



PSiRA
Private Security Industry Regulatory Authority

THE BARREL OF THE GUN

IMPROVING THE REGULATION AND CONTROL OF THE USE OF FIREARMS
WITHIN THE PRIVATE SECURITY INDUSTRY IN SOUTH AFRICA



Dr. Sabelo Gumedze
Research and
Development Unit



PSIRA
Private Security Industry Regulatory Authority

THE BARREL OF THE GUN

**Improving the Regulation and Control
of the use of Firearms within the
Private Security Industry in South Africa**

31 March 2016

Dr. Sabelo Gumedze

Research and Development Unit

Private Security Industry Regulatory Authority

Tel: 012 003 0500/1

Email: Research.Development@psira.co.za

www.psira.co.za

Contents

Executive Summary	5
List of Acronyms	6
1. Introduction	7
2. Methodology and Limitations	9
3. Literature Review	11
3.1. PSiRA's Firearms Audit Report (2013)	11
3.2. Jaynes' "Flying Below the Radar?"	12
4. Coping with the Growth of the Private Security Industry	13
5. The South African Firearms Reality	14
6. Legislative Aspects	16
6.1. The Private Security Industry Regulation Act	16
6.2. The Private Security Industry Regulations	16
7. Research Findings	19
7.1. The Origins of a Heavily Armed Private Security Industry	19
7.2. Firearms Used in the Private Security Industry	19
7.3. Non-Compliance in the Possession and Use of Firearms	20
7.4. PSiRA Inspectors' (In)competency to Handle Firearms	20
7.5. Non-Inspections of Firearms Training Centres	21
7.6. Central Firearms Registry Database	21
7.7. No Access to the Database of the Central Firearms Registry	22
7.8. Challenges within the Central Firearms Registry	22
8. Recommendations	24
8.1. Information Sharing	24
8.2. Independent Audits of Firearms Licenses	24
8.3. Training on Firearm Competency	25
8.4. Registration and Inspections of Firearms Training Centres	25
8.5. Registration of Firearms within PSiRA	25
9. Conclusion	27
References	29

Executive Summary

The total number of private security businesses with firearm licenses currently stands at 3,345. The total number of firearms licensed to the private security businesses stands at 101,623. The number of PSiRA inspectors in charge of ensuring compliance with the law stands at 65. Given these figures, this report seeks to find ways on how best the regulation and control of the use of firearms within the private security industry could be improved. Underscoring the fact that currently PSiRA cannot effectively regulate and control the use of firearms within the industry, it can, however, make a contribution towards effective regulation and control in collaboration with the Central Firearms Registry.

The need for increased firearms regulation and control within the private security industry cannot be over-emphasized. This report highlights the fact that whilst PSiRA has a critical role to play in assisting with the control of firearms within the private security industry, the ultimate control responsibility lies solely with the Central Firearms Registry, which is responsible for considering firearms license applications as well as monitoring compliance in terms of the Firearms Control Act. This means that PSiRA can only do so much within its means and competences.

Acknowledging the dearth of literature on the use of firearms in the private security sector, this report nevertheless raises some of the challenges faced by PSiRA in so far as the regulation and control of the use of firearms in the private security sector is concerned. The report underscores the need for PSiRA to brace itself for an industry that is not only growing at an exponential rate, but an industry which is in possession of more than a hundred licensed firearms. The 62 inspectors who are responsible for ensuring compliance in terms of the private security businesses with licensed firearms are generally not competent in handling firearms.

The report points to the need for the enactment of regulations that will specifically address the use of firearms within the private security sector. This is also in line with the Private Security Industry Regulation Amendment Act, 2013, which will be in operation in the not too distant future. The regulations should also take into consideration the new amendments which are currently proposed for the Firearms Control Act.

The report highlights some of the current challenges faced by PSiRA, such as non-compliance in the possession and use of firearms, non-inspection of firearms training centres, inaccuracy of and accessibility to the Central Firearms Registry (CFR) database, and losses of firearms in the private security industry. In order to improve the regulation and control of the use of firearms within the private security industry, the report recommends the following: that information must be shared between the CFR and PSiRA; that PSiRA inspectors must be trained and be competent to handle firearms; that firearms training centres must be registered with PSiRA and subject to its inspections; and that PSiRA must register and keep a register of firearms within the private security industry.

List of Acronyms

CFR	Central Firearms Registry
CIPC	Company and Intellectual Property Commission
PSiRA	Private Security Industry Regulatory Authority

1. Introduction

The purpose of this research project is to contribute towards the Private Security Industry Regulatory Authority's (PSiRA's) effective regulation and control of the use of firearms within the South African private security industry. The use and possession of firearms within the South African private security industry is governed by two pieces of legislation, namely the Private Security Industry Regulation Act (Act No 65 of 2001) and the Firearms Control Act (Act No. 60 of 2000).¹ The Private Security Industry Regulation Act (PSIR Act) established the Private Security Industry Regulatory Authority (PSiRA)² whose primary objects are firstly, to regulate the private security industry and secondly, to exercise effective control over the practice of the occupation of the security service provider in the public and national interest, among other things.³

In order to achieve these objectives, PSiRA is, among other things, mandated to ensure that all security service providers act in the public and national interest in rendering security services.⁴ The Authority is further mandated to ensure that compliance with existing legislation by security service providers is promoted and controlled through a process of active monitoring and investigation of the affairs of security service providers.⁵ It must be noted that South Africa, like most member states of the European Union (with the exception of Denmark, France, the Netherlands and the United Kingdom), allows for the carrying of firearms by security personnel with a special permit.⁶

The Authority is currently self-funded in the sense that it does not receive any funding from the national treasury as appropriated by the South African Parliament. However, it receives funds from annual fees, registration fees, course reports and fines from the private security industry. During the financial year 2012/2013, the total operating revenue generated amounted to R159.9 million.⁷ This negatively impacted on the effective operations of the Authority. Due to financial constraints, PSiRA has not been in a position to employ enough inspectors to ensure that the industry complies with the law. In its 2014/15 annual report,⁸ PSiRA acknowledged the capacity constraints, stating that the number of employed inspectors, which currently stands at 49, was not sufficient in carrying out its legislative mandate, which also includes the regulation of the use of firearms.

