

EMPOWERED BY LEGISLATION:

The Powers and Functions of
Private Security Service Providers



PSIRA
Private Security Industry Regulatory Authority

About the Report

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ABBREVIATIONS AND ACRONYMS

CPA Criminal Procedure Act

PO Peace Officer

POPI Act Protection of Personal Information Act

PSIR Act Private Security Industry Regulation Act

PSI Private Security Industry

SAPS South African Police Services

SLA Service Level Agreement

SSP Security Service Provider

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EXECUTIVE SUMMARY

Private security service providers are empowered by legislation in carrying out their functions. This study seeks to discover whether security service providers know and understand their role and functions, including the legislation applicable to their roles and functions. There has been debate on whether or not security officers should be granted peace officer status.

Some saying granting of peace officer status will assist security service providers in carrying out their roles and functions. Needless to say, from a legal point of view, the granting of peace officer status to private security officers will bring a plethora of challenges to both the PSiRA and the South African Police Services (SAPS), unless the legislation is amended accordingly.

The study found that the private security industry (PSI) is in no way attempting to replace the SAPS, but that the industry complements the work of the police. It is also clear that there is generally a cordial working relationship between the PSI and the SAPS. Whilst in some quarters, the idea of granting peace officer status to private security officers is welcomed, in other quarters the opposite can be said: The argument for granting such powers emanates from the point that security officers would be given more respect in society. Those in opposition view this as *ultra vires* to the current legislation.

1. INTRODUCTION

As a result of the escalating criminal activities that exist in different communities, law enforcement agencies are seen to be fighting against crime. Clifford is of the view that crime is not a matter for the police alone but for the world's intervention.¹ Hence, many people and organisations have decided to source the aid of the private security industry², by contracting with security service providers (SSP). Prior to the rendering of any security services, a security service provider will first enter into a service level agreement (SLA) with a client regarding the services to be rendered. Further, the Code of Conduct for Security Service Providers, 2003 more specially regulation 9, places a mandatory requirement on security service providers to ensure that the contractual agreement between the client and the SSP is reduced to writing. The agreement between these parties forms the SLA which the security company must fulfil.³

The agreement will state the functions to be carried out by the SSP. Although it is the client that dictates what duties are to be performed by the SSP, such duties should emanate from (and delimited by) the empowering legislation and must not be unlawful. This study considers the roles and functions of private security service providers and the legislation that empowers them to perform their duties. There have been several studies conducted by the Authority focusing specifically on the effective regulation of various sectors within the PSI in South Africa. To name but a few, Airport Security, Anti-poaching, In-house security, Armed Response, Maritime Security, and Asset in-transit. This study explores the legislation that empowers security service providers to perform their day-to-day duties within the guarding sector.

Furthermore, this study unpacks the question of what procedures and processes would be required for security officers to be granted peace officer powers (if at all); taking it from the premise of the study which was conducted by Caluza in 2021 relating to the same subject. Caluza indicated that if at some point in time security officers are granted peace officer status, certain issues were to be addressed, such as the involvement of SAPS in their regulation.⁴ Therefore the approach of this study is to focus on the procedures, processes, and training standards required to grant a security officer peace officer power.

It is important to note that the phenomenon subject to this study excluded legislation such as the Protection of Personal Information Act 4 of 2013 (POPI Act). A study on the POPI Act was conducted by the Authority,⁵ and it provides a thorough legal analysis of the Act. This

1 Clifford, W., 1977. Australian Institute of Criminology and Australia, *How to Combat Hijacking*. Australian Institute of Criminology.

2 Seanego T & Xulu H, *For the Love of Flying: Exploring the Regulation of Security Service Providers in South African Airports*. Published by: The Private Security Industry Regulatory Authority. 2020.

3 Caluza L, *Establishing Boundaries: Examining The Service Rendered By Private Security Security Companies in Public Spaces*, Published by: The Private Security Industry Regulatory Authority. 2021.

4 As above.

5 Zama N, *Impact of the Protection of Personal Information Act*. Published by: The Private Security Industry Regulatory Authority. 2021.

study revealed that the POPI Act is not specific as to the functions or activities that apply to the PSI, it places a duty on the responsible party to take steps to safeguard against the unauthorised use, sharing, handling, and processing of personal information.

Firstly, this study provides a background, highlighting some of the challenges that have been experienced in exercising the roles and functions of private security providers. Secondly, it discusses the research aim, objectives, hypothesis, and questions. Thirdly, it unpacks the research methodology and highlights the limitations of the study. Fourthly, it presents the literature review. Fifthly, the study discusses the research findings and lastly, it presents recommendations and draws a conclusion.

2. BACKGROUND

On the 23rd of December of 2020, a circular was issued by SAPS, and the circular warned private security service providers not to perform functions that would ordinarily be performed by the police, and not to usurp the powers of the police or otherwise face arrest. On the 12th of February 2021, an industry circular was issued by PSiRA. PSiRA stated that its circular was largely informed by the circular issued by SAPS, dated the 23rd of December 2020, on the *Utilisation of Private Security and Other Private Persons in Police stations*.⁶ The purpose of the industry circular was to reiterate to private security service providers to refrain from performing functions that would ordinarily be performed by the SAPS, as empowered by legislation. PSiRA further listed the functions or activities which SSPs should refrain from performing by asserting that the powers to effect arrests, search and seizure, conduct roadblocks and the stopping of vehicles primarily rest with the police.⁷ It is as a result of these activities that the Authority saw a need to conduct this study. Furthermore, the study highlighted some of the limitations on the powers and functions of SSPs.

