

Regulating Private Security in South Africa

Context, challenges and recommendations

Julie Berg¹ & Vavariro Gabi²

Introduction

On 9 August 2010 newspapers reported a 'killing spree' by security guards which left at least four people dead at Aurora Grootvlei Mine in Springs. It was later confirmed that security guards, who were part of a detail employed by the mine to curb illegal mining activity, killed four illegal miners.³ The guards were subsequently arrested and charged with murder for the deaths of four miners.⁴ In addition to the four recovered bodies, there were further reports that as many as 20 miners might have been murdered in the underground shaft by the security guards. *The Sowetan* quoted an eyewitness as saying that when he went down a shaft with a group of miners they encountered the three guards. He said he heard one of the guards giving an order to 'shoot everyone [...] People started running all over when the first men fell'.⁵ He later pretended to be dead, thus escaping the killers.⁶ Under the current dispensation, instances such as these are dependent on individual charges being laid, investigated by the police and brought to court. The weakness of this system and the risks of impunity of the private security industry are demonstrated by the fact that prior to *The Sowetan* breaking the story, no complaints by the survivors, the private security company or Aurora Grootvlei Mines were made. In the absence of an external system of investigation and review there is no information as to whether this was an isolated incident and there is no data available on the number of people who have been injured or killed due to private security activities in any given year.

According to the Annual Report (2009/2010) of the Private Security Industry Regulatory Authority (PSIRA) an annual review of legislation and regulations has been submitted to the Minister of Police for consideration.⁷ If the Private Security Industry Regulation Act 56 of 2001, which establishes PSIRA and regulates the private security industry, is to be reviewed it will be among

a trio of new legislation strengthening the oversight of policing in South Africa. In March 2011, legislation providing oversight of the South African Police Services (SAPS) namely the Civilian Secretariat for Police Act (2 of 2011) and the Independent Police Investigative Directorate Act (1 of 2011) were signed into law by the president and, at the time of writing, await proclamation by Parliament. While an expanded mandate for the Independent Complaints Directorate (ICD)⁸ and a reinvigorated Civilian Secretary of Police⁹ in theory counterbalance growing public concern of corruption, criminality and excessive use of force¹⁰ by the South African Police Services (SAPS) and Metropolitan Police Service (MPS) there is little comparable oversight of the private security industry.

The root of the problem is manifold. The private security industry has been and is increasingly engaging in duties primarily thought of as being the exclusive mandate of the state. There is a blurring of private and public policing practices as well as a blurring of the policing of private and public spaces. Mass private property, for instance, constitutes private space and is privately policed, however, it is for public use (shopping malls for instance). This frontline interaction with the public as well as the increasing involvement of private security on traditional public spaces (such as within City Improvement Districts around the country) constitutes a challenge to current regulatory systems. Another challenge is the sheer pervasiveness and diversity of private security activities. Over the past few decades the private security industry in South Africa has grown to be one of the largest service industries in the country. Employee numbers and budget rival that of the state police:

measured as a percentage of GDP [...] South Africa is home to the largest private security market in the world¹¹

it is now almost impossible to identify any function or responsibility of the public police that is not, somewhere and under some circumstances, assumed and performed by private police in democratic societies.¹²

However, it was the attack on and murder of private security industry guards by other guards during the 2006¹³ industry-wide strike and the inability of PSIRA to respond to it that brought the risks of weak oversight over the industry into sharp focus.¹⁴ The regulatory systems currently in place largely reflect 'a business regulation model rather than a model of public service governance', involving, amongst other things, licensing, certification and minimum standard setting, hence the inability of state regulatory systems to deal with the aftermath of the violent strikes and the Aurora mine incident.¹⁵ In the same way that one may ask of the police 'who guards the guardians?' so one should ask of the guarding industry; and increasingly this lacuna in oversight over the private security industry is becoming apparent.

In light of this, the paper provides an overview of current oversight and accountability mechanisms for the private security industry, including past regulatory provisions. It examines the challenges and limitations of these mechanisms and highlights potential areas of focus to strengthen accountability in the private security industry, thus concluding with recommendations.

Regulating the private security industry: Phases of oversight

According to Braithwaite (2002) 'regulation is what we do when obligations are not being honored.'¹⁶ It is something requiring rules or laws and then enforced by some actor (not necessarily the state), it is 'steering the flow of events'.¹⁷ Regulation can come from a variety of directions and sources – 'regulation occurs in many locations, in many fora', it is a 'product of interactions' not exclusively formal, top-down state control.¹⁸ Regulation, as defined by Black (2003) is:

the sustained and focused attempt to alter the behaviour of others according to defined standards or purposes with the intention of producing a broadly identified outcome or outcomes, and which may involve mechanisms of standard-setting, information-gathering and behaviour-modification.¹⁹

Regulatory systems put into place by some actor also reflect a particular underlying ideology, goal or purpose. For instance, the regulatory systems dealing with the private security industry in the past compared to present systems differ in their purpose and scope. This is largely hinged on the relationship between the state and the industry and how it has evolved as well as, obviously, the nature of the political system in place in the past versus the shift to a new democracy in the 1990s. One could identify three phases of regulation of the private security industry in South Africa: the past regulatory phase was focused predominantly on a professionalization of the industry to prompt the industry into playing a supporting role to the state. Current regulatory systems reflect the desire to continue this project of professionalisation but much focus is placed on the protection of the labour rights of employees and the protection of the public, and rightly so. One could argue that with the move to review current regulatory systems we are moving to a third phase of regulation, one in which we recognise the accountability and oversight deficits of holding individuals accountable for human rights abuses or abuse of power, in light of shifts in property relations, the increasing pluralisation of policing and the increasing use of private security by members of the public.

What follows is a critical review of the first two phases of regulation followed by a discussion of the challenges of moving to a new or third phase of regulation in South Africa.

Past developments and regulation

An exponential growth in the private security industry in South Africa took place from the mid-1970s with estimations of the industry being worth around USD 13 million in 1978 and USD 58 million in 1986.²⁰ The 1970s and 1980s in South Africa was characterised by states of emergency, political turmoil and violent uprisings with state resources (up until 1990) heavily spent on maintaining the apartheid system of segregation. In the midst of the pledge of the African National Congress at the time to make townships 'ungovernable'²¹ and mounting pressure on the state police, in particular, to suppress civil unrest and township violence, the result was that the state police (the then South African Police Force) began to withdraw from the late 1970s from conventional policing duties to focus on maintaining state security and political control. The result was twofold, the private security industry was both actively and passively recruited to 'fill in the gaps' left by the state and legislation was enacted to facilitate the professionalisation of the industry to further promote this. In particular, private security companies were recruited to secure 'national key points' as stipulated by the National Key Points Act of 1980.²² National key points were sites of strategic importance for national security (such as fuel plants and military bases) of which there were 413 official 'Key Points' and 800 other 'semi-Key Points' as stipulated by the Minister of Defence in 1984.²³ The legislation placed the onus on the proprietor of the 'Key Point' to provide security under the supervision of the South African Defence Force – which at the time was allocated as the managing structure for National Key Points.²⁴ The National Key Points legislation allowed for the powers of arrest and search and seizure for security personnel specifically guarding Key Points.²⁵ The legislation effectively created a huge market for security companies in that the proprietors of Key Points who did not want to be seen as supporting the apartheid regime (international oil companies for instance) preferred to outsource their security to companies rather than use their own employees.²⁶ Thus in many instances, the entire security function of strategic facilities was made available to local companies. The industry was forced to professionalise – what was once a rudimentary guarding institution became more paramilitary and specialised, due to the influences of the Defence Force as the managing agent and the legislation enacted to regulate the industry.²⁷ It has been alleged that the apartheid government and private security companies were collaborating in that the government facilitated formal and informal mechanisms of cooperation between the companies and state security structures²⁸ which naturally would also have had an influence on the quality of security provision. What could have prompted this collaboration was a conference held in 1987 entitled *Security – A National Strategy* during which those in attendance – state officials and private security personnel – discussed the possibilities of the security industry playing a role in the governance of security in apartheid South Africa alongside the public sector.

This 'responsibilisation' of the private security industry within Key Points sites had a ripple effect across the industry.²⁹ Clients not involved in the National Key Points legislation but nevertheless

hiring private security for other things (such as cash-in-transit activities) began to expect the same levels of professionalism and expertise of the companies involved in the Key Points, thus influencing the professionalism and militarism of the entire industry at that time. In other words, expectations were created that the special police powers and status granted to Key Points security guards could be extended to others in the industry performing more fundamental street-policing duties. It has been surmised that this 'pioneering' attitude of the industry also contributed to the government creating the first legislation in the late 1980s.

The first legislation aimed at regulating the industry was passed in October 1987 and promulgated in April 1989. It was called the Security Officers Act (92 of 1987) and was established primarily to create the Security Officers' Board. It is in the composition of the Board, as well as the influence of security associations in the process of drafting and promoting the legislation, that one can consider the legislation to be geared towards a form of enforced self-regulation to also root out 'fly-by-night' companies. The Security Officers' Board (SOB) consisted of ten members, six of whom were representatives from the industry itself (employer and employee representatives). Other representatives included the then South African Police and appointees of the then Minister of Law and Order.³⁰ The SOB was essentially created as a body to ensure that security companies, employers and employees registered with it (with certificates issued to that effect) and it would decide who could qualify to be registered or not.³¹ Qualification to register included, amongst other things, no prior convictions or prior violations of the industry's code of conduct.³² Thus the Act made provision for the creation of an industry code of conduct as well as the standardisation of training, and the creation of an inspectorate as the enforcement component of the SOB.³³ The SOB was primarily funded from fees paid by registered companies and security guards. The legislation was, however, flawed in terms of the fact that it excluded a large tranche of the industry – namely in-house security, defined by the Act as services 'rendered by an employee on behalf of his employer [sic]'.³⁴ The degree of self-regulation was also seen as problematic as the inclusion of industry representatives on the SOB rendered the Board subject to vested interests and possible undue influence over regulatory effectiveness.³⁵ Another problem associated with the Act was the presence of the South African Police (SAP) on the SOB which was given wide discretionary powers to choose private security representatives – the Minister of Law and Order would select private security representatives based on a list of candidates compiled by the Commissioner of Police.³⁶ Thus the election of security industry representatives was hinged on the close connections with the SAP rather than an independent process of selection and recruitment.

It has been argued that the initial batch of legislation was for the purpose of developing a relationship with the state to assist in tackling the problems of increasing unrest at the time.³⁷ In other words the 1987 legislation was created to protect the interests of the industry whereas the later legislation (including the amendments of the 1990s) was created to protect the interests of the public hence explaining why the later legislation (to be discussed) takes on a more punitive and exclusionary stance with respect to the treatment of the industry by the new, democratic government.³⁸ The underlying principles of the apartheid and post-apartheid legislation thus reflect the changing regulatory tactics employed by the two state systems, as mentioned.

Post-apartheid size and regulation

The loopholes in the original Act resulted in the Security Officers Amendment Acts of 1992, 1996 and 1997 and the creation of new legislation from 2001.³⁹ The 1992 Amendment facilitated the removal of police representation on the SOB,⁴⁰ as well as granting the SOB more independence and more regulatory powers.⁴¹ The 1996 Amendment⁴² reflects a shift in rhetoric during the transition to a democracy by introducing the new names of the democracy – in terms of the new South African Police Services⁴³ and new titles for the previous Minister of Law and Order and Commissioner of Police. The 1997 Amendment (104 of 1997) came about as a result of a security forum in 1994 during which the transformation of the industry was discussed.⁴⁴ This resulted in the 1997 Amendment Act, amongst other things, restructuring the SOB and including in-house security within the regulatory ambit of the Act. In terms of the former change, the SOB was replaced by a Security Officers' Interim Board (SOIB) pending, at the time, the creation of a new, permanent Board.

