



FLYING BELOW THE RADAR?

The armed private security sector in South Africa

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Published by the Criminal Justice Initiative of Open Society Foundation for South Africa
2nd Floor, Lobby 2, Block B, Park Lane, corner Park and Alexander roads, Pinelands 7405, South Africa
www.osf.org.za

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First Published 2012
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ISBN 978-1-920489-48-9

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LIST OF ABBREVIATIONS

AIT	asset-in-transit
CFR	Central Firearms Registry
FCA	Firearms Control Act
FCR	Firearms Control Register
ICoC	International Code of Conduct for Private Security Providers
IPID	Independent Police Investigative Directorate
ISACS	International Small Arms Control Standards
PMC	private military company
PSC	private security company
PSIRA	Private Security Industry Regulatory Authority
SALW	small arms and light weapons
SAPS	South African Police Services
SARPCCO	Southern African Regional Police Chiefs Cooperation Organisation
SASSESTA	Safety and Security Sector Education and Training Authority
UNPoA	UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects

ACKNOWLEDGMENTS

This paper is dedicated to Sarah Meek, an arms control and disarmament researcher and activist who had an untimely death in 2006. Without having had the privilege of meeting Sarah Meek, her legacy serves as inspiration. Thanks are due to a number of people who helped in conceptualising and finalising this paper. I am grateful to Zohra Dawood, Executive Director of the Open Society Foundation for South Africa for her support. Special thanks are owed to the Arms Management Programme at the Institute for Security Studies, the Small Arms Survey and Gun Free South Africa. I would also like to thank the respondents, who gave generously of their time for interviews. Thanks to Vaun Cornell for editorial assistance. Finally, a word of gratitude to Dean Peacock for his careful reviewing, insightful comments and ongoing support.

Much of the research for this paper was undertaken while the author was a Sarah Meek Fellow at the Institute for Security Studies (ISS).

The role and contribution of the Small Arms Survey is also noted, as a supporter of the Sarah Meek Fellowship.

EXECUTIVE SUMMARY

This paper examines the South African private security sector, with particular focus on the firearms holdings of South African private security companies (PSCs). The central question that this paper seeks to answer is whether PSCs in South Africa are a source of illicit firearms and ammunition, and contribute to levels of firearm death and injury. This key question is addressed in six parts, commencing with a scene-setting discussion on international benchmarks for PSC firearms and ammunition controls. Against this backdrop, the paper then investigates the current state of South African legislation and regulations on firearms and ammunition controls for PSCs, and the extent to which these relate to and comply with international standards. The paper focuses on the South African private security sector and explores to what extent this sector utilises firearms/ammunition. The following section then attempts to gauge the extent to which relevant legislation and regulatory frameworks are being implemented, enforced and adhered to within the private security sector. The paper then examines the extent and dynamics of firearms and ammunition diversion and misuse from/by the private security sector.

Key findings

1) PSC stockpiles are unknown

The key informant interviews revealed that the Private Security Industry Regulatory Authority (PSIRA) is not interested in firearm holdings and that the Central Firearms Registry (CFR) is grossly under-capacitated. The result is that information on private security company stockpiles is not being properly recorded.

2) No central data repository on PSC firearm discharges and injury/death due to PSCs firearms

In addition to a lack of information on the extent of firearms and rounds of ammunition held by PSCs, there is a lack of knowledge of the extent of misuse and abuse of PSC firearms. Currently, neither PSIRA nor the South African Police Services (SAPS) keep a record of cases of death and injury perpetrated with PSC firearms specifically.

3) Accountability gap for clients who employ negligent PSCs

Whereas emerging good practice on the international stage tends towards client-level responsibility, the South African situation remains one of client immunity.

4) Insufficient oversight over PSIRA and PSCs

While the PSIRA budget is comparable to that of the Independent Police Investigative Directorate (IPID), actual spending on oversight of the private security sector is insufficient with a mere 16 inspectors employed nationally. There is also a general lack of public knowledge about the legal framework within which PSCs function, in particular the powers of arrest, stop and search, use of force and general legal standing. Another gap in oversight relates to the role of PSIRA inspectors.

5) Private security companies operate like state law enforcement

Key informant interviews revealed that PSCs, especially the larger companies, engage in policing functions, primarily in terms of arresting suspects.

6) Confusion over training standards

There is considerable confusion in the industry regarding training standards, particularly maintenance training. There are allegations of certain training service providers and PSCs utilising cheap and low-grade ammunition to cut costs. The problem does not lie so much with training standards per se, but rather the fact that these standards are not applied evenly across the board.

7) Lack of alignment between private security and firearm legislation

The *Firearms Control Act* (Act 60 of 2000) (FCA) has been subject to important amendments and regulations, which have not been incorporated adequately into PSIRA legislation and regulations.

8) Prevalence of criminal cases against PSIRA members

While the details remain unclear, there is an unacceptable level of illegality amongst PSIRA members. Every PSIRA annual report contains a heading 'Criminal Investigations' and notes that those are in respect of 'criminal contraventions of the Act'. This could include

all manners of crimes and violations, all of which serious and a threat to public safety. The 2010/2011 PSIRA Annual Report notes 257 new such cases recorded by PSIRA.

Based on these findings the paper concludes with a set of six policy recommendations aimed at key audiences who have the ability and mandate to implement or act on these recommendations. Each recommendation applies in different ways to a range of stakeholders – the Civilian Secretariat for Police, the Minister of Police, PSIRA, the CFR within SAPS, the parliamentary Portfolio Committee on Police, PSCs and the civil society sector engaged in advocacy and monitoring around public safety issues.

Recommendations

The following key recommendations are based on the findings of this research study.

- Harmonisation and consolidation of legislation is needed to align the FCA and the *Private Security Industry Regulation Act* (Act 56 of 2001) and Regulations more closely.
- Co-operation between PSIRA and the CFR needs to be strengthened, professionalised and consolidated.
- The policing functions undertaken by PSCs need to be closely monitored.
- Increased oversight over the PSC sector is needed; PSIRA requires strengthening and professionalisation to fulfil its task.
- More reliable information on the private security sector is needed and this information should be readily available for monitoring by civil society.
- Training standards and practices need to be harmonised.
- A model of client-level responsibility should be adopted, in alignment with international trends.

1. INTRODUCTION

In late October 2010, life became unbearable for Sonnyboy Maduna, a young father and private security guard employed by Hlanganani Protection Services. According to police reports, Maduna took a company firearm home after his shift and used the weapon to shoot and kill his wife, Dikeledi Maduna, before shooting himself in the presence of their five-week-old daughter. The infant lay alongside her parents' dead bodies for five days before being found by the police after a neighbour had reported a strong smell. Little Ntsoaki Maduna survived.

Understandably the story made headlines in many national newspapers,¹ evoking significant public outrage, for the most part directed at the perpetrator, Sonnyboy Maduna. No mention was made of the culpability, or at least vicarious responsibility, of the security company employing Maduna, which allowed him access to the weapon. The warrant officer working on the case confirmed that the firearm was registered to the company.² The company informed the South African Police Services (SAPS) that at the time of the shooting the firearm in question had been reported missing (from a change room). The guard responsible for 'losing' the firearm was charged with negligence deemed unfit and fined. As the 'lost' firearm turned up in the possession of the deceased, Maduna either stole the weapon or it was passed on to him voluntarily. The fact of Maduna's employment at an armed private security company did, in a manner, aid him in his crime.³ Existing legislation places the burden of responsibility for ensuring that firearms are acquired, stored and used within the ambit of the law on the private security provider (the company). Failure to do so must result in accountability and appropriate sanction.

The fact that this is not currently the situation in South Africa provides the rationale for this paper. Private security in South Africa is a financially lucrative and potentially lethal

business. The central issue that this paper seeks to explore is whether those profiting from the booming private security industry are also ensuring adherence to the law. While the issue of profits derived from civilians' fear and insecurity raises a range of ethical questions that merit further investigation and discussion, this falls beyond the scope of the paper. Rather, this paper will address the phenomenon of private security companies and explore whether their existence and growth have led to an increase in the proliferation of firearms and ammunition, and firearm-related death and injury in South Africa.

The private security industry emerged during the apartheid years, with the support of the apartheid government, when private security companies were employed by the state to act as a complement to the police.⁴ Since the end of apartheid, the industry has continued to grow, with a current estimated net worth of R30 billion.⁵ Unlike during the apartheid years, this post-apartheid growth has been fuelled by commercial rather than political motivation. Over the past decade, the private security sector has grown significantly, from 5491 registered private security companies in 2001 to 8828 in 2011.⁶

While public and media scrutiny of the global private security industry is increasing, the use of firearms remains insufficiently documented, with far too little known about the type, scale and use of arms in this sector. This information gap has serious implications for transparency, arms management and control. In order to fully understand the scope and impact of private security companies (PSCs),⁷ improved reporting, data collection and transparency are required.

Before commencing discussion, it is necessary to clarify the terminology used in this paper. Within literature on the private security sector, some writers distinguish between two broad categories of operations, being private security companies (PSCs) and private military companies (PMCs). While this distinction is regarded as superfluous in much of the international literature, it remains necessary in the South African context primarily because there are specific pieces of legislation governing each category of operation.⁸ To date much research has focused on the latter category, while the category of private security companies has been largely neglected, at least in the South African context. The focus of this paper is on private security companies, with the abbreviation PSC used to refer to all legally registered business entities that provide, on a contractual basis, security services.⁹

It is hoped that this paper will yield insights that will ultimately contribute to greater control of firearms and ammunition by PSCs, and in so doing, stem the possible diversion of these stocks into the illegal pool as well as limit levels of gun violence perpetrated by PSCs.

2. INTERNATIONAL STANDARDS FOR FIREARM AND AMMUNITION CONTROL IN THE PRIVATE SECURITY SECTOR

South Africa has come to occupy an important space on both the regional and global stage, and the country's status is compromised where regional and international commitments are not adhered to sufficiently. While most international instruments regarding small arms and light weapons (SALW) are more politically binding than statutory, it is important that South Africa subscribe to international trends in terms of human rights frameworks and standards. South Africa is a signatory to several regional and international instruments and agreements that have a bearing on local SALW issues – the Bamako Declaration (2000),¹⁰ the UN Firearms Protocol (2001),¹¹ the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (2001) (UNPoA),¹² the Southern African Development Community (SADC) Firearms Protocol (ratified in 2003),¹³ and the Geneva Declaration on Armed Violence and Development (2006). Together these instruments and agreements place a responsibility on South Africa to maintain international standards of firearms control, management and use. While these instruments do not specifically mention PSCs, they should be included as PSCs are part of the civilian firearm owner population.