Kole (2017) argued that giving private security officers peace officer status would create a lot of confusion.⁸ There would be abuse of power as there are already police officers who abuse the power that they have (Kole, 2017).⁹ The respondents of the study also questioned who would be held responsible for the abuse of power as the Minister of Police is liable for any criminal cases reported.¹⁰ The topic of peace officer powers raises a number of legal issues that would have to be considered carefully in order to prevent an overlapping of powers and roles. Resulting from this backdrop, a need for a study on the roles and functions of private security providers remains critical. The debate around the training of peace officers, including the question of whether PSiRA has the powers to grant security service providers with peace officer powers, is inevitable. Of importance is that

6 Chauke M, Private Security Industry Regulatory Authority Industry Circular No:002/21. *Notice In Respect Of The Involvement of Private Security Entities And Other Private Persons In Police Operations* (2021).

7 As above.

8 Kole, J. (2017). Exploring questions of power. Peace officers and private security. South Africa: Institute for Security Studies. *SA Crime Quarterly*, 61: 19-29.

9 As above.

10 As above.

the legislation that grants the peace officer powers must be analysed for the purpose of determining the practical intricacies in relation to the question of granting private security providers with peace officer powers.

3. RESEARCH AIM, OBJECTIVES, HYPOTHESIS & QUESTIONS

The overarching aim of the study is to critically analyse the roles and functions of private security service providers as empowered by different legislation. The importance of addressing this issue is a result of the confusion created by the private security providers' involvement in crime prevention, which arguably encroaches into the space of the South African Police Service.

Objectives

The objective of the study is as follows:

- To identify the legislation which empowers private security service providers to perform their duties.
- To establish the extent of awareness of security service providers of the applicable legislation that empowers them to perform their duties.
- To explore and discuss the powers and perceived powers of private security service providers.
- To discuss the process of granting peace officer powers including the requirements thereof.
- To determine whether or not the current training standards within the private security industry, is adequate for possibly granting private security providers peace officer powers.

Research Hypothesis

The research hypothesis is: *Private security providers are conversant with their roles and functions as empowered by applicable legislation in the performance of their daily duties.*

Flowing from this hypothesis, the primary research question is as follows: -

To what extent is the South African private security industry conversant with the roles and functions in the performance of its daily duties?

The secondary research questions are as follows: -

- What legislation informs the roles and functions of private security service providers in the performance of their duties?
- Are security service providers aware of the legislation which empower them to perform their duties?
- What are the powers and perceived powers of private security service providers in South Africa?
- What obtains in the process of granting peace officer powers and its implications thereof in relation to private security providers in South Africa? Is the training afforded to security service providers adequate to be considered in granting them peace officer powers?

4. RESEARCH METHODOLOGY

This part looks at the tools and techniques used in conducting this study. The study used qualitative research methodology, which focused on obtaining data through open-ended and conversational communication. The data was collected using telephonic and Microsoft Teams interviews, this being mostly a consequence of COVID-19, and the applicable regulations at the time of data collection. Following such engagements with the participants, in-depth insights into the phenomenon were possible. The qualitative research method provided participants with an opportunity to share their lived experiences. The participants also discussed what roles and functions they were performing including their understanding of the empowering legislation. They also elaborated on the conduct which is now considered to be a contentious topic. They also provided recommendations on how PSiRA could improve in order to ensure their effectiveness and efficiency in the regulation of the industry.

In upholding ethical research standards, consent forms were sent to each participant prior to the interviews. These forms were signed and kept by the Authority. The participants gave their permission to have their contributions form part of the report. The sample for the study included different companies with varying sizes. Officials from the Authority were also interviewed with a view of soliciting their perspectives in relation to the roles and functions of private security service providers in South Africa.

Limitations To The Study

As aforementioned, the study focuses on the guarding sector. It is important to note that the topic on legal aspects is very broad and includes several activities that are regulated by various pieces of legislation. This was beyond the scope of this study. For instance, the study did not discuss the legal prescripts relating to security training as provided for in the

Skills Development Act 97 of 1988, Safety at Sports and Recreational Events Act 2 of 2010, National Key Point Act 102 of 1980, and the POPI Act 4 of 2013.

One limitation to the study was low participation which was largely due to private service providers' thinking that they were being inspected for their compliance. Most participants who were asked to participate in the study immediately responded by saying they were registered with PSiRA, and that they were compliant with the law. The participants were of the view that the study is about compliance which was not necessarily the case. This study was in no way aimed at testing the compliance of the industry, but to understand their roles and functions. Be that as it may, the participation of those who agreed to be interviewed provided sufficient data to formulate research conclusions.

Another limitation to the study is the limited literature on the subject matter. This is largely due to the fact that the roles and functions of the private security sector are provided for in legislation, which has not been a subject of rigorous academic discourse in the South African context. It is hoped that in future, this topic will be subjected to academic scrutiny in order to enrich the debate around this topical research topic.

5. LITERATURE REVIEW

This part presents legal and academic writings of scholars who have written on the phenomenon.

5.1 Background to Security Functions

According to Tshukudu, the private aspect of security functions is not a new phenomenon. He argues that private actors were seen providing security functions to states and to citizens, with quasi-official agencies providing policing services in Britain until the emergence of the modern police in 1929, and the private aspect of security function dates to the ancient Greek and Roman empires.¹¹ Indeed, the private security industry not only provides security services to private individuals but also to governments. Irish argues that there are many small fly-by-night type security companies that provide cheap and substandard services, thereby tarnishing the image and reputation of the industry.¹² Although Irish is correct, it can be argued that even legitimate or registered SSPs have also played a role in tainting the reputation of the private security industry. There have been cases where registered SSPs were found guilty of misconduct and fined by PSiRA. The role played by SSPs in crime prevention has a significant impact in either identifying an offender or assisting the police in the prosecution of criminals. The roles and functions performed by SSPs vary from sector to sector, and from client to client depending on the Service Level Agreement.