The SOIB was mandated to report regularly to the Minister of Safety and Security and the SOIB's composition was changed to include 'members [who ...] are representative of employees who are security officers, employers of such employees and users of security services' but also stipulating that the chairperson and vice-chairperson of the SOIB not be affiliated in any way to the industry.⁴⁵ In this way private citizens were included on the SOIB representing a client's perspective and also reflecting the spirit of participatory governance that was characteristic of much of the transitional period in South Africa, specifically with the creation of new, democratic regulatory systems.⁴⁶ The 1997 Amendment Act thus represents a shift in the underlying principles of the regulation taking place as a result of a shift in government and hence governance mentalities. However, there is general agreement within the private security industry that the changes in legislation took place due to more modest reasons – that is, the fact that the SOB was generally perceived to be mismanaged and failed to live up to its role as regulator and lacked the power to effectively enforce regulation, hence the need for a new Board.⁴⁷

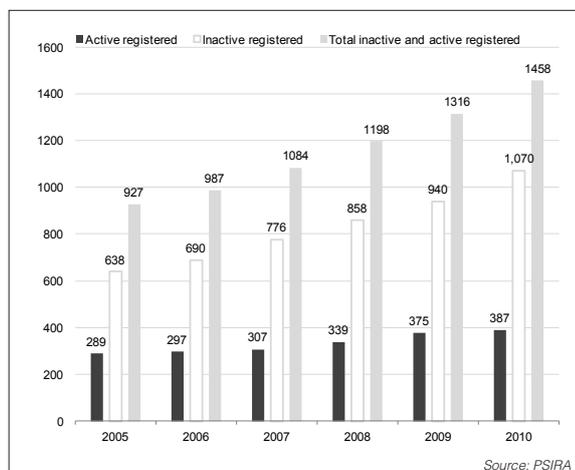
In the meantime, the industry has continued to grow in response to the insecurities associated with the democratic transition, as an avenue for employment for returning liberation army members and the opening up of the economy to foreign interests.⁴⁸ As mentioned, it is one of South Africa's fastest growing industries and by February 2010 had on record 1.4 million security officers and posted an annual turnover of over ZAR 40 billion.⁴⁹

The rapid growth and expansion of the private security industry in South Africa is now an accepted fact that cannot be ignored, argued or wished away.⁵⁰

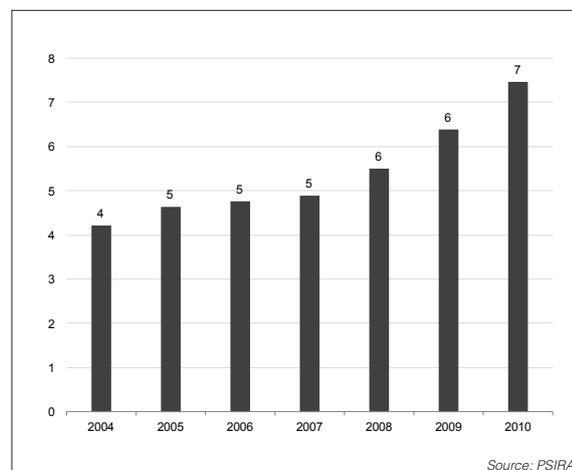
The number of security officers has been steadily increasing since 1997, during which time there were 115 331 active, registered security officers. As at March 2007,⁵¹ according to PSIRA there were 307 343 active, registered security officers and by 2010 the number had risen to 387 273. The SAPS in comparison had 190 199 members as of 31 March 2010.⁵² Graph 1 shows the number of registered security officers from 2005 to 2011 – the number of active and inactive security officers represented in separate categories as well as the total number of both active and inactive security officers.

As one can see, by 2010 there were nearly a million and a half registered security officers in South Africa, although only about a quarter of these were active. Similarly the number of companies has been increasing particularly from 2004, as shown by Graph 2, during which time there were 4 212 companies. By 2010 this number had risen to 7 459 private security companies registered with PSIRA.⁵³

Graph 1
Number of active and inactive registered security officers in South Africa 2005–2010 ('000s)



Graph 2
Number of active registered security businesses in South Africa 2004–2010 ('000s)



According to the Private Security Industry Regulation Act (2001), by security officer is meant any person:

- (a) (i) who is employed by another person, including an organ of State, and who receives or is entitled to receive from such other person any remuneration, reward, fee or benefit, for rendering one or more security services; or
- (ii) who assists in carrying on or conducting the affairs of another security service provider, and who receives or is entitled to receive from such other security service provider, any remuneration reward, fee or benefit, as regards one or more security services;
- (b) who renders a security service under the control of another security service provider and who receives or is entitled to receive from any other person any remuneration, reward, fee or benefit for such service; or
- (c) who or whose services are directly or indirectly made available by another security service provider to any other person, and who receives or is entitled to receive from any other person any remuneration, reward, fee or benefit for rendering one or more security services.⁵⁴

Included in the definition of 'security service' according to the Private Security Industry Regulation Act (2001) are those who are responsible for 'managing, controlling or supervising the rendering' of security services.⁵⁵ In other words, what Table 1 represents is the number of employers and employees working in the security industry, since it was a requirement (with the new legislation) that security managers also be registered as security officers. Apart from these management duties there are a range of services that are defined as a 'security service' by the 2001 legislation. Graph 3 shows the types of security services offered based on the percentage of companies which offer the service.

As on can see from Table 1, the services most offered are guarding and special events security. Although it is not apparent how many private security companies are locally based and how many are based in foreign jurisdictions, it is clear that many of the largest companies in South Africa are foreign-owned. Table 2 represents the top 10 largest private security companies in South Africa as at 2005.

Table 1 Security services offered in South Africa (2005)

Security guards	21%
Special events	13%
Other: manufacturing, locksmiths, in-house, insurance, fire detection, etc.	12%
Security control room	7%
Training	7%
Body guarding	7%
Rendering a security service	6%
Private investigator	6%
C-I-T guards	5%
Armed response	5%
Security consultants	4%
Security equipment installers	4%
Car watch	3%

Source: PSIRA

Table 2 Ten largest private security companies in South Africa (2005)

Company name	No. of security officers employed
1. Fidelity Corporate Services	20 292
2. Securicor	9 928
3. ADT Security Guarding	6 782
4. Magnum-Shield Security Services	6 675
5. Group 4 Falck	5 878
6. Coin Security Group	4 821
7. Enforce Guarding	3 963
8. Chubb & Supergroup	3 475
9. Protea Security Services	3 328
10. Gremick	2 700

Source: PSIRA

Since the changeover to a new dispensation in the early to mid-1990s, South Africa has been considered fertile ground for new investment opportunities, especially in the security market. However, there has been a realisation (prompted by the advice of a key South African security industry player) by major international companies that their involvement in South Africa can never extend to grass roots level simply due to vast cultural differences.⁵⁶ Learning from past mistakes has led them to adopt a sort of laissez-faire approach of ownership, reaping in huge profits without really getting involved in the management of the business.

This is a [billion rand] industry in South Africa, that's why the international companies are starting to buy out the South African companies, they don't make a 100% profit they make 500% profit...⁵⁷

Those who have experienced the takeovers of these companies have noted the lack of interference in the structure and make-up of their company, coupled with the influx of experience and technology that these foreign companies are able to provide. The only real concern is that this continued buying up of local companies will lead to a monopolised private security industry, with a few companies controlling the entire industry. In fact, as Shaw (2002) has pointed out, the industry is stabilising with control being vested into a smaller number of larger companies.⁵⁸ This international involvement in South Africa affairs aroused the concern of the government at around the time of the drafting of the Private Security Industry Regulation Bill. The national security implications of having South Africa's private security industry controlled by foreign powers did not escape the government, and the Minister for Safety and Security stated at the time that all foreign involvement in the South African private security industry would be excluded and that consequently the approximately USD 20 million foreign shareholding would have to be transferred to South African control over a period of five years.⁵⁹

The motivation for this was that the number of private security personnel employed by foreign companies overshadows the public policing and defence agencies in South Africa by a large margin. Having such a large portion of the country's resources owned by foreign companies was not considered to be prudent. Consequently, at the time, clauses were placed into the Bill to prohibit foreign persons from having shares in or any other interest in the ownership of a security firm.⁶⁰ The defence of this policy was that similar legislation existed in many other countries prohibiting non-citizens from being involved in their private security sectors.⁶¹

However, despite the near implementation of this policy the idea was abandoned. A number of factors were responsible for this abandonment. The policy would have hampered an investment protection agreement signed with Britain in 1994 and ratified in 1998. The reputation of South Africa as an investment destination would have been seriously tarnished and the loss of many South African jobs would have resulted. Along with these factors, intensive lobbying, meetings

with governments and stakeholders and a critical meeting between the then Minister of Safety and Security and the representatives of the companies affected took place on 10 October 2001.⁶² The senior representatives of the companies that would have been affected by the new policy (who specifically flew in for the meeting from their respective countries) decided to take a 'firm, but non-confrontational and non-sensationalist stand against the legislation' and succeeded in assuring the government that foreign involvement in South African security provision would not be a threat to national sovereignty and possibly reminding the government that preventing only certain sectors of the market from investing in South Africa would go against free market ideals.⁶³

Today, there is much international involvement, with the main investors being from the United States of America, the United Kingdom and Singapore.⁶⁴ International companies such as G4S, Tyco International (which merged with the American company ADT) and Chubb for instance, have all entered the South African market and established themselves in the provision of security. Mergers and takeovers have therefore been taking place for the past few years.⁶⁵

In terms of the composition of local companies, during the transitional period many members of the South African Police, defence force and ex-combatants involved in the fight for and against the apartheid state migrated to the private sector to further utilise their skills, further boosting the growth of the industry and resulting in a proliferation of small and medium-sized local companies.⁶⁶ It is generally known that many police officers end up in the industry; this could perhaps be substantiated through the statistics revealing the gradual exodus of police officers from the South African Police Service (SAPS). At one stage, ex-police officers were using their retirement or retrenchment packages to start up their own private security companies and then making use of their connections with the SAPS to gather information for their own purposes – that is, for the purposes of their business; however, it is not known to what *extent* this takes place.⁶⁷ Also at one stage private security companies would only recruit those with previous backgrounds in security especially from the South African Police (SAP). It is only since the beginning of the 1990s that this strategy changed.⁶⁸ Former Security Branch, Civil Co-operation Bureau and South African Defence Force personnel seem to have found their way into the industry to some degree.⁶⁹ Military operations in other African countries (such as the Rhodesian bush wars) have led to the creation of a people with military training without an avenue to make use of it, except within the private security industry.⁷⁰

Many criminal activities were, correctly or not, ascribed to resistance to the political dispensation. Thus, by the very nature of their services, and their operational links with the police, it would have been unlikely that they would separate their perspective from that of the government in power over the last 40 plus years.⁷¹

In fact, the industry's reputation was tarnished by the fact that it was regarded by some not as a benefit to the country but as a threat to security in South Africa because of the fact that many right wing military leaders who fought for apartheid (and also those who fought against) were now involved in an industry making up such a huge portion of South Africa's security needs.

There are three options for people who want to destabilise the country: the army, the commandos and the security industry. The first two are covered.⁷²

Currently the threat of a third force is no longer of primary concern as the industry is now being recognised as very much a part of the policing landscape. As mentioned, much of the legislation in the post-apartheid period reflects more of the desire to hold the industry accountable so that it can contribute to democratic policing. What follows is thus a closer look at the regulatory framework which is currently in force to regulate the private security industry.

