



Gun Free South Africa's Oral Submission on Private Security Industry Regulation Amendment Bill [B 27—2012], 1 November 2012

Presenter: Felicity Harrison (Vice-Chairperson)

Introduction

- Good afternoon and thank you for inviting us to make a submission on the Bill
- Welcome the opportunity to engage with and work with parliament on legislation
- *Ceasefire Campaign* endorses our submission.

Hand-out

Comparison between SAPS and the Private Security Industry to help the committee in your deliberations.

1) Background:

GFSA is **not an expert** in the Private Securities Industry. We will, therefore, confine our comments to those aspects which impact on the work which we do i.e. to ensure the **safe use and regulation** of firearms in our society.

Since the Committee has a copy of our submission in front of them, we will highlight a number of points.

GFSA is concerned about the lack of regulation over this industry and therefore welcome the amendments to the Act. We would like to see some of the proposed changes strengthened; and will alert the Committee to some areas which need further attention.

We believe that the proliferation of firearms is a legacy of our colonial and apartheid past and it is one which does not fit into the democratic era we now find ourselves in, nor with the future which we hope to build.

Parliament took important steps to do this when it passed the Firearms Control Act (FCA). This Act is one of the most comprehensive pieces of gun control legislation in the world which has already saved thousands and thousands of lives.

Mortuary data shows that:

- 29% of non-natural deaths were due to firearms in 2002, this dropped to 10.8% in 2008, while deaths from stab wounds and transport accidents remained stable during this time.
- Research presented by Dr Naeemah Abrahams, Deputy Director at the MRC's Gender and Health Research Unit, shows that the Firearms Control Act has saved the lives of more than 800 women a year, with the number of women shot and killed halving from 32% in 1999 to 17% in 2009, while deaths from other means, including stab and blunt injuries did not change.

SA has the largest security industry in the world – worth an estimated R30 billion. Training private security guards – especially those who use firearms is essential. We would like to see this industry come under the provisions of the FCA.

According to figures available,

SAPS – 163, 416 members

SANDF - 67 938 members (excluding the Military Skills Development Section)

Active Security Guards - 411,109: which means that this is **larger than our police and military combined.**

2) Clauses we welcome

GFSA welcomes the strengthening of the regulatory system in particular:

- Clause 3: the introduction of a quarterly report
- Clause 6: financial oversight
- Clause 7: Annual Report
- Clause 11: Penalties
- Clause 14: the CFR

3) Further recommendations

We would ask that the committee consider our recommendations to take some of these changes even further; as well as to look at including changes in the following areas:

- Align this bill with the provisions of the Firearms Control Act;
- Standardise training practices and qualifications
- Introduce client-level responsibility
- Introduce measures to monitor the policing functions undertaken by some private security companies.

4) Substantive Recommendations:

Clause 3

GFSA welcomes the requirement that PSIRA report quarterly to the Minister.

GFSA urges that this amendment and related regulations specify the information to be included in each quarterly report, and recommends that PSIRA be required to report on the following each quarter:

- Number of security firms registered.
- Number of security guards registered, including category and functions.
- Details of training guards have received, including most recent training.
- Number of firearms registered to, lost by and stolen from private security companies.
- All instances in which firearms are discharged by security guards, including circumstances and consequences thereof e.g. death or injury.
- Detailed information on criminal investigations involving the private security industry.

Clause 6

GFSA welcomes this amendment, believing it will give PSIRA additional resources to function effectively as a regulatory authority of private security companies in South Africa.

GFSA urges that the PSIRA Act and Regulations be further amended to spell out in detail the exact responsibilities of the PSIRA in overseeing the private security industry. This detail would guide inspectors on exactly what they need to inspect e.g.

- Confirming that the firearms for which security companies have licences for are actually in their possession, that they are safely stored in SABS compliant safes and that guards employed to use these firearms are 'fit and proper'.
- Confirming that armed guards have undertaken the necessary training and that this training is of the requisite standard e.g. inspecting targets and ensuring that ammunition meets SABS standards.