11 T Tshukudu 'An assessment of private security sector adherence to Botswana employment law'. International Conference on Public Administration and Development Alternatives (IPADA) 2020.

12 J Irish, Policing for profit: The future of South Africa's private security industry. 1999.

There have been some concerns around SSPs performing functions that they are not permitted to perform in terms of the law, or functions that would ordinarily be performed by the South African Police Services. Tshukudu argues that the private security providers may also be viewed as a threat and as encroaching on the mandate of the public police.¹³ This view cannot be supported, instead the relationship between the SSPs and the police should be viewed as that of cooperation and collaboration rather than as a threat. In the South African context, for example, there has been evidence of the PSI working in collaboration with the police. There has been no evidence of the PSI attempting to usurp the powers and role of the police, however there have been claims that some SSPs have been faced with instances where the client requests them to perform duties exceeding what has been provided in the service level agreement (SLA).

5.2 Service Level Agreement

Prior to carrying out any of its duties, a security service provider must first enter into a service level agreement (SLA), as required by the Regulation 9(4) of the Code of Conduct For Security Service Providers. Regulation 9(4) provides that *“A security service provider must ensure, at his or her own cost, that the full contractual agreement with the client in respect of the rendering of a security service is reduced to writing and signed by or on behalf of the security service provider and that a true copy thereof is provided to the client without undue delay”*. The SLA provides in detail the services that are required from the SSP by the client. Although a SSP owes its duty to the client or is accountable to its client, a SSP also has a responsibility to the public, such as upholding the right to life. SSPs owe different obligations towards different people.¹⁴ A SSP who’s only duty is to patrol the client’s residential property may not fully see the application of the various pieces of legislation during the performance of their duties (which is patrolling) until such SSP is faced with a threat such as intrusion or where they now have to protect the property or life of the client, only then will the legislation come into play. The SSP needs to know the extent to which the law allows him to protect the property and the life of the client as well as his own life when faced with an imminent threat.

Depending on where the SSP is stationed, a security officer is often given the duty of protecting the public from loss or injury while on the client’s premises. This includes keeping the public out of harm’s way for example in railway security, the SSP will direct the public not to stand too close to the platforms.¹⁵ In retail stores, SSPs protect people, records, merchandise, money, and equipment.¹⁶ In office buildings, banks, hotels, and hospitals,

13 Tshukudu (n 11 above).

14 Sokanu <https://www.careerexplorer.com/careers/security-guard/> (accessed 8 July 2021).

15 As above.

16 As above.

guards maintain order and protect the organisation's customers, staff, and property".¹⁷ In museums or art galleries, security officers provide protection services for paintings and exhibits.¹⁸ It has been said that this is done by monitoring people and conducting inspections of packages entering and leaving the building.¹⁹ In Government buildings, SSPs protect information and products and check the credentials of people and vehicles entering and leaving the premises.²⁰ SSPs working in the transportation industry provide security screening, people protection and guarding services at airports.²¹

It can be argued that in the guarding sector "some of the more general or common duties of SSPs are to monitor and authorise the entrance and departure of employees, visitors, and other persons, to guard against theft and maintain the security of the premises, to patrol industrial or commercial premises to prevent and detect signs of intrusion and ensure the security of doors, windows and gates, to operate detecting devices to screen individuals and prevent the passage of prohibited articles into restricted areas".²² However, this is not an exhaustive list, and the functions will differ in the various sub-sectors of the guarding sector.

Despite it being the client who dictates the duties of SSPs, such duties must not be unlawful. Regulation 8(2)(b) of the Private Security Industry Regulation Code of Conduct For Security Service Providers 2003 provides that;

Security guards may not 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.²³

This section highlights situations where the powers and functions of security service providers end or may be limited

5.3 Legal Framework

Tshukudu argues that the setting up of norms and standards and a regulatory framework would not only enhance professionalism in the industry but would also inspire confidence in the police to work with the PSI.²⁴ The submission made by Tshukudu that the security industry is regarded as essential to complementing the work of the Police Force is supported.²⁵

17 As Above.

18 As above.

19 As above.

20 As above.

21 As above.

22 <https://www.gostudy.net/occupation/security-officer> (accessed 06 July 2021).

23 PSIR Code of Conduct of Security Service Providers 2003.

24 Tshukudu (n 11 above).

25 As above.

Further, despite the differences, some observers have argued that private security and the public police are complementary to one another.²⁶

Sarre argues that the legal powers, rights, and immunities of private security personnel are obscurely and confusingly located across a range of fields: the criminal law; the law of property; the law of contract (both in terms of contracts of employment, and the contracts that apply to paying customers whenever they enter a private sports or entertainment venue); and employment law.²⁷ Sarre further argues that the consequence of this is that there are many bits and pieces of common law, general law, and legislation that come together to form what could loosely be referred to as the law of private security.²⁸ Although there are other pieces of legislation in South Africa which makes reference to the functions of SSPs. The principal legislation detailing the day-to-day powers and functions of SSPs is the Criminal Procedure Act 51 of 1977 and the PSiR Act. Kole argues that the only legislation empowering PSOs to combat crime in South Africa is Section 42 of the Criminal Procedure Act.²⁹ This section permits security officers to arrest without a warrant; anyone who commits a schedule 1 offence in the presence of security officers (where security officers are deployed).³⁰

According to Sarre, the powers exercised by the SSPs are not powers specific or exclusive only to the PSI, but instead SSPs derive their powers from citizen powers to the extent provided for in the Criminal Procedure Act. Sarre argues that the law does not confer any powers upon security personnel except for the powers given to an ordinary citizen.³¹ He further argues that powers of private citizen are considerable in the sense that, the law of property, for example, grants the owner of private property the power to require visitors to leave the owners premises (using reasonable force if necessary) or to subject visitors to stipulations (such as a search) prescribed and advertised by the property owner.³² The powers of SSPs, therefore, are limited to citizen powers unless where a SSP have been granted special or additional powers such as peace officer status.

