

Submission on the Private Security Industry Regulation Amendment Bill [B 27—2012]

Submission made by **Safer South Africa Foundation (SSAF)**, a national NGO established in 2012 to primarily focus upon mobilising and capacity building South Africa's less advantaged communities in an effort to strengthen the community's ability to 'fight against crime', encourage and improve partnership working with police, correctional services and those agencies responsible for road traffic safety. In addition to its work with communities, the foundation seeks to actively contribute to the national discourse on crime and community safety matters by undertaking research, advocacy and campaigns.

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1. General Overview

Safer South Africa Foundation (SSAF) welcomes the review of the Private Security Industry Regulation Act, 2001 and considers it timely and important to assess its provisions and to refine or improve them as required. With this in mind we support the Private Security Industry Regulation Amendment Bill [B 27—2012] particularly as it seeks to promote *crime prevention partnerships* which we believe can harness the enormous and untapped potential not just in the private security industry but in those government institutions that have not perhaps previously recognised the importance of giving due regard to crime prevention when exercising their daily functions, thus maximising opportunities to reduce crime in South Africa. We also welcome those amendments that seek to strengthen the effective control and management of firearms by the private security industry, an objective recognised in the Memorandum on the Objects of the Private Security Industry Regulation Amendment Bill, 2012, “the challenges of the private security industry manifested themselves in many ways which included...the lack of proper accountability for fire-arms in the possession of members of the private security industry... and the criminality within the private security industry.”

Safer South Africa Foundation’s submission draws upon UK legislation, namely the Crime and Disorder Act, 1998, in particular Section 17 which states that all relevant authorities have a duty to

consider the impact of all their functions and decisions on crime and disorder in their local area. We feel that this legislation is particularly relevant to the issue of crime prevention partnership arrangements as it places a 'Duty' on named government institutions to 'give due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area' We also refer to the Police Reform Act (2002) Act, 1998, in particular S.40 and S.41 which provides UK police authorities with the power to Accredit private security sector organizations thereby significantly enhancing the opportunities for joint working, training and sharing of information between the private security industry and the police service.

The author of this submission is a retired Metropolitan Police Service superintendent and in the four years prior to retirement in 2010 was the police lead for 'partnership working' in the London Borough of Lambeth.

Our submission consists of two parts:

- Part 1 notes amendments we support, including recommendations to strengthen these clauses.
- Part 2 identifies matters that have not been addressed in Amendment Bill [B 27—2012].

2. Detailed comments on proposed amendments in order to strengthen them

1. Amendment of section 3 of Act 56 of 2001

2. Section 3 of the principal Act is hereby amended—
(a) by the insertion after paragraph (b) of the following paragraph:
“promote crime prevention partnerships between the private security industry and organs of state responsible for crime prevention;” and
(b) by the insertion of the word “and” at the end of paragraph (p).

Safer South Africa Foundation's response and recommendations

a. Safer South Africa Foundation particularly notes and welcomes the Amendment of Section 3 of

Act 56 2001, with particular reference to, 'promote crime prevention partnerships between the private security industry and organs of the state responsible for crime prevention'

- b.** Safer South Africa Foundation strongly urges that careful attention is given to this amendment as we feel the clause may be open to a number of interpretations and potential misunderstanding.
- c.** To avoid any such confusion or misinterpretation we feel that the government should move to 1) define in the widest possible terms exactly what is meant by crime prevention partnerships, including clearly identifying those 'organs of the state' responsible for crime reduction 2) place all identified 'partners' under a legislative 'Duty' to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area and 3) implement a legislative framework that causes the responsible authorities work together to develop and implement strategies to protect their local communities from crime and to help people feel safe.

Rationale

These recommendations are largely based on the UK Crime and Disorder Act, 1998 which, amongst other things, legislates for *crime prevention* partnership arrangements to ensure that all responsible authorities are held to account in their participation and contribution to these arrangements. In the experience of the author while such legislative arrangements are absolutely crucial in ensuring co-operation between a range of authorities that would not normally share information and or take responsibility for crime reduction strategies, partnership working where the intended outcome is crime reduction can present a number of challenges. These challenges usually manifest due to the historical and traditional view whereby crime reduction and prevention is seen as the responsibility of the police alone, after all it is they who are provided with the necessary resources and budget.