South Africa is party to other processes that, while not legally binding, do place a 'good faith' obligation for compliance and refer specifically to PSCs, including the Montreux Document (2008)¹⁴ and the International Code of Conduct for Private Security Providers (ICoC)¹⁵ (2010).¹⁶ A parallel initiative is the drafting of a new international convention on PSCs by the independent experts of the UN Working Group on the Use of Mercenaries. This legal instrument would apply to all situations, armed conflict or not. Mandated by the Human Rights Council and the General Assembly of the United Nations, key elements of the draft text include the development of national regimes for the licensing, regulation and oversight of the activities of PSCs, and the establishment of an international register of PSCs.¹⁷

Together these international instruments and processes comprise a fairly comprehensive set of standards for PSC firearm and ammunition control. These standards fall into three broad areas of regulation: 1) acquisition of firearms and ammunition; 2) management of firearms and ammunition; and 3) use of firearms and ammunition.¹⁸

2.1 Acquisition of firearms and ammunition

The realm of 'acquisition' includes both the weapons as well as the actual PSC that is contracted; this applies more in the case of large contracts usually involving multinationals or state contractors. Generally the international frameworks in respect of acquisition are fairly vague and make broad injunctions for compliance. The situation has been improved with the advent of the Montreux Document as well as the ICoC, both of which suggest that the contracting party take responsibility for ensuring that the PSC contracted is of good and proper standing, and that the PSC and its staff do not have a prior record of

criminal involvement.¹⁹ Furthermore, the Montreux Document suggests that contracting states should take into account whether the PSC acquires its weapons lawfully, uses its weapons in adherence with international law, and has complied with contractual provisions regarding return and the disposal of weapons and ammunition.²⁰

The type and quantity of weapons acquired varies across contexts, determined largely by the activities performed by the particular PSC and national legislation in the country of operation. Many countries prohibit the use of firearms by private security personnel operating in their countries, including Denmark, the Bahamas, the Netherlands, Japan, Kenya, Nigeria, Norway and the United Kingdom.²¹

In countries which do allow PSCs to carry and use firearms, proper acquisition processes must be followed. If PSCs cannot procure firearms locally through a registered dealer, then procurement is conducted through government agencies to obtain the legally required import and export licenses. Particulars around licensing are not specified in international agreements, other than through injunctions that PSCs comply and adhere. The international trend is towards transparent, streamlined and standardised acquisition criteria and procedures to curb illicit dealings. It remains the case that the balance of responsibility is placed on the contracting party to ensure that they do not contract a PSC that is not compliant.

2.2 Management of firearms and ammunition

A recent scan of national legislation in 14 countries found that for the most part legislation does not provide sufficient prescriptions regarding how PSCs should store and manage their arms and ammunition holdings to prevent theft and loss.²² A common requirement is that PSC personnel do not take service weapons home, and while this is important, it should be complemented by more detailed, stringent regulations. A noticeable gap in international standards and benchmarks is in relation to ammunition controls, with very few countries' national legislation establishing clear guidelines on the storage and management of ammunition.

Florquin notes that some larger PSCs have developed their own comprehensive firearm policies and procedures for arms management; however these documents are often treated as confidential as they are required by large multinational clients as part of tender processes, and to make such documents public would entail a loss of competitive advantage for the author PSC.²³

The Montreux Document urges contracting parties to check that the PSC maintains accurate and up-to-date weapons and ammunition records that are available for inspection on demand.²⁴ The document suggests that states should incorporate management regulations into their licensing laws and establish rules for the possession such as:

- requiring the registration of weapons, including their serial number and calibre, and ammunition, with a competent authority;

- limiting the number of employees allowed to carry weapons in a specific context or area;
- requiring the storage of weapons and ammunition in a secure and safe facility when personnel are off duty;
- controlling the further possession and use of weapons and ammunition after an assignment is completed, including return to point of origin or other proper disposal of weapons and ammunition.²⁵

ICoC expands on this, stipulating that:

Signatory company policies or procedures for management of weapons and ammunitions should include: a) secure storage; b) controls over their issue; c) records regarding to whom and when weapons are issued; d) identification and accounting of all ammunition; and e) verifiable and proper disposal.²⁶

2.3 Use of firearms and ammunition

As is the case with acquisition and management regulations, the actual use of firearms by PSC personnel is also regulated and monitored unevenly across different settings. Certain countries place strict regulations on the kind of activity that can be conducted by PSCs with firearms; for example in France and China these activities are limited to 'cash-in-transit' operations.²⁷ Other countries regulate the kind of weapon that can be used by PSCs, with the majority of countries prohibiting fully automatic or military weapons, restricting use to handguns and, in some cases, shotguns. In a recent assessment of PSCs internationally, Florquin notes that few PSCs have internal policies that specify restrictions on the arms their personnel may carry, pointing out that the type of weapon used is largely determined by the particulars of the job.²⁸

Where regulations are in place, it is unclear how effective these are due to a lack of external evaluation and assessment. The limited body of data on weapons discharge available is a step in the right direction, but it does not provide a comparative basis for assessment. Central to better regulation of the use of firearms is improved training requirements that are specific to the use of firearms. To date, most legislation on PSCs stipulates that arms training must take place but does not provide detail on the content required.

While the Montreux Document and the ICoC do provide clearer, more helpful guidelines for the use of firearms by PSCs, these texts are not legally binding. The Montreux Document suggests that contracting parties ensure that the personnel of a PSC are adequately trained around rules on the use of force and firearms, and encourages adherence by suggesting that contracting parties also check 'whether the PSC's internal regulations include policies on the use of force and firearms'.²⁹ ICoC expands upon the Montreux Document, with Section 59 specifying Weapons Training requirements as follows:

- a) Personnel who are to carry weapons will be granted authorisation to do so only on completion or verification of appropriate training with regard to the type and model of weapon they will carry. Personnel will not operate with a weapon until they have successfully completed weapon-specific training.
- b) Personnel carrying weapons must receive regular, verifiable and recurrent training specific to the weapons they carry and rules for the use of force.
- c) Personnel carrying weapons must receive appropriate training in regard to rules on the use of force. This training may be based on a variety of relevant standards, but should be based at a minimum on the principles contained in this Code and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990), and national laws or regulations in effect in the area duties will be performed.³⁰

It is significant that ICoC invokes the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990) in regard to the use of firearms by PSCs. This affirms the need to hold PSC personnel to the same standards as state ‘law enforcement’ personnel, especially when it comes to the use of firearms. The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990) are quite rigorous, stating clearly that ‘intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life’.³¹ The UN Principles also urge states to put in place laws and regulations to ensure that officials are ‘accountable for the firearms and ammunition issued to them’.³²

A unique contribution of ICoC is its request for ‘Incident Reporting’ whereby signatory companies ‘prepare an incident report documenting any incident involving its personnel ... which includes the firing of weapons under any circumstance [except authorised training], any escalation of force, damage to equipment or injury to persons, attacks, criminal acts, traffic accidents, incidents involving other security forces, or such reporting as otherwise required by the Client, and ... conduct an internal inquiry’.³³ The internal inquiry is expected to produce all the necessary details, which can then be forwarded to the relevant prosecuting authority.

Under the broad ambit of ‘use’ is a clause, contained in both the Montreux Document and ICoC, that all personnel engaged in duty-related activities must be ‘personally identifiable... visible from a distance’, allowing for a clear distinction between PSC personnel and other public law enforcement.³⁴ ICoC also mentions the importance of psychosocial support for PSC personnel.³⁵ While some have criticised ICoC as an industry-driven charade of compliance, the benchmark that it establishes improves on existing documents. As of 1 December 2011, 266 companies had signed the ICoC, including 16 South African companies.³⁶

3. LEGAL FRAMEWORK GOVERNING THE ACQUISITION, MANAGEMENT AND USE OF FIREARMS AND AMMUNITION IN SOUTH AFRICA

The existing regulatory framework governing the work of private security companies in South Africa is made up of two key pieces of legislation: the *Firearms Control Act* (Act 60 of 2000) and the *Private Security Industry Regulation Act* (Act 56 of 2001), and accompanying regulations. The *Private Security Industry Regulation Act* establishes provisions for PSCs and serves as the founding legislation to establish a regulatory authority to oversee the execution and implementation of the Act, known as the Private Security Regulatory Authority (PSIRA), to 'regulate the private security industry and to exercise effective control over the practice of the occupation'.³⁷ The full mandate of PSIRA is extensive and encapsulates broad injunctions to promote a professional, efficient and accountable private security sector, including:

- the authorisation of all licences for private security service providers and training service providers;
- compliance monitoring of all PSIRA-accredited bodies (security and training providers); and
- record keeping of all PSIRA-accredited bodies in a register.

PSIRA is governed by a five-person Council, appointed by and accountable to the Minister of Police. PSIRA is a statutory body that is governed by its legislation and is required to report to Parliament annually. PSIRA has drafted a binding code of conduct for security service providers.³⁸

With regard to armed private security guards, the oversight functions are shared by PSIRA and the SAPS Central Firearms Registry (CFR), which is mandated by the FCA to serve as the repository for all firearm-related information and documentation.³⁹ The CFR's mandate is clearly demarcated in the FCA, Section 125 which mandates the CFR to collect and house all firearm related information on a central database.⁴⁰

The Act also outlines the information that must be included on the database:⁴¹

- competency certificates, licences, authorisations and permits, as well as renewals and cancellations thereof;
- applications for competency certificates, licenses, authorisations and permits and any renewal applications which have been refused in terms of the Act;
- transfers of firearms effected in terms of the Act;
- imports and exports of firearms and ammunition in terms of the Act;
- the transport of firearms and ammunition in terms of the Act; and
- the loss, recovery, theft or destruction of firearms.

- a record of all licensed dealers, manufacturers, gunsmiths, importers, exporters, transporters, accredited institutions, organisations and all firearms in their possession;
- a record of all firearms in the possession of official institutions;
- a record of the acquisition, transfer, loss, theft or destruction in respect of firearms in the possession of official institutions; and
- a record of all firearms recovered, forfeited to the State or destroyed.

The CFR is also responsible for other aspects of firearm management which will be discussed further where relevant in the sections that follow.

The CFR has been the site of extensive contestation. After complaints from both gun control as well as gun lobby groups, the Minister of Police established a task team to investigate problems with the CFR and advise on remedial action.⁴² The findings and recommendations of the Task Team reveal an extremely worrying trend of firearm licenses being awarded without due process, and in some instances licenses being awarded for prohibited firearms such as AK-47s. While the extent to which this alleged licensing fraud occurred in respect of PSC firearm licenses is unclear, the sobering fact remains that the CFR has not been functioning properly. Over and above alleged corruption and fraudulent licensing, the CFR data system has no integrity, rendering any quantitative assessment of South African stockpiles very difficult.

While PSIRA is responsible for authorising and issuing licenses to private security guards, the CFR is responsible for issuing firearm licenses and all matters related to firearms held by PSCs. Given the important points of contact between the two bodies, it follows that the legislation and accompanying regulations should be aligned. This is currently not the case. The Firearms Control Act predates the Private Security Industry Regulatory Authority Act and currently the two pieces of legislation are not sufficiently aligned. The FCA has been subject to important amendments and regulations, which have not been sufficiently incorporated into the PSIRA legislation and regulations. While this discrepancy has been noted by the Parliamentary Portfolio Committee responsible for overseeing the private security sector, at the time of writing there is no indication that the PSIRA legislation will be on the parliamentary schedule for 2012, besides a verbal undertaking from the Minister of Police.⁴³

As will be shown in the discussion to follow, this shared oversight function has been ineffective and has been plagued by mismanagement and unclear designation of roles and responsibilities. The net result is a gap in accountability and oversight that poses a potential risk in terms of diversion and negligent use of firearms by PSCs, as will be argued in later sections of this paper.