26 T Griffiths & R Montgomery Research report: 2015–R041 publicsafety.gc.ca 2015.

27 R Sarre The legal powers of private security personnel: some policy considerations and legislative options. *Law and Justice Journal*, 8(2), pp.301-313. 2008.

28 As above.

29 J Kole Exploring questions of power: Peace officers and private security. *South African Crime Quarterly*, 61, pp.19-29 2017.

30 As above.

31 Sarre (n 12 above).

32 As above.

5.4 Powers of the SSPs

There are three distinctions of power; namely outcome power, social power, and power over. These are defined as follows:³³

- **Outcome power** can be defined as the ability of an actor to bring about or help to bring about outcomes.
- **Social Power** is the ability of an actor to deliberately change the incentive structure of another actor or actors, to bring about or help bring about outcomes.³⁴
- **Power over** can be defined as the ability to have control or authority over someone.

The power of a SSP to conduct a citizen's arrest in certain circumstances constitutes outcome power.³⁵ Social power is the ability of a SSP to get the individual to act or refrain from acting in a certain manner by virtue of the skills the SSP has acquired or the social environment.³⁶

According to Patten, Ruddell, and Thomas, "unlike police officers, security officers are not legally compelled to act in a crisis, do not possess special law enforcement powers and are not bound by the constitutional limitations placed on police officers because they are not government agents".³⁷ The above statement by Patten et al cannot be supported, for instance regulation 8 of the Code of Conduct For Security Service Providers, 2003 lists the different obligations a security officer has towards the public and towards the private security industry. More specifically regulation 8(3) provides that: "*Every security service provider must endeavour to prevent crime, effectively protect persons and property and refrain from conducting himself or herself in a manner which will or may in any manner whatsoever further or encourage the commission of an offence or which may unlawfully endanger the safety or security of any person or property.*" The interpretation here is that, the PSIR Act places a duty on the security officer to work towards crime prevention, protect persons and property.

Security officers may be less interested in issues of guilt or innocence because their primary roles are to prevent crime and reduce disorder.³⁸ SSPs cannot exercise powers which are a prerogative of the police. According to Smart Security Pros, in their article titled *4 Things Security Officers Have Legal Authority To Do*, in general the legal powers of a security guard are the same as that of an everyday citizen.³⁹ The article further provides that, the legal scope of the authority given to a security guard may change depending on their level of

33 M Button *Security officers and policing: powers, culture and control in the governance of private space*. Ashgate Publishing, Ltd 2013.

34 As above.

35 As above.

36 As above.

37 R Patten, R Ruddell and M O Thomas Examining the roles of the police and private security officers in urban social control. *International journal of police science & management*, 13(1), pp.54-69.2011.

38 As above.

39 Smart Security Pros, Published December 2019.

<https://smartsecuritypros.com/security-officer-legal-powers/> (accessed 8 July 2021).

authorised power.⁴⁰ The article continues to state that, there are three designations namely private security officers limited to citizen powers, security guards who have been granted special authorised power by their local governing institutions, and security officers who are also law enforcement officers.⁴¹ While the services of some SSPs may be deployed by the state, this does not mean that now SSPs have the same powers as the South African Police Services. It can be argued that some SSPs are capable of exercising wider powers, provided these powers have been granted or conferred to the SSP by an empowering legislation such as section 334 of the CPA.

Generally, depending on the context, private security personnel have the same powers as ordinary citizens, drawing most of their powers from the law of contract and the law of property, among other things. Apart from these legal tools available to private security personnel in the performance of their duties, they also draw on their symbolic status and thus rely on public consent and compliance with the law. Nevertheless, they are liable to face legal action should their arrest or search prove to be found to have been unlawful.⁴²

Section 199(1) of the Constitution of the Republic of South Africa 1996, provides that security services consist of one defence force, a police service and an intelligence service.⁴³ Private security service providers are not listed in this section. However, private security services providers are often seen at the aid of and working together with the various law enforcement agencies. The term 'security services' refers to law enforcement agencies that offer a public service to citizens.⁴⁴ SSPs are excluded from this definition or category as provided by the Constitution. The following examples demonstrate instances where SSP powers may be limited thus showing that SSPs are not a threat to the police and cannot be said to be encroaching the powers or mandate of the police since they themselves have limited powers.

The Private Security Industry Regulatory Authority released an Industry circular highlighting the provisions from the CPA of acts which constitute an unlawful conduct when performed by private security service providers. It is illegal for private security service providers to set up roadblocks or check points and exercise any police powers at a roadblock including a) conducting public searches of persons, vehicles, premises or containers; b) hold roadblocks or checkpoints; c) stop vehicles on public roads; d) conduct crime scene investigations; e) interrogate suspects without informing them of their constitutional rights; or f) take statements.⁴⁵

40 As above.

41 As above.

42 J Berg 'The Accountability of South Africa's Private Security Industry'. *Open Society Foundation for South Africa, Newlands* 2007.