The Private Security Industry Regulation Act of 2001

The primary legislation regulating the industry is the Private Security Industry Regulation Act (56 of 2001). Its enactment increased the scope of legislation governing the sector and addressed the shortcomings of its predecessors.⁷³ The 2001 Act provides for the establishment of PSIRA (which

will be discussed at a later stage) as well as a Council (consisting of a maximum of five persons) which 'governs and controls' PSIRA.⁷⁴ There is no provision made in the Private Security Industry Regulation Act for private security representation on PSIRA or the Council, nor for representatives outside of the industry who nevertheless have 'direct or indirect financial or personal interest' in the industry.⁷⁵ There is, however, provision in the 2001 Act for the Council to appoint an advisory committee potentially consisting of private security representation to assist in its decision-making.⁷⁶ This exclusion of private security companies on the Council and PSIRA was recognised as a means by which for regulation could take place impartially, as one private security representative explained:

The biggest problem was that the people who were controlling SOB were actually owners of big companies so what would happen I get a contract, I'm just giving an example, I get a contract, so what does the chairman of the SOB do he sends all his dogs to come and open my books they find one mistake and they close it down, that's what was happening.⁷⁷

The legislation provides for a hierarchical system of accountability in that PSIRA is directly accountable to the Council and the Council in turn is directly accountable to the Minister of Safety and Security (now Minister of Police).⁷⁸ PSIRA and the Council are obligated to submit annual reports on activities and finances to the Minister as well as to Parliament.⁷⁹

The Private Security Industry Regulation Act of 2001 increases the ambit of the law through, as mentioned, including both employees (security guards) and employers (contractors and managers) as 'security service' providers. The legislation also extends its mandate by including providers who were previously excluded, such as locksmiths; private investigators; security training providers; manufacturers, importers and distributors of monitoring devices as well as those who monitor electronic security equipment; installers of security equipment; and labour brokers.⁸⁰ What is especially important about the Act is the inclusion of in-house security within its ambit, which was specifically excluded by previous legislation. The Act requires that all 'security service providers' – that is any person 'who renders a security service to another for remuneration, reward, fee or benefit' be registered with PSIRA.⁸¹ The Act makes clear who is included and excluded from registration – only South African citizens or those with permanent resident status may register to perform a security service.⁸² In terms of Section 21(1) of the Private Security Regulation Act: 'an application for registration [...] must be accompanied by [...] a clear and complete set of fingerprints.' The fingerprints are then submitted to the SAPS which is responsible for screening applicants for previous convictions. Persons registering must be over the age of 18; must be 'mentally sound'; must adhere to 'relevant training requirement'; not be in possession of a criminal record for at least ten years or of an improper conduct record for at least five years.⁸³ It also clearly fills up the gaps in terms of the revolving door of state and private security personnel in that a clearance certificate is needed for any current or 'former member of any official military, security, police or intelligence force or service in South Africa or elsewhere'.⁸⁴ It is interesting to note as well that private security companies must also register with PSIRA, as well as register in their individual capacities offering a security service, and that they should conform to 'the prescribed requirements in respect of the infrastructure and capacity necessary to render a security service'.⁸⁵ It seems that this provision has been specifically added to deter so-called 'fly-by-night' companies.

It seems the over-arching goal of the legislation more broadly and PSIRA specifically is to legitimise and professionalise the private security industry in order that it can contribute to the good of society, particularly with regards to 'safety and security in the country'.⁸⁶ The new legislation has, in particular, granted a range of powers and duties to PSIRA to give effect to this goal. As mentioned, PSIRA is tasked with receiving registrations and thus to ensure that those applying conform to the prescriptions of the Act. PSIRA thus plays a regulatory role in terms of who may enter the security industry through rejecting, suspending or withdrawing registration. It is also involved in protecting the rights of those who are exploitable – the security guards. In fact the Private Security Industry Regulation Act specifically mandates PSIRA 'to protect and assist security officers and other employees against or in regard to acts, practices and consequences of exploitation or abuse'.⁸⁷ PSIRA overall has 35 functions as outlined by Section 4 of the Act. All PSIRA officials have peace

officer status and are expected to conduct regular inspections of private security company premises and/or respond to complaints made against a private security company which come through their Complaints and Help Desk – called ‘triggered inspections’.⁸⁸ As one PSIRA inspector explained:

We’re a statutory body placed by the government in terms of the legislation [...] Act 56 of 2001 and our job function is guided by the legislation, that’s how we operate strictly within that function. We are basically policing the private security industry by that we do audits or inspections at the various companies we see whether they comply with the legislation in terms of the registration, see whether the guards that they’re employing are registered that they are trained in terms of the Act and if they are paid correctly as well. Everybody that needs to or wants to be involved in the security set-up, being it an individual must be registered with us, businesses, being it physical guarding, alarm installing, locksmiths, private detectives, body guarding, all that falls under that category, and also people that [are] monitoring security signals need to be registered with us as well. [Those] are all the categories that we are ... policing and regulating.⁸⁹

The use of the term ‘policing’ is accurate since, as mentioned, PSIRA inspectors have peace officer status, allowing them to affect arrests and elicit the necessary information during their inspections, including accessing all documents and data related to employees, wages, shifts, firearms, training and client contracts.⁹⁰

[T]hey [PSIRA] can walk in here right now and they can say to me look we are to do an inspection and I must take out and show I mean I can’t say to them that I am not ready to now or whatever you know. They’ve got everything to protect them they’ve got everything to back them up they’ve got [...] the whole legislation behind them to make it.⁹¹

There are those that are saying that we support the new Act because for instance we have closed the loopholes that were in the 1987 Act, things like registration for instance. If you paid R9.50 [levy paid to PSIRA to register], whether you were a security officer who never received training, whether you’ve never done managerial skills or your courses as long as we got that R9.50 nobody could stop you from registering your business. But now its difficult you must have infrastructure, you must have tax clearance, you must have partnership agreements, you must have all those documents...⁹²

PSIRA inspectors, in essence, may impose fines, penalties and/or interdicts to prevent continued operation and may also open charge sheets if it is found that a private security employer or employee has violated any provision of the legislation.⁹³ PSIRA thus may instigate criminal proceedings against those that do not adhere to the legislation since the onus has been placed on private security companies to ensure that they are registered, inform PSIRA of name changes, employee changes and so forth and comply with the legislation in every way.⁹⁴ There is also a moral censure built into the regulatory tools available to PSIRA in that lists of defaulting companies may be published for public information. Yet there is a practical aspect to this as well since the legislation also makes provision for the onus to be placed on consumers to ensure that they only hire registered companies with registered employees in possession of accredited training certificates and receiving minimum wages in line with Department of Labour provisions.⁹⁵ Consumers are expected to request this information and ensure that private security companies are above board and equipped for the job at hand.⁹⁶

There are challenges however, with respect to regulating the industry in practice. Currently there is no system of on-going vetting and registration of private security employees and companies by PSIRA. Once an employee is registered they are registered ‘for life’.⁹⁷ This inevitably results in PSIRA being unable to keep track of who is still actively working, who has exited the industry or even retired/deceased⁹⁸ which ultimately gives unscrupulous operators and employees the opportunity to manipulate the system to further their illicit activities. A security officer will remain registered with

PSIRA indefinitely, unless his/her registration is withdrawn by PSIRA since there is no obligation for an officer to renew registration.⁹⁹ Section 22 of the 2001 Act states that:

The Minister may prescribe procedures and principles in respect of periodic applications for the renewal of registration by registered security service providers and the conditions and requirements for the granting of such applications.

However, there are no procedures in place in terms of enforcing this section to prompt regular clearances of security personnel through the submission of fingerprints to PSIRA. It has been pointed out, however, that should this be enforced it may be very difficult to require that SAPS screen the approximately one million security guards' fingerprints currently on PSIRA's database.¹⁰⁰

While the initial checks prior to registration¹⁰¹ can prevent certain persons such as those with a criminal record from entering the industry,¹⁰² subsequent criminal activity might go unnoticed. There are no follow-ups or periodic checks on registered employees. Neither are individual employees deregistered or deactivated after a certain period of inactivity in the industry. The mix of active and inactive employees within the industry and the constant flow between them impacts both on the ability of the industry to protect itself against criminal elements but also on the ability of the industry to maintain accepted and up-to-date training standards.

The PSIRA Complaints and Help Desk could be developed as a valuable tool for 'triggered' inspections of misconducts in the public sphere. The authority has a full-time Complaints and Help Desk at its Head Office, as well as at the KwaZulu-Natal branch. This is catered to manage general enquiries and to register complaints that need further investigation by inspectors.¹⁰³ PSIRA provides statistical information in its annual report pertaining to the number of enquiries and complaints received at Head Office, KwaZulu-Natal and Mthatha during the period under review¹⁰⁴ but there is no differentiation between complaints or enquiries and nor is there any indication of what complaints or queries pertain to or how they were addressed or subsequently resolved. Currently, inspections are focused on employers and fulfil more of an administrative role.¹⁰⁵ However, PSIRA has stated its intention to advocate for the establishment of an office of the Ombudsman for the private security industry to address customer complaints, which will free up capacity to become more focused on Code of Conduct violations.¹⁰⁶

There are also capacity constraints on PSIRA which hinder its ability to fulfil its mandate. This reduces its ability to conduct thorough and effective inspections of the security companies and their employees.¹⁰⁷ At the time of writing, there were 37 inspectors supported by nine administrative support staff in the four regional branches in the Western Cape, KwaZulu-Natal and the Eastern Cape along with a head office in Pretoria¹⁰⁸ responsible for an industry of 387,273 employees across 7 459 registered businesses. If PSIRA is to take on a more robust oversight role this capacity will need to be increased in terms of numbers and skills.

In sum, research conducted by Minnaar and Pillay in 2007¹⁰⁹ found that while PSIRA's inspectors conducted investigations and criminal cases were handed over to the SAPS, deficits were clearly apparent:

- The limited capacity aggravated numerous vacancies of inspectors and investigators, which meant that, where inspections were taking place, they focused on checking registrations of employees and that companies were fulfilling labour obligations;
- The collection of evidence was poor thus resulting in little or no information for SAPS to build its cases for prosecution;
- Significant gaps were apparent in the PSIRA database. In particular, there was an absence of a database of companies which had been deregistered or suspended; and
- Investigations were mostly complaints-driven, came predominantly from the public and consisted mostly of complaints about labour issues, working conditions or low wages.

*Private security industry regulations of 2002*¹¹⁰

The Private Security Industry Regulations provides guidelines on how to conform to the Private Security Industry Regulation Act of 2001 through outlining the following:

- Application requirements for registration;
- Training requirements;
- Procedures with regards to clearance certificate submissions (allowing former members of state policing or military institutions to become security service providers);
- Infrastructure requirements in order to register as a private security company (for example, that there is an administrative office and skilled administrative staff, facilities for paying wages, appropriate facilities such as vehicles, if applicable);
- Procedures with regards to applications where there is a change of name and status or any other pertinent change of security service provider information;
- Provisos around the keeping of documents and records for reporting purposes; and
- Rules with regards to the provision of uniforms, insignia and badges (which are not to be identical or similar to state police insignia), licensed firearms and so forth.

There is a change from past practices in Section 3(2) of the Regulations, in which it is stated that 'every natural person applying for registration as a security service provider must have successfully completed [...] at least the training course described and recognised as "Grade E"' and that security employers or managers are required to have at least a Grade B.¹¹¹ Ordinarily security employers or managers would not have been trained and graded in what is essentially training for security officers. When the legislation was enacted there was an outcry from the private security industry in that many security managers with years of experience and other qualifications (such as academic qualifications) were required to undergo this training in order to retain their registration with PSIRA. The result was that a moratorium was placed on this requirement for a period of approximately one year, during which time the submission of a curriculum vitae was accepted.

Section 13(5) and (6) is also worth noting since it is also a change from past practices in that it requires that a security officer may not use his/her own firearm while employed by the security company. The private security company is responsible for supplying firearms to its employees.¹¹² This may be proving difficult to enforce due to the logistical requirements of requiring a guard to sign in weapons before and after a shift as well as storing the weapons in appropriate and secure storage facilities.¹¹³ In fact there are a range of issues that need to be grappled with in terms of the use and abuse of firearms in the security industry. A review of specific legislation with regards to firearms use as pertaining to private security companies will be made at a later stage.

