations of the law.

132. Further research into national regulatory strategies is clearly needed in order to identify trends, gaps and good practices in regulating private military and security companies. To this end, the Working Group encourages Member States that have not yet responded to its request to share with it laws and regulations relating to private military and security companies to do so.

133. In this study, the Working Group observed that only five of the countries studied have ratified the International Convention against the Recruitment, Use, Financing and Training of Mercenaries and that only one of them, Peru, prohibits the activities of mercenaries domestically. The Working Group calls on the countries that are parties to this convention to incorporate the prohibition of those activities into their domestic legislation.

134. The Working Group also encourages Governments in these regions to promote discussion on the role of private security companies in the context of regional security into the agendas of intergovernmental, regional and subregional organizations.