43 S199(1) of Constitution of the Republic of South Africa 1996.

44 Kole (n 14 above).

45 M Chauke Private Security Industry Regulatory Authority Industry Circular No:002/21. *Notice In Respect Of The Involvement of Private Security Entities And Other Private Persons In Police Operations* 12 February 2021.

Regulation 8(3) of the Code of Conduct for Security Service Providers, 2003 provides that:

“Every security service provider must endeavour to prevent crime, effectively protect persons and property and refrain from conducting himself or herself in a manner which will or may in any manner whatsoever further or encourage the commission of an offence or which may unlawfully endanger the safety or security of any person or property.”

Regulation 8(12)(b) of the Code of Conduct for Security Service Providers, 2003 further states that:

A security service provider rendering a security service –

may not incite, encourage or help any person to use force unlawfully or commit any unlawful act.

Although effective in combating crime, the CPA places a number of prohibitions on the conduct of SSPs. Private security providers are prohibited from tampering, contaminating, or disturbing physical evidence on a crime scene or introduce change into the crime scene.⁴⁶ Such conduct could constitute one or more of the following offences:-⁴⁷

- Defeating the ends of justice;
- Obstructing a police official in the execution of his or her duties; and
- Even being an accessory to the principal offence.

In essence, SSPs have civilian powers, a SSP may face legal action or legal damages, and criminal charges that can be put against an individual security officer for breaking the law. SSPs do not have the authority to use lethal force. The powers of SSPs emanate from the PSIR Act and the Criminal Procedure Act, the Constitution of the Republic of South Africa, and most importantly the legislation governing the specific sub-sector of the respective guarding sector of the private security industry.

5.5 Empowering Legislation

Can Private Security Officers Conduct Arrests?

The CPA provides not only the categories of persons who may conduct arrests but also provides the situation wherein arrests may be made. In limited circumstances, SSPs can make arrests. SSPs do not have protection for any unlawful arrests made and may face legal action for such unlawful arrests. Section 40 (1) of the CPA provides that a peace officer may without a warrant arrest any person.

⁴⁶ As above.

⁴⁷ As above.

Section 42 (1) of the CPA allows a private person or citizen (which includes a security service provider) to make an arrest but within limited instances and provides the grounds under which such arrests may be made. This section provides that '[a]ny private person may without warrant arrest any person-

- (a) who commits or attempts to commit in his presence or whom he reasonably suspects of having committed an offence referred to in Schedule 1;
- (b) whom he reasonably believes to have committed any offence and to be escaping from and to be freshly pursued by a person whom such private person reasonably believes to have authority to arrest that person for that offence'.

5.6 Search and Seizures

According to Griffiths *at et*, the majority of private security personnel are engaged in preventive activities, compared to police officers, whose tasks include prevention, investigation, making arrests, and providing information for prosecution.⁴⁸ The CPA provides the categories of persons who are empowered to conduct search of arrested person and seizure of article, as well as the grounds under which search and seizures may be conducted.

Section 23 (1) of the CPA,⁴⁹ provides that on the arrest of any person, the person making the arrest may-

(a) if he is a peace officer, search the person arrested and seize any article referred to in section 20, which is found in the possession of or in the custody or under the control of the person arrested, and where such a peace officer is not a police official, he shall forthwith deliver any such article to a police official; or

(b) if he is not a peace officer, seize any article referred to in section 20 which is in the possession of or in the custody or under the control of the person arrested and shall forthwith deliver any such article to a police official.

(2) On the arrest of any person, the person making the arrest may place in safe custody any object found on the person arrested and which may be used to cause bodily harm to himself or others.⁵⁰

Kole argues that special powers to conduct search and seizure of articles suspected to have been used in the commission of crime have been granted to some PSOs in the United Kingdom and the United States, but this has however been contingent on proper training being given to the relevant officers.⁵¹ The requirement for additional training is no surprise

48 Griffiths (n 11 above).

49 Section 23(1) of the Criminal Procedure Act 51 of 1977.

50 Section 23(2) of the Criminal Procedure Act 51 of 1977.

51 Kole (n 14 above).

since SSPs would've been given wider powers. Further it is an opportunity for one to improve their knowledge and understanding of the role and functions of a Peace Officer.

5.7 Peace Officer Status

According to Griffiths & Montgomery, generally, private security officers do not have any special powers and there are private security personnel with special powers such as peace officer status.⁵² Section 334 of the Criminal Procedure Act provides that the Minister may declare certain persons peace officers for specific purposes, by notice in the Gazette. This basically states that the private security industry cannot just be granted the peace officer status unless it is for a specific purpose. The CPA provides that peace officer includes any magistrate, justice, police official, correctional official as defined in section 1 of the Correctional Services Act, 1959 (Act 8 of 1959), and, in relation to any area, offence, class of offence or power referred to in a notice issued under section 334 (1), any person who is a peace officer under that section.⁵³ Kole avers that among the powers peace officers have are the following: powers of arrest; powers to search; and powers to seize an article suspected to have been used in committing an offence.⁵⁴

According to Kole, the purpose of conferring the peace officer status is to broaden an individual's legal powers in accordance with objectives to be achieved.⁵⁵ Kole further argues that in 1984 the USA gave peace officers' powers to in-house security managers (29%) and to contract/private security managers (14%) who were thoroughly trained to perform such peace officers powers including training them on the relevant legislations.⁵⁶ It goes without saying that SSPs who are declared or granted peace officer status or powers should undergo training.