*Code of Conduct for Security Service Providers of 2003*¹¹⁴

The Code of Conduct¹¹⁵ stems from both ideological concerns about the nature and reputation of the security industry as well as practical application of rules and norms that will ensure compliance to the stated aims of the Private Security Industry Regulation Act of 2001. Minnaar (2007) points out that the Code of Conduct is applicable to all security service providers regardless of whether they are registered with PSIRA or not and also regardless of whether they were in South Africa or not when the 'conduct was committed'.¹¹⁶ The Code of Conduct is essentially a set of binding rules for all private security employers and employees. Inter alia it provides that security industry personnel refrain from behaving in 'a manner which will or may in any manner whatsoever further encourage the commission of an offence; or which may unlawfully endanger the safety or security of any person or property'.¹¹⁷ The Code of Conduct also explicitly states the general obligations of the private security industry towards PSIRA, state security agencies, the public, clients and other private security companies, such as: preventing crime; only using minimal force in terms of the restrictions of the law; not holding oneself as 'having authority, power, status, capacity, level of training, accreditation, registration, qualification or experience which he or she [or the private security company] does not have'; lawfully possessing a firearm and using it as permitted by the law; and so forth.¹¹⁸ What is also pertinent is the obligation of private security companies not to

'break open or enter premises, conduct a search, seize property, arrest, detain, restrain, interrogate, delay, threaten, injure or cause the death of any person, demand information or documentation from any person, or infringe the privacy of the communications of any person, unless such conduct is reasonably necessary in the circumstances and is permitted in terms of law'.¹¹⁹ In light of the powers afforded to private security guards as outlined by the Criminal Procedure Act¹²⁰, the Code of Conduct does not outright ban the use of threats, injury or even death in Section 8(2), as outlined above, as it would then contradict the powers as afforded by this legislation. PSIRA is tasked with enforcing the Code of Conduct.¹²¹ Its powers of sanction with regard to the Code of Conduct include the issuing of a warning or a reprimand to anyone found guilty of breaching the Code of Conduct; suspending registration for a period not exceeding six months; withdrawing registration; imposing fines; and publishing 'details of the conviction of improper conduct and of any penalty that was imposed for the specific breach'.¹²² As one can see, despite the potential for abuse by private security companies, as Minnaar (2007) points out the enforcement of the Code of Conduct by PSIRA is limited – in other words PSIRA cannot criminally prosecute private security companies but would rely on other authorities to take this up.¹²³

In sum, according to a series of focus groups run by Minnaar and Pillay (2007) with the industry to better understand the challenges facing PSIRA, the responses were indicative of the limitations of PSIRA in arguably one of the most important areas of the Act. This was underscored by the fact that very few of the participants in the groups had ever read the Code:

- There were no effective sanctions for misconduct particularly excessive use of force, shootings and strike violence;
- There was a lack of clarity of the role of PSIRA (if any) in monitoring 'private policing' activities;
- There was poor compliance of companies and their personnel with respect to all of the provisions in the Code of Conduct augmented by a perception that compliance and adherence was 'only voluntary'; and
- The Code of Conduct was undermined by perceptions about its lack of enforceability. There was a perception that sanctions are applied selectively and that the sanctions are not strong enough.

Private Security Industry Levies Act of 2002¹²⁴

The Private Security Industry Levies Act 23 of 2002 supplemented the 2001 Act with the requirement that formal levies be paid by security companies and their employees, failure of which could result in the suspension of that company. It is interesting to note that PSIRA is financially dependent on the security industry for its funding received through monthly levies, interest and penalties paid by private security companies for non-compliance with the legislation. The Levies Act simply makes provision for the collection of these monies, the management of levies and consequences of non-payment.¹²⁵

Since PSIRA's operations are largely dependent on these levies it is clear that the legislation is an attempt to stringently enforce the receipt of finances. The possible problem with relying on private security company fees is that PSIRA may be incentivised to concentrate on initial registration and regular fee payments over and above other regulatory duties. According to the opinion of one private security representative:

you pay your fees to PSIRA regularly and they will stay off your back, no problem. If you skip or jump your fees for two three months [...] then all of a sudden they will contact you and come here for inspections and they'll, you know, be 'on your case' if I can put it that way.¹²⁶

Suggestions have been made that it would perhaps be more pertinent for another state agency to take this on, such as the Department of Labour or an industry bargaining council (as currently exists in many industries such as the Steel and Engineering Industries Federation), so relieving PSIRA from performing administrative duties, severing the direct incentive to ensure payment

of fees and focusing more on overseeing and holding the industry accountable to inter alia its Code of Conduct.¹²⁷ This will realign PSIRA with its vision and mission statement and more importantly the Constitution. The granting of government subsidies to PSIRA is also another option in light of the over-reliance on private security company levies and the fact that PSIRA is under-resourced.

Training

The Security Officers' Board Training Regulations 1992 provide for certificating security personnel who have completed training. The training regulations are set out in the Security Officers Act 92 of 1987 Section 32 which is still in force and quite extensive. Regulation 3 of the Training of Security Officers Regulations, 1992 clearly states that the Security Officers Board which is now PSIRA 'shall, for the purposes of the promotion of the training of security officers determine: different training levels for different categories or grades of security officers' and contents of training courses 'most suitable for the training of security officers for the different categories or grades'.¹²⁸

In terms of the Private Security Industry Regulation Act, 2001, one of PSIRA's functions is to 'take such steps as may be expedient or necessary [...] to ensure a high quality of training', including, amongst other things, granting and withdrawing of accreditation of security training institutions; 'monitoring and auditing' of quality of training and verifying the authenticity of training certificates.¹²⁹ In general therefore PSIRA has to ensure that private security companies maintain a certain standard and give effect, where applicable, to the provisions of the Training of Security Officers Regulations of 1992.¹³⁰ But in practice, according to Minnaar (2004) there seems to be low standards of training within the industry as a whole, as well as low requirements for the recruitment of security officers.¹³¹ At one stage there was also a particular problem with the number of illegal training centres operating around the country. Although PSIRA conducts regular inspections of private security companies including training centres it is not clear to what extent illegal training centres are still in operation.¹³²

According to the Private Security Industry Regulation Act of 2001, what is missing from the list of requirements for registration is any minimum level of education to be registered as a security officer.¹³³ This has two diverging implications. On the one hand private security companies provide a large source of employment for a number of previously disadvantaged groups without the advantages or opportunities of having secondary school education. On the other hand, this has implications for the quality of service provision due to lack of education, thus the level of training and standards of training would have to compensate for this deficit. However, it seems that in practice, training is by no means delivered equitably across the board. For instance, consider the following statements. The first statement is in reference to the training practices of a large, international private security company, the latter two statements refer to the training standards in the private security industry as a whole:

You know before security, beginning security used to be chips, anybody could just come, 'right you've done your training there you are a security officer'. Not anymore [...] the liability covers are so high that they are actually having to seriously monitor their recruitment process, and I know their own training schools out of maybe a class of 100 only 20 probably make it through. The guys are getting strict now; it's difficult to get in security and then every year having to go through integral testing for a security guard...other companies are not as strict as that.¹³⁴

OK, the standard Grade E to C courses as we know it; they're all a week each. So if you come in and you want to do from E to C it will take you three weeks to complete all three of the courses.¹³⁵

the standard of training within the security industry is not very high. All the guys do is get a module, read it, write an exam and get a certificate and suddenly they're a qualified security officer.¹³⁶

It is clear that there is a disparity in terms of training standards, with individual private security companies taking more initiative to train their officers mostly in terms of liability concerns. However, it seems as if this situation is changing as PSIRA is attempting to impact on the quality of training through its engagement with the Safety and Security Sector Education and Training Authority (SASSETA), which is a national training authority as established by the Skills Developments Act of 1998.¹³⁷ In 2005 SASSETA became the sole quality assurance body for the private security industry. This agreement was extended in August 2008 for a further three years.¹³⁸ In terms of the agreement, SASSETA, as a South African Qualifications Authority (SAQA) Accredited Education, Training and Quality Assurance body, will quality-assure all education and training in the security industry, whilst PSIRA will register security training providers and security service providers who wish to operate in the security industry. The agreement between PSIRA and SASSETA resulted in the alignment of the accredited courses in terms of the Training of Security Officers Regulations, 1992 and the National Qualifications Framework-Registered Qualifications. This meant prior learning was recognised and it also formed the basis for the new statutory training qualifications for all private security service providers.¹³⁹ In terms of PSIRA's Annual Report of 2006/2007, attempts were being made to align private security training standards with national standards which would entail the Training of Security Officer Regulations of 1992 being replaced with an 'outcomes-based system', of which the quality would be assured by SASSETA.¹⁴⁰ Also, a new specialist skills programme was set up towards the end of 2007 to include specialist security programmes in replacement of the old grading system, such as, for instance, Grade E guards being categorised as SASSETA E or 'patrol security officers' and Grade D guards being categorised as SASSETA D or 'access control officers', as well as specialist groupings such as 'armed reaction officer', 'assets-in-transit officer' and so forth.¹⁴¹

A problem with trying to set up and maintain higher standards of training is that even if this is done, it is not the case that private security companies will train their guards above a Grade E. Very often private security company contracts are short-term and oftentimes it is not worth investing in training, particularly if staff members are on short-term contracts for small contracts:

My training budget for 20 people is huge, it's nearly R200 000 a year, send them on one course and it costs R6000–8000.¹⁴²

Firearms control

The use of firearms within the private security industry is regulated by the Firearms Control Act of 2000 and the Regulations of 2004 (which were implemented in mid-2004).¹⁴³ The firearms control legislation requires that security personnel should be trained at an accredited training facility and acquire a competency certificate before being issued with a firearm (by a private security company).¹⁴⁴ In order to qualify for a competency certificate (which must be renewed every five years¹⁴⁵) one must, for instance, be a South African citizen, 'demonstrate knowledge of the firearms legislation [...] be of stable mental condition [and] not inclined to violence', not have been convicted (within or outside of South Africa) of a range of offences which are outlined by the Act and have completed a 'prescribed test on knowledge of this Act', completed training and tests with regards to handling a firearm as well as training and tests for using a firearm in the course of security duties.¹⁴⁶ What is also interesting is that only persons 21 years of age and older may be issued with a firearm – this would explain why some private security companies prefer to hire people no younger than 21; see discussion on self-regulation below.¹⁴⁷ Within Section 20 of the Firearms Control Act reference is made specifically to those intending to make use of firearms for business purposes and the onus has also been placed on private security companies to keep a register of all its firearms and to make provision for the storage and/or transportation of firearms.¹⁴⁸

In a study conducted by Minnaar (2008) in 2007 during which the views of a number of private security company role-players were elicited on the challenges facing the security industry, the following issues were identified in relation to the use and regulation of firearms in the security industry:

- Firearms were not being effectively monitored with respect to firearms being issued to 'untrained, unqualified and unlicensed staff';

- There was a lack of effective regulation by PSIRA of the Firearms Control Act (2000) and supporting regulations (2004);
- There was a lack of a database for the registering of private security company firearms (despite legislative provision for this database);
- The lack of effective inspection of firearm serial numbers and the dependence of PSIRA on the SAPS in respect to dealing with misconduct (in terms of the Firearms Control Act, only the SAPS is legally entitled to conduct firearms inspections); and
- There were negative perceptions by the private security companies, viewing the firearms controls as 'just another moneymaking racket'.¹⁴⁹

Other issues raised by Minnaar (2008) include the fact that, amongst other things, once the legislation was implemented there were initially backlogs in accrediting firearms trainers; processing of Proficiency and Competency certificates (private security companies had to undergo two accreditation processes to acquire firearms first through SASSETA and then through the SAPS Central Firearms Registry); and in the processing of firearms licenses.¹⁵⁰

Normatively speaking, the legislation does regulate firearms and it has, in principle, strengthened regulatory controls over firearms usage in the private security companies by placing increasing demands on them to justify their use of firearms and to regulate the manner in which firearms in their possession are used.¹⁵¹ But as has been pointed out by Minnaar (2008), in practice the very nature of the industry sometimes precludes private security companies from adhering to the legislation. For instance, companies may tender for a contract, win the contract but then be expected to provide a certain number of armed guards in a short space of time. Unless the company is a large company with a number of licenced guards on hand, it would be difficult for the company to apply for licenses before the award of the tender. There is a huge amount of pressure for companies to live up to the contract after it has been awarded, resulting in the possibility of companies – especially small ones – not adhering to the legislation.¹⁵² Another issue was identified by private security companies with regards to the provisos that firearms may only be used for business purposes and may only be used by the person authorised to use that firearm. Security officers are prohibited from carrying their firearms while off-duty and conversely not use private firearms when on duty.¹⁵³ However, as outlined below:

The contentious issue at the moment is the firearm issue, its not so much that security companies object to purchasing an additional 100 firearms but what is concerning us is that a lot of the security companies basically what a lot of the security companies were doing were employing individuals who obtained their own firearm therefore you would utilise him and his firearm and then obviously pay him a fee because he was using his own firearm now that the legislation has turned around and said that the security company will provide the firearm and he will not be permitted you are now doubling the amount of firearms that are actually out there.¹⁵⁴