For ease of comparison, discussion of South African legislation will explore the same three key areas of regulation for PSC firearm and ammunition control as in the previous section on international legislation: 1) acquisition; 2) management; and 3) use.

3.1 Acquisition of firearms and ammunition

Both the Private Security Industry Regulatory Act and the Firearms Control Act contain regulations for the acquisition of firearms and ammunition by PSCs. The legislation employs a two-tiered mechanism whereby the firearm is registered and the owner is licensed. The FCA requires that all PSC personnel who need to carry a firearm must obtain a competency certificate before a firearm can be issued to them. A competency certificate can only be issued once the individual has undergone the necessary training at an accredited training facility.⁴⁴

The requirements for obtaining a competency certificate are listed in Sections 9 and 10 of the FCA. The FCA stipulates a minimum age of 21 years for firearm possession. This age limit is out of sync with the PSIRA Act, which stipulates 18 years as the minimum age for registration as a private security guard. While not all security guards are armed, and one would assume that the SAPS Central Firearms Registry would not grant a license to a person younger than 21 years of age, this ought to be spelt out clearly in the legislation. The FCA and PSIRA Act require that the applicant is a South African citizen or permanent resident.⁴⁵ Key provisions of the FCA require that the applicant be a 'fit and proper person' and of 'a stable mental condition', and not be 'dependent on any substance that has an intoxicating or narcotic effect' or convicted of a range of offences relating to firearm usage, violence or sexual abuse, fraud, alcohol or drug abuse, sabotage, terrorism, public violence, arson, intimidation, rape or kidnapping.⁴⁶ Whereas the PSIRA legislation requires only a once-off background check on the individual seeking registration as a PSIRA-accredited guard, the FCA requires renewal of the competency certificate every five years.⁴⁷ While the level of rigour involved in the renewal process has been the subject of some debate, the provision itself allows for some kind of review process, even if only every five years.

A current discrepancy exists in terms of the FCA's dual licensing system whereby both the firearm and the user must be registered and licensed. Currently the period of validity for a 'license to possess a firearm for business purposes as a security provider' is two years, while a competency certificate for business purposes is five years.⁴⁸ This discrepancy has caused much confusion, compounded further by a lack of harmonisation between PSC provisions in the FCA and PSIRA Act.

The PSIRA Act specifies the need for further training and qualifications for armed PSC guards, in addition to the competency certificate required by the FCA. The PSIRA Act and accompanying regulations require completion of a minimum of 'Grade E' training.⁴⁹ The Regulations also contain a confusing clause regarding the waiver of this minimum in recognition of prior learning, provided the applicant has shown 'good cause'.⁵⁰ The Regulations do stipulate that this should be done 'after such consultation with the South African Qualifications Authority, the Policing, Security, Legal and Correctional Services Sector Education and Training Authority, or with any other statutory body, as the Authority may deem necessary'.⁵¹ In the 2009 Draft Regulations for the Training of Private Security Service Providers, all categories of armed security guards are mandated to have a range of

competencies, including some that are firearm-specific such as: 'knowledge of statutory prescriptions applicable to the possession, handling, carrying, storage and use of a firearm; duties and obligations of firearm ownership in terms of legislation; handle and use a firearm for business purposes...'⁵²

While this wording appears rather opaque, the firearm training industry in South Africa has developed a detailed set of rules and requirements, as laid out by SASSETA, the SAPS and the Unit Standards contained in the relevant firearm qualification. The qualification contains core unit standards with clearly defined performance standards which need to be met. All armed PSC guards must complete the training and attain the corresponding qualifications.⁵³ Each category is listed below, followed by the core competencies required. This detail was supplied by a training service provider.⁵⁴ While this level of detail is encouraging and reflects a well-regulated sector, at least on paper, it must be noted that none of this detail appears in either the FCA or the PSIRA Act or accompanying regulations.

Categories 1 and 2 are the equivalent of what is known internationally as 'basic level', which is the requirement for private firearm ownership or first-time firearm ownership.

Category 3 applies to security guards and anybody who is issued with a company firearm. This category covers firearms licensed to a company or institution for 'business purposes' as per Section 20 of the FCA. A PSC guard who carries a handgun will be required to complete 117705, 119649 and then 123515. Category 3 can be regarded as an 'intermediate level' or duty-related level.

Guards who wish to be accredited for tactical work need to progress to the Category 4, which is intended for all persons who need to use a firearm/s in a tactical environment. This category can be regarded as what is internationally referred to as 'advanced level'.

South African legislation spells out exactly what type of firearm a PSC is permitted to possess. Automatic or military style weapons are strictly prohibited to any non-state actors.⁵⁵

Unlike the international guidelines discussed earlier, South African legislation does not place responsibility at the feet of the contracting party, but rather on the state authority that awards the licence to the PSC and on the PSC itself. This difference is explained largely by the kind of work that international PSCs undertake, warranting additional responsibility of the contracting party, especially if the site is one of recent or current armed conflict. This paper proposes that South Africa adopts a variation of this client-level responsibility, particularly for contracts that exceed a certain Rand value. This recommendation is based on the size of the PSC industry in South Africa, loopholes in accountability, and the current inability of relevant state officials to monitor and police the PSC sector.

Table 1: Training requirements for armed private security guards in South Africa

BASIC	INTERMEDIATE	ADVANCED
Private firearm ownership or first-time firearm ownership	Ownership for business purposes – non-tactical	Ownership for business purposes – tactical
CATEGORY 1	CATEGORY 3	CATEGORY 4
117705: Knowledge of the <i>Firearms Control Act</i> (Act 60 of 2000).	123515: Handle and use a handgun for business purposes. 123514: Handle and use a shotgun for business purposes. 123511: Handle and use a self-loading rifle or carbine for business purposes. 123519: Handle and use a manually operated rifle or carbine for business purposes.	123510: Apply tactical knowledge in the use of firearms. 123513: Demonstrate tactical proficiency with a handgun. 123518: Demonstrate tactical proficiency with a self-loading rifle or carbine. 123512: Demonstrate tactical proficiency with a shotgun.
CATEGORY 2		
119649: Handle and use a handgun. 119650: Handle and use a self-loading rifle or carbine. 119651: Handle and use a manually operated rifle or carbine. 119652: Handle and use a shotgun.		

3.2 Management of firearms and ammunition

Existing legislation covers certain aspects of the management of PSC firearms and ammunition. As is the case with the acquisition of firearms and ammunition, both the PSIRA Act and the FCA cover elements of management guidelines.

South African private security guards are not allowed to use their own personal firearms for PSC work; PSIRA Regulations 13 (5) and (6) state clearly that it is the company’s responsibility to provide the weapon and ammunition. A violation of this regulation is viewed as a criminal offence and could leave the individual ‘liable to a fine or to imprisonment for a period not exceeding 24 months.’⁵⁶ This is a key departure from apartheid-era legislation whereby guards were able to use their personal firearm for PSC work.

Another regulation requires that guards wear uniforms in which the company logo is visible; PSIRA Regulations state that an appropriate uniform must display at least two badges, prominently attached, with the name of the security business clearly legible, as

well as a badge attached to the front top of the uniform with the name and registration number of the security officer clearly legible.⁵⁷ Flouting of this particular regulation was made famous in 2011, when a politician appeared in court flanked by heavily armed private security guards.⁵⁸ The guards were not dressed according to these regulations, with no visible company logo, as illustrated in the photographs, which also reveal the nature of the weapons ('Dashprod' – SAR M-14) and the close proximity of the armed guards to other civilians. At the time of writing, the PSC in question had not been held accountable.⁵⁹

Julius Malema with armed guards



Armed guards outside Gauteng South High Court. No visible identification as per the legislation



The PSIRA Act requires PSIRA to keep a register of every security service provider registered in terms of the Act,⁶⁰ recording, amongst others, its physical address, particulars of directors, services offered, employees' details and particulars of firearm licences.⁶¹ Both the PSIRA legislation and the FCA oblige the PSC to adhere to strict record-keeping of all matters relating to the business, particularly its firearm holdings. Every security guard must be in possession of a PSIRA identity card, containing full name, identity number, and PSIRA registration number. PSIRA Regulations require that the PSC keep an updated record of all employees' details, their level of accredited training, and any disciplinary records.

PSIRA Regulations also require that the PSC keep records of each day's activities and be able to produce daily logs with information on the activities undertaken, including '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; and particulars of ammunition provided to a security officer.'⁶² Should a PSC be unable to produce this information, it is 'guilty of an offence and on conviction liable to a fine or to imprisonment for a period not exceeding 24 months'.⁶³

As regards storage, the FCA requires that all firearms are properly stored and maintained in good working condition. PSCs are required to abide by the same storage regulations as other firearm holders and must ensure that the firearm is unloaded, not readily accessible to unauthorised use and securely attached with a secure locking device to a non-portable structure during storage. The safe must comply with requirements as per Section 86 (10) of the FCA Regulations of 2005.

In the event of a PSC discontinuing business, the FCA stipulates that the PSC must notify the CFR in writing, specifying the particulars of all firearms and ammunition in the company's possession and informing the CFR of how these weapons will be disposed of, either through surrender to the SAPS or through sale to a gunsmith. This disposal must take place within 90 days of the conclusion of business, and if this period lapses, the SAPS is required to confiscate the weapons for destruction.⁶⁴

3.3 Use of firearms and ammunition

While perhaps an obvious point, it is important to bear in mind that under South African law PSC personnel are classified as civilians, which means that they are subject to all regulations and obligations pertaining to ordinary civilians. This has important implications in South Africa where there is a growing trend for PSCs to view themselves, and indeed for the general public to view them, as part of official law enforcement. PSC guards are not state law enforcement and they must abide by the same laws and due process as all civilians. This is of particular relevance in terms of the use of lethal force, and when PSC guards effect an arrest.

A particular piece of legislation that applies to PSCs, but is often ignored, is the *Criminal Procedure Act* (Act 51 of 1977) (CPA) which governs a range of criminal proceedings.

Section 49 is of particular significance here as it deals with the use of force in effecting an arrest. Although arrests are mostly carried out by the police, this legalisation covers citizens' arrests, and as such applies to PSCs. Following an incident in 1999 in which a civilian shot and killed a fleeing burglary suspect, this piece of legislation was challenged in the courts and was eventually found to fall short of constitutional muster.⁶⁵ The Constitutional Court ruled that Section 49 of the CPA be amended to reflect more clearly the principles of proportionality and least degree of force possible in effecting arrests. The proposed amendments have been debated in Parliament but have yet to be signed into law. Throughout the parliamentary debates and public submissions, not one mention was made of the implications of Section 49 for PSCs.⁶⁶ This glaring omission reflects a general lack of knowledge of the actual activities of PSCs. In the interviews conducted during research for this paper, it emerged repeatedly that a core part of the business of PSCs involved making arrests, particularly for copper and cable thefts, and that the guards undertaking this work are reportedly quite heavily armed.