1 Firearms Control Act No. 60, 2000 replaced the ineffective and outdated Arms and Ammunition Act No. 75, 1969.

2 Hereafter also referred to as the Authority.

3 Section 3 of the Private Security Industry Regulation Act No. 65 of 2001.

4 Section 3(b) of the Private Security Industry Regulation Act No. 65 of 2001.

5 Section 3(b) of the Private Security Industry Regulation Act No. 65 of 2001.

6 See generally Elke Krahmman & Aida Abzhaparova, *The Regulation of Private Military and Security Services in the European Union: Current Policies and Future Options*, EUI Working Papers AEL 2010/8, Academy of European Law PRIV-WAR Project.

7 PSiRA Annual Report 2013/2013, p.103

8 As above, p.57.

Undertaking research on the use of firearms within the private security industry could not have come at a better time, as it is aimed at making concrete recommendations on how to improve the Authority's mandate in terms of the use and control of the firearms within the industry.

2. Methodology and Limitations

The process of data and research updates included a desktop research that was aimed at updating the data as reflected in the Audit and delving deeper into analysing the challenges faced by PSiRA in effectively regulating and controlling the South African private security industry. This research also involved reviewing literature on this subject as it pertains to the use of firearms within the industry. It further provided an analysis on how the Firearms Control Act could be aligned with the Private Security Industry Regulation Act. This analysis is critical for informing policy options on how the Firearms Control Act and the Private Security Industry Regulation Act could at best be strengthened to effectively regulate and control the use of firearms within the private security industry in South Africa.

Unstructured interviews were conducted with PSiRA staff members as well as representatives of PSiRA stakeholders, being the private security providers. Information was also gathered during the National Firearms Summit, which was held in Cape Town on 24 March 2015. This Summit was organised by the Portfolio Committee on Police and dedicated to measures to control the proliferation of guns in South Africa, which followed the release of the draft Firearms Control Amendment Bill. Further engagements with the members of the CFR and CFR Appeal Board took place.

For the purposes of this report, “firearm” means a firearm as defined in the Firearms Control Act, 2000⁹ and all regulations made thereunder. In terms of section 1 of the Firearms Control Act, firearm means the following:

- a. device manufactured or designed to propel a bullet or projectile through a barrel or cylinder by means of a burning propellant, as a muzzle energy exceeding 8 joules (6ft-lbs);
- b. device manufactured or designed to discharge rim-fire, centre-fire or pin-fire ammunition;
- c. device which is not at the time capable of discharging any bullet or projectile, but which can be readily altered to be a firearm within the above-mentioned meaning of paragraphs (a) and (b);
- d. device manufactured to discharge a bullet or any other projectile of a calibre of 5.6 mm (.22 calibre) or higher at muzzle energy of more than 8 joules (6 ft-lbs), by means of compressed gas and not by means of burning propellant; or

9 Act No. 60 of 2000.

- e. barrel, frame or receiver of a device referred to in paragraphs (a), (b), (c), and (d), but does not include a muzzle-loading firearm or any device contemplated in section 5 of the Firearms Control Act.¹⁰

It must be noted that private security officers are classified as civilians, which essentially means that they are subject to all regulations and obligations pertaining to ordinary civilians.¹¹ This is relevant to the discourse on the control of firearms within the private security industry.

There are two main limitations to this study. Firstly, the Firearms Control Act, 2000 is currently undergoing review and will usher in a new dispensation in terms of the use and possession of firearms within private security sector. It is not known when the amendment act will be passed. Secondly, the Private Security Industry Regulation Amendment Act, 2013, which introduces new sections on the use and possession of firearms within the context of the private security sector, is not yet in operation. These limitations, which reflect some uncertainties on what the future holds, make it impossible to give a thorough analysis on how the regulation and control of the use of firearms within the industry could be promoted.

Other limitations include the fact that, as PSiRA inspectors are incompetent to handle firearms, any observation of the “full inspection” of firearms was impossible. The report will show that PSiRA inspectors’ responsibility is to complete a sheet, thus ensuring compliance without actually handling the firearm. This limitation presents a challenge in so far as regulating and controlling the use and possession of firearms within the industry.

10 S 5 of the Firearms Control Act provides for devices not regarded as firearms for purposes of the Act. This includes examples such as an air gun, tranquiliser firearm and a flare gun, among others.

11 Nathalie Jaynes, *Flying Below the Radar? The Armed Private Security Sector in South Africa*, Open Society Foundation (2012), p.17.

3. Literature Review

There is an unfortunate dearth of literature on the use of firearms within the private security industry in South Africa. This is largely linked to the absence of statistical data, both on the part of the CFR and PSiRA. Despite this limitation, this report will reflect on two important works, namely, the PSiRA Firearms Audit Report (2013) (unpublished) and Jaynes' occasional paper, *Flying Below the Radar: The Armed Private Security Sector in South Africa* (2012). While these important works were finalised just a few years ago, they remain relevant for our purposes.

3.1. PSiRA'S FIREARMS AUDIT REPORT (2013)

The Firearms Audit undertaken during the financial year 2012/2013 on the Central Firearms Register's (CFR) database in terms of firearm licenses issued to private security providers was the first attempt by PSiRA in trying to understand the extent to which firearm licenses were issued by the CFR to private security providers. While the firearms audit was not easy due to PSiRA not having access to the CFR database and manually having to identify security businesses from a database list of 8,345 businesses, it nevertheless provided critical insights on the extent of firearms within the South African private security industry.