52 Griffiths (n 11 above).

53 Section of the CPA.

54 Kole (n 14 above).

55 As above.

56 OJ Kole 'Partnership policing between the South African Police Service and the private security industry in reducing crime in South Africa' (Doctoral dissertation, University of South Africa) 2015.

6. FINDINGS

This part presents the research findings for this study.

6.1 Limited Functions of SSPs

The study found that SSPs have limited functions. In undertaking their duties, SSPs either play a reactive or proactive role. When a security officer who is on patrol duty at an entrance of a building, and when there are suspects, that security officer will make an arrest and that arrest will fall under citizens arrests.⁵⁷ In terms of section 49 of the Criminal Procedure Act, there are three instances where a person can react with force. Further, depending on the degree of threat, a SSP may use minimum force. In the event that the degree of threat or harm increases and there are no other alternative means or if the threat is imminent, then the SSP can use lethal force to defend themselves. Lethal force does not necessarily mean the security officer must always use a firearm. A baton or even handcuffs may be used for self-defence.⁵⁸ The SSP has a right to life in terms of the Constitution of the Republic of South Africa.⁵⁹

Services that are rendered by security service providers require them to at all times adhere to the following legislation: Criminal Procedure Act, Labour Relations Act, Constitution of the Republic of South Africa, Protection of Personal Information Act, PSIR Act, and Firearms Control Act.

6.2 Working Relationship between SSPs and SAPS

It was observed that generally the police are arguably under resourced and do not have the capacity. The industry was of the view that some security companies are better funded, better resourced, and better trained than the police. Unfortunately, when it comes to the police, the attitude is a 'them' and 'us' attitude and not a working together attitude.⁶⁰ The security and tactical support unit can arrive where a crime is being committed in two minutes which is something the police cannot do.⁶¹ This makes one question why the government would not want to use those resources. The lines are clearly defined. It was further emphasised that in areas where there is a good working relationship between the police and security companies, the crime level in those areas has gone down.⁶² It was further also stated that in places like Stellenbosch, for instance, the police call on the security companies to assist during roadblocks.

57 Firmstone M, September 2021.

58 As above.

59 As above.

60 Bam X, August, 2021.

61 As above.

62 As above.

The view from the industry is that security service providers know what they can and cannot do in the rendering of their services. There are those among the industry who were adamant that security companies were not attempting to replace the police as they were undertaking an important function of the state.⁶³ It was argued that worldwide, security services providers have more capacity as compared to the police. This was because security providers arguably invest a lot of time and money in training their security officers. Some companies also have in-house schools which provide additional training for security officers particularly those which provide specialised services.

6.3 Security Officers Acting Beyond Their Powers

It was argued that if a security officer's life was at risk, or they were physically attacked by looters, then they were entitled to lawfully defend themselves.⁶⁴ It was observed that this did not only apply to security officer, but instead, civilians could also defend themselves if they were at risk or under attack.⁶⁵ It is important to note that the law empowers individuals (citizens) to use such powers which are deemed to be necessary to evade harm or threat. As a security officer, they are aware that the police need to be informed of situations where there are schedule 1 offences.⁶⁶ In the case of the recent Phoenix looting in Durban, security officers were arguably assisting people during this unfortunate event.⁶⁷ It was also argued that the police should have been involved much earlier before the situation got out of hand.⁶⁸ The events that took place in Phoenix are unfortunate, especially considering there are rules in the Code of Conduct for Security Service Providers, 2003 which stipulate how security officers should conduct themselves as well as the obligations security officers owe to the public. Further this code also places a legal duty on security officers to respect the Constitution of the Republic of South Africa as stated below:

Regulation 8(1)(a) of the Code of Conduct states that:

"A security service provider must at all times act in a manner which – (a) does not threaten or harm the public or national interest."

Regulation 8(2) of the Code of Conduct states that:

A security service provider may not infringe any right of a person as provided for in the Bill of Rights...

Regulation 6(5) of the Code of Conduct states that:

"A security service provider may not perform any act which is calculated to bring the Authority into contempt or disrepute."

63 As above.

64 As above.

65 As above.

66 As above.

67 As above.

68 As above.

6.4 Should Security Officers be Granted Peace Officer Status?

The question of whether security officers should be granted peace officer status is debatable. The study found that there are law enforcement officers in different industries and sectors, and that the functions of law enforcement officers will also vary. For instance, a number of municipalities have law enforcement officers. Further, traffic officers can also be referred to as law enforcement officers. The same goes for certain correctional service officers. The difference between traffic officers and correctional officers is that the former can issue fines and effect, while the latter cannot issue fines. The duty to conduct investigations, however, rests with the police.⁶⁹ It was found that in Stellenbosch and Cape Town that some security companies operating within the Central Business District (CBD) are sworn in as auxiliary law enforcement officers.⁷⁰

The study found there are instances where the term law enforcement officer and peace officer have been used inter-changeably, even though one may actually be referring to a security officer who is now an auxiliary law officer, which creates a lot of confusion.

A security officer on their own cannot be sworn in as an auxiliary law enforcement officer, the application needs to be done through the security company and not as an individual security officer. Once sworn in, the security officer is then referred to as an auxiliary law enforcement officer. The process to be sworn in as an auxiliary law enforcement officer involves the SAPS, the Department of Justice and the specific Municipality where that security company or the now auxiliary law enforcement officer will be working. The By-laws of the said municipality will further dictate the powers and duties of the auxiliary law enforcement officer. For example, depending on the By-laws of the municipality, an auxiliary law enforcement officer may arrest and take the detainee to the police station. Whereas a normal security officer is required to call on the police to take the detainee to the police station. It is important to note that the security officers/security company need to undergo a peace officer training before they can be granted any additional powers or before they can be sworn in as auxiliary law enforcement officers.