The PSIRA Act and the FCA do place certain obligations on the PSC with regard to the use of firearms. In addition, there is a PSIRA Code of Conduct for all guards. The PSIRA Act stipulates that the Code of Conduct is 'legally binding on all security service providers, irrespective of whether they are registered with the Authority or not.'⁶⁷ While the Code of Conduct is chiefly a repetition of aspects of the PSIRA Act and the FCA, there is an injunction for any use of force to be within the bounds of what is 'reasonably necessary... and is permitted by law'.⁶⁸ The language of the Code of Conduct is similar to the FCA and the PSIRA Act, placing the balance of responsibility on the PSC as a service provider. It is the responsibility of the PSC to ensure that all usage of firearms is within the ambit of the law.⁶⁹ The Code of Conduct places an obligation on all PSCs to provide annual training for their guards, with Chapter 3, paragraph 7 stating that:

A security service provider must, at his or her own cost and as often as it is reasonable and necessary, but at least once a year, provide training or cause such training to be provided, to all the security officers in his or her employ to enable them to have a sufficient understanding of the essence of the applicable legal provisions regarding the regulation of the private security industry and the principles contained in this Code.

A similar obligation is stated in the FCA 2005 Regulations, requiring that PSCs undertake periodic reviews of their armed employees' abilities and ensure that they 'undergo at least one proper practical training session...at least every 12 months',⁷⁰ and that all armed guards attend at least one proper briefing session every 12 months to keep them up to date with all legislation 'for the possession, carrying, safe custody and use of firearms and ammunition'.⁷¹ Interestingly, the 2005 FCA Regulations include a requirement that the PSC assess the armed guards at least every 24 months to ensure that 'they do not suffer from any condition that would render their continued possession of a firearm and ammunition

as posing an unreasonable risk to any person'.⁷² However, the same clause specifically states that this assessment 'does not include psychological or psychiatric testing', contradicting the body of the FCA, which requires that the criteria for firearm ownership include being of a 'stable mental condition' and 'not [being] inclined to violence'.⁷³ This qualification stands in even starker contradiction with the growing body of evidence showing a correlation between exposure to repetitive trauma and stress and an individual's propensity to irrational behaviour.⁷⁴ In fact, the 2005 FCA Regulations affirm this logic five paragraphs later when the PSC is compelled to provide 'appropriate counselling and debriefing...if the security officer has used a firearm against any person and has caused death or injury'.⁷⁵

The PSIRA Code of Conduct also specifies the penalties for non-compliance including a warning, R10 000 fine, suspension or imprisonment of up to 24 months. However, the Code is unclear and silent on procedures for such disciplinary processes. The assumption is presumably that the PSIRA as an oversight body will fulfil the role of watchdog. Indeed a unique invention of the South African legislation is the provision for inspectors, who are employed by the Authority on a full-time basis to monitor all registered security service providers across South Africa.

The role of PSIRA inspectors is guided by Chapter 5 of the PSIRA Act. However, the legislation is not sufficiently clear about when an inspection ought to be carried out or at whose authority. Mention is made of the inspections being carried out 'at the direction of the director' but it is not clear if an inspector can only act on instruction or whether there is a proactive element to their role. PSCs are obliged to furnish the inspectors with all details of the business. According to the legislation, the PSC is only required to inform the inspector of whether or not the PSC is in possession of firearms, and the details of the license. This reflects a significant gap in oversight. Interviews with PSCs revealed that PSIRA inspectors 'never even look in the safe'. While the CFR can also undertake spot inspections to check on adherence to the FCA, interviewees deemed this even less likely.

The 2005 FCA Regulations do not mention the role of the CFR but rather place full responsibility on the PSC or 'security service provider' to investigate or ensure that investigation happens in every incident involving the discharge of a firearm by an employee. In the event of the discharge resulting in death or injury, the PSC is compelled to provide psychosocial support to the security officer. In addition the PSC is required to inform the nearest SAPS station and the relevant Designated Firearms Officer.⁷⁶

4. USE OF FIREARMS AND AMMUNITION IN THE SOUTH AFRICAN PRIVATE SECURITY SECTOR

According to a recent study of global PSC firearm stockpiles,⁷⁷ South African PSCs are armed at a ratio of 0.24 firearms per armed guard, whereas in parts of Latin America this ratio ranges from 0.34 to 0.86. Based on existing information available on levels of PSC

armaments across different settings, and taking into account contextual factors such as exposure to armed conflict, an interpretative ratio has been established which, in turn, has been applied to existing information on reported numbers of PSC personnel across 70 countries. This research illustrates that PSCs globally hold a relatively small portion of the global firearm stockpile, which is currently placed at roughly 875 million units. According to these estimates, PSC arms holdings can be deemed comparable to units held by gangs and armed groups (2–11 million units), but significantly lower than law enforcement (26 million), armed forces (200 million), and civilians (650 million).⁷⁸

Despite the fact that the estimated PSC arms holdings are smaller than those of armed forces, the PSC stockpile still warrants investigation because little is known about these stocks and because of the steady, significant growth of the industry. To date, insufficient attention has been paid to the role of weapons and gaps in their regulation within the private security sector. Although PSCs are hardly a new phenomenon in South Africa, the situation is particularly acute. As of 17 September 2003, the CFR reported to the Parliamentary Portfolio Committee on Safety and Security that of a total of 3 252 companies, 1 643 were active and these companies held 58 981 firearms.⁷⁹ The 2010/2011 PSIRA Annual Report showed an increase in the number of registered and active private security companies to 8 828. Since 2003, neither PSIRA nor the CFR have reported on how many firearms are held by PSCs, despite the fact that legislation and regulations specify that this information must be recorded by PSIRA. Some have argued that this lack of publicly available data reflects not so much sinister efforts to squash transparency as blatant lack of competency. Since 2003 PSIRA has struggled with such widespread mismanagement and corruption that the Minister of Police appointed a Ministerial Intervention Task Team in 2009 to investigate the problems and recommend remedies. Early indications are that this task team has helped, although this remains to be proved.

Thus while there are no publicly accessible figures on the quantity of firearms registered to each PSC in South Africa, it is possible to extrapolate a figure, based on previous figures and global PSC arms trends. In 2004, a total of 248 025 PSC guards were registered, with 58 981 of these guards armed, amounting to a ratio of 0.24 firearms per PSC personnel.⁸⁰ Using the above-mentioned *Small Arms Survey* data, Florquin estimates that this ratio has increased to 0.29 in South Africa, with an estimated 609 093 firearms registered to South African PSCs.⁸¹ These figures may well be conservative; based on key informant interviews undertaken for this paper, armed guarding remains a central element in private security in South Africa. As one interviewee remarked, 'It is getting more difficult to use firearms but the market still requires it. I would stop using armed guards, but that's where the tenders are.'⁸² The sector as a whole is growing, and one could assume that there is an associated rise in demand for armed guarding.

Table 2: The growth of the private security sector in South Africa

YEAR	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
No. of PSCs	5 491	4 521	4 71	42 12	4 639	4 763	4 898	5 504	6 392	7 459	8 828
No. of guards	194 525	222 717	248 025	269 773	288 686	296 901	307 343	339 108	375 515	387 273	411 109
No. of firearms	N/A	N/A	N/A	58 981	N/A						

Information sourced from PSIRA Annual Reports

South African PSCs use a range of firearms, including sidearms, assault rifles and shotguns.⁸³ Tactical units, which are becoming more popular in the middle-class suburbs of Johannesburg, are usually heavily equipped, with each patrol vehicle carrying a glock and one assault rifle. These guards carry LM 5 with no rounds until needed.⁸⁴ The ammunition of choice is PMP, manufactured by local arms manufacturer DENEL.⁸⁵

All of the PSCs interviewed reported strict compliance with the legislation pertaining to ammunition with a limit of 200 cartridges for each licensed firearm, unless otherwise authorised by the Registrar.⁸⁶ However, there are unconfirmed reports of certain training service providers and PSCs utilising cheap and low-grade ammunition to cut costs. This practice is allegedly facilitated through SABS corruption with poor quality ammunition approved as of the correct standard, with the end result that ammunition is less accurate and can cause unnecessary collateral damage due to the firearm jamming or the brass casing rupturing.

A medium-sized PSC interviewed employs a total of 420 guards with 50 per cent tactical and 50 per cent guards. It was reported that the tactical units are armed, therefore amounting to 210 armed personnel. The range of services offered by the PSC include tactical solutions, including proactive policing, armed reaction, guarding, alarm and CCTV installations and monitoring, vehicle tracking, forensic and criminal investigation, logistics and technology modelling and implementations. The company personnel boast a high level of expertise and are one of the few companies that have been successful in preventing copper cable theft.⁸⁷

Another medium-sized company interviewed also offers specialised tactical services to high-end clients like private game reserves. The company has around 300 employees, with at least 80 deployed in active guarding at any given time.⁸⁸ The company also specialises in the protection of copper cables as used by government and parastatals like Transnet. It was reported that the PSC provides a specialised service in recovering stolen cables, with a reported 600 arrests effected over the past three years. In addition to these arrests, the guards have also assisted with statements and served as witnesses in legal proceedings, contributing to an 85 per cent conviction rate of all enabled arrests.⁸⁹

It was reported that the armed security guards are well trained and therefore better paid than other security guards so the company experiences lower attrition rates. The guards are armed with both rifles and handguns, depending on the site. Guards in the metro areas usually use handguns and guards in rural sites use both.

5. IMPLEMENTATION OF LEGISLATION AND REGULATORY FRAMEWORKS

As has been illustrated, the PSIRA Act and the FCA make clear demands on PSIRA, and in turn, on private security companies. The Acts stipulate that PSCs must maintain registers of all company firearms and ammunition and ensure safe storage. If the business closes down, the PSC must surrender all firearms to the SAPS or destroy them. The FCA also establishes clear requirements regarding ownership and use of firearms by PSCs, requiring that all service firearms be returned to the company safe at the completion of a shift and that guards must not take such firearms home.

Research conducted in 2003, and published in *Hide and Seek* in 2004, flagged areas of concern regarding PSIRA's compliance with the Act. One of the issues raised relates to when a PSC is deregistered or goes out of business; in this situation, all licenses should be cancelled. However, it was reported that this does not always happen and allegations were made that companies register and then deregister with the aim of obtaining licensed firearms illicitly.⁹⁰ In 2003, the then Director of PSIRA told the Parliamentary Portfolio Committee that PSIRA 'had no means of checking the status of private security companies' firearms after deregistration.⁹¹ The committee requested that PSIRA put in place measures to ensure that a full audit be conducted of a company's stockpiles before it is allowed to deregister. It is disheartening to note that the same concerns were raised in a parliamentary meeting in November 2010.⁹² This remains a serious loophole and potential risk factor for diversion.