GFSA urges that oversight of the private security industry is further strengthened, and suggests that just like the police service has an Independent Police Investigative Directorate (IPID) overseeing it, that such a body be established for the Private Security Industry.

Clause 7

In line with our recommendation already mentioned regarding quarterly reports, GFSA would urge that the content of PSIRA's annual report be spelled out, specifying that the following information is included:

- Number of security firms registered.
- Number of security guards registered, including category and functions.
- Details of training guards have received, including most recent training.
- Number of firearms registered to, lost by and stolen from private security companies
- All instances in which firearms are discharged by security guards, including circumstances and consequences thereof e.g. death or injury.
- Detailed information on criminal investigations involving the private security industry.

Clause 11:

GFSA welcomes this amendment, as it seems to imply that anyone guilty of any of the offences in the Schedule including public violence, intimidation, rape, murder, robbery, culpable homicide involving the use of a firearm, assault with intention to cause serious deadly harm, an offence in terms of the Domestic Violence Act, 1998 as well as an offence in terms of legislation pertaining to the control over the possession and use of firearms and ammunition would be permanently excluded from registering as a security guard.

GFSA would however submit that the Firearms Control Act, 2000 be specifically listed in the Schedule, seeing this as an omission.

Clause 14:

GFSA warmly welcomes this amendment. There is no indication that private security company firearm and ammunition stockpiles are known to either the PSIRA or CFR. Key informant interviews revealed that PSIRA is not interested in firearm holdings and that the CFR is grossly under-capacitated. The result is that this information is not being recorded.

As has been recommended earlier, we urge that in addition to keeping details of every firearm being made available within 30 days of request, that the PSIRA be responsible for reporting this information in both quarterly and annual reports.

Clause 18:

As already mentioned, GFSA urges that this amendment be expanded to include recognition of the Firearms Control Act, 2000.

5) Further Recommendations

Include Client-Level Responsibility

Emerging good practice internationally is tending towards client-level responsibility. Two international codes of conduct, the Montreux Document and the International Code of Conduct for Private Security Providers (ICoC), suggest that the contracting party take responsibility for ensuring that the private security company contracted is of good and proper standing, and that the company and its staff do not have a prior record of criminal involvement¹.

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 private security company that they employ to guard their premises and personnel. The rationale for employing a security company 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 private security companies to comply with the law.

Align and harmonise legislation

The PSIRA Act and Regulations be aligned with the FCA. While the PSIRA is responsible for authorising and issuing licences to private security guards, the CFR is responsible for issuing firearm licences and all matters related to firearms held by private security companies.

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 – our submission details instances where there is a lack of harmony and we would ask that the Committee applies its mind to ensuring these gaps are filled.

Align and standardise training practices and qualifications

Training standards and practices in the PSIRA Act and Regulations must be aligned with the Firearms Control Act and Regulations.

Training standards and practises must be standardised in the PSIRA Regulations.

The PSIRA Act and Regulations must spell out in detail the exact responsibilities of the PSIRA in overseeing training within the private security industry as described in recommendation 2b above.

Increase monitoring of policing functions undertaken by private security companies

PSIRA develop a binding code of conduct and training for all private security companies with armed guards based on the International Code of Conduct for Private Security Providers (ICoC) on the use of force.

Many private security companies, especially larger ones, engage in policing functions, primarily arresting suspects for copper and cable thefts, and that the guards undertaking this work are reportedly quite heavily armed.

Yet private security guards are not law enforcers; they are civilians and are therefore bound to the same rules of conduct as ordinary civilians. However, relevant legislation and policy directives do not take cognisance of this fact, failing to cite private security companies as relevant actors, e.g. Section 49 of the Criminal Procedure Act, which discusses the modalities of use of force when effecting an arrest, doesn't recognise private security companies as a distinct category.

6) Conclusion

GfSA thanks you again for inviting us to make a submission.

ⁱ 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, Part Two, para 6: a