



South Africans Rendering Private Security Abroad: Perspective and Context

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Private Security Industry Regulatory Authority

- **José Luis Gómez del Prado** (2007)
 - “The new modalities [of traditional mercenarism] involve **an emerging and very flourishing industry** of private military and security companies, which operates under a commercial logic of obtaining the greatest profit...these companies also recruit and train in developing countries...”

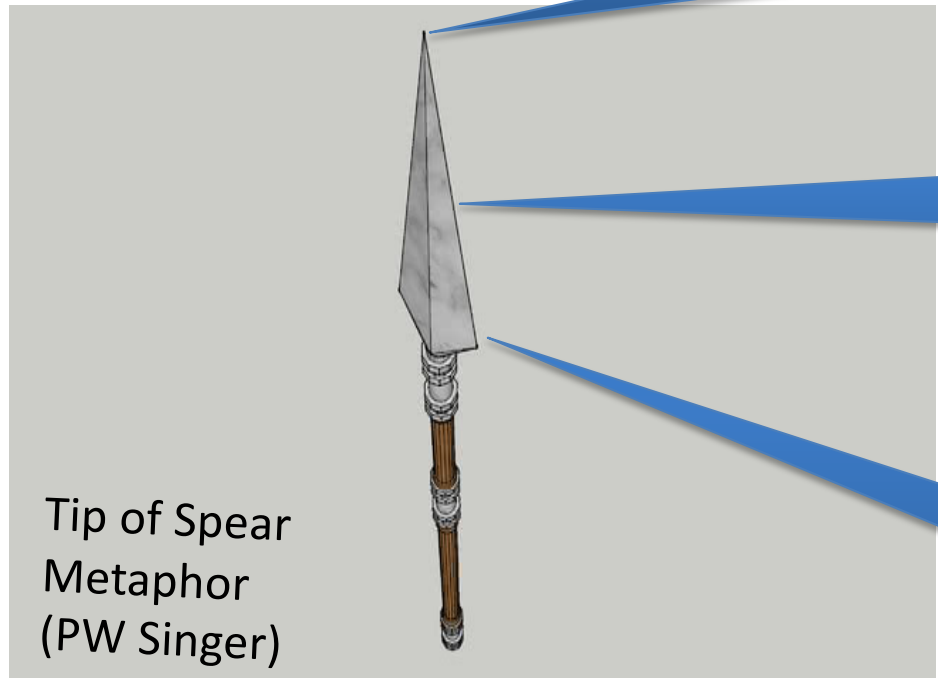


Scope



- Introduction
- Private Security Industry Regulation Act/2001
- Foreign Military Assistance Act of 1998
- Prohibition of Mercenary Activities and Regulation of Certain Activities in Country of Armed Conflict Act/2006
(Not yet in force)
- Private Security Industry Regulation Amendment Act/2013
(Not yet in force)
- Challenges and Concerns
- Conclusion

Introduction



Tip of Spear
Metaphor
(PW Singer)

❖ Security Companies providing Implementation and Command Services (front liners)

❖ Security Companies (Consultants) providing Advisory and Training Services

❖ Security Support Companies providing Non-Lethal Aid and Assistance





- Absence of any authorization process in the Act
- The Act assumes that security services are and can be rendered beyond South Africa
- Extra-territorial application of the Act (S 39)
 - An act constituting an offence in terms of the Act committed outside is deemed to have been committed in the Republic



Foreign Military Assistance Act/1998



- Purpose:
 - Deals with rendering of foreign military assistance by South African juristic persons, citizens, persons permanently resident within South Africa and
 - foreign citizens rendering such assistance from within the borders of the country.



The Regulation of Foreign Military Assistance Act/1998



- Purpose:
 - The provision of **assistance or service** of a military or military-related nature in a country of armed conflict;
 - The enlistment of South African citizens or permanent residents in other armed forces; and
 - Deals with the prohibition of mercenary activity;
 - The provision of humanitarian aid in a country of armed conflict



The Regulation of Foreign Military Assistance Act/1998



- S 2 – no person may within the Republic or elsewhere recruit, use or train persons for or finance or engage in mercenary activity
- Definition of “mercenary activity”
 - S 1 – means direct participation as a combatant in armed conflict for private gain
 - **Note: if there is no “armed conflict”, then there is no mercenary activity!!!**



The Regulation of Foreign Military Assistance Act/1998

- S 3 – No person may within the Republic or elsewhere -
 - Offer to render **any foreign military assistance** to any state or organ of state, group of persons unless he/she has been granted authorisation to offer such assistance in terms of **section 4**
 - **S 4 deals with authorisation for rendering of foreign military assistance**
 - Render any foreign military assistance to any state or organ of state, group of persons or other entity or persons unless such assistance is rendered in accordance with an agreement approved in terms of **section 5**
 - **S 5 deals with approval of agreement for rendering of foreign military assistance**