According to the 2004 *Hide and Seek* study, PSIRA does supply the CFR with a list of all deregistered companies on a monthly basis. The CFR then visits the company, inspects the firearms and removes those deemed surplus.⁹³ According to key informant interviews undertaken for this paper, this practice is not that common. More worrying is a statement made by PSIRA Chairperson Thula Bopela in response to the Police Portfolio Committee's queries about what becomes of firearms after a business has deregistered; Mr. Bopela indicated that PSIRA 'only checked for compliance' and that this was SAPS responsibility.⁹⁴ The training of PSC personnel for firearm use was another major area of concern that emerged during key informant interviews. A leading provider of training for private security guards noted that the problem lay not with the training standards per se, but rather that these standards are not applied evenly across the board. The training structure has been through a series of changes with 'grades' replaced by unit standards. Part of the problem seems to

reside in the differing concerns of the two key bodies responsible for the training – the CFR and the Safety and Security Sector Education and Training Authority (SASSETA). According to industry sources, ‘Neither body has the expertise to do practical inspections.’⁹⁵

The interviews indicate that the necessary regulations are in place for training of PSC personnel on firearm use. However, the loophole is evident in the lack of oversight of the content of training. Interviewees indicated that two different companies, of a similar size, have vastly different training budgets. The Chair of the National Training Forum suggested that it takes roughly 100 rounds to ensure personnel are sufficiently trained for business purposes, but there are reports of certain service providers using as few as 25 rounds in training to cut costs.⁹⁶ While the formal requirement from SASSETA is that targets are available as evidence to demonstrate that the trainee has had sufficient practice before armed public patrol, it is unclear to what extent this is implemented.

In 2009, PSIRA published draft regulations on training for public comment. At the time of writing it remains unclear whether those regulations have been taken through a proper public consultation process and if the regulations have been assented to in Parliament. In the 2009/2010 PSIRA Annual Report mention is made of a meeting to be convened between PSIRA and the Civilian Secretariat for Police.⁹⁷ The 2010/2011 Annual Report does not indicate if the regulations are any closer to proclamation.

In addition to these concerns, it was reported that current firearm legislation entails a time-consuming waiting process for the licensing of the firearms and issuing of competency certificates. More than one company reported having to wait two years to obtain registration, while PSCs also reported that the new unit standards entail a costly training process. According to one interviewee, it costs the company around R8 000 to train one security guard properly to use a firearm for business purposes.⁹⁸

Overall the key informant interviews reported general compliance with the law in terms of compulsory monthly training for staff with armed guards required to fire 50 rounds per month in training. Generally, larger companies did not reflect much faith in the current firearm training and competency regulations; as one company owner remarked: ‘A competency certificate is not a good indication of competency.’⁹⁹

In terms of recruitment, it was revealed that the trend of hiring ex-SAPS or ex-SADF members continues, even though there are clear prescripts on this in the legislation. The companies interviewed reported strict recruitment processes with every prospective guard undertaking a polygraph test to check for a history of substance abuse or criminal activity.¹⁰⁰ However, it was reported that recruitment is becoming more difficult. Of the companies interviewed, one company openly admitted that there was one incident in which a guard had been involved in an armed robbery.¹⁰¹

A common complaint from PSCs is the low level of cooperation from PSIRA. Larger companies need to show that they have been through successful PSIRA inspections in order to qualify to apply for large tenders. Representatives of the companies interviewed complained of great difficulty in dealing with PSIRA; one company reported eight

PSIRA inspections in four years, and an impression that the PSIRA inspectors had no knowledge of firearms.¹⁰² Another company reported that one PSIRA inspection and two CFR inspections had been carried out since the company's registration in 1998, despite numerous requests for PSIRA inspections. The interviewee also noted that the inspectors do not seem interested in firearms.¹⁰³

It was reported that personnel are not permitted to ever take firearms home in alignment with the law; a firearm must be recorded and accounted for at the end of a shift. In cases of neglect, the director of the company will be held accountable for any civil or criminal claim.¹⁰⁴

The interviewees painted a picture of PSCs being largely compliant provided they perceived that they had something to lose by not being compliant. However, it is worrying that PSIRA and the CFR appear not to be exercising due oversight. Training service providers also seem to be fudging the law, when and where they can, in order to cut costs.

6. MISUSE OF FIREARMS AND AMMUNITION IN THE PRIVATE SECURITY SECTOR

One of the core concerns regarding PSCs is the perceived high risk of diversion of company weapons to the illegal pool and the use of company firearms to perpetrate violence. As has been mentioned, there is insufficient data¹⁰⁵ on how many firearms are used in which crimes and on rates of diversion. According to a 2006 study of reported firearm deaths in 112 countries, South Africa had the third-highest annual rate of firearm deaths (26.8 per 100 000 people), after Colombia and Venezuela.¹⁰⁶ Most of these were homicides reportedly committed with illegal firearms. This pool of illegal firearms is made up of firearms diverted (lost or stolen) from four main sources:¹⁰⁷

- 1) licensed civilian owners (primary contributor, with an average of 18 731 civilian firearms reported lost or stolen annually);¹⁰⁸
- 2) state armouries;
- 3) state personnel; and
- 4) private security companies.

Some have therefore argued that by reducing the number of firearms in circulation fewer firearms can be diverted to the illegal pool and land up in the wrong hands, thereby reducing gun violence. Current South African legislation (the FCA) has, some would suggest, already helped reduce firearm diversions from civilians. The FCA has meant that it is more difficult for civilians to get a firearm licence. In 2003, total licensed firearms recorded on the CFR had fallen from 4.5 million (in 1999) to 3.7 million. In 2009, the total stood at 1.5 million licensed gun owners.¹⁰⁹

In the current climate, we are attempting to piece together fragments of information to complete a jigsaw puzzle. The bottom line is that there are no figures publicly available on the rate of diversion from the private security sector, nor reliable data on firearm violence perpetrated by PSCs. The lack of data is, in itself, a major obstacle to effective accountability and efforts to prevent violence. Although the 2005 FCA Regulations stipulate that PSCs must keep a record of all firearm discharge incidents resulting in death or injury, this data (if indeed it is even collected) is not available publicly. A quick scan of recent media reports provides a snapshot of PSC misuse, and this may be merely a small section of a bigger picture:

- An All Blacks rugby supporter wearing black face paint was mistakenly shot by G4S Cash Solutions guard on suspicion that he was a masked robber.¹¹⁰
- Two security guards (company unnamed) shot and killed a taxi driver after the taxi cut off the security vehicle.¹¹¹
- Two Transnet security guards appeared in court for allegedly shooting and killing a nine-year old boy and firing shots at six other people travelling in a vehicle. The guards pleaded not guilty, but admitted to firing one 'warning shot' at the vehicle because the vehicle 'drove erratically'.¹¹²
- A Fidelity security guard allegedly shot dead two female security guards while on duty at the Transnet depot in Krugersdorp.¹¹³
- A security guard working for Hlanganani Protection Services took a company firearm home after shift, shot and killed his wife shooting himself. The couple's five-week-old infant was lying on the bed while this happened. Miraculously, the infant survived for five days without food while her parents lay dead.¹¹⁴
- A security guard used his company firearm to shoot and kill his lover.¹¹⁵
- A security guard shot his lover's mother in an act of retaliation.¹¹⁶
- A security guard allegedly used his service revolver to kill his girlfriend and aim it at their two month old baby.¹¹⁷

These media reports raise a series of questions about how the security guards were able to sidestep legislative safeguards to prevent such incidents. In cases in which the firearm is a company issue firearm, the PSC is ultimately accountable; since PSCs are no longer allowed to have their guards use their own personal firearms. Media reports do not assist in assessing the extent of accountability in such cases.

Diversion through theft and loss is possibly slightly easier to understand in that PSCs are more vulnerable to diversion precisely because a licensed firearm is more valuable than an unlicensed firearm. The PSCs interviewed agreed that an armed security guard is more of a target; a particularly high risk service for PSCs is asset-in-transit (AIT) guarding, given the value of these assets (mostly cash). SAPS statistics for cash-in-transit heists describe a low point of 192 in 2003/2004, and a peak in 2006/2007 of 467.¹¹⁸ Since 2006/2007 the number of AIT heists has decreased with 291 in 2010/2011. It remains unclear whether this

represents a decreased risk of diversion for PSCs as the data on firearms lost/stolen is not recorded and made public by PSIRA or SAPS.

According to industry sources, another risk factor for diversion is the phenomenon of 'open licenses' – licensed guns which can no longer be used. There is a reported problem of surplus firearms that PSCs no longer use, which are left lying in company storerooms. One interviewee reported clearing over 200 stopper guns from a mining company's PSC stocks.¹¹⁹ A similar problem is the common occurrence of 'untraceable security service providers'; this is so common that it merits a regular heading in PSIRA's annual reports. For the 2010/2011 financial year, 176 such cases were reported.¹²⁰ The report does not indicate whether these PSCs were armed companies or not, but it is likely that a portion of these companies used firearms, and it is totally unacceptable that regulatory authorities have no record of the whereabouts of these weapons.

Another heading appearing in all PSIRA annual reports is 'Criminal Investigations'. The report does not provide details about the reasons for these investigations other than a broad statement of 'criminal contraventions of the Act'.¹²¹ The 2010/2011 PSIRA Annual Report notes 257 such cases.

Prior to the 2010 Fifa Soccer World Cup held in South Africa, the PSC firearm stockpile was significantly increased, with many companies acquiring excess firearms. Fidelity Security acquired 600 temporary firearm permits to service their World Cup business.¹²² These temporary permits were awarded through court interdict after the CFR refused the applications. The temporary permits were awarded for a 12-month period. That period has since lapsed and it remains unclear whether correct procedures were followed by Fidelity and the CFR to ensure that the permits have been legalised or firearms returned to SAPS.

PSIRA has come under increased scrutiny by the Parliamentary Police Portfolio Committee. After a range of allegations of corruption and fraudulent activity, at a November 2010 parliamentary briefing the committee requested that PSIRA formulate and implement an urgent turnaround strategy. In March 2011, PSIRA appeared before the Portfolio Committee to report back on its progress. One of the issues identified by the committee was PSIRA's inadequate firearm management systems; as part of their turnaround strategy PSIRA worked with the SAPS to seize illegal firearms within the private security sector. At their March 2011 report back, PSIRA reported the following information for the period November 2010 – March 2011:¹²³

- Arrest of 78 illegal private security operators;
- Arrest of 13 service providers for firearm-related contraventions;
- Seizure of 244 illegal firearms from private security operators;
- Seizure of 1 474 rounds of ammunition; and
- Identification of 742 cases of identity fraud by foreign nationals for further investigation.

These figures reflect a worrying prevalence of illegal operations within the sector, but also demonstrate the possibility of an effective clampdown through targeted collaboration between PSIRA and SAPS.

Image from PSIRA briefing to the Parliamentary Portfolio Committee on Police, 3 March 2011. Firearms seized during raids at PSCs



7. FINDINGS

7.1 Firearms and ammunition stockpiles are not known

There is no indication that the PSC firearm and ammunition stockpiles are known to either PSIRA or the CFR. While it has long been the case that this data is not made publicly available, there remain serious concerns as to whether this information is even known to the authorities. The key informant interviews revealed that PSIRA is not interested in firearm holdings and that the CFR is grossly under-capacitated so the end result is that this information is simply not being properly recorded.