The findings in the Firearms Audit also pointed to the urgent need for further research into the use of firearms within the private security industry. The Firearms Audit further revealed that there was a serious problem with regard to firearms control within the industry.¹²

Firstly, the changing of registration status of security businesses since the initial firearm licenses issued by the office of the CFR presented challenges, particularly where the registration of the security service providers had been withdrawn by the Authority or the businesses were placed under liquidation or voluntary liquidation as per the records of the Company and Intellectual Property Commission (CIPC). This meant that the withdrawn businesses were still in possession of firearms, thus putting the general public in danger. The Firearms Audit found that there were 19,833 firearms that the withdrawn businesses still had in their possession.¹³

Secondly, the Firearms Audit revealed that the number of firearms licensed to licensed businesses exceeded the number of security officers employed. This means that there were more firearms than the individuals who were licensed to use them. Thirdly, the Audit also revealed that there was a system in which the Authority could automatically send information of change in registration status of businesses to the office of the CFR in order to revoke the firearms license. This means that a business may have had its registration withdrawn by PSiRA and continued to use licensed firearms outside legally mandated roles for private

12 Firearms Audit, p.46.

13 As above, p.3.

security providers. Fourthly, the Audit also found that firearms competency in respect of PSiRA inspectors was very minimal, if not non-existent.

3.2. JAYNES' "FLYING BELOW THE RADAR?"

The other most important literature on the subject is found in Jaynes' occasional paper, titled "Flying Below the Radar? The Armed Private Security Sector in South Africa".¹⁴ In her seminal work, Jaynes reflected on a number of important findings. Firstly, she noted that both the CFR and PSiRA were grossly under-capacitated and thus any information on private security company stockpiles was not properly recorded.¹⁵

Secondly, it was further noted that there was no central data repository on firearms discharges and injury/death in terms of firearms licensed to private security businesses. A register of such incidences was neither kept by the South African Police Service nor by PSiRA.¹⁶ Thirdly, the study revealed that there was insufficient oversight of PSiRA and the private security industry. Accordingly, Jaynes argued that the actual spending on oversight of the industry by PSiRA was insufficient, as there were only 16 PSiRA inspectors employed nationally.¹⁷

Jaynes also questioned the role of inspectors in terms of their inspection mandate. Fourthly, Jaynes noted that there was a misalignment between the PSiRA legislation and the CFR legislation.¹⁸ This misalignment had an impact on the effective control of firearms within the private security industry.

Some of the recommendations made by Jaynes included harmonisation of the Firearms Control Act and the PSiRA Act, co-operation between PSiRA and the CFR, and the increased oversight of the private security sector on the part of PSiRA. In so far as the harmonisation of the legislation is concerned to date, this has not even taken any shape as the Firearms Control Act is currently undergoing a legislative review, which will result in the amendment of the Act. The PSiRA legislation is also undergoing a legislative review. The PSiR legislation can only be properly aligned with the Firearms Control Act once the amendment is finalised. In so far as the co-operation between PSiRA and the CFR is concerned, systems are already in place for such co-operation, despite the fact the CFR database remains inaccessible to PSiRA. In so far as the need for strengthening the oversight mechanism is concerned, PSiRA has thus far increased its inspectorate to a total of 62 inspectors. While this increase is welcome, PSiRA's inspectorate remains generally ineffective, particularly in terms of firearms control in the private security sector.

14 Jaynes (n 11 above).

15 As above, p 1.

16 As above, p 2.

17 As above.

18 As above.

4. Coping with the Growth of the Private Security Industry

That the South African private security industry is growing at an exponential rate is not disputed. The most recent statistics show that during the 2014/ 2015 financial year, there were 8,195 registered active security businesses and 1,979,969 registered (active and inactive) security officers recorded on PSiRA's database.¹⁹ Of these businesses, there were 3,136 registered active armed response businesses.²⁰

These businesses are mainly in the following sectors: guarding, assets in transit (cash and other), close protection, reaction services and anti-poaching.

A recent PSiRA Audit on the Central Firearms Register's database in terms of firearms licenses issued to security service providers during the 2012/2013 financial year, showed that 101,612 firearms were licensed to the private security industry.²¹ In the financial year 2013/2014, a total of

1,119 firearm application enquiries were received from the Central Firearms Registry and finalised.²² As the industry is one that is thriving, there is a strong likelihood that this figure has grown. As PSiRA provides a frontline service, there is a critical need for an improved frontline service delivery on the part of the Authority in terms of regulating and controlling the use of firearms within the private security industry, which is steadily growing.

During the financial year 2014/15, there were only 49 inspectors²³ employed by PSiRA to conduct country-wide inspections, which are aimed at ensuring that the industry is in compliance with the law, particularly the Private Security Industry Regulation Act No. 56 of 2001. This also includes ensuring compliance with the Firearms Control Act No. 60 of 2000 in terms of those businesses that use firearms in their provision of security services. With only 44 inspectors responsible for conducting inspection of an industry that is almost three times larger than the public police, this is not only an uphill struggle for the Authority, but also threatens the safety of the South African population at large. A further challenge is the absence of a computerised database system that shows all the private security businesses licensed by SAPS to use firearms and the types of firearms to be used. These challenges are largely as a result of financial constraints, which have hampered the Authority's work over the years.

19 See the PSiRA Annual Report 2014/15, p.48. During the financial year 2013/14, the number of registered security officers was 1,868,398 compared to the PSiRA Annual Report 2013/2014, p.42.