Therefore, the cultural and organisational change necessary to ensure that a range of government organs embrace the crime prevention partnership ethos will from the outset take a great deal of leadership and commitment, however, the outcomes in our view will be rewarding.

2. Substitution of section 10 of Act 56 of 2001

Ad Clause 3:

The following section is hereby substituted for section 10 of the principal Act:

“Accountability of Council

10. (1) The Council is accountable to the Minister for the performance of its functions and must supply the Minister with such information and particulars as the Minister may in writing require in connection with the functions of the Authority or any other matter relating to the Authority.

(2) The Council must submit a report to the Minister—

(a) on any matter required by the Minister under subsection (1) and on any matter which it is necessary or expedient to bring to the attention of the Minister; and

(b) at least once a quarter in connection with the activities of the Authority.”

Safer South Africa Foundation’s response and recommendations

- a. SSAF welcomes the requirement that PSIRA report quarterly to the Minister.
- b. SSAF 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.

Rationale

SSAF’s recommendation 1b above is based on Jaynes’ observation that:

- There is a need for more information on the private security industry including personnel, equipment, cases of misconduct, budgets, types of functions and training regimes.
- Currently, neither PSIRA nor the South African Police Service (SAPS) keep a record of how many cases of death and injury are perpetrated with private security company firearms.

3. Amendment of section 23 of Act 56 of 2001

Ad clause 11:

Section 23 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (d) of the following paragraph:

Requirements for registration (1) Any natural person applying for registration in terms of section 21 (1), may be registered as a security service provider if the applicant is a fit and proper person to render a security service, and... ‘

‘(d) was not found guilty of an offence specified in the Schedule [**within a period of 10 years immediately before the submission of the application to the Authority**];’

Safer South Africa Foundation’s response and recommendations

a. We welcome 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.

b. Safer South Africa Foundation would however submit that the Firearms Control Act, 2000 be specifically listed in the Schedule, seeing this as an omission.

4. Amendment of section 36 of Act 56 of 2001

Ad clause 14

Section 36 of the principal Act is hereby amended by the addition after subsection (2) of the following subsection:

“(3) The Central Firearms Register in the Service must—(a) keep a separate updated database, in the prescribed form, of the details of every firearm issued to a security service provider; and (b) at the written request of the director, submit the updated database of firearms referred to in paragraph (a) to the Authority within 30 days of the request being made.”.

Safer South Africa Foundation’s response and recommendations

- a. This amendment is welcomed. As Jaynes has noted, “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.
- b. Furthermore, 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.

Additional matters that have not been addressed in the Private Security

Industry Regulation Amendment Bill [B 27—2012]:

- 1. Accreditation of private security sector organisations whose operatives provide policing type functions in public places.**

When the Minister of Police, Mr. Nathi Mthethwa, introduced the Bill during his budget vote speech on 9 May 2012, he stated that ‘the increasing number of private security guards in South Africa poses a need for greater cooperation between the private security industry and the South African Police Service’. It is our view that this statement goes to the nub of a significant challenge facing South Africa. A challenge highlighted in the Private Security Industry Regulatory Authority (PSIRA) Annual Report (March 2011), which indicated that 1 780 874 security officers were registered with PSIRA. It is recognised that a significant number of security operatives perform policing type functions in the public space which in turns causes some confusion on the part of the public as to the security operatives’ role, their utilisation of firearms, batons, handcuffs and powers to use force when detaining suspects or undertaking their general duties. The issue of ‘powers’ is but one hugely important aspect that in our view requires clarity. The other equally pressing concern has to be how to harness the huge crime reduction and prevention potential presented by the significant numbers of private security industry operatives in a way that ensures greater co-operation between the South African Police Service and the private security sector, while at the same time enhancing the ability of the private security sector to deliver their range of services.