Private security companies are the license holders for the firearms issued to their employees. This in theory is an effective means of regulating since private security companies will have to ensure that all those who are issued with firearms are competent and capable, failing which the company could lose its business firearms license, however, this is not practical especially for smaller companies.¹⁵⁵ Security guards could previously use their own firearms and be hired by the private security company 'as is', since by having a firearm the guard would have already have had to undergo procedures to receive a competency certificate individually. Now however, the private security companies have to supply their own firearms, training and storage to obtain a business firearms licence, which is costly.¹⁵⁶

The oversight role of PSIRA with respect to firearms can be developed and strengthened in the new legislation. According to PSIRA, 13 service providers were arrested for firearm-related contraventions. In addition to this, PSIRA participated together with the SAPS in the seizure of 244 firearms.¹⁵⁷ This figure seems negligible considering that in 2003, it was reported that out of the 1 643 operational security companies there was a total of 58 981 firearms in their possession.¹⁵⁸

Also, data on the number of firearms lost by security company employees is not publicly available.¹⁵⁹ According to the SAPS, 11 982 firearms were reported lost or stolen in 2009/2010.¹⁶⁰ What is unknown is how many of these lost or stolen firearms were lost or stolen from the private security industry. The loss or theft of company firearms is most frequent in the assets-in-transit (AIT) sector as firearms are typically stolen during successful heists. This is because these individual employees are usually armed while transporting assets and may be more likely to be targeted by armed attackers than other private security officers. According to Lamb (2008), AIT heists become a valuable indication of firearms diversions in light of the lack of data on firearms losses in the industry.¹⁶¹ There were 358 reported cases of AIT heists countrywide in the 2009/2010 year according to the SAPS.¹⁶² It is estimated by AIT companies that their vehicles carry an average of two to three firearms meaning that with the number of AIT vehicles attacked in the period 2009/2010 (assuming each carried 2.5 firearms), this would mean that approximately 895 firearms would have been stolen.¹⁶³ There has been a decline in the number of firearms lost as a result of these heists over the years but more needs to be done since they account for a substantial amount of firearm loss to the industry.

Another way in which firearms can be diverted is when security companies 'lose their authorisation and go out of business. When security companies are deregistered their firearm licenses are not automatically cancelled, as required by law'.¹⁶⁴ The reason for this is unknown and needs to be addressed in order to curb the diversion of firearms out of the industry. According to Lamb (2008) it may also be the case that companies register and then deregister so as to obtain licensed firearms.¹⁶⁵ PSIRA has no way of reviewing the whereabouts of firearms after a company has deregistered and it also does not take account of all the firearms in the company before registration is withdrawn.¹⁶⁶ By contrast, SAPS firearm loss is carefully monitored and increases in firearm loss generate significant public debate. The SAPS are constantly being asked to strengthen their systems of firearm management and control and this data provides a reliable indicator of the functioning of these systems. The same standards of control and review assessed by available data on numbers of firearms across the industry and the loss or theft of such firearms should apply to the private security industry as well. There is thus a need for closer coordination with the firearms registrar.¹⁶⁷

*In the courts*¹⁶⁸

In light of the Aurora Grootvlei case, it seems that based on a review of court cases private security companies may be held accountable for their actions through criminal or civil cases brought against them. A review of court cases conducted by one of the authors reveal the way in which the courts are utilised, in that cases appearing in courts may involve: individual security guards for committing some offence; private security companies for unfair treatment of employees; challenges to the legislation or trade unions by private security companies or individuals regarding employment regulations or other objections to the legislation; and cases of vicarious liability where a private security company is held liable for the actions of an employee. Cases of vicarious liability usually involve one of two issues – either a guard was acting criminally and the client has claimed for damages or loss or a guard was acting within the scope of his duties which resulted in an injury or damage. In terms of the former scenario, one case of vicarious liability, for instance, involved a bus company filing for damages against the private security company after two security guards were apparently involved in damaging the buses they were meant to guard.¹⁶⁹ Similarly a private security company whose employee was accused of stealing foreign currency of a client (which the guard was meant to be guarding) resulted in the company having to pay back the stolen money to the client.¹⁷⁰

In terms of the latter scenario, a security guard shot and killed, in self-defence, a suspected burglar. The parents of the deceased laid a case against the private security company for limited liability but it was found that the guard was within his rights to protect himself and his actions were not considered to be excessive.¹⁷¹ Another case linked to firearms ownership involved a security guard shooting a fleeing suspected burglar resulting in him becoming a paraplegic. The private security company was held vicariously liable but claimed that they were not responsible due to the fact that

the guard had used his personal firearm which the private security company claimed they were not aware he possessed. Despite this the company was still held liable because the guard was acting within the scope of his employment when the incident took place.¹⁷² It is clear that the courts may be an avenue for regress, but not whether this has a strong regulatory control over private security companies especially in terms of grass roots actions of security guards.

Self-regulation

The primary means of regulation in the 1980s, preceding the legislation enacted in the late 1980s, was self-regulation through security associations. The industry organised itself into a number of security associations. Some of these associations were fairly recently formed during the late 1990s, such as the South African Black Security Employers' Association (SABSEA) while most were formed in the 1970s and 1980s. The oldest association, the Institution of Fire Engineers have minutes dating back to 1950. The most influential and largest security association – the Security Association of South Africa (SASA) – was formed in 1965 'to develop high standards on a self-regulatory framework for the private security industry' where none had existed before.¹⁷³ SASA was established particularly to develop a standard of ethical professionalism and the older security associations were fundamentally influential in developing the initial legal framework for the system of state regulation in the 1980s. For instance, the older security associations, along with individual private security companies, were instrumental in advocating for the formation of the first state regulatory mechanism – the Security Officers' Board.¹⁷⁴ The associations have also been key players in the drafting of the older legislation, for instance, the South African Institute of Security (SAIS), formed in 1978, claim responsibility for drafting the initial set of training standards for the industry.¹⁷⁵ The industry during the apartheid days can be understood as mostly regulated by a system of 'club governance'.¹⁷⁶ This idea stems from the fact that initially private security companies primarily involved old boy networks involving those with police and/or military backgrounds. With the onset of the new democratic dispensation more and more private security companies were being created by those with business expertise rather than security expertise per se.

Today there are a number of security associations representing the diverse needs of employees, employers and specialist services (locksmiths associations for instance). These associations usually have their own codes of conduct or requirements to which members have to adhere.¹⁷⁷ Membership of security associations is voluntary and the type of regulation is purely moral censure – with exclusion from an association the primary form of 'punishment' for transgressing private security companies. The security associations can be thought of as an expression of market accountability, in that unprofessional or illegally operating private security companies give the entire industry a bad reputation, impacting on clientele and profits. Because of the diversity of interests which they represent one will often find a private security company or an individual being a member of more than one association since the benefits include the opportunity to network with others and, especially during the drafting of the new legislation, to discuss the implications of the new regulatory regime on costs and practices.

Apart from the self-regulative capacity of security associations individual private security companies may also develop and implement a range of strategies to regulate and control employees. Since PSIRA only performs one background check of an individual upon initial registration (and the SAPS is responsible for conducting a fingerprint analysis) many of the larger private security companies which can afford to do so have taken the initiative to ensure that employees are 'employable'. This is in light of the sensitive issue of indemnity:

and the new legislation is the fingerprint check and the rejection of the individual if he's got a previous conviction, but of course that doesn't help if he doesn't have a previous record but he is about to commit an offence.¹⁷⁸

Private security guards are very often at the frontline of interaction with the public and company policies may play a role in disciplining employees over and above the demands of the legislation. A security guard using excessive force and injuring a client or a member of the public during the

course of his or her duties, for instance could have a criminal charge laid against him or her or civil action could be taken.¹⁷⁹ Private security companies may protect themselves through public liability insurance, but this is costly and would have to be extensive considering that companies may be exposed to civil liability claims on a daily basis – it is clear that not all companies would be able to afford this, therefore they would have to adopt other strategies to ensure that their employees do not transgress the law.¹⁸⁰ For instance, some private security companies conduct literacy tests, psychometric tests, drug tests and/or lie detector tests.¹⁸¹ As mentioned, they may instigate training over and above minimum training standards and/or provide particular types of additional training depending on the nature of the security activity such as first-aid training, public relations training, budget skilling and night orientation training.¹⁸² They may conduct their own background checks, only hire those who are over 21 years of age (despite the legislation requiring 18 to be the minimum age) as well as ensuring that those they employ have matriculated as the minimum educational standard.

They may ensure that none of their guards are armed, particularly if working in public spaces, not only in terms of liability issues but also in terms of the safety of employees:

Nine times out of ten [arming guards] attracts trouble because basically the would-be criminals come looking for the weapons, I mean you see so many security guards being shot for their weapons [...] let's assume that something happens, we had a close call [...] four or five guys with AK-47s [...] we got there just after they left and we chased them down the road and they ended up running across the railway track [...] do we chase them down the road firing our pistols and they fire their machine guns back at you? What's it all about? So eventually what we're saying to ourselves is all we can do, is to rock up, observe and call the police. There is nothing else you can do unless you're willing to have a second world war.¹⁸³

The above quote also reflects the growing challenges faced by private security companies as they move, more and more, into complex and dangerous situations in which they become the primary port of call in public spaces. What follows is a reflection on the implications of developing a third phase of regulation in South Africa in light of these challenges.

A third phase of oversight? Future prospects

There are a number of challenges currently facing the industry, one of which is the increased pluralisation of policing as private security is shifting more of its activities onto public spaces due to, amongst other things, levels of insecurity and the public placing more and more demands on the industry. As private security is expected to do more, it is confronted with more opportunities for things to go wrong in terms of individuals within the industry committing abuses.

In terms of the increasing pluralisation of policing, many countries throughout the world, including South Africa, have witnessed a rise in so-called 'plural policing' as policing activities have consistently become privatised and 'multilateralised'.¹⁸⁴ With the movement of private policing into public spaces in South Africa, plural policing regulation and accountability become more of a challenge.¹⁸⁵ One could in fact ascribe three challenges stemming from the rise of plural policing: there is an empirical challenge, in that the increasingly pluralised nature of private-public policing presents problems with respect to the networking of diverse actors in terms of their differing mandates, who they work for and where, particularly in light of the tendencies to produce policing on an inequitable basis – with some neighbourhoods experiencing more active policing/security provision than others. The second challenge is what Shearing (2006) calls the problem of collective blindness in that there is a refusal to acknowledge the rise of what Macauley (1986) calls 'private governments'.¹⁸⁶ The increasing privatisation of policing, the rise of plural policing networks catering predominantly to areas of socio-economic value are often not 'seen' as a challenge to policy-makers and practitioners since, as Shearing (2006) argues, the paradigm of state-centric policing predominates.¹⁸⁷ This relates to the third challenge – the conceptual challenge. Even if private governments and increasingly complex plural policing environments are recognised, those with a

state-centric understanding of policing will also lack the conceptual tools to resolve governance, and regulatory and accountability dilemmas that arise from these. As the private security industry seeks to capture more market share positioning itself for greater public roles, forms partnerships with government in the form of municipal and city improvement districts¹⁸⁸ that are common across South Africa and lobbies for state funding the line between private and public becomes less clear. This needs to be recognised. What also needs to be recognised is the state's influence and involvement in polycentric security governance arrangements has altered and in some respects diminished¹⁸⁹ so too has its role changed and diminished in terms of its ability to ensure that plural policing networks are held democratically accountable. As Walker (2002) has stated:

The dispersal of policing authority, the entrenched protection of fundamental rights and the creation of a multi-faceted framework of accountability are no longer within the exclusive power of the state.¹⁹⁰

Furthermore the complexities of plural policing networks create what is called the 'knowledge problem' whereby the state is prevented from learning how complex and impassable 'social and economic subsystems' function and where 'tiers of responsibility' become difficult to disentangle thus preventing effective monitoring.¹⁹¹ Added to the knowledge problem is the 'power problem' where the state also lacks the powers and 'instruments of policy' to regulate these complex systems.¹⁹² In policing terms then, the plurality of security providers has rendered current accountability mechanisms inadequate since the means of regulation, which may be top-down and compartmentalised, may not match the fluidity and plural nature of new systems of governance.¹⁹³ In others words, the instruments used by the state to regulate may be inappropriate and/or not sophisticated enough.¹⁹⁴ Creating an adequate regulatory framework therefore requires a departure from a conventional state-centric approach where this duty is simply allocated to the state, since the state may merely be one possible institution within a range of others operating in complex 'networks'.¹⁹⁵ Stenning (2009) in a recent article reviewing the 'story' of the governance and accountability of plural policing points out that:

it is hard to see why, if the dispersal and pluralisation of policing provision beyond the state can be accepted as a virtually inescapable and potentially desirable and beneficial trajectory, and accommodated within democratic principles, the dispersal of effective and democratic governance of, and accountability for, plural policing beyond the state could not also be imagined.¹⁹⁶

In other words, the regulation of fragmented actors in pluralised environments becomes a new challenge and an exercise in imagination in terms of attempting to develop broader strategies for democratic policing.¹⁹⁷

Perhaps we are now entering a third phase of regulation where we acknowledge changing dynamics within policing in South Africa and the need to engage with oversight and accountability within human rights terms through supplementing the business model of regulation with one that is also focused on constitutional rights of access to security as well as freedom from illicit violence in all its forms and from all sectors.