20 PSiRA Annual Report 2014/15, p.55.

21 Audit on the Central Firearms Register's Database in Relation to Firearms Licenses Issued to Security Service Providers (Firearms Audit). On file with author.

22 PSiRA Annual Report (n 19 above), p.69.

23 As above, p.43.

5. The South African Firearms Reality

At best, South Africa could be described as a 'gun culture' society, being the rampant and fragrant use of guns in society.²⁴ There is no doubt that South Africans remain fascinated and obsessed with guns. A gun is used as a legal weapon, which poses a greater degree of danger when brandished easily with no restrictions.²⁵ In the case of South Africa, even with the restrictions, the 'gun culture' has run out of control. This culture has permeated through to the private security industry. It cannot be overlooked that the culture of violence, which was inherent in the apartheid era, brought with it a baggage of weapons commonly owned by individuals with a proclivity to use them as and when they deem fit. This was coupled with the insecurities which threatened both businesses and individuals alike.

That South Africa is a violent country is not in doubt. Guns are more often than not used to address, rightly or wrongly, the high crime rate. Needless to say, ordinary South Africans 'get sucked into the very culture of violence' as they wish to defend themselves and their property against heavily armed criminal elements. This is achieved through gun ownership. It has been argued that criminals' knowledge of the widespread possession of guns by citizens exerts a deterrent effect on crime.²⁶ Whether this is correct in the South African context, remains a moot question. Some prefer to cede their 'right to gun ownership' to private security companies to provide security services, including the use of firearms.

The other interesting observation is that South Africa is not insulated from the circulation of these weapons, whether legally or illegally obtained. It is very easy to obtain an illegal firearm. According to Tracey, the theft and losses of firearms from the private security industry is one of the sources of the illegal pool of firearms.²⁷ The easy access and availability of firearms in South Africa makes it easy for those who gain such access to firearms to accidentally cause deaths with the use of firearms. It has been argued that '[w]here firearms are more readily available, there will be a higher accidental death rate from firearms.'²⁸

The South African reality is that firearms figure prominently in violent crime and are the dominant weapon used in attempted murders. In the case of *S v Mbatha*, *S v Prinsloo*,²⁹ J Langa, quoting from the Human Science Research Council document 'Recent Crime Trends', notes that the intolerably high levels of gun violence has a 'profound negative effect' on the quality of life and social stability. As early as 2000, the

24 See generally, Joyce Saltalamachia: 'Deadly pastime: Americans and guns' (1995), p.86. New York Law School Journal of International and Comparative Law, p.345.

25 See generally, Masanzu Kundayi: 'Of guns and laws': a South African perspective in light of United Kingdom and United States gun laws The Comparative and International Law Journal of Southern Africa, Vol. 39, No. 1 (MARCH 2006), pp.131-151.

26 Kleck, G. (1991). Point Blank: Guns and Violence in America, Aldine de Gruyter, New York.

27 Tracey, L. 2011. Implementing the South African firearms control: A complete failure or work in progress? Pretoria: Institute for Security Studies, p.1.

28 Cook, P.J. (1982), 'The Role of Firearms in Violent Crime', in M.E. Wolfgang and N.A. Weiner, eds., Criminal Violence: 236-91. Beverly Hills: Sage.

29 1996 2 SA 464 474.

South African firearms statistics were termed 'the grimmest on record', as the report of the National Injury Mortality Surveillance System revealed that firearms deaths were higher than those occurring through road accidents.

The reality is that PSiRA does not have a record on its database of all the security businesses that are licensed by SAPS for firearms. This undoubtedly creates challenges in cases where the Authority suspends or withdraws registration of a security business. Due to this challenge, PSiRA cannot account for the number of security businesses licensed by SAPS for firearms. It is therefore difficult to reconcile the number of firearms that are in the possession of the security industry. Thus PSiRA is unable to ensure that the firearms within the private security industry are fully accounted for.

6. Legislative Aspects

The possession and use of firearms in the private security sector is governed by the law. The legislative aspects are both found in the PSIR Act as well as in the regulations.

6.1. THE PRIVATE SECURITY INDUSTRY REGULATION ACT

The Private Security Industry Regulation Act provides that the Minister may make regulations relating to the issuing, possession and use of firearms and other weapons by security providers.³⁰ It must be noted that the Act does not make it peremptory for the Minister to issue such regulations. Instead, it provides for the Minister's discretion. It is submitted that the Act should have provided for a peremptory order. To this end, it is important that regulations specifically on the use of firearms should specifically be enacted in order to improve the regulation and control of their use within the industry.

In terms of the Act, the powers of inspectors regarding security providers include requesting from any person on the premises who is in control of the premises³¹ to produce to the inspector "all or any records or documentation relating to the activities of the security service provider...and pertaining to such a period as may be determined by the inspector." This includes posting sheets indicating "whether the security officers are in possession of any firearms or other weapons or have been provided with any firearm or other weapon by anyone and any legal authorisation regarding such a firearm."³² The inspections of these posting sheets will be discussed in more detail later in the report.

6.2. THE PRIVATE SECURITY INDUSTRY REGULATIONS

6.2.1. DECLARATION OF LAWFUL POSSESSION OF FIREARMS

In terms of the Private Security Industry Regulations, every security business applying for registration as a security service provider must, for the purposes of compliance with the Act,³³ demonstrate, through a declaration with such substantiation as may be necessary, to the satisfaction of the Authority that the applicant will meet the certain minimum requirements at the commencement of its business activities in the

30 S 35(1) (m) of the PSIR Act.

31 This includes any person who appears to be performing managerial, supervisory, administrative or clerical functions related to rendering a security service.

