



African Policing Civilian Oversight Forum

Submission to the Portfolio Committee on Police

**Comments on the Private Security Industry Regulation Amendment Bill
(Bill 27 of 2012)**

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1. About APCOF

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

APCOF objectives are to:

- Create and sustain public confidence in the 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

This submission draws directly from the APCOF Policy Paper, *Regulating Private Security in South Africa: Context, challenges and recommendations*, published in 2011.¹ The contribution of the authors is acknowledged. This paper is available at www.apcof.org.za.

2. Introduction

In March 2011, legislation providing for stronger oversight of the South African Police Service (SAPS), namely the Civilian Secretariat for Police Act² and the Independent Police Investigative Directorate Act³ were signed into law. An expanded mandate for the Independent Complaints Directorate (ICD) and a reinvigorated Civilian Secretary of Police, in theory, respond to growing public concern for corruption, criminality and excessive use of force by the SAPS and Metropolitan Police Service (MPS). The human rights of the South African public are the subject of substantial legal protection from abuse by the police, yet there is little comparable protection in relation to the private security industry.

The rise of the private security industry in South Africa, evidenced by the need to bring regulation through Private Security Industry Regulation Act (PSIRA) of 2001 has brought about blurring of private and public policing practices as well as a blurring of the policing of private and public spaces. This frontline interaction of the private security industry with South Africa citizens, as well as the increasing presence of private security in public spaces

¹ Berg J and V Gabi. *Regulating Private Security in South Africa: Context, challenges and recommendations*. APCOF Policy Brief 3, November 2011

² Civilian Secretariat for Police Act, No. 2 of 2011

³ Independent Police Investigative Directorate Act, No 1 of 2011

traditionally policed by the SAPS/MPS constitutes a significant challenge to current regulatory systems that must be addressed.

The current regulatory instruments which focus almost exclusively on the regulation of employers; the registration of employees; enforcement of minimum working conditions; and ensuring training standards are met provide little oversight over the conduct of individual security officers and officials. This is left to the industry itself. Increasingly, this lacuna in oversight over the private security industry is becoming apparent, and requires that it be addressed in terms of this legislation.

Strong oversight over the private security industry is as necessary as it is over the SAPS. 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.”⁴

The PSIRA Bill provides an opportunity to address this deficit, yet this remains woefully absent from the current Bill. This deficit becomes an even more urgent gap to fill given the inclusion into section 3 of the Bill the expansion of the role of the private security industry into the realm of crime prevention, which further expands this industry’s engagement with the South African public.

3. Background

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.⁵ The guards were subsequently arrested and charged with murder for the deaths of four miners.⁶ 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

⁴ *Private Security Industry Regulatory Authority and Another v Anglo Services Ltd and Others* 2006 ZASCA 176

⁵ *Pretoria News*, “Bad Brad’ May Face More Murder Bid Charges’, 1 March 2011

⁶ *Ibid.*

of the guards giving an order to “shoot everyone...People started running all over when the first men fell”.⁷ He later pretended to be dead thus escaping the guards.⁸

Under the current dispensation, instances such as this 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 this story, no complaints or reports were received by the survivors, the private security company or Aurora Grootvlei Mines. In the absence of an external system of investigation and review, there is no requirement to report, nor is there a repository of information that would indicate whether this was an isolated incident or whether some pattern of abuse may be discerned. There is currently no means of gathering data on the number of people that have been injured or killed due to private security activities in any given year. Given the current volatility in the private sector, and particularly in the mining industry, this deficit in an oversight must be addressed as a matter of urgency.

4. The Oversight Deficit

The private security industry has been, and is increasingly, engaging in duties that had previously been 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.

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.⁹ In the same way that one may ask relating to the police, ‘who guards the guardians?’, one may ask the same in relation to the private security industry.

⁷ Sowetan Live, *Aurora Mine Massacre*, 12 August 2010, <http://www.sowetanlive.co.za/news/2010/08/12/aurora-mine-massacre>, accessed 26 July 2011

⁸ *Ibid.*

⁹ Stenning P. *Governance and Accountability in a Plural Policing Environment – the Story so Far*. Policing, 2009, 3(1), pp.22-33

5. Oversight and Current Limitations

The PSIRA Code of Conduct is essentially a set of binding rules for all private security employers and employees. Amongst others, 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.”¹⁰

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.¹¹

In the light of the powers afforded to private security guards as outlined by the Criminal Procedure Act,¹² the Code of Conduct does not ban outright 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.

¹⁰ Code Of Conduct For Security Service Providers, 2003 S8(3)

¹¹ Code of Conduct for Security Service Providers, 2003, s 8(3) to (7)

¹² 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).

PSIRA is tasked with enforcing the Code of Conduct.¹³ 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.”¹⁴ Minnaar points out the limitation that PSIRA cannot criminally prosecute private security companies but would rely on other authorities to take this up.¹⁵

Research conducted by Minnaar and Pillay in 2007¹⁶ found that while PSIRA’s inspectors conducted investigations and criminal cases were handed over to SAPS, the following deficits were clearly apparent:

- Limited capacity, aggravated by 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.

6. Recommendations in relation to Strengthening Oversight

A glaring omission in current legislation is the fact that there is no means by which private security companies are regulated through civilian oversight comparable to the oversight mechanisms put in place for the SAPS and MPS. There are 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.

¹³ 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).

¹⁴ Minnaar and Pillay (note 13 above)

¹⁵ Minnaar (note 116 above)

¹⁶ Minnaar and Pillay (note 13 above)

The IPID and Civilian Secretariat of Police provide vital information to the public on the functioning of the SAPS. The misconduct of a single police officer is not only a matter between the offender and the victim, but is an issue of public interest, as in any democracy. It is an indicator of the effectiveness of systems and policies and the extent to which rights are being upheld and protected. This should be 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 IPID of police conduct, it would 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 above we call on the Committee to ensure the PSIRA Act includes provisions that require that:

- A positive duty be placed on the private security industry, via PSIRA, to submit itself to scrutiny and reporting in relation to its record of action in relation to safeguarding the human rights of South African citizens
- The private security industry becomes legally obliged to submit all cases of death as a result of security guard action, rape or torture to an independent, external facility. We recommend that this facility be one of the current institutions that already carry an oversight mandate, such as the Chapter 9 institutions, the IPID or the National Secretariat for Police
- Investigations, whether undertaken by SAPS or internally, should be subject to audit and or further investigation by an external oversight agency such as the Independent Police Investigation Directorate.
- Reporting and analysis mechanisms that allow the Civilian Secretariat of Police to assess and report, and make relevant policy recommendations, on any systemic issues within the industry, or parts of the industry, which give rise to abuse and hamper effective accountability.
- The private security industry be required to provide detailed public reports on its investigations and other oversight activities.