Conclusion

The normative regulatory framework in place for the private security industry is good, however, the practical implementation of many of these provisions has been unsuccessful – dogged by lack of resources and manpower, unintended consequences of the legislation and the very nature of regulating an industry which is extremely diverse, large and inherently problematic. There are gaps within the normative framework which do not sufficiently engage, if at all, with the many internal challenges faced by all within the employ of private security companies;¹⁹⁸ problems which the private security industry indirectly contributes to (such as inequality of security provision); the sheer diversity, as mentioned, of the activities that the industry is involved with on both public and private

spaces; as well as the increasing involvement of private security in policing activities traditionally thought of as being the exclusive domain of the state. There is a general perception amongst South African academics and practitioners alike that the private security industry is not well-regulated in terms of for instance democratically-elected government structures and apparatuses creating the architecture for civilian oversight. This is in light of for instance, the perceived encroachment of private policing on the public police mandate as well as the fact that with South Africa's transition to a democracy, an exemplary architecture of oversight was created to regulate the state police with no comparable system for the private security industry. Yet, Stenning (1994)¹⁹⁹ asserts that the industry is not necessarily less regulated than, for instance, state agencies, as state regulation (primarily through the law and state regulatory agencies) may be one way amid a range of other ways in which the industry is regulated. For instance, market competition, consumer demands and self-regulation all have an important regulatory function.

Law is just one form of effective norm. Norms are effective because they form part of a wider scheme of regulation [...] These may or may not be part of the legal system.²⁰⁰

Regulation and accountability are most effective when there are 'multiple levels of control' – licencing of private security companies is just one method, albeit an important method.²⁰¹ The challenge is to utilise the range of regulatory mechanisms to tighten the accountability framework and there is clearly a need for focused engagement with private security company regulation to address gaps and shortfalls in the legislation and other regulatory methods of control. One glaring omission is the fact that there is no means by which private security companies are regulated through civilian oversight, few centralised channels by which members of the public, for instance, can complain and no consistent and thorough information on the nature of private security company abuses – except through a review of incidences that make it to the courts. The ICD and Civilian Secretariat of Police provide vital information on the functioning of the SAPS. The misconduct of a single police officer is not only a matter between the offender and the victim. It is an indicator of the effectiveness of systems and policies and the extent to which civic rights are being upheld and protected. It is no different for the private security industry. However, insight into the behaviour of the private security industry also has another positive benefit. If cases of inappropriate use of force are significantly lower than those revealed by the ICD of police conduct, it will be important to establish and understand how this is achieved. If there are training and management techniques that can be replicated it is only this data that will allow us to begin asking those questions.

In light of the fact that private security companies outnumber state police and have the potential to make a real difference to South Africa's crime rates there is a pressing need to engage with these issues.

What follows are some recommendations in light of some of the challenges outlined in the review of the legislation.

Recommendations

Strong oversight over the private security industry is as necessary as it is over the public police. This sentiment is echoed by the courts, which note that there is a 'compelling need for vigilance on the Private Security Industry Regulatory Authority's part to ensure that the objects of the Act and the Constitution are not undermined'.²⁰²

There is a need to reflect on the nature of the regulatory system in its entirety in terms of (old and) new challenges facing policing in South Africa and the role of the state and non-state in driving a new regulatory system forward. There is also the need to answer key questions around accountability, in terms of what should the industry be accountable for, to whom and why? These questions need to engage, as mentioned, with the diversity of activities and services provided, since not all sectors of the industry will require the same degree of oversight and regulation.

In developing a new regulatory framework for the industry, the following may assist in strengthening the accountability and oversight of individual private security employees and the industry at large:

- There is clearly a need for multiple levels and sites of control and accountability. Although top-down, hierarchical systems of regulation are important, these should be supplemented with other forms of regulation which are complementary and which address gaps apparent in the current system of regulation.
- In light of this, there should be a system of dealing with both individual cases of abuse or misconduct as well as a means to assess and address any systemic issues within the industry, or parts of the industry, which hamper effective functioning and accountability.
- There is a need to coordinate regulatory bodies (both within and outside of the state) so as to engage with broader oversight issues in light of the increased pluralisation of policing and the unique regulatory challenges that arise from these developments. Similarly, the current partnerships between the SAPS and the private security industry need to be considered in the light of the potential regulatory challenges that arise.
- There is clearly a gap in knowledge about the nature, activities and abuses of/within the industry. The private security industry should be legally obliged to submit all cases of death as a result of security guard action, rape or torture to an independent facility. This facility should receive, document and monitor complaints by clients and the public regarding private security functions. Investigations, whether undertaken by the SAPS or internally, should be subject to audit.
- Similarly, regular screening and vetting of security personnel is required. The screening of personnel should not be a once-off occurrence but should take place regularly to ensure that employees that are active in the industry are not involved in criminal activities. In addition to this, inactive security personnel should be deregistered and proper records kept, to ensure that criminality does not merely move from service provider to service provider.
- The extent to which the powers and limitations of private security employees are articulated in training and codes of conduct needs to be regularly reviewed and updated to meet developments and advances. Areas that need particular attention are electronic monitoring, bodily searches, investigations and the handling of confidential information which may offend the confronted individuals.
- The systems of firearm control and training in the industry need to be strengthened. The destruction of firearms owned by security companies that have been deregistered has to be strictly regulated and monitored to ensure that firearms do not make their way into the criminal economy.
- The current funding of the systems of oversight needs to be reviewed. The collection of funds collected from the industry may be tasked to an independent department or entity so as to ensure the objective regulation of the industry, not driven by monetary incentives.²⁰³

Notes

- 1 Senior Lecturer, Centre of Criminology, Department of Public Law, University of Cape Town.
- 2 Researcher.
- 3 Germaner, S. (2011) 'Bad Brad' May Face More Murder Bid Charges, *Pretoria News*, 1 March.
- 4 Ibid.
- 5 <<http://www.sowetanlive.co.za/news/2010/08/12/aurora-mine-massacre>> Accessed 26 July 2011.
- 6 Ibid.
- 7 Private Security Industry Regulatory Authority (PSIRA) Annual Report 2009/2010.
- 8 The Independent Complaints Directorate was created to investigate all deaths in police custody and as a result of police action as well as cases of alleged criminal misconduct. 'Police' refers only to the South African Police Service and Municipal Police Services. <http://www.icd.gov.za/about%20us/vision_mission.asp> Accessed 1 August 2011.
- 9 See: Re-Organising the Secretariat of Police: Consultations with Civil Society: A Composite Report of a Series of Workshops conducted on 15–16 January and 7–9 February 2010 <http://apcof.org.za/File_uploads/File/Secretariat%20of%20Police%20composite%20report.pdf> Accessed 3 August 2011.
- 10 The Criminal Procedure Act 51 of 1977, Section 49 currently allows for the deadly use of force by police in defence of themselves or other people from death or grievous bodily harm. In addition to this, such force may be used to prevent the flight of a person who presents a substantial risk of causing death or grievous bodily harm in the future. The provision aims to protect the general public and police officers as they carry

- out their duties in a highly volatile environment. The many incidences of excessive use of force may result in the tragic loss of life such as the killing of Olga Kekana in 2009 and Andries Tatane in 2011. See the following for discussion on the amendment of Section 49 of the Criminal Procedure Act: <http://www.csvr.org.za/index.php?option=com_content&view=article&id=2505:south-africa-requires-a-more-professional-approach-to-the-use-of-force-by-police&catid=74:policing&Itemid=23> Accessed 1 August 2011. Van Der Walt, T. (2011) 'The Use Of Force in Effecting Arrest in South Africa and the 2010 Bill: A Step in the Right Direction?', *Potchefstroom Electronic Law Journal*, 14(1): 138–162 (for a discussion of the Criminal Procedure Amendment Bill B39-2010).
- 11 Abrahamsen, R. and M. Williams (2011) *Security Beyond the State: Private Security in International Politics*. New York: Cambridge University Press, p. 21.
 - 12 Stenning, P. (2000) Powers and Accountability of Private Police, *European Journal on Criminal Policy and Research*, 8(3): 325–352 at 328.
 - 13 The strike lasted 96 days with mass looting and damage to property occurring and resulting in the deaths of 60 people. According to the Department of Labour Industrial Action Annual Report 2006 (p. 2): 'The security guard strike alone accounted for about 1 296 000 working days lost, which represents about 31.2% of the total working days lost in 2006'. Available at: <<http://www.labour.gov.za/downloads/documents/annual-reports/industrial-action-annual-report/2006/Annual%20Report%20-%20Industrial%20Action%20Report%202006%20-%20Introduction.pdf/view>> Accessed 10 August 2011. See also: Minnaar, A. and K. Pillay (2007) A Review of the Issues and Challenges Facing the Private Security Industry in South Africa. Unpublished Research Report, Department of Security Risk Management, School of Criminal Justice, College of Law University of South Africa, p. 4.
 - 14 Ibid.
 - 15 Stenning, P. (2009) Governance and Accountability in a Plural Policing Environment – the Story so Far, *Policing*: 1–12 at 5.
 - 16 Braithwaite, J. (2002) *Restorative Justice and Responsive Regulation*. New York: Oxford University Press, p. x.
 - 17 Braithwaite, J., Makkai, T. and Braithwaite V. (2007) *Regulating Aged Care: Ritualism and the New Pyramid*. Cheltenham: Edward Elgar, p. 9.
 - 18 Black, J. (2002) *Critical Reflections on Regulation*. London: Centre for Analysis of Risk and Regulation, p.4 and p. 6.
 - 19 Black, J. (2003) Enrolling Actors in Regulatory Systems: Examples from UK Financial Services Regulation, *Public Law*, Spring: 63–91 at 65.
 - 20 Grant, E. (1989) Private Policing. In Bennett, T., Devine, D., Hutchison, D., Leeman, I. and D. Van Zyl Smit (eds) *Acta Juridica*. Cape Town: Juta, pp. 92-117.
 - 21 Waldmeir, P. (1998) *Anatomy of a Miracle: The End of Apartheid and the Birth of the New South Africa*. New Brunswick: Rutgers University Press, p. 46.
 - 22 Interview with a risk consultant and South African Security Association representative (Cape Town, April 2002).
 - 23 Prabhat, M. (1990) Gray, ANC Representatives Debate on Divestment Issue, *The Tech*: 1, 11.
 - 24 Ibid.
 - 25 Grant (note 20 above).
 - 26 Interview with a risk consultant and South African Security Association representative (Cape Town, April 2002).
 - 27 Prabhat (note 23 above).
 - 28 Irish, J. (1999) Policing for Profit: The Future of South Africa's Private Security Industry, *ISS Monograph Series*, 39(1):1.
 - 29 Garland, D. (1996) The Limits of the Sovereign State: Strategies of Crime Control in Contemporary Society, *British Journal of Criminology*, 36(4): 445–471.
 - 30 Carrier, R. (1999) The Dissolving Boundaries Between Private and Public: Oversight of Private Security and Policing in South Africa. Unpublished policy brief.
 - 31 Security Officers Act 92 of 1987, s 10(1), s 11(3), s 13 and s 14; Grant (note 20 above).
 - 32 Security Officers Act 92 of 1987, s 12(1)(b) and (d).
 - 33 Security Officers Act 92 of 1987, s 3(c), s 9, s 19.
 - 34 Security Officers Act 92 of 1987, s 1; Grant (note 20 above).
 - 35 Grant (note 20 above).
 - 36 Grant (note 20 above).
 - 37 Interview with a risk consultant and South African Security Association representative (Cape Town, April 2002).
 - 38 Ibbotson, J. (1994) Repositioning the Security Industry in a Changing South Africa, *Security Focus*, 12(11): 35–37.
 - 39 Security Officers Amendment Act 119 of 1992; Security Officers Amendment Act 64 of 1996; Security Officers Amendment Act 104 of 1997; Private Security Industry Regulation Act 56 of 2001.
 - 40 Security Officers Amendment Act 119 of 1992, s 3(1); Irish (note 28 above).
 - 41 Security Officers Amendment Act 119 of 1992, s 14 and s 16; Irish (note 28 above).
 - 42 Security Officers Amendment Act 64 of 1996.
 - 43 As altered by s 5 of the South African Police Service Act 68 of 1995.
 - 44 Irish (note 28 above).
 - 45 Security Officers Amendment Act 104 of 1997, s 5(2); Minnaar, A. 1999. The South African Private Security Industry and Crime Prevention. Paper presented at the CRIMSA International Conference: Crime Prevention in the New Millennium, 25–28 May.
 - 46 Interview with a risk consultant and South African Security Association representative (Cape Town, April 2002).
 - 47 Interview with a risk consultant and South African Security Association representative (Cape Town, April 2002); Irish (note 28 above).
 - 48 Ibid.
 - 49 PSIRA Annual Report (note 7 above).