32 S 34(1)(d)(ii)(dd) of the PSIRA Act.

33 S 23(2)(b) of the PSIRA Act.

rendering of a security service.³⁴ This includes that “the applicant is in lawful possession of the firearms and other weapons that are necessary to render the security service in respect of which it has contracted.”³⁵

6.2.2. REGISTER OF SECURITY SERVICE PROVIDERS WITH FIREARMS

In terms of section 24 of the PSIR Act, the Authority must keep a register in which it must enter the name and prescribed particulars of every security service provider registered in terms of the Act. The Private Security Industry Regulations further provide that the register of security service providers, which is kept by the Authority (in terms of section 24 of the Act), contains, among other things, “particulars of firearm licenses and permits issued to a security service provider.”

6.2.3. RECORD AND DOCUMENT KEEPING RELATING TO FIREARMS

The Private Security Industry Regulations further provide that, among other things, a security business must keep a posting sheet containing information on “whether a security officer was provided with a firearm or other weapon, and if so, the type of firearm or weapon, its proper identification number if any, as well as information on the legal authority in terms of which the firearm was provided and possessed.”³⁶

The security business must further have “legal authorisation in the form prescribed by law in respect of the possession of and use of firearms and other weapons by the security business and its security officers.”³⁷

6.2.4. PROVISION OF A SUITABLE FIREARM FOR A SPECIFIC PURPOSE

In terms of the Private Security Industry Regulations, a security business which renders a security service requiring the possession or use of a firearm, must lawfully provide a suitable firearm for that purpose and may not require or permit a security officer employed by the security business to obtain or provide a firearm for that purpose.³⁸ The Regulations further provide that a security officer may, for the purpose of

34 And is likely to continue to meet these requirements for at least 1 year after such commencement.

35 Reg. 5(1)(b)(xi) of the PSIRA Regulations.

36 Reg. 10(7)(f)(vi) of the PSIRA Regulations.

37 Reg. 10(7)(l) of the PSIRA Regulations.

38 Reg. 13(5) of the PSIRA Regulations.

rendering a security service in the course of his or her employment, only possess a firearm lawfully provided by his or her employer.³⁹

The importance of the regulation providing for the use and possession of lawful firearms for the purpose of rendering a security service cannot be over-emphasized. Any security service provider who requires or permits a security officer employed or made available to that security service security service in the course of his or her employment is guilty of an an offence and on conviction liable to a fine or to imprisonment for a period not exceeding 24 months.⁴⁰

39 Reg. 13(6) of the PSIRA Regulations.

40 Reg. 13(7)(d) of the PSiRA Regulations.

7. Research Findings

7.1. THE ORIGINS OF A HEAVILY ARMED PRIVATE SECURITY INDUSTRY

The defining moment of South Africa's large and heavily armed private security industry was in the mid-1980s. This was during the time when the apartheid regime attempted to depoliticise its counter-insurgency operations by deploying private security businesses instead of the police and/or armed forces.⁴¹ After 1994, the growth of the private security sector increased at an exponential rate and its focus was more on the commercial side (as opposed to the political imperatives).

As the time progressed, firearms arguably became the best form of protection. Ironically, they also became a source of violence leading to untold suffering and death (to both innocent and not so innocent people). The fact remained that the increase in the proliferation of firearms became a common cause. Mills argues that both the South African Police (the then South African Police Service) and the private security sector were sources of illegal weapons in South Africa.⁴² He further argues that private security companies with armed guard contracts sometimes hired unregistered security officials who were not subjected to the Security Officers' Board Act of 1987 that compelled them to undergo a mandatory firearm training course.⁴³

7.2. FIREARMS USED IN THE PRIVATE SECURITY INDUSTRY

The types of firearms generally used in the private security industry include handguns, shotguns, restricted firearms such as semi-automatic firearms (LM range and other), and bolt action rifles (anti-poaching rifles). The firearms used in the industry must be linked to the private security businesses registered by PSiRA. The private security businesses who apply for the firearm licenses must be registered with the Authority. Before any firearm license is issued by the CFR to any private security business, PSiRA must provide information relating to the registration status of the business applicant, the number of security officers employed by the business applicant (including its registration and training status), and annual amounts due to PSiRA.

During the financial year 2014/2015, it was reported that a total of 1,062 firearm application enquiries were received from the CFR.⁴⁴ These enquiries were revealing. The CFR was informed as follows: 36 of the applicants owed annual amounts or fines; 112 of the applicants failed to inform PSiRA of the changes; 72 responsible persons of the firearms were not linked to the business or registered; 25 businesses

41 Blecher, S. "Safety in Security? A report on the private security industry and its involvement in violence", Network of Independent Monitors, March 1996.

42 Mills, G. 1994. Small Arms Control: Some Early Thoughts. Pretoria: Institute for Security Studies, p.2.

43 As above. The Security Officers' Board Act of 1987 was thereafter succeeded by the Private Security Industry Regulation Act, 2001.

44 In the year 2013/2014, PSiRA received a total of 1,119 enquiries from the CFR.

were not registered; 6 directors/members/partners/owners of businesses were not registered or trained; 1 business was liquidated; and in 26 cases the SAPS or businesses provided incorrect information.⁴⁵ The Annual Report states that of the 1,062 firearm enquiries, a total of 784 applicants were cleared by PSiRA.

7.3. NON-COMPLIANCE IN THE POSSESSION AND USE OF FIREARMS

Within the private security industry, non-compliance of the use of firearms is pervasive. During the financial year 2014/2015, it was reported that of the total of 421 security officers who were inspected and investigated for carrying firearms, 33 were found to be contravening Regulations 13(5) and (6). Regulation 13(5) prohibits a security officer employed by a security business to obtain or provide a firearm for the purpose of rendering a security service requiring the possession or use of a firearm, and Regulation

13(6) provides that in the course of his or her employment, a security officer may only possess a firearm lawfully provided by his or her employer.