For a security company to work under the municipality, there will be a written agreement between that security company and the said municipality. It was reported that for that to happen, a security company needs to apply and obtain a special grant or permission to perform their duties in conjunction with the municipality or any state entity such as PRASA or DENELL, for instance.⁷¹ Peace officers have the power to issue spot fines and can carry out arrests.⁷² It was argued that security officers' powers are limited powers because they can only carry out citizen arrests. There was a view that the granting of peace officer status to security officers should be considered as this would give security officers a "better status" in society.

69 As above.

70 As above.

71 As above.

72 As above.

The issue surrounding the granting of peace officer powers to security officers was once mooted during Security Officers Board's era (the PSiRA predecessor) where it was recommended that security officers should be police reservists and wear one uniform.⁷³ Having security officers in one uniform and designating them as reservists meant that in the event of a war, it was possible for the Government to call all security officers to engage in the war effort (without adequate pay).⁷⁴

6.5 Peace Officer Training

The study found that the refresher training in the private security industry was almost non-existent. There is also no mandatory refresher training of PSiRA grades.⁷⁵ It was found that there is peace officer training which is facilitated by a number of training centres. The peace officer training is for a duration of two weeks, the first week focuses on the theoretical part and the second week focuses on the practical training. Mostly, peace officer training courses focus on the legal aspects of the law as it relates to security service providers.⁷⁶ The training provides the dos and don'ts; basically what a SSP is or is not allowed to do in terms of the law.

Examples of a Peace Officer Short Learning Programmes are offered by the Nelson Mandela University and comprises of the following:

- **Introduction to Principles of Law Enforcement by Peace Officers:** the purpose of this course is to equip students to be capable of understanding the relevant sections and regulations contained in the criminal procedure legislation pertaining to peace officers.⁷⁷ The entrance requirement for enrolling for this course is communication and language competencies at NQF level 4.⁷⁸
- **Law Enforcement by Peace Officers:** this course will prepare students to enforce municipal by-laws and legislation. It is aimed at the training of any official who is responsible for the implementation and enforcement of by-laws or legislation and for whom appointment as a peace officer in terms of section 334 of the criminal procedure Act, 51 of 1977 is required.⁷⁹

73 Bam (n 60 above).

74 As above.

75 Firmstone (n 57 above).

76 As above.

77 <https://cla.mandela.ac.za/Courses-Offered>

78 As above.

79 As above.

6.6 The Duration for Both Short Learning Programmes is Five Days, Respectively.

A training institution offering a peace officer training course must align the course with the *South African Qualifications Authority Unit Standard 377224* also which requires the candidate to “[d]emonstrate an understanding of the role and functions of a peace officer and traffic warden”. The purpose of this learning unit standard is to enable learners to understand the relevant sections and regulations contained in the criminal procedure legislation pertaining to peace officers.⁸⁰ The unit standard enables the learner to apply applicable legislation by enforcing the provisions of the legislation, teaching the public and leading by example.⁸¹ In this unit standard, “Legislation” refers to Criminal Procedure legislation, National Road Traffic legislation and related bylaws.⁸² The unit standard also allows for the transformation of the status of a peace officer and a traffic warden, as learners become models for other learners.⁸³ This attracts quality people and allows for the aspirations of people to be part of the authorized officers. This unit standard caters for both peace officer and traffic warden and includes the bylaws of the specific organization or authority.⁸⁴

Credited learners undertaking this unit standard must be capable of the following:⁸⁵

- They must explain the meaning of the terms and phrases used in the legislation;
- They must explain the duties and responsibilities of peace officers;
- They must explain the procedure for search and seizure;
- Four, there must demonstrate an understanding of the relevant aspects of Criminal Law; and explain the rules pertaining to giving evidence.

6.7 Difference Between Peace Officer and Law Enforcement Officers

While peace officers and law enforcement officers undergo more or less the same training, the training of the latter is longer than that of peace officers. Law enforcement officer training focuses on the environment that law enforcement officers works in. Traffic law enforcement training takes three (3) months and entails learning about notices and the Constitution of the Republic of South Africa. The peace officer training, on the other hand, is shorter, however not in-depth, than that of the traffic law enforcement officer or municipality law enforcement officers. The peace officer training entails a thorough learning and understanding of the law, which includes CPA, schedule 1 offences, use of minimum force, and crime investigations.

80 South African Qualifications Authority unit standard 377224, <https://allqs.saqa.org.za/showUnitStandard.php?id=377224>, 16 January 2021.

81 As above.

82 As above.

83 As above.

84 As above.

85 As above.

If the candidate is working for a security company, the company will conduct its own internal investigations exactly in the way it would be done by the police but internally. When a security officer has been granted peace officer status, the arrests conducted by such security officer will no longer fall under a citizen's arrest. This security officer is now regarded as a peace officer because of the additional powers bestowed upon them.

6.8 Application Process to Become a Peace Officer

In the jurisdiction that you are in, a security company needs to ensure that all the members are in full uniform, there's a requirement to be wearing certain badges to the company, which is like the police where they have an appointment certificate. Security officers need not only undergo the training but must also be suitable candidates as it is not everyone who can become a peace officer. The peace officer application is made to the South African Police Services or the municipality. The application to the municipality is only applicable to those security companies that will be working in conjunction with the municipality. These are the security officers that will be sworn in as auxiliary law enforcement officer as stated earlier in this report. The municipality also has the powers and informs SAPS of its own members to be sworn in as peace officers. The peace officer application process is not lengthy, the requirements are as follows:

- Versatility in languages;
- Medical fitness;
- Literacy;
- Matriculation;
- Absence of a criminal record;
- And fingerprints requirement.