The Regulation of Foreign Military Assistance Act/1998

- Meaning of Foreign Military Assistance:
- **S 1(iii) military services or military related services, or any attempt, encouragement, incitement or solicitation to render such services, in the form of**
 - **Military assistance to a party to the armed conflict by means of**
 - Advice or training
 - Personnel, financial, logistical, intelligence or operational support;
 - Personnel recruitment;
 - Medical or para-medical services; or
 - Procurement of equipment
 - **Security Services for the protection of individuals involved in armed conflict or their property**
 - **Any action aimed at overthrowing a government or undermining the constitutional order, sovereignty or territorial integrity of a state**
 - **Any other action that has the result of furthering the military interests of a party to the armed conflict**



Prohibition of Mercenarism



- The Act prohibits any person who involved in mercenary activities, namely:
 - Any person who participates as a combatant for gain in an armed force;
 - Any person who directly or indirectly recruits, uses, trains, supports or finances a combatant for private gain in an armed conflict;



Prohibition of Mercenarism...



- Any person who directly or indirectly participates in any manner in the initiation, causing or furthering of
 - an armed conflict or
 - coup d'etat or
 - rebellion against any government

- Any person who directly or indirectly performs any act aimed at
 - Overthrowing a government or
 - Undermining the constitutional order, sovereignty or territorial integrity of a state



The Authorization Process



- No SA citizen/permanent resident may **enlist** with any foreign armed force of any state, unless authorized by the National Conventional Arms Control Committee (S 4 (1))
- No person may **render** or provide humanitarian assistance in an armed conflict, unless granted authorization to render such assistance by the National Conventional Arms Control Committee (S 5 (1))



The Authorization Process...



- Acts which require authorization include
 - Negotiating or offering assistance (including rendering service) to an armed conflict or regulated country;
 - Providing any assistance or rendering any service to a party to an armed conflict or regulated area;



The Authorization Process...



- Recruiting, using training, supporting or financing a person to provide or render **any service** to a party to an armed conflict or regulated area; and
- Performing any other act that has the result of **furthering the military interests** of a party to an armed conflict or in a regulated country



The Authorization Process...



- ‘assistance or service’ includes-
 - Any form of military or military-related assistance, service or activity;
 - Any form of assistance, service or activity by means of –
 - advice or training;
 - personnel, financial, logistical, intelligence or operational support;
 - personnel recruitment;
 - medical or para-medical services; or
 - procurement of equipment; or
 - Security services (Refer to the P*Si*R*A* Act)



The Authorization Process...



- Section 2 (b)
 - ‘No person may within the republic or elsewhere, directly ... recruit, use, train, support or finance a **combatant** for private gain in an armed conflict’ –
 - **THIS IS CONSIDERED A MERCENARY ACTIVITY AND PROHIBITED**



The Authorization Process...



- Section 3 (b)
 - ‘No person may within the republic or elsewhere ...recruit, use, train, support or finance any person to render or provide assistance or service to a party to an armed conflict, unless he, she or it has been granted authorisation in terms of section 7(2)... in accordance with an agreement or arrangement allowed or approved under an authorisation granted in terms of section 7(2)’
 - **THIS IS ALLOWED PROVIDED IT IS AUTHORISED**



The Authorization Process...



- **An authorization is refused if it would –**
- (a) **be in conflict with the Republic's obligations** in terms of international law;
- (b) **result in the infringement of human rights and fundamental freedoms** in the territory in which the assistance or service is to be rendered or the exemption granted;



The Authorization Process...



- (c) **endanger the peace** by introducing destabilising military capabilities or other negative consequences into the region or territory where the assistance or service, or humanitarian aid, is to be, or is likely to be, rendered or provided or would otherwise contribute to regional instability or would negatively influence the balance of power in such region or territory;



The Authorization Process...



- (d) **in any manner support or encourage any terrorist activity or terrorist and related activities**, as defined in section 1 of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004 (Act No. 33 of 2004);
- (e) **contribute to the escalation of regional conflicts** or in any manner initiate, cause or further an armed conflict, or a coup, uprising or rebellion against a government;



The Authorization Process...