These 33 infractions of the law do not necessarily reflect the widespread non-compliance, as the number of PSiRA inspections are very low compared to the number of firearms within the industry. This figure, however, gives a glimpse on the ubiquitous nature of non-compliance with regard to the possession of firearms within the industry. A further disturbing fact is that the same security officers who were in contravention of Regulations 13(5) and (6) were also found to be incompetent in using firearms. It is possible that if the number of security officers inspected was higher than the 421, the number of infractions would also increase. It is also possible that if more PSiRA inspectors were competent to handle firearms, the inspections would be more effective. This would essentially lead to more security officers being found wanting.

7.4. PSiRA INSPECTORS' (IN)COMPETENCY TO HANDLE FIREARMS

While PSiRA launched a firearms inspection programme during the 2014/15 financial year, it is disturbing that PSiRA inspectors are incompetent to handle the firearms which they are responsible for inspecting. Of the 65 PSiRA inspectors (both operational and non-operational), only five inspectors are competent in handling firearms.⁴⁶ This is despite the fact that PSiRA established a Firearm Regulatory Sub-Committee responsible for establishing a Standing Committee (between PSiRA and the CFR) in order to "[f]acilitate the training of [PSiRA] inspectors to enhance proper firearm control including] competency in the use of firearms and verification of ammunition."⁴⁷

The incompetency of PSiRA inspectors in terms of firearms presents a challenge in so far as effective inspection of firearms is concerned. In fact, the inspections conducted by PSiRA inspectors are more on the compliance side than the physical inspection of the firearms themselves. This is evident from the inspection checklist below.⁴⁸

45 PSiRA Annual Report 2014/15, p.41.

46 Interview with Mr Stefan Badenhorst, Senior Manager: PSiRA, on 22 March 2016.

47 PSiRA Annual Report (n 19 above), p.43.

48 Any physical handling of firearms by a firearm incompetent inspector would be unlawful.

During the financial year 2014/15, the total number of firearm inspections totalled 1,035. Between 1999 and 20 October 2014, the CFR approved 61,253 applications for firearms from private security companies. If in one year (2014/15), the inspections were only 1,035, this means that in that year, more than 60,000 firearms were never inspected by PSiRA inspectors. In fact, this could not have been possible, because during that year PSiRA only had 49 inspectors (which included 4 managers).⁴⁹

Even if inspections were carried out, the inspectors would not have been able to “fully inspect” the firearms, as the majority were incompetent to handle firearms.

7.5. NON-INSPECTIONS OF FIREARMS TRAINING CENTRES

It is further important to note that PSiRA inspectors do not inspect firearms training centres. Firearms training centres are also neither registered as security service providers (by PSiRA), nor are they subject to PSiRA inspections. This is very strange in the sense that they offer training and instruction in the use of firearms to individuals (not all) who will in turn use such knowledge to render a security service. If one considers the definition of a “security service” in terms of the PSIR Act, firearms training centres would be required to register as security service providers.

Section 1(1) of the PSIR Act provides that a security service means “providing security training or instruction to a security service provider or prospective security provider”. The Act further provides that “security training” means “any training, instruction or qualification required in terms of the law before a person may be registered as a security service provider or allowed to render any particular security service.”

7.6. CENTRAL FIREARMS REGISTRY DATABASE

It is not disputed that the CFR’s database is not organised in such a manner that private security service providers with firearm licenses are easily identifiable. The absence of a separate database for security service providers will make it extremely difficult to obtain real-time information on the number of firearms in the private security sector. In the event that PSiRA would be interested in ascertaining the number of private security businesses with firearm licenses, this would mean that any information would be manually ascertained and verified with the South African Companies and Intellectual Property Commission (CPIC). This would not only be a tedious exercise, but also inaccurate, as it would involve working through all the CRF lists, which run into thousands of names.

For purposes of inspection, PSiRA inspectors use a list from the CFR, which contains information of the security businesses, including the number of firearms that are licensed. The current list used by PSiRA inspectors reflects a total number of 3,345 private security businesses.

49 PSiRA Annual Report (n 19 above), p.43.

7.7.NO ACCESS TO THE DATABASE OF THE CENTRAL FIREARMS REGISTRY

The study showed that PSiRA does not have any access to the CFR firearms database.⁵⁰ If there was such a direct access, this would make it easier for PSiRA to keep track of security businesses with firearm licenses (including their use and/or misuse thereof). It is commendable that PSiRA has already established the Firearms Regulatory Sub-committee which, inter alia, facilitates the establishment and implementation of effective internal systems to enhance assistance in the control of firearms in the industry.⁵¹

The Firearms Sub-committee is also responsible for facilitating the establishment of a Standing Committee between PSiRA and the Office of the CFR of the South African Police Service. Among other things, the Standing Committee is responsible for facilitating and improving communication and liaison between the CFR and PSiRA, as well as generally sharing information from each other's databases in respect of security service providers and licensed institutions.⁵² Thus far, the Standing Committee has not been successful in PSiRA securing any access to the CFR database.

7.8.CHALLENGES WITHIN THE CENTRAL FIREARMS REGISTRY

7.8.1. INADEQUATE STATISTICAL DATA

The CFR stated that as of 17 September 2003, 1,643 private security companies (out of a total of 3,252) were registered as possessing 58,981 firearms.⁵³ In 2003, therefore, the average number of firearms held by a private security company was approximately 35 firearms. Part of the reason for private security companies owning a large number of firearms is that private security officers are not allowed to use their own firearms in the course of their rendering a security service. According to the CFR, between 1999 and 20 October 2014, the number of approved applications for firearms (from private security companies) stood at 61,253, while those refused stood at 6,006.⁵⁴

Regulations 13(5) and (6) of the PSiRA regulations proscribes the use of personal firearms for private security work and states that it is the private security company's responsibility to provide the weapons and ammunition to be used. Any violation of this regulation is viewed as a criminal offence and renders an individual 'liable to a fine or to imprisonment for a period not exceeding 24 months.'⁵⁵ The Firearms Control Act of 2000 also forbids private security officers from using their firearms on duty. This was not the case before the promulgation of the Firearms Control Act in 2000.