As noted earlier in the paper, the CFR has been the site of extensive contestation. After complaints from both gun control as well as gun lobby groups, the Minister of Police established a task team to investigate problems with the CFR and advise on remedial action.¹²⁴ The findings and recommendations of the Task Team revealed an extremely worrying trend of firearm licenses being awarded without due process, and in some instances licenses being awarded for prohibited firearms. While the extent to which this alleged licensing fraud occurred in respect of PSC firearm licenses is unclear, the sobering

fact remains that the CFR has not been functioning properly. Over and above alleged corruption and fraudulent licensing, the CFR data system has no integrity, rendering any quantitative assessment of South African stockpiles very difficult.

7.2 No central data repository on firearm discharges and injury/death due to firearms in private security sector

In addition to not having a clear enough sense of how many firearms and rounds of ammunition are held by PSCs, there is the additional problem of not knowing the extent of misuse and abuse of PSC firearms. Currently, neither PSIRA nor the SAPS keep a record of how many cases of death and injury are perpetrated with PSC firearms. Some individual PSCs do keep a record of this information, but this does not reflect a systematic data effort.

7.3 No accountability for clients employing negligent PSCs

Whereas the emerging good practice on the international stage is tending towards the phenomenon of client level responsibility, the South African situation remains one of client immunity. Both the Montreux Document as well as the ICoC suggest that the contracting party take responsibility for ensuring that the PSC contracted is of good and proper standing, and that the PSC and its staff do not have a prior record of criminal involvement (Montreux Document Part Two, para 6: a). The Montreux Document suggests that contracting states should take into account whether the PSC acquires its weapons lawfully, uses its weapons in adherence with international law, and has complied with contractual provisions regarding return and/or disposal of weapons and ammunition (Part Two, para. 11).

In South Africa, clients are viewed simply as end-users and do not face sanction for hiring PSCs that are negligent. The key informant interviews revealed allegations of Air Ports Company South Africa (ACSA) utilising training service providers that do not adhere to even the most basic PSIRA training standards when it comes to firearm training for the guards. Similarly, large parastatals like Transnet manage to fly below the radar and remain unaccountable for firearm misuse by the guards that the company contracts.¹²⁵

7.4 Insufficient oversight over PSIRA and PSCs

On paper the sector appears to enjoy satisfactory oversight. PSIRA is a statutory body that is governed by its legislation and is required to report to Parliament annually. PSIRA is governed by a five-person Council, appointed by and accountable to the Minister of Police. PSIRA has drafted a binding code of conduct for security service providers.¹²⁶ Even without taking into account the additional provisions of the FCA, one would anticipate that the PSC sector would enjoy good oversight. Unfortunately this is not the case. Berg and Gabi recently found that ‘there is no means by which private security companies are regulated through civilian oversight’.¹²⁷

Comparably, the SAPS as an institution has internal accountability mechanisms as well as two external oversight bodies that ensure compliance with legislation and the human rights standards enshrined in the Constitution. These oversight bodies are the Civilian Secretariat for Police (CSP) and the Independent Complaints Directorate (ICD).¹²⁸ There are currently approximately 150 000 active SAPS members who fulfil an active policing function.¹²⁹ Together the CSP and the ICD work to fulfil an oversight function over policing. The Civilian Secretariat for Police (CSP) has an annual budget of roughly R25 million and the Independent Complaints Directorate (ICD) has a budget of roughly R130 million.¹³⁰ Both budgets will increase in 2012 to R41 million for the CSP and R150 million for the IPID.¹³¹ By comparison, PSIRA has an annual expenditure budget of R157 million and out of this sum a portion is dedicated towards oversight of 387 273 active guards. The most recent PSIRA annual report states that there are 16 inspectors employed to undertake inspection visits at the 8828 PSIRA registered companies. While the PSIRA budget is comparable to that of the IPID the actual spending on oversight is insufficient with a mere 16 inspectors employed nationally.

In addition to this oversight gap, there is also a general lack of public knowledge of the legal framework within which PSCs function. This lack of knowledge relates to powers of arrest, stop and search, use of force and general legal standing. Another gap in oversight relates to the role of PSIRA inspectors. While their role is guided by Chapter 5 of the PSIRA Act, the legislation is not sufficiently clear about when an inspection ought to be carried out or at whose authority. Mention is made of the inspections being carried at 'at the direction of the director' but it is not clear if an inspector can only act on instruction or whether there is a proactive element to their role. Interviews with PSCs revealed that PSIRA inspectors 'never even look in the safe'. While the CFR can also undertake spot inspections to check on adherence to the FCA, interviewees deemed this even less likely.

A very practical example of this lack of oversight is in respect of the 600 temporary firearm permits Fidelity Security acquired prior to the 2010 Fifa Soccer World Cup to service their World Cup business.¹³² These permits were awarded through court interdict after the CFR refused the applications. The temporary permits were awarded for a 12-month period. That period has since lapsed and it remains unclear whether correct procedures were followed by Fidelity and the CFR to ensure that the permits have been legalised or firearms returned to SAPS.

7.5 PSCs operate like state law enforcement

The above mentioned lack of knowledge is partially explained by a general failure to acknowledge that all private security guards are still civilians and are therefore bound to the same rules of conduct as ordinary civilians. The key informant interviews revealed that PSCs, especially the larger ones, are engaging in policing functions primarily in terms of arresting suspects.¹³³ In the interviews it emerged repeatedly that a core part of the business of PSCs involved making arrests, particularly for copper and cable thefts, and that the guards undertaking this work are reportedly quite heavily armed.

There is insufficient acknowledgement of the civilian status of PSC guards. This came into sharp focus during the 2011 parliamentary debates and public submissions on Section 49 of the Criminal Procedure Act which governs the use of force when affecting an arrest. The legislation applies to law enforcement as well as to civilian arrest. Throughout the submissions not one mention was made of the implications of Section 49 for PSCs. This glaring omission reflects a general lack of knowledge of the actual activities of PSCs.

7.6 Lack of harmonisation of training standards

The legislation and the practice in terms of training is out of sync. The PSIRA Act and accompanying regulations require completion of a minimum of 'Grade E' training.¹³⁴ The PSIRA Regulations contain a confusing clause regarding the waiver of this minimum in recognition of prior learning, provided the applicant has shown 'good cause'.¹³⁵ In contrast the firearm training industry in South Africa has developed a detailed set of rules and requirements, as laid out by SASSETA, the SAPS and the Unit Standards contained in the relevant firearm qualification. The qualification contains core unit standards with clearly defined performance standards which need to be met. While this level of detail is encouraging and reflects a well-regulated sector, at least on paper, it must be noted that none of this detail appears in either the FCA or the PSIRA Act or accompanying regulations.

Another problem in terms of training relates to the maintenance training that is required for armed guards as per the PSIRA Act and FCA. The FCA's 2005 Regulations require that PSCs undertake periodic reviews of their armed employees' abilities and ensure that they 'undergo at least one proper practical training session...at least every 12 months',¹³⁶ and that all armed guards attend at least one proper briefing session every 12 months to keep them up to date with all legislation 'for the possession, carrying, safe custody and use of firearms and ammunition'.¹³⁷ These 2005 Regulations also include a requirement that the PSC assess the armed guards at least every 24 months to ensure that 'they do not suffer from any condition that would render their continued possession of a firearm and ammunition as posing an unreasonable risk to any person'.¹³⁹

However, the same clause specifically states that this assessment 'does not include psychological or psychiatric testing'. This not only contradicts the body of the FCA, which requires that the criteria for firearm ownership include being of a 'stable mental condition' and 'not [being] inclined to violence'¹³⁹ but also stands in contrast with the growing body of evidence showing a correlation between exposure to repetitive trauma and stress and an individual's propensity to irrational behaviour.¹⁴⁰ In fact, the 2005 FCA Regulations affirm this logic five paragraphs later when the PSC is compelled to provide 'appropriate counselling and debriefing...if the security officer has used a firearm against any person and has caused death or injury'.¹⁴¹ It therefore appears that there is an important inconsistency between the FCA and the 2005 Regulations.

The key informant interviews revealed allegations of certain training service providers and PSCs utilising cheap and low-grade ammunition to cut costs. This practice is allegedly

facilitated through SABS corruption with poor quality ammunition approved as of the correct standard, with the end result that ammunition is less accurate and can cause unnecessary collateral damage due to the firearm jamming or the brass casing rupturing.

A leading provider of training for private security guards noted that the problem lay not with the training standards per se, but rather that these standards are not applied evenly across the board. The training structure has been through a series of changes with 'grades' replaced by unit standards. Part of the problem seems to reside in the differing concerns of the two key bodies responsible for the training – the CFR and the Safety and Security Sector Education and Training Authority (SASSETA). According to industry sources, 'Neither body has the expertise to do practical inspections'.¹⁴²

The interviews indicate that the necessary regulations are in place for training of PSC personnel on firearm use. However, the loophole is evident in the lack of oversight of the content of training. Interviewees indicated that two different companies, of a similar size, have vastly different training budgets. The Chair of the National Training Forum suggested that it takes roughly 100 rounds to ensure personnel are sufficiently trained for business purposes, but there are reports of certain service providers using as few as 25 rounds in training to cut costs.¹⁴³ While the formal requirement from SASSETA is that targets are available as evidence to demonstrate that the trainee has had sufficient practice before armed public patrol, it is unclear to what extent this is implemented.

In 2009, PSIRA published draft regulations on training for public comment. At the time of writing it remains unclear whether those regulations have been taken through a proper public consultation process and if the regulations have been assented to in Parliament. In the 2009/2010 PSIRA Annual Report mention is made of a meeting to be convened between PSIRA and the Civilian Secretariat for Police.¹⁴⁴ The 2010/2011 Annual Report does not indicate if the regulations are any closer to proclamation.

7.7 Lack of harmonisation and alignment in key legislation

While PSIRA is responsible for authorising and issuing licenses to private security guards, the CFR is responsible for issuing firearm licenses and all matters related to firearms held by PSCs. Given the important points of contact between the two bodies, it follows that the legislation and accompanying regulations should be aligned. This is currently not the case. The *Firearms Control Act* (FCA) predates the *Private Security Industry Regulatory Authority Act* (PSIRA Act) and currently the two pieces of legislation are not sufficiently aligned. The FCA has been subject to important amendments and regulations which have not been sufficiently incorporated into the PSIRA legislation and regulations.

The FCA stipulates a minimum age of 21 years for firearm possession. This age limit is out of sync with the PSIRA Act, which stipulates 18 years as the minimum age for registration as a private security guard. While not all security guards are armed, and one would assume that the SAPS Central Firearms Registry would not grant a license to a person younger than 21 years of age, this ought to be spelt out clearly in the legislation.

The FCA and PSIRA Act require that the applicant is a South African citizen or permanent resident.¹⁴⁵

Whereas the PSIRA legislation requires only a once-off background check on the individual seeking registration as a PSIRA-accredited guard, the FCA requires renewal of the competency certificate every five years.¹⁴⁶ While the level of rigour involved in the renewal process has been the subject of some debate, the provision itself allows for some kind of review process, even if only every five years.