- 50 Minnaar and Pillay (note 13 above) at p. 12.
- 51 Unless otherwise stated, all information in this section was obtained from PSIRA Annual Reports: 2004/2005 Annual Report, 2005/2006 Annual Report, 2006/2007 Annual Report, 2009/2010 Annual Report.
- 52 See: <http://www.saps.gov.za/saps_profile/strategic_framework/annual_report/2009_2010/2_profile_structure_rollofhonour.pdf> Accessed 11 June 2011.
- 53 The issue of active and inactive guards needs to be addressed by the new Act, why are inactive persons not deregistered? PSIRA Annual Report (note 7 above).
- 54 Private Security Regulation Act 56 of 2001, s 1, definition of 'security officer'.
- 55 Private Security Regulation Act 56 of 2001, s 1, definition of 'security service'.
- 56 Interview with a risk consultant and South African Security Association representative (Cape Town, April 2002).
- 57 Interview with a private security company manager and member of American Society for Industrial Security (Cape Town, July 2002).
- 58 Shaw, M. (2002) The Impact of Private Policing. In M. Shaw (ed.) *Crime and Policing in Post-Apartheid South Africa: Transforming Under Fire*. Cape Town: David Phillip.
- 59 Visser, H. (2002) Foreign Ownership of Private Security in South Africa: Prospects and Issues. Paper presented at the Security 2000 Conference, 23 May 2002.
- 60 Ibid.
- 61 Ibid.
- 62 Securicor Gray Guardian (2001) Negotiated Security Bill Proves SA is a Working Democracy, *Securicor Gray Guardian*, December.
- 63 Ibid. Interview with private security company manager (Cape Town, April 2002).
- 64 Johnston, L. (2000) Transnational Private Policing: The Impact of Global Commercial Security. In J. Sheptycki (ed.) *Issues in Transnational Policing*. London: Routledge.
- 65 Ibid; Irish (note 28 above).
- 66 Minnaar, A. and P. Ngoveni (2004) The Relationship Between the South African Police Service and the Private Security Industry: Any Role for Outsourcing in the Prevention of Crime? *Acta Criminologica*, 17(1): 42–65.
- 67 Ewing, D. (1999) Private Security: Protection for the Rich, *Siyaya Journal*, 15: 53–57.
- 68 Irish (note 28 above).
- 69 Ewing (note 67 above).
- 70 Irish (note 28 above).
- 71 Ibbotson (note 38 above).
- 72 Quoted by security service provider in Ewing (note 67 above).
- 73 Berg, J (2003) The Private Security Industry in South Africa: A Review of Applicable Legislation, *South African Crime Journal*, 16: 178–196.
- 74 Private Security Industry Regulation Act, 56 of 2001, s 5(1).
- 75 Private Security Industry Regulation Act, 56 of 2001, s 7(b)(i).
- 76 Private Security Industry Regulation Act, 56 of 2001, s 13(2).
- 77 Interview with private security company operational director (Cape Town, May 2002).
- 78 Private Security Industry Regulation Act, 56 of 2001, s 10.
- 79 Private Security Industry Regulation Act, 56 of 2001, s 10(1)(b) and (c).
- 80 Private Security Regulation Act 56 of 2001, s 1, definition of 'security service'.
- 81 Ibid.
- 82 Private Security Regulation Act 56 of 2001, s 23(1)(a).
- 83 Private Security Regulation Act 56 of 2001, s 23(1)(b) – (e) and (g). The Improper Conduct Enquiries Regulations 2003 provides a procedure to be followed when conducting an enquiry into conduct of a service provider. Inappropriate conduct is defined in Section 24, of the Code of Conduct for Security Service Providers as a security service provider who: 'contravenes or fails to comply with a provision of the Act; commits an offence contemplated in the Schedule to the Act; contravenes or fails to comply with a provision of the Levies Act; or contravenes or fails to comply with a provision of the Code [...] is guilty of improper conduct'. Charges against security official must be submitted in the form of an affidavit to the director of PSIRA.
- 84 Private Security Industry Regulation Act 56 of 2001, s 23(1)(f) and (h).
- 85 Private Security Industry Regulation Act 56 of 2001, s 23(2)(b).
- 86 Private Security Industry Regulation Act 56 of 2001, preamble and s 3.
- 87 Private Security Industry Regulation Act 56 of 2001, s 4(j).
- 88 PSIRA Annual Report 2004/2005 at 9.
- 89 Interview with PSIRA inspector (Cape Town, June 2006).
- 90 Private Security Industry Regulation Act 56 of 2001, s 34.
- 91 Interview with private security company training centre manager (Cape Town, February 2007).
- 92 Interview with PSIRA manager (Cape Town, June 2002).
- 93 Private Security Industry Regulation Act 56 of 2001, s 27(1)(a).
- 94 Private Security Industry Regulation Act 56 of 2001, s 20.
- 95 Private Security Industry Regulation Act 56 of 2001, s 38(3)(g).
- 96 Private Security Industry Regulatory Authority Media Release, 20 March 2002.
- 97 Minnaar and Pillay (note 13 above).
- 98 Ibid.
- 99 Wiid, A. (no date). *The Voluntary Fingerprinting of Private Security Officers Business Against Crime South Africa*. Business Against Crime <http://www.restaurant.org.za/downloads/news_april/shopping/fingerprinting.pdf> Accessed 10 August 2011.

- 100 Ibid.
- 101 Berg, J. (2007) *The Accountability of South Africa's Private Security Industry: Mechanisms of Control and Challenges to Effective Oversight*, Open Society Foundation for South Africa Criminal Justice Initiative Occasional Paper Series, p. 2.
- 102 759 applications were rejected of persons with records of scheduled offences and 933 were applicants with pending scheduled offences for rejection. Information from Private Security Regulatory Authority (PSIRA) on its 'Turn Around Strategy'. Presentation to the Portfolio Committee on Police 3 March 2011.
- 103 PSIRA Annual Report (note 7 above).
- 104 Ibid.
- 105 Ibid. During the period 1 April 2009 to 31 March 2010, a total of 6 971 regulatory inspections of security businesses were conducted
- 106 PSIRA Annual Report (note 7 above).
- 107 Ibid.
- 108 Ibid.
- 109 Minnaar and Pillay (note 13 above).
- 110 Regulations made under the Private Security Industry Regulation Act 56 of 2001, s 35.
- 111 Grade 'A' being the highest level of training and grade 'E' being the lowest. Regulations made under the Private Security Industry Regulation Act 56 of 2001, s 3(2).
- 112 Private Security Industry Regulations 2002.
- 113 Interview with private security company manager (Cape Town, April 2002); interview with private security company operations manager (Cape Town, October 2006).
- 114 Code of Conduct prescribed under the Private Security Industry Regulation Act 56 of 2001.
- 115 The Code of Conduct should be read together with the Improper Conduct Enquiries Regulations 2003, which makes provision for the procedures to be followed with respect to conducting an enquiry. Provision is made for the laying of a charge against an offending private security company or security officer which is then dealt with by a tribunal with a presiding officer (a person specifically contracted by PSIRA for that 'case') and PSIRA prosecutors (interview with PSIRA inspector, Cape Town, June 2006).
- 116 Minnaar, A. (2007) Oversight and Monitoring of Non-state/Private Policing: The Private Security Practitioners in South Africa. In S. Gumede (ed.) *Private Security in Africa: Manifestation, Challenges and Regulation*. Pretoria: Institute for Security Studies, pp. 127–149. Code of Conduct for Security Service Providers, 2003, s 2(a) and s (d).
- 117 Code Of Conduct For Security Service Providers, 2003 S8(3).
- 118 Code of Conduct for Security Service Providers, 2003, s 8(3) to (7).
- 119 Code of Conduct for Security Service Providers, 2003, s 8(2)(b).
- 120 Section 12(1)(c) of the Bill of Rights states that 'everyone has the right to freedom and security of the person' including 'to be free from all forms of violence from either public or private sources' (Constitution of the Republic of South Africa, Act 108 of 1996). This entails the right to protect oneself from violence through for instance the use of private security companies to protect you and/or your property on your behalf. As mentioned above, the Criminal Procedure Act of 1977 specifically provides the powers necessary for private security companies to perform this function through for instance stating that 'the owner, lawful occupier or person in charge of land' may arrest a person believed to have committed an offence or is in the process of committing an offence – the private security company can perform this function by proxy if permitted to by the owner of the property (The Criminal Procedure Act 51 of 1977, s 42(3)). They are also authorised, as are ordinary citizens to 'make citizen's arrests, banish trespassers and deny entry and search personal property, amongst other things, by virtue of their status as agents of property owners, employers' as well as 'other powerful persons and institutions in society' (Berg, note 101 above). The Criminal Procedure Act also allows private security companies to 'break open premises in order to effect [an] arrest' and to use 'use force – even deadly force – to effect the arrest should the person offer up resistance' as long as the action is 'reasonable' (Criminal Procedure Act 51 of 1977, s 49(2)). However, as Singh points out, the meaning of 'reasonable' is open to interpretation (Singh, A. [2005] *Private Security and Crime Control, Theoretical Criminology* 9[2]: 153–174).
- 121 Private Security Regulation Act 56 of 2001, s 3. In 2009/2010 6,971 inspections on existing service providers were conducted by PSIRA which lead to 1,568 service providers being charged (Improper Conduct Dockets opened) for contravening various provisions of the Act, Code of Conduct for Security Service Providers and other regulations made under the Act. However, the majority of these were for administrative offences – 794 related to failure to pay minimum wages and 177 cases involved the failure to register as a security business (PSIRA Annual Report, note 7 above).
- 122 Minnaar and Pillay (note 13 above).
- 123 Minnaar (note 116 above).
- 124 Private Security Industry Levies Act, 23 of 2002.
- 125 Berg (note 73 above).
- 126 Interview with private security company training centre manager (Cape Town, February 2007).
- 127 Visser, P. (2003) Notes on the Funding of the Regulation of the Private Security Industry, *Tydskrif vir die Suid-Afrikaanse Reg*, 4: 748–752 at 752.
- 128 The subject matter of the courses consists of some or all of the following: personal hygiene and general appearance; public relations; role and functions of security officers; bombs, explosive devices and firearms; discipline; self-defence; observation; guarding and patrolling; radio and telephonic communication; legal aspects; access control; search procedures and techniques; keeping and use of pocket books; drafting of written reports; handling of threats and risks; bomb threats; protection of information; emergencies; fire-fighting, -prevention, and -protection; industrial relations; and occupational safety (Training of Security Officers Regulations, 1992, under s 32(1) of the Security Officers Act, 1987 (No. 92).
- 129 Private Security Industry Regulation Act 56 of 2001, s 4(k)(i), (ii) and (vi).
- 130 Regulations made under the Security Officers Act 92 of 1987.
- 131 Minnaar, A. (2004) *Private–Public Partnerships: Private Security, Crime Prevention and Policing in South Africa*.