50 See the Firearms Audit, at p.14.

51 PSiRA Annual Report (n 19 above) 42.

52 As above.

53 Central Firearms Registry presentation to the Parliamentary Portfolio Committee on Safety and Security, 17 September 2003.

54 As above.

55 PSiRA Regulations 'Uniforms, insignia, badges and firearms', paragraphs 3(d) and (f).

7.8.2. STATISTICAL DATA INACCURACIES

It must be noted that the CFR does not have annual figures relating to the number of firearms in the private security industry. In fact, the statistics provided by the CFR on the number of firearms in the private security industry may also not be accurate. Reasons are firstly, that there is a common practice among private security companies of exchanging or trading their firearms. Secondly, the fluidity of security companies is pervasive, as they emerge and cease to be in business easily. Thirdly, some registered security companies are not licensed to use or possess firearms. Finally, the location of firearms owned by private security businesses whose registrations had been withdrawn by PSiRA was unknown. This, therefore, makes it difficult to ascertain with certainty the number of firearms in the private security industry.

7.8.3. LOSSES OF FIREARMS IN THE PRIVATE SECURITY INDUSTRY

It is common cause that firearms owned by private security companies get lost. In most cases, these firearms are lost as a result of successful attacks on security officers transporting assets. It must be noted that attackers are usually armed. The CFR does not have any statistics on the number of firearms that are lost in the private security industry. This presents a challenge in terms of tracking the number of firearms within the industry.

8. Recommendations

8.1. INFORMATION SHARING

The importance of information sharing between PSiRA and the CFR is critical for the purposes of improving regulation and control of the use of firearms within the private security industry. The information received from PSiRA as requested by the CFR is important in deciding whether a security business could be considered for firearm licenses. The information received from the CFR requested by PSiRA is equally important in order to ensure that the security businesses with firearm licenses are in compliance with the law.

The Private Security Industry Regulation Amendment Act, 2013 (though not yet in force), provides that PSiRA must inform the Registrar of CFR at the time of any new registration, suspension, sale, transfer, liquidation, merger, lapsing or termination of the registration or ownership of a security service provider or any other material change or reason that would necessitate the licensing, re-licensing or disposal of firearms in the possession of such security service provider.⁵⁶ It is important to note that PSiRA is required to report the above information to Parliament in its annual report.

Furthermore, the Private Security Industry Regulation Amendment Act, 2013 provides that the Registrar must, at the written request of the Authority Director, submit a list of firearms registered to a particular service provider to PSiRA within 30 days of the request being made.⁵⁷

It is therefore critical that the Private Security Industry Regulation Amendment Act, 2013 comes into operation as soon as possible.

8.2. INDEPENDENT AUDITS OF FIREARMS LICENSES

As the CFR does not have annual figures relating to the number of firearms in the private security industry, it is recommended that these statistics must be published annually. This will ensure that the information is made public and that there is responsibility and accountability for the possession and use of firearms within the industry.

Since the data produced by CFR is not entirely accurate, it is further recommended that PSiRA should also conduct its own annual independent audit in order to have its own interpretation of firearms within the private security industry. The only challenge herewith is that the independent audit largely depends upon the data received from the CFR, which still needs better systems in so far as the licensing of firearms is concerned.

56 Section 33 (b) of the Private Security Industry Regulation Amendment Act, 2013.

57 As above.

8.3. TRAINING ON FIREARM COMPETENCY

It is recommended that PSiRA inspectors be trained on firearms in order to enable them to be competent in handling firearms and to “fully inspect” the firearms in the private security industry. It should be a requirement that all PSiRA inspectors to be employed on a full-time basis should have firearm competency as a requisite. This will ensure that firearms are “fully inspected” and that any private security provider in violation with the law is called upon to account.

The Firearm competency training should be done every three years to ensure that the inspectors remain competent in handling firearms. This could also include PSiRA sourcing services of shooting ranges for the inspectors’ training. As the inspection of firearms may also put the inspectors in great danger, they should be allowed to also carry firearms for protection.

8.4. REGISTRATION AND INSPECTIONS OF FIREARMS TRAINING CENTRES

As this study has revealed that the firearms training centres are not registered as security service providers, it is recommended that since they, among other things, provide security training or instruction to security providers or prospective security providers, they must be subjected to the PSiRA regulatory regime, including being inspected for training, possession and the use of firearms.

8.5. REGISTRATION OF FIREARMS WITHIN PSiRA

The study has pointed to the inaccurate information from the CFR. In order to address this, it will be important that a dedicated Firearms Registration Unit be established within the PSiRA Registration Department. Over and above the registration of a security provider, firearms should also be registered within that recommended unit in order to ensure that the firearms in the private security sector are known and also reported in the PSiRA annual report. Such registration of firearms at PSiRA should carry a cost to be borne by the private security provider, being the company owning the firearms. The registration of the firearms could also be done annually and any non-adherence must attract a penalty.

In future, the registration of firearms within PSiRA will also assist the PSiRA Council which is, in terms of section 10(1A)(b)(v) of the Private Security Industry Regulation Amendment Act, 2013⁵⁸, required to

58 Not yet in operation. Section 42 of the Act provides that it will come into operation on a date determined by the President by proclamation in the Gazette.

submit to the Minister at least once a quarter the number of firearms registered to, lost by, stolen from, transferred by security businesses or destroyed in terms of the Firearms Control Act. Over and above this, the Council must submit a report to the Minister at least once a quarter, instances in which firearms were discharged and caused death or injury by a security officer in the performance of his or her duties.⁵⁹

⁵⁹ Section 10(1A)(b)(vi) of the Private Security Industry Regulation Amendment Act, 2013.

