

SOUTH AFRICAN PRIVATE SECURITY CONTRACTORS ACTIVE IN ARMED CONFLICTS: CITIZENSHIP, PROSECUTION AND THE RIGHT TO WORK

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SUMMARY

South Africa has adopted two pieces of legislation since 1998 aimed at restricting one of the fastest growing sectors of the global economy: the private security industry. Not only is this legislation completely unique, but it appears wholly at odds with international opinion. In this article we place private security contractors (PSCs) under the microscope of international law, exploring the role they play in armed conflicts, and the status afforded them by international humanitarian law (IHL). We address the issue of prohibited mercenarism, questioning whether PSCs should be categorised as mercenaries. We then shift our focus to the South African legislation and discuss the ambit of its application as compared with international law obligations to outlaw mercenaries. We discuss the likelihood of successful prosecution of PSCs, and the potential penalties that PSCs might face in terms of the South African legislation. Lastly we consider the constitutional challenges which might emerge as this legislation, and a proposed amendment to the *South African Citizenship Act* threaten the constitutionally protected rights of South African PSCs to practise a profession and enjoy citizenship.

KEYWORDS: International humanitarian law; private security contractors; mercenaries; South Africa's anti-mercenary legislation; citizenship

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