A current discrepancy exists in terms of the FCA's dual licensing system whereby both the firearm and the user must be registered and licensed. Currently the period of validity for a 'license to possess a firearm for business purposes as a security provider' is two years, while a competency certificate for business purposes is five years.¹⁴⁷ This discrepancy has caused much confusion, compounded further by a lack of harmonisation between PSC provisions in the FCA and PSIRA Act.

7.8 Criminal cases against PSIRA members

Every PSIRA annual report contains a heading 'Criminal Investigations'. The reports are rather thin on details relating to the reasons for and progress of these investigations other than a broad statement of 'criminal contraventions of the Act'.¹⁴⁸ This could include all manner of crimes and violations, all of which serious and a threat to public safety. The reports indicate that the matters are referred to the SAPS and National Prosecuting Authority (NPA) for further investigation and prosecution; however there is no sense of any remedial action taken by PSIRA itself, let alone accountability. The 2010/2011 PSIRA Annual Report notes 257 new cases recorded by PSIRA. This is an increase from the previous Annual Report which notes 104 new cases.¹⁴⁹ There appears to be a significant backlog with cases and no indication of how this is being tackled. The 2008/2009 PSIRA Annual Report notes a total of 839 cases still awaiting SAPS investigation.¹⁵⁰ While the details remain unclear this is an unacceptable level of illegality.

8. POLICY RECOMMENDATIONS

These findings constitute the basis for recommendations to remedy key problems around the misuse and abuse of firearms by PSCs. An overarching theme throughout this paper is that the relevant legislation provides a sound regulatory framework. An overarching theme throughout this paper is that the relevant legislation provides a sound regulatory framework and the key challenge remains implementation and coordination between PSIRA and the CFR as the key oversight bodies.

The recommendations that follow are targeted at key audiences with the appropriate ability and mandate. Each recommendation applies in different ways to – the Civilian Secretariat for Police, the Minister of Police, PSIRA, the CFR within SAPS, the parliamentary

Portfolio Committee on Police, PSCs and the civil society sector engaged in monitoring and advocacy around issues of public safety.

8.1 Harmonise and consolidate legislation

There is clear need for an overall harmonising exercise to align the FCA and the PSIRA Act and Regulations more closely. The penalties of the FCA are generally more stringent than those of the PSIRA legislation. The Table of Offences constituting the final ‘Schedule’ in the PSIRA Act mentions ‘legislation pertaining to the control over the possession and use of firearms and ammunition’; this needs to be expanded to include the FCA explicitly. In addition, the PSIRA Code of Conduct can be strengthened and clarified by being updated in line with developments in the FCA, as well as the PSIRA Act. An additional section should be inserted outlining the specific roles and responsibilities in disciplinary cases.

8.2 Strengthen and professionalise cooperation between oversight bodies

Harmonising the PSIRA and FCA legislation speaks to a larger need for closer cooperation and collaboration between PSIRA and the SAPS. While the most recent PSIRA Annual Report mentions efforts to produce joint Standard Operating Procedures (SOPs) to guide joint inspections of errant PSCs, the report notes that PSIRA is still awaiting feedback from SAPS on this issue.¹⁵¹ This is a common refrain in the PSIRA reports; the parliamentary Portfolio Committee and the Auditor General should refuse to allow this perpetual ‘buck passing’.

Both PSIRA and the CFR require more human resources. The inspection process needs to be standardised and made more rigorous. It is recommended that PSIRA produce a PSIRA Inspectors’ Guide. A greater focus on ammunition is needed, both in the legislative texts and the PSIRA Inspectors’ Guide, to ensure the use of SABS-approved ammunition.

There appears to be a high level of mistrust of the PSIRA and CFR authorities among companies in the private security sector. One suggestion made was that the sector should establish a Security Officers’ Body; the rationale advanced was that there is sufficient expertise within the sector to fulfill an ombudsman role.¹⁵² Another suggestion from a PSC was the need for improvement of the guidelines for storage and stockpile management, with the recommendation of a dual safe system.¹⁵³ It is encouraging to read in the 2010/11 PSIRA Annual Report of two workshops held by PSIRA and the CFR, one with the explicit aim of sharing databases.¹⁵⁴ However once again, the follow through has not transpired.

The Confederation of European Security Services (CoESS) model offers a good example for South Africa to utilise and lobby for adoption by SARPCCO or the SADC Defence Organ.

8.3 Increase monitoring of policing functions undertaken by PSCs

It is clear from the interview findings that many PSCs carry out traditional policing functions, including making arrests. Without discussing the merits of this trend, it would

be prudent for relevant legislation and policy directives to take cognisance of this fact, and cite PSCs as relevant actors.¹⁵⁵ One clear example is Section 49 of the *Criminal Procedure Act* which discusses the modalities of use of force when effecting an arrest. An immediate remedy could be for PSIRA to use the ICoc and its references to the UN Basic Principles on the Use of Force. PSIRA must develop comprehensive training on Section 49 for all armed PSC guards who might have occasion to make arrest or use lethal force. As has been shown, it is stipulated in the FCA, the PSIRA Act, accompanying Regulations and the PSIRA Code of Conduct that all PSCs must provide (at least) annual training for all employees to 'enable them to have sufficient understanding of the essence of the applicable legal provisions regarding the regulation of the private security industry and the principles contained in the Code'.¹⁵⁶

8.4 Strengthen oversight over the PSC sector

Given the growth of the PSC sector, and its increasing role and function as a policing agent, it could be argued that the PSC sector ought to be governed by similar oversight as the SAPS.

While there are many building blocks in place for effective oversight of the PSC sector, implementation remains a concern. Currently, oversight over PSCs is shared by PSIRA, SAPS (the CFR specifically) and the Police Portfolio Committee. As this paper has shown, this situation has been ineffective, particularly with regard to PSIRA and the CFR. Both institutions have been plagued by mismanagement and a lack of clarity over designated roles and responsibilities. The net result is a critical gap in accountability and oversight that poses a potential risk in terms of diversion and negligent use of firearms by PSCs.

One remedy would be to re-calibrate oversight over PSCs to more closely reflect the SAPS oversight mechanisms. While SAPS oversight is far from perfect, the model and mechanisms are sound. Given that the PSIRA Council reports to the Minister of Police, there is a legitimate expectation that the Civilian Secretariat for Police exercise oversight of the Council and its operations, namely the smooth running of PSIRA.

In addition to the Civilian Secretariat for Police, PSIRA should also be answerable to the Police Portfolio Committee and the Auditor General. While the Portfolio Committee does engage PSIRA representatives rigorously at their annual appearance, there is scope for more proactive oversight, including site visits. Moreover, it could be argued that the Auditor General has been far too lenient with PSIRA.¹⁵⁷

8.5 Ensure accessibility of reliable data

There is a need for more information on the sector – personnel, equipment, cases of misconduct, budgets, types of functions and training regimes – and to ensure that such information is made available publicly to facilitate monitoring by civil society.¹⁵⁸ PSIRA and SAPS must record this information and make it readily available. Civil society monitoring and prevention work can only be effective if the scale of the problem is understood. PSIRA must include a section on PSC misuse in its annual reports.

It is of particular importance for SAPS and PSIRA to record the number of PSC firearms lost or stolen each year, as is already the case in respect of SAPS firearms. PSIRA and FCA legislation certainly place an obligation for such reporting to occur.

8.6 Harmonise training standards and practices

It is unacceptable that training standards are applied unevenly across the private security sector. One way to address this problem would be to devise separate competency requirements for business purposes, with the requirement of a physical component for guards, with training standards drawn up to reflect this difference. The actual competency certificate should stipulate whether the certificate is valid for personal or company use.

The findings of this research also highlight an inconsistency in the FCA Regulations in terms of the maintenance training and assessment for armed guards. The 2005 Regulations require that the PSC assess armed guards at least every 24 months but this assessment does not include psychological or psychiatric testing. However, this is contradicted by a later section which compels the PSC to provide 'appropriate counselling and debriefing... if the security officer has used a firearm against any person and has caused death or injury'.¹⁵⁹ The FCA must be amended to address this inconsistency and PSIRA must engage in monitoring to ensure that maintenance and training assessments do take place.

8.7 Introduce client responsibility

Both the Montreux Document and ICoC offer a model of emerging good practice in terms of mechanisms for client-level responsibility. Both texts suggest that the contracting party take responsibility for ensuring that the PSC contracted is of good and proper standing, and that the PSC and its staff do not have a prior record of criminal involvement.¹⁶⁰ The Montreux Document suggests that contracting states should take into account whether the PSC acquires its weapons lawfully, uses its weapons in adherence with international law, and has complied with contractual provisions regarding return and/or disposal of weapons and ammunition.¹⁶¹

This model of client-level responsibility could be replicated in South Africa to ensure that state institutions, parastatals and large listed companies are held liable for the PSCs that they employ to guard their premises and personnel. The rationale for employing a PSC is to protect assets and maximise profit, and it is thus reasonable to expect that the contractor be responsible for checking the track record and reputation of a security company in their employ, providing an additional incentive for PSCs to comply with the law.

9. CONCLUSION

The tragic events that marked the life of five-week-old Ntsoaki Maduna made headlines. While it was somewhat of a ‘miracle’ that this tiny infant survived for five days, alongside the bodies of her parents, the truth is that this tragedy could have been prevented. This paper has explored what can be done to prevent a recurrence of such a tragedy, and other traumas caused by the misuse, abuse and loss or theft of firearms in the private security sector.

The findings and recommendations of this research study chart a clear action plan for PSIRA, SAPS, the Civilian Secretariat for Police, the Minister of Police, the parliamentary Portfolio Committee on Police, PSCs and civil society organisations involved in monitoring and advocacy around public safety issues. While it is hoped that these recommendations will guide changes to the legislative and policy landscape to ensure improved management of and accountability within the private security sector, the challenge remains to develop detailed operational guidelines and training to ensure practical adherence and effective implementation. Meaningful compliance with legislation and regulations can only be achieved in the context of increased transparency within the private security industry on arms holdings, weapons discharge and internal operating procedures. In addition, regulatory and control mechanisms need to keep pace with the rate at which the industry continues to develop and grow. Parliamentary Police Portfolio Committee members have already raised serious concerns about the long-term sustainability of PSIRA, given its history of mismanagement.¹⁶² As this paper has demonstrated, there is urgent need for PSIRA to step up its efforts and fulfil its mandate effectively. The cost of failing to do so will be the increased threat to the safety of the public and civilians.