9. Conclusion

As the private security industry continues to grow, firearms also continue to be on the increase. This report has shown that improving the regulation and control of the use and possession of firearms within the private security industry requires the harmonisation of the laws dealing with the private security industry and the control of firearms in South Africa. Both the Private Security Industry Regulation Amendment Act, 2013 (not yet in operation) and the draft Firearms Control Amendment Bill are not as helpful for purposes of a thorough analysis. Both legal regimes are undergoing reviews. The Private Security Industry Regulation Act, 2001 and the Firearms Control Act, 2000 are not consonant with each other and are now outdated. The question of whether the amendments to both legislations will yield any meaningful results remains unclear.

The study has highlighted the current challenges faced PSiRA in ensuring that the use and possession of firearms in the private security industry is regulated and controlled. Thus far, the role played by the Authority is limited mainly because of the outdated laws. Given the magnitude of challenges relating to the number of firearms in the industry as well as to PSiRA, it cannot be said that PSiRA is effectively improving the regulation and control of the use and possession of firearms in the industry. It therefore follows that PSiRA cannot be said to effectively ensure compliance of the use and possession of firearms within the industry. This challenge is further compounded by the fact that PSiRA inspectors are generally incompetent to handle firearms. Their role is reduced to a simple "tick, cross and complete" exercise and not the actual handling of the firearms to ensure the lawfulness or otherwise of the firearms.

The study has also highlighted the non-inspection of firearms training centres by the Authority, which is technically not in line with the PSiR Act, which provides that the provision of security training or instruction to a security service provider, which is a "security service" must be a subject of inspection. This issue goes to the heart of defining what a "security service" is within the meaning of the PSiRA Act.

The unreliable, inaccurate and inadequate central firearms registry database was also identified as a challenge to the Authority's role in improving the regulation and control of firearms in the industry. This is further exacerbated by the fact PSiRA does not have access to the database of the Central Firearms Registry. The losses of firearms within the private security industry is not effectively tracked. As the CFR does not have statistics on the number of firearms that are lost in the industry, PSiRA cannot claim to have such knowledge. Thus the tracking of lost firearms in the private security industry by the Authority is non-existent.

In view of some of the challenges faced by the Authority in regulating and controlling the use and possession of firearms in the industry, the study recommends that information sharing between PSiRA and CFR remains critical. This should be coupled with the harmonisation of the current laws dealing with the private security industry and firearms control in South Africa. The study also recommends the need to have fire-

arm-specific regulations to be implemented by PSiRA. These regulations can only be developed after the coming into operation of the Private Security Industry Regulation Amendment Act, 2013 and promulgation (and coming into operation) of the Firearms Control Amendment Bill.

Training on firearms by PSiRA inspectors remains a key challenge and needs to be undertaken without any delay. The study also recommends the registration of training centres for firearms as they provide a “security service” within the meaning of the PSiRA Act. Most importantly, the study recommends that all firearms within the private security industry should be registered (and subject to a fee payment) by PSiRA. This will require a specialised unit within the PSiRA registration unit.

The role to be played by the Authority in improving and controlling the use and possession of firearms within the private security industry cannot only be undertaken in collaboration with the Central Firearms Registry. The urgent attention to be given to the use and possession of firearms within the private security industry cannot be overemphasized.

References

BOOKS

- Cook, P.J. (1982). 'The Role of Firearms in Violent Crime', in M.E. Wolfgang and N.A. Weiner, eds., *Criminal Violence*: 236-91. Beverly Hills: Sage.
- Kleck, G. (1991). *Point Blank: Guns and Violence in America*, Aldine de Gruyter, New York.

ARTICLES

- Blecher, S. "Safety in Security? A report on the private security industry and its involvement in violence", Network of Independent Monitors, March 1996.
- Masanzu Kundayi 'Of guns and laws': A South African perspective in light of United Kingdom and United States gun laws *The Comparative and International Law Journal of Southern Africa* Vol. 39, No. 1 (MARCH 2006).
- Saltalamachia Joyce 'Deadly pastime: Americans and guns' (1995) 86 *New York Law School Journal of International and Comparative Law* 345.

OCCASIONAL PAPERS

- Jaynes Natalie, *Flying Below the Radar: The Armed Private Security Sector in South Africa* (2012).
- Krahmman Elke & Abzhaparova Aida, *The Regulation of Private Military and Security Services in the European Union: Current Policies and Future Options*, EUI Working Papers AEL 2010/8, Academy of European Law PRIV-WAR Project.
- Mills, G. 1994. *Small Arms Control: Some Early Thoughts*. Pretoria: Institute for Security Studies.

THESIS

- Bopape, Lesetja, Simon, 2014. An Analysis of the Firearms Control Measures used by the South African Police Service, University of South Africa (unpublished thesis)

REPORTS

- PSIRA Annual Report 2014/15.
- PSIRA Firearms Audit Report (2013) (unpublished)

LEGISLATION

- Arms and Ammunition Act No. 75, 1969.
- Firearms Control Act No. 60 of 2000.
- Private Security Industry Regulation Act No. 65 of 2001.
- Private Security Industry Regulation Amendment Act, 2013



PSiRA
Private Security Industry Regulatory Authority

Head Office: 420 Witch-Hazel Avenue, Eco Glades 2 Office Park, Highveld Ext 70, Centurion 0158
Tel: 086 10 PSiRA (77472) | **Helpdesk:** 086 133 3850 | **Email:** info@psira.co.za

www.psira.co.za