Safer South Africa Foundation’s recommendation

This recommendation draws upon the UK Police Reform Act (2002) S40 and S41 which provides police authorities with the power to Accredite private security sector organizations thereby ensuring closer co-operation, improved standards, joint working, information sharing and enhanced public confidence. We feel that the relevant sections of the Police Reform Act (2002) suitably amended and adapted to the South African context will provide opportunities to ensure the closer co-operation between the South African Police Service and those relevant sections of the private security sector. The UK Community Safety Accreditation scheme provides an opportunity for *approved community safety and security organisations* to enter into a formal agreement with relevant police authorities that allows their *employees* to become accredited and, where appropriate, to utilise limited police powers and to help them undertake their roles more effectively. It is important to note that the *employee* becomes the accredited person; therefore this is not a means of providing limited policing powers to members of the Neighbourhood Watch or Community Policing Forums. Community Safety Accreditation Schemes

are seen as an integral part of the UK Government's Neighbourhood Policing Strategy, which explicitly recognises their importance in, "forging links, improving communication and delivering effective policing to neighbourhoods". The Community Safety Accreditation Scheme if introduced in a South African context would in our view help to harness and standardise working arrangements between the South African Police Service and the private security sector by improving the quality, consistency and transparency of the "mixed economy" of private and public sector 'policing patrols' that already exists on South Africa's streets and public spaces.

2. Align and harmonise legislation

Safer South Africa Foundation's recommendation

- a. The PSIRA Act and Regulations be aligned with the Firearms Control Act and related Regulations.

Rationale

According to Jaynes, 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 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. The FCA predates the PSIRA Act and the two pieces of legislation are not aligned, for instance:

- The FCA specifies a minimum age of 21 years for firearm possession, yet the PSIRA Act stipulates 18 years as the minimum age for registration as a private security guard. While not all security guards are armed, and one assumes that the CFR would not grant a license to a person younger than 21 years of age, this requires clarification in the legislation.
- 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.
- 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. This discrepancy has caused much confusion, compounded further by a lack of harmonisation between private security company provisions in the FCA and PSIRA Act.

3. Align and standardise training practices and qualifications

Safer South Africa's recommendations

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

- b. Training standards and practices must be standardised in the PSIRA Regulations.

Rationale

Safer South Africa Foundation's recommendations are based on Jayne's observation that:

- While PSIRA published draft regulations on training for public comment in 2009, PSIRA's 2010/2011 Annual Report does not indicate if the regulations are any closer to proclamation.
- There's a disjuncture between the training requirements of the FCA and PSIRA e.g.:

The FCA Regulations of 2005 require that a private security company assess armed guards at least every 24 months though such assessment does not include psychological or psychiatric testing. However, this is contradicted by a later section which compels the company to provide 'appropriate counselling and debriefing... if the security officer has used a firearm against any person and has caused death or injury'. The FCA must be amended to address this inconsistency. The legislation and the practice in terms of training security guards are not complementary. The PSIRA Act and Regulations require completion of a minimum of 'Grade E' training. However, 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'. In contrast the firearm training industry in South Africa has developed a detailed set of rules and requirements, as laid out by the SASSETA. This qualification contains core unit standards with clearly defined performance criteria. Yet none of this detail appears

in the FCA, the PSIRA Act or accompanying Regulations.

A further issue of concern relates to the maintenance training required for armed guards as per the PSIRA Act and FCA. The FCA's 2005 Regulations require that private security companies 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', 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'. The 2005 Regulations also include a requirement that the private security company assess its 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'. However, the same clause specifically states that this assessment 'does not include psychological or psychiatric testing'. This not only contradicts the FCA, which requires that the criteria for firearm ownership include being of a 'stable mental condition' and 'not [being] inclined to violence' 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. In fact, the 2005 FCA Regulations affirm this logic five paragraphs later when the company is compelled to provide 'appropriate counseling and debriefing...if the security officer has used a firearm against any person and has caused death or injury'. It therefore appears that there is inconsistency between the FCA and the 2005 Regulations.

Notes

We are grateful for the assistance of the NGO, 'Gun Free South Africa' in drawing to our attention the key firearms related matters of concern and in particular the issues raised in a research paper: Jaynes, N., (2012) *Flying Below the Radar? The armed private security sector in South Africa*, we have attached a summary of this paper as an Addendum to this submission, full copies of the report can be downloaded from the Open Society Foundation for South Africa website: www.osf.org.za.

Relevant sections of the Crime and Disorder Act and the Police Reform Act can be found at

<http://www.legislation.gov.uk/ukpga/1998/37/section/17> and the Police Reform Act at:

<http://www.legislation.gov.uk/ukpga/2002/30/section/40> and

<http://www.legislation.gov.uk/ukpga/2002/30/section/41>

UK Government guidance on the Community Safety Accreditation scheme can be located at
<http://library.npia.police.uk/docs/homeoffice/comm-safety-accreditation.pdf>