ENDNOTES

- 1 'Baby spent 5 days with dead parents', *IOL News*. <http://www.iol.co.za/news/crime-courts/baby-spent-5-days-with-dead-parents-1.708589>. 'Five-week-old child survives 5 days after parents' death', *The Sowetan*. http://www.sowetanlive.co.za/news/2010/11/03/five-week-old-child-survives-5-days-after-parents_death.
- 2 Telephonic interview undertaken by Gun Free South Africa board member, 5 November 2010.
- 3 The notion of employer vicarious responsibility was recently affirmed in a Constitutional Court judgment. *F and Minister of Safety and Security*, 15 December 2011.
- 4 Gould and Lamb, 2004: 184.
- 5 Minaar, in Gumede, 2007: 129. *Private Security in Africa 2007*, publisher, place: 129.
- 6 *PSIRA Annual Reports*. Available online at: http://www.psira.co.za/joomla/index.php?option=com_content&view=category&id=24&Itemid=39&layout=default.
- 7 The abbreviation 'PSC' for Private Security Company refers to all legally registered business entities that provide, on a contractual basis, security and/or military services, regardless of whether they operate in situations of conflict.
- 8 Domestic security services are governed by the Private Security Industry Regulation Act (Act No. 56 of 2001) (PSIRA). Military or security services operating beyond South Africa's borders are governed by the Prohibition of Mercenary Activities and Regulation of Certain Activities in Country of Armed Conflict (Act No. 27 of 2006) (Mercenary Act).
- 9 This definition is used by Nicolas Florquin in 'A Booming Business – Private Security and Small Arms', *Small Arms Survey 2011: States of Security*, 2011: 102.
- 10 Bamako Declaration. Available online at: <http://www.unesco.org/cpp/uk/declarations/bamako.pdf>.
- 11 UN Firearms Protocol. Available online at: http://www.unodc.org/pdf/crime/a_res_55/255e.pdf.
- 12 UN PoA. Available online at: <http://www.poa-iss.org/poa/poahtml.aspx>.
- 13 SADC Firearms Protocol. Available online at: <http://www.sadc.int/index/browse/page/125>.
- 14 Available online at <http://www.eda.admin.ch/psc> (last accessed 30 November 2011).
- 15 Available online at <http://www.icoc-ppsp.org/> (last accessed 30 November 2011).
- 16 The *Montreux Document On Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies During Armed Conflict* (the Montreux Document) was adopted in 2008 and is supported by 35 states. Building on the Montreux Document, the Swiss government and the Geneva Center for the Democratic Control of Armed Forces (DCAF) have worked with industry, as well as the UK and US governments to develop an *International Code of Conduct for Private Security Providers* (ICoC). The ICoC was formally adopted in Geneva on 9 November 2010; by 1 December 2011, 266 companies had signed it, including 15 South African companies: GCE Consultants, Gold Fields Protection Services, International Maritime Security, Quemic, Protea Coin, Manuel Security, Maritime Risk Solutions, Marrow Alert Security Intelligence, OGM International Limited, Safenet Security Services, Saracen International Limited, Sea Rangers Maritime Security Services, SSG Specialist Maritime Services, Stallion Security and Thorburn Security Solutions. While both texts apply to states' obligations when utilising PSCs in situations of armed conflict, they also contain helpful firearm-related clauses and can act as a useful guide for NGOs and PSCs.
- 17 Gómez del Prado, 2010. At the Human Rights Council's fifteenth session in September 2010, states voted to establish an open-ended intergovernmental working group to consider the possibility of elaborating an international regulatory framework on PSCs, including the option of a legally binding instrument.
- 18 This classification is loosely based on Zimring, 1991. Also used by Parker in *Small Arms Survey 2011: States of Security*, 2011: 102.
- 19 Montreux Document, Part Two, paragraph 6 (a).
- 20 Montreux Document, Part Two, paragraph 11.
- 21 This is noted by Florquin, 2011:111. Florquin cites CoESS 2008; da Silva, 2010:2; van Steden and Uberts, 2006:23; Yoshida and Leishman, 2006.
- 22 Clare da Silva, 'Analysis of selected countries' national legislation on private military and security companies (PSCs) and firearms and multinational companies' use of PSCs', Background Paper, Geneva: Small Arms Survey, 2010.
- 23 Florquin, 2011: 121. 'A booming business: Private security and small arms', *Small Arms Survey 2011: States of Security*, 2011: 121.
- 24 Montreux Document, Part Two, paragraphs 9 and 34.
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- 26 ICoC, Section 58.

- 27 CoESS 2008.
- 28 Florquin, 2011: 118. 'A booming business: Private security and small arms', *Small Arms Survey 2011: States of Security*, 2011 Cambridge University Press, Cambridge:118.
- 29 Montreux Document, Part Two, paragraphs 10(a) and 35(a); quote from Part Two, paragraph 12.
- 30 ICoC, Section 59.
- 31 UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, paragraph 9.
- 32 Ibid, paragraph 11 (d).
- 33 ICoC, Section 63.
- 34 Montreux Document, Part Two, paragraph 16.
- 35 ICoC, Section 64.
- 36 The 15 South African companies include: CE Consultants, Gold Fields Protection Services, International Maritime Security, Quemic, Protea Coin, Manuel Security, Maritime Risk Solutions, Marrow Alert Security Intelligence, OGM International Limited, Safenet Security Services, Saracen International Limited, Sea Rangers Maritime Security Services, SSG Specialist Maritime Services, Stallion Security and Thorburn Security Solutions.
- 37 PSIRA Act, Chapter Two, paragraph 3. Available online at: http://www.pkira.co.za/joomla/index.php?option=com_content&view=category&id=20&Itemid=37&layout=default.
- 38 Code of Conduct for Security Service Providers 8(6). Available online at: <http://www.pkira.co.za/content/view/43/37/>.
- 39 See FCA Regulations, Sections 125 and 127 for the duties of the CFR. FCA is available online at: http://www.saps.gov.za/docs_pubs/legislation/juta/Act60of2000.pdf.
- 40 FCA Regulations, Section 125 (1) a-g.
- 41 FCA Regulations, Section 125 (2) a-h.
- 42 Remarks by Minister of Police, E N Mthethwa, MP to the National Press Club on the current challenges affecting the South African Police Service firearms application and licensing processes, Sheraton Hotel, Pretoria. 2 November 2010. Available online at: <http://www.info.gov.za/speech/DynamicAction?pageid=461&sid=14225&tid=23633>. Also see the report of the task team, not available publicly but can be accessed from a gun lobby website - <http://www.gunownerssa.org/documents/EnquiryFunctioningCFRandFCA2000.pdf> (last accessed 16 December 2011).
- 43 Keynote address, Minister of Police Nathi Mthethwa, ISS 2nd International Crime Conference, Sandton, South Africa, 1 December 2011.
- 44 FCA Regulations, Section 4(1).
- 45 PSIRA Act (23) a; FCA Regulations, Section 9 (b).
- 46 FCA Regulations, Section 9 (2) and (3).
- 47 FCA Regulations, Section 10 (2).
- 48 FCA 2005 Amendment Regulations, Schedule Annexure A.
- 49 PSIRA Act (23) and Regulations (3) 2. Regulations available online at: http://www.pkira.co.za/joomla/pdfs/regulations_act_56_of_2001.pdf.
- 50 PSIRA Regulations, 'Training requirements for registration as a security service provider', paragraph 5.
- 51 PSIRA Regulations, 'Training requirements for registration as a security service provider', paragraph 6.
- 52 Draft Regulations for the Training of a Private Security Service Provider, 2009.
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- 54 Email correspondence with training expert, December 2011.
- 55 FCA Regulations, Section 4(1).
- 56 PSIRA Regulations, 'Uniforms, insignia, badges and firearms', paragraphs 3 (d) and (f).
- 57 PSIRA Regulations, 'Uniforms, insignia, badges and firearms', paragraphs 3 (b).
- 58 'Who is Malema at War With?' *IOL News*. <http://www.iol.co.za/news/crime-courts/who-is-malema-at-war-with-1.1056002> ; <http://www.businessday.co.za/articles/Content.aspx?id=139931>. <http://www.sowetanlive.co.za/incoming/2011/04/12/julius-malema-s-bodyguards--photos> (last accessed 1 December 2011).
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- 60 PSIRA Act (24).
- 61 PSIRA Regulations, 'Register of security service providers and related issues', paragraph 1.

- 62 PSIRA Regulations, 'Keeping of records and documents', paragraph 7 (f).
- 63 PSIRA Regulations, 'Keeping of records and documents', paragraph 8.
- 64 FCA Regulations, Section 102.
- 65 *Ex Parte Minister of Safety and Security & Others: In RE S v Walters & Another* 2002 (4) SA 613 (CC).
- 66 While some have argued that civilians making an arrest should be governed by common law, it is in fact the status quo that civilians are governed by the laws of arrest as per Section 49 of the Criminal Procedure Act. If a private security guard is making an arrest s/he is doing so as a citizen.
- 67 PSIRA Act, Section 28 (2).
- 68 PSIRA Code of Conduct, Section 8 (4).
- 69 PSIRA Code of Conduct, Section 8 (6),(7); Section 11 (4).
- 70 FCA 2005 Amendment Regulations, Section 2 (s)(viii).
- 71 FCA 2005 Amendment Regulations, Section 2 (s)(ix).
- 72 FCA 2005 Amendment Regulations, Section 2 (s)(vii).
- 73 FCA 2000, Section 9 (d).
- 74 Orcutt, King and King, 2003: 381–390. Also Manzoni and Eisner, 2006: 613–64. Also Leino, Selin, Summala and Virtanen, 2011:400–406.
- 75 FCA 2005 Amendment Regulations, Section 2 (s)(xii).
- 76 FCA 2005 Amendment Regulations, Section 2 (s)(xi–xiii).
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- 88 Interview, Gauteng, South Africa, 23 November 2010.
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- 93 Gould and Lamb, 2004:187.
- 94 PSIRA 2009/2010 Annual Report hearings to the Police Portfolio Committee, 1 November 2010 - <http://www.pmg.org.za/node/24154>.
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- 98 Interview, Gauteng, South Africa, 23 November 2010.
- 99 Interview, Gauteng, South Africa, 29 November 2010.
- 100 Interview, Gauteng, South Africa, 29 November 2010.
- 101 Interview, Gauteng, South Africa, 29 November 2010.
- 102 Interview, Gauteng, South Africa, 29 November 2010.
- 103 Interview, Gauteng, South Africa, 23 November 2010.

- 104 Interview, Gauteng, South Africa, 23 November 2010.
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- 106 Cukier and Sidel, 2006: 16.
- 107 Chetty, 2000:45; Gould and Lamb 2004:133–266; Kirsten 2007:2. Also see *Small Arms Survey* 2008:183–201.
- 108 *Small Arms Survey* 2008:184.
- 109 Figure reported by then CFR head, Brigadier Bothma on SAFM Radio interview, April 2010.
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- 127 Berg and Gabi, 2011:22.
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- 130 See the following parliamentary reports – ICD – <http://www.pmg.org.za/docs/2011/comreports/110412pcpolicereport.htm> and CSP <http://www.pmg.org.za/docs/2011/comreports/110412pcpolicereport2.htm>.
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- 155 Berg and Gabi make this claim in 'Regulating Private Security in South Africa. Context, challenges and recommendations', *APCOF Policy Paper 3*, November 2011.
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- 157 See parliamentary notes, 4 October 2011, Auditor General Report. While PSIRA received an unqualified audit opinion from the Auditor General, there remain major problems, for example bad debts to the tune of R75 495 989 million.
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