Inaugural Lecture at the Department of Security Risk Management, School of Criminal Justice, University of South Africa, 31 August 2004.

- 132 Ibid.
- 133 Private Security Industry Regulation Act, 56 of 2001, s 23; Minnaar (note 131 above).
- 134 Interview with private security company client (Cape Town, March 2007).
- 135 Interview with private security company training centre manager (Cape Town, February 2007).
- 136 Interview with private security company co-founder (Cape Town, June 2002).
- 137 Skills Development Act 97 of 1998, s 9(1). The training responsibilities and standards generating functions of PSIRA were delegated by means of a Memorandum of Understanding signed in July 2005 to SASSETA (Minnaar and Pillay, note 13 above).
- 138 PSIRA Annual Report (note 7 above).
- 139 PSIRA Annual Report (note 7 above).
- 140 PSIRA Annual Report 2006/2007 at 19. Draft Training Regulations were published in *Government Gazette* No. 32669 on 30 October 2009 following on from its submission in November 2008 and there has been on-going liaison with the office of the Secretariat of Police to ensure its publication. In addition to this draft, regulations were circulated to industry and stakeholders (PSIRA Annual Report, note 7 above).
- 141 Minnaar, A. (2008) The Impact of Firearms' Controls on the South African Private Security Industry, *Acta Criminologica*, 21: 100–123.
- 142 Interview with a private security company manager and member of American Society for Industrial Security (Cape Town, July 2002).
- 143 Firearms Control Act, 60 of 2000 and Regulations on the Issuing, Possession and Use of Firearms and Other Weapons by Security Service Providers, 2003.
- 144 Firearms Control Act 60 of 2000, s 9(1).
- 145 Firearms Control Act 60 of 2000, s 10(2).
- 146 Firearms Control Act 60 of 2000, s 9(2)(b), (d), (f) to (o), (q), (r) and (s).
- 147 Firearms Control Act 60 of 2000, s 9(2)(a).
- 148 Firearms Control Act 60 of 2000, s 20(6)(a) and (b).
- 149 Minnaar (note 141 above). In light of some of these challenges PSIRA, in conjunction with the Central Firearms Registry, compiled a draft policy agreement to allow for the establishment of a Security Industry Firearms Regulation Committee that will endeavour to establish closer cooperation between the SAPS and the Authority. This will include, inter alia, database alignment and regular sharing of information to confirm whether businesses still qualify for licenses after they had been obtained, that is, whether registrations are still valid, number of security officers employed and the like. PSIRA made certain amendments to the draft policy document and submitted it to the Central Firearms Registry for signature. At the time of writing, PSIRA was still awaiting feedback from the Central Firearms Registry in respect of the matter (PSIRA Annual Report, note 7 above).
- 150 Minnaar (note 141 above).
- 151 Sections 20, 102, 103 and 28(1)(c) provide that a security company may lose its licence if a firearm is issued to an incompetent person.
- 152 See Minnaar (note 141 above) for a full account of the impact that firearms legislation has had on private security companies.
- 153 Firearms Control Act 60 of 2000, chapter 4 and s 20 .
- 154 Interview with private security company manager (Cape Town, April 2002).
- 155 Firearms Control Act 60 of 2000, s 20(2)(a) and s 28(2).
- 156 Minnaar (note 141 above).
- 157 PSIRA on its 'Turn Around Strategy'. Presentation to the Portfolio Committee on Police 3 March 2011.
- 158 Lamb, G. (2008) 'Under the Gun': An Assessment of Firearm Crime and Violence in South Africa. Report compiled for the Office of the President, Pretoria, Institute for Security Studies at p. 9.
- 159 Ibid.
- 160 SAPS Annual Report 2009/2010 at 90 <http://www.saps.gov.za/saps_profile/strategic_framework/annual_report/2009_2010/6_prg2_vispol.pdf> Accessed 19 May 2011.
- 161 Lamb (note 158 above).
- 162 <http://www.saps.gov.za/statistics/reports/crimestats/2010/categories/robbery_cashintransit.pdf> Accessed 9 August 2011.
- 163 Lamb (note 158 above). The number has been decreasing steadily. In 2006/07 an average of 1,168 firearms was stolen during the period, 990 in 2007/08 and 965 in 2008/09. <http://www.saps.gov.za/statistics/reports/crimestats/2010/categories/robbery_cashintransit.pdf> Accessed 9 August 2011.
- 164 Lamb (note 158 above).
- 165 Parliamentary Monitoring Group, Briefing by Private Security Industry Regulatory Authority to the parliamentary portfolio committee on safety and security, September 2003. See also Lamb (note 158 above).
- 166 Lamb (note 158 above).
- 167 Gumedze, S. (2008) The Private Security Sector in Africa, *ISS Monograph Series*, 146: 69–98 at 95.
- 168 Unless otherwise stated, this section is based on Berg (note 101 above).
- 169 *Algoa Bus Company (Pty) Ltd v Lindikaya Security Services* 1999 JDR 0134 (SE).
- 170 *Luxavia (Pty) Ltd v Gray Security Services (Pty) Limited* 2001 JDR 0041 (W).
- 171 *Cingo and another v Springbok Patrols Limited and Another* 2000 JOL 7502 (Tk).
- 172 *Isaacs v Centre Guards CC t/a Town Centre Security* 2003 JOL 11473 (C).
- 173 Interview with a risk consultant and South African Security Association representative (Cape Town, April 2002).
- 174 Interview with private security company manager (Cape Town, April 2002).
- 175 SAIS website <<http://www.instituteofsecurity.co.za/>> Accessed 3 October 2011.

- 176 Braithwaite *et al.* (note 17 above).
- 177 For a list of these see <<http://www.security.co.za/associations.asp>> Accessed 3 October 2011.
- 178 Interview with a risk consultant and South African Security Association representative (Cape Town, April 2002).
- 179 However, if a security guard were to commit a serious crime, indemnification would not make much difference as the security guard would be treated as any other citizen (Berg, J. (2004) Private Policing in South Africa: The Cape Town City Improvement District – Pluralisation in Practice, *Society in Transition*, 35: 224–250).
- 180 Berg (note 101 above).
- 181 Irish, I. (2000) The Business of Private Policing in South Africa: Sentry Security and the Armed-Response Sector. In Vera Institute of Justice (ed.) *The Public Accountability of Private Police: Lessons from New York, Johannesburg and Mexico City*. New York: Vera Institute of Justice.
- 182 Interview with private security company regional director (Cape Town, May 2002).
- 183 Interview with private security company client (Cape Town, November 2006).
- 184 Bayley, D. and C. Shearing (2001) *The New Structure of Policing: Description, Conceptualization, and Research Agenda*. Washington DC: National Institute of Justice.
- 185 Sharp, D. and D. Wilson (2000) 'Household Security': Private Policing and Vigilantism in Doncaster, *The Howard Journal of Criminal Justice*, 39: 113–131.
- 186 Shearing, C. (2006) Reflections on the Refusal to Acknowledge Private Governments. In Wood, J. and B. Dupont (eds) *Democracy, Society and the Governance of Security*. New York: Cambridge University Press, pp. 11-32. Macaulay, S. (1986) Private Government. In Lipson, L. and S. Wheeler (eds) *Law and the Social Sciences*. New York: Russell Sage Foundation, pp. 445–518.
- 187 Shearing (note 186 above).
- 188 Berg (note 179 above). See also Berg, J. (2010) Seeing Like Private Security: Evolving Mentalities of Public Space Protection in South Africa', *Criminology and Criminal Justice* 10(3): 287–301 at 291.
- 189 Although it must be noted that the state's role in increasingly fragmented governance arrangements does not necessarily mean that its role has been hollowed out – since old state structures and the creation of new involvements may be the result of the development of governance networks.
- 190 Walker, N. (2002) Policing and the Supranational, *Policing and Society*, 12: 307–321 at 317.
- 191 Gill, P. (2002) Policing and Regulation: What is the Difference?, *Social & Legal Studies*, 11(4): 523–546 at 527. Crawford, A., Lister, S., Blackburn, S. and J. Burnett (2005) *Plural Policing: The Mixed Economy of Visible Patrols in England and Wales*. Bristol: Policy Press, p. 83.
- 192 Gill (note 191 above) at 527.
- 193 Loader, I. (2000) Plural Policing and Democratic Governance, *Social & Legal Studies*, 9: 323–345. Crawford *et al.* (note 191 above).
- 194 Black (note 18 above).
- 195 Jones, T. (2003) Accountability in the Era of Pluralized Policing. Presented at In Search of Security: An International Conference on Policing and Security. Workshop S4 – Accountability of Policing Networks, Montréal, Québec, Canada.
- 196 Stenning (note 15 above).
- 197 Black (note 19 above).
- 198 See: Berg, J. (2004) Challenges to a Formal Private Security Industry–SAPS Partnership: Lessons from the Western Cape, *Society in Transition*, 35(1): 105–124.
- 199 Stenning, P. (1994) Private Policing: Some Recent Myths, Developments and Trends. In Biles, D. and J. Vernon (eds) *Private Sector and Community Involvement in the Criminal Justice System*. Canberra: Australian Institute of Criminology, pp. 145–155.
- 200 Scott, C. (2004) Regulation in the Age of Governance: The Rise of the Post-regulatory State. In Jordana, J. and D. Levi-Faur (eds) *The Politics of Regulation: Institutions and Regulatory Reforms for the Age of Governance*. Cheltenham: Edward Elgar, pp. 145–174 at 156.
- 201 Stone, C. and H. Ward (2000) Democratic Policing: A Framework for Action, *Policing and Society*, 10:11–45.
- 202 *Private Security Industry Regulatory Authority and Another v Anglo Services Ltd and Others* 2006 ZASCA 176.
- 203 Visser (note 127 above).

ABOUT APCOF

The African Policing Civilian Oversight Forum (APCOF) is a network of African practitioners active in policing reform and civilian oversight over policing in Africa.

It believes that the broad values behind the establishment of civilian oversight are to assist in restoring public confidence, develop a culture of human rights, integrity and transparency within the police and promote a good working relationship between the police and the community. It achieves its goal through raising awareness, sharing information on police oversight and providing technical assistance to civil society, police and police oversight bodies in Africa.

APCOF utilises the expertise of its membership to promote learning and networking on the continent. It is actively engaged in country reform projects, regional dialogues, and is working at a continental level to prioritise police reform.

APCOF was created in 2004. Its members are drawn from state and non-state institutions.

THE OBJECTIVES OF APCOF ARE TO:

- Create and sustain public confidence in police
- Develop a culture of human rights, integrity, transparency and accountability within the police
- Promote a good working relationships between the police and the community

APCOF WORKS ON A RANGE OF ISSUES SUCH AS:

- Promoting fair treatment of citizens by police agencies on the continent
- Exchange of information on better practices among oversight bodies
- Promoting the establishment of police oversight bodies where they do not currently exist
- Standard setting for policing and civilian oversight bodies in Africa
- Encouraging and supporting the formation of regional networks to promote police reform
- Supporting local reform initiatives at promoting civilian police oversight

CONTACT APCOF:

African Policing Civilian Oversight Forum
2nd Floor, The Armoury, Buchanan Square
160 Sir Lowry Road
Woodstock, Cape Town 8001
Tel: +27 21 461 7211
Fax: +27 21 461 7213

www.apcof.org.za

The opinions expressed in this paper do not necessarily reflect those of the African Policing Civilian Oversight Forum (APCOF). Authors contribute to the APCOF Policy Briefs series in their personal capacity.

© APCOF 2011
Designed and typeset by COMPRESS.dsl



OPEN SOCIETY FOUNDATION FOR SOUTH AFRICA



AFRICAN POLICING CIVILIAN OVERSIGHT FORUM