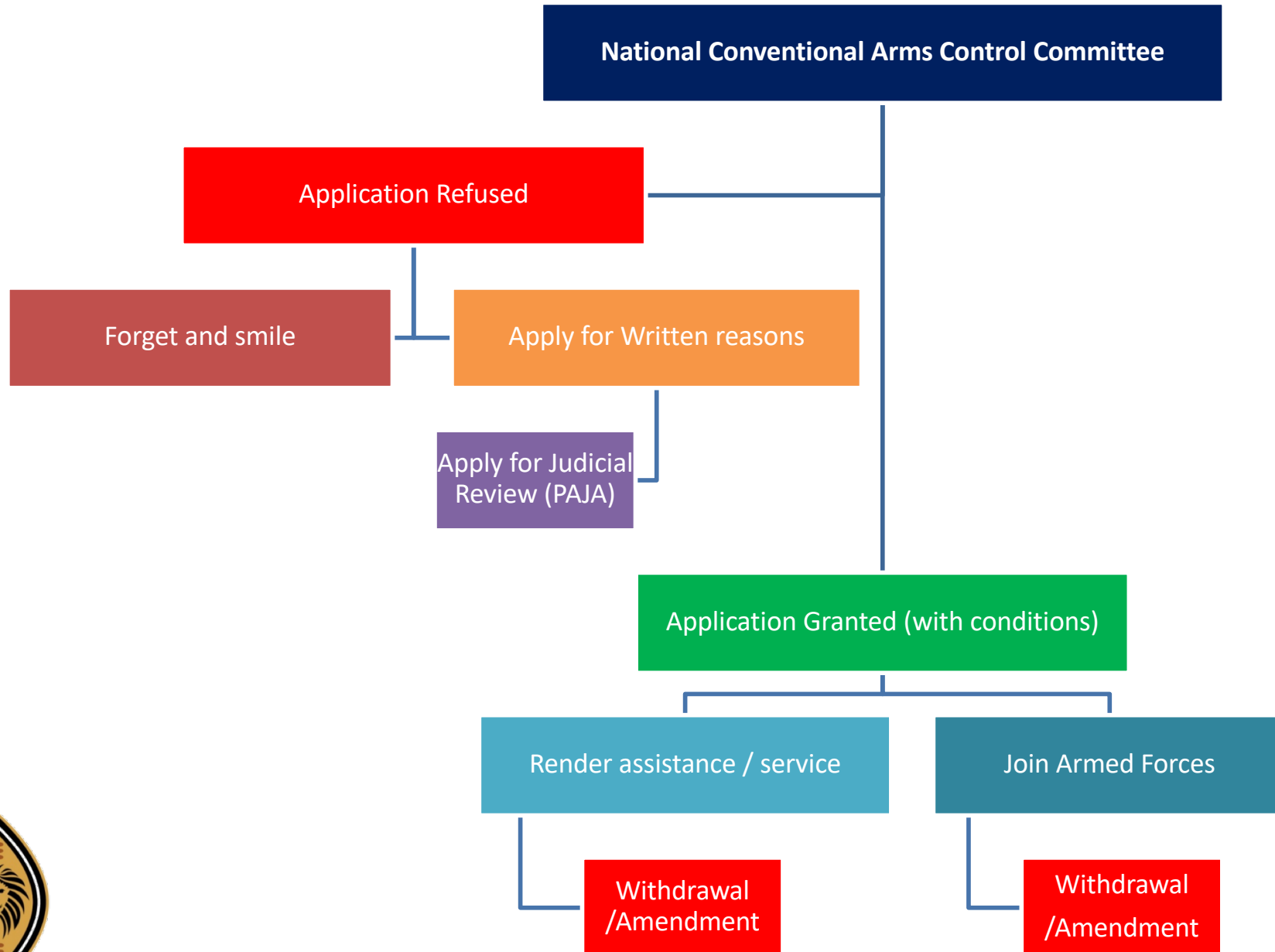
(f) **prejudice the Republic's national or international interests;**

or

(g) **be undesirable or unacceptable** for any other reason



The Application Process



- S 36A Security Services Rendered outside Republic
 - **Application** – any person who, within the Republic, recruits, trains, hires out, sends or deploys any other person to provide a security service outside the Republic
 - **Obligation** – provide the director of PSiRA on a quarterly basis such information as maybe prescribed regarding such
 - Recruitment
 - Training
 - Hiring out
 - Sending deployment or
 - Nature of the security service (within prescribed limits)



- **Two Weeks Notice Requirement** for armed guarding services
 - **Two weeks before deployment** - inform P*Si*RA in prescribed manner
- Information provided to P*Si*RA must be submitted to the State Security Agency (SSA) within 7 days (of receipt of notification)



Conclusion



- PSiRA registered companies and officers do operate beyond SA
- The recruitment of SA citizens and permanent residents with security/military skills abroad is arguably discouraged (in the law)
- SA citizens/permanent residents working abroad/beyond SA remain unknown by PSiRA
- For compliance to exist, the law must exist and be effective



The End



**“If you think
compliance is
expensive –
try non-compliance.”**

Former U.S. Deputy Attorney General Paul McNulty

Thank you for your attention!

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