Should Security Service Providers with a criminal record be granted Peace Officer status?

The study found that if a person has a schedule 1 offence, the offence never goes away. An application, however, can be made to the minister to have the offence expunged where the offence took place more than 10 years ago. It was argued that since people change, reform and become rehabilitated, the public should not unfairly judge them.⁸⁶ There are also individuals who were military veterans who have been assisted with the application to expunge the criminal record.⁸⁷

⁸⁶ Firmstone (n 57 above).

⁸⁷ As above.

6.9 Accountability

One of the issues raised when considering whether to grant security service providers with peace officer statuses is that of accountability. It was not clear whether the issue of accountability should be addressed by the employer or the security officer, PSiRA or the Minister of Police. PSiRA is the custodian and regulator of the private security industry. It is the Minister of Police who grants the peace officer powers. Furthermore, the duties performed by the SSP whilst in their official duty are performed on behalf of the employer, and not PSiRA or the Minister of Police. This ostensibly makes the employer vicariously liable for the actions of the security officer. This does not, however, mean that legal action or criminal charges cannot be brought against the security officer in their personal capacity.

It was observed that SSPs already have powers, and they derive such powers from the landlord of the premises where they are stationed and/or working at that particular time. The question which arises from this debate is which additional powers are being referred to since SSP can make arrests under citizen powers?⁸⁸ Citizens arrests allow SSPs to exercise their powers. To try and avoid such unlawful arrests, it is very important that security officers regardless of the peace officer status should undergo the required training, and that security officers must understand when they are permitted by law to conduct that arrest.⁸⁹ If there is an unlawful arrest by a law enforcement officer who works for a municipality, then that municipality would be the responsible party.⁹⁰

6.10 Advantages Of Granting Peace Officer Status

The South African Police Services are currently outnumbered by the private security industry and the security officers are the only support for the SAPS. Granting peace officer status means security officers will be able to conduct arrests. The security officer who is now the auxiliary law enforcement officer will take the detainee to the police, depending on the powers vested in that auxiliary law enforcement officer as provided in the By-laws, the peace officer or auxiliary law enforcement officer will write a statement and hand over that statement to the police. It will make it easier for the investigator. The function will still remain with the police to investigate the crime. The difference will be that security officers would be put in a better position where they are able to write a proper statement.

88 Sambo S, Private Security Industry Regulatory 2021.

89 Firmstone (n 57 above).

90 As above.

Security officers who would be granted the peace officer status would be empowered to issue fines. Where a peace officer sees a crime being committed and instead of a police officer tracking the perpetrator,⁹¹ the peace officer would now be working with the judicial system whereby the peace officer would give a copy of the fine to the perpetrator, the peace officer would then take the original fine to the prosecutor at court and the clerk of the court would then administer that fine.⁹² Thus assisting the police, further, the police are not stationed in public areas 24 hours conducting patrols like security officers, peace officers and law enforcement officers. This alone should arguably be a motivating factor to grant them peace officer status.⁹³

Security officers report first at crime scenes. This is the support that is provided by security officers. It was argued that there will not be any clashes or overlapping of roles as long as everyone understands their roles, responsibilities, and limits. For instance, law enforcement municipalities know their limits and work in conjunction with the police because they have various operations collaboratively. The same should be extended to the private security industry, as there is nothing stopping the private security industry from working in conjunction with the police.⁹⁴

91 As above.

92 As above.

93 As above.

94 As above.

7. RECOMMENDATIONS

Considering the research findings, the following recommendations are made.

7.1 Continuous Testing

It is recommended that PSiRA considers making it mandatory that there be continuous psychometric tests of security officers. These tests must be a requirement for testing whether security officers are fit and proper to render security services in line with the PSiR Act.

7.2 Refresher Training

It is further recommended that PSiRA, should make it mandatory for all security service providers to undergo refresher training for their respective sectors. This will enable security officers to be up-to-date with the law as it relates to their powers and functions.

7.3 Grades Training

It is further also recommended that the training should include an in-depth-focus on both PSiRA Act the Criminal Procedure Act. This will enable the security officers to understand the legal aspects with regards to their powers and functions. It will also avoid any confusion with regards to this issue in future.

7.4 Enforcement

It is further recommended that PSiRA should strengthen its law enforcement by ensuring that security providers exceeding their powers and functions are prosecuted in terms of the law.

8. CONCLUSION

The powers and functions of security service providers emanate from legislation. The private security industry is well aware of the PSIRA Industry circular dealing with the roles and functions of private security service providers. Whilst collaborations between the industry and SAPS must be strengthened, the powers and functions of private security providers must be clearly defined to avoid any confusion which has been witnessed in recent times. It is important to note that security service providers play a supportive (as opposed to equal) role to the police.

There are arguments for and against the granting of the private security providers peace officer powers. There is a need for the Authority to take a position on this issue bearing in mind the legal prescripts coupled with the practical challenges for granting such powers. The issue of who should be held accountable in instances where there has been an unlawful conduct by a private security officer, for example an unlawful arrest, requires consideration from a legal perspective. The issue of whether private security officers should be granted peace officer powers remains a subject of interesting debate. As the society is dynamic, so is the industry. A consideration of granting peace officer powers to security officers can only be a reality with the change of existing laws. As the existing laws stand, this issue remains clear.



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