Are Private Security Companies in South Africa a source of illegal firearms that contribute to crime, injury and death in the country?

This briefing was developed by Gun Free South Africa. It is a summary of a paper by Natalie Jaynes (2012), *Flying Below the Radar? The armed private security sector in South Africa*. Research for Jaynes’ paper was undertaken while she was a Sarah Meek Fellow at the Institute for Security Studies. Jaynes’ paper was published by the Criminal Justice Initiative of Open Society Foundation for South Africa: www.osf.org.za.

### South Africa’s private security industry

South Africa’s private security industry emerged during apartheid, when private security companies were employed by the government to complement the police.

Since the end of apartheid the industry has continued to grow; in the past decade the number of registered private security companies increased from 5,491 in 2001 to 8,828 in 2011 and is estimated to be worth R30 billion.

### But how well are private security company firearms and ammunition regulated?

This is the question posed by Natalie Jaynes in 2011. Below is a summary of her key findings and policy recommendations.

### Key findings

1. **Firearms and ammunition stockpiles are not known**

   There is no indication that private security company (PSC) firearm and ammunition stockpiles are known to either the Private Security Regulatory Authority (PSIRA) or the Central Firearms Registry (CFR).

   Key informant interviews revealed that PSIRA is not interested in firearm holdings and that the CFR is grossly under-capacitated (see Box on page 4). The result is that this information is not being recorded.

2. **No central data repository on firearm discharges and injury/death**

   Currently, neither PSIRA nor the South African Police Service (SAPS) keep a record of how many cases of death and injury are perpetrated with PSC firearms. While some individual PSCs keep a record of this information, there is no systematic data collection.

### Acronyms and Glossary

- **CFR**: Central Firearms Registry.
- **CSP**: Civilian Secretariat for Police.
- **FCA**: Firearms Control Act, 2000.
- **ICoC**: International Code of Conduct for Private Security Providers: Formally adopted in Geneva on 9 November 2010; by 1 December 2011, 266 companies had signed it, including 15 South African companies.
- **IPID**: Independent Police Investigative Directorate.
- **Montreux Document**: 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 was adopted in 2008 and is supported by 35 states.
- **PSC**: Private Security Company.
- **PSIRA**: Private Security Industry Regulatory Authority.
- **SAPS**: South African Police Service.
- **SASSETA**: Safety and Security Sector Education and Training Authority.
3. No accountability for clients employing negligent PSCs

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 PSC contracted is of good and proper standing, and that the PSC and its staff do not have a prior record of criminal involvement¹.

In South Africa, the situation is one of client immunity; 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 Airports Company South Africa (ACSA) utilising training service providers that do not adhere to even the most basic PSIRA standards when it comes to firearm training for 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.

4. Insufficient oversight over PSIRA and PSCs

On paper the private security sector appears to enjoy satisfactory oversight: PSIRA is a statutory body directed by legislation, it is governed by a five-person Council, appointed by and accountable to the Minister of Police, it is required to report to Parliament annually and has drafted a binding code of conduct for security service providers. Yet ‘there is no means by which private security companies are regulated through civilian oversight’², unlike the SAPS.

The two external bodies overseeing the approximately 150,000 SAPS members who fulfil an active policing function are the Civilian Secretariat for Police (CSP) and the Independent Police Investigative Directorate (IPID). As of 2012, these two bodies have an annual budget of approximately R190 million (R41 million for the CSP and R150 million for the IPID).

By comparison, PSIRA has an annual expenditure budget of R173 million³ from which 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 8,828 PSIRA registered companies. Further, the role of these 16 inspectors employed nationally is unclear; Chapter 5 of the PSIRA Act, makes mention of 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.

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

5. PSCs operate like state law enforcement

Private security guards are not law enforcers; they are civilians and are therefore bound to the same rules of conduct as ordinary civilians. Yet key informant interviews revealed that PSCs, 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.

Despite this, there is insufficient acknowledgement of the civilian status of PSC guards. This was apparent during the 2011 parliamentary debates and public submissions on Section 49 of the Criminal Procedure Act, which governs the use of force when effecting 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, reflecting a general lack of knowledge of the actual activities of PSCs.

6. Lack of harmonisation of training standards

The legislation and the practice in terms of training security guards is out of sync. 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 Safety and Security Sector Education and Training Authority (SASSETA). This qualification contains core unit standards with clearly defined performance criteria. Yet none of this detail appears in the Firearms Control Act (FCA), the PSIRA Act or accompanying Regulations.

Another problem 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’, 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 PSC assess their 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 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’. It therefore appears that there is inconsistency between the FCA and the 2005 Regulations.

The key informant interviews revealed allegations of certain training service providers and PSCs using 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. The end result is ammunition that is less accurate and dangerous, as it can cause injury or death 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. Part of the problem seems to be because neither of the two key bodies responsible for security guard training – the CFR and the SASSETA – ‘has the expertise to do practical inspections’ to ensure that training is of the required standard. Interviewees indicated that two different private security 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. 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. PSIRA’s 2010/2011 Annual Report does not indicate if the regulations are any closer to proclamation.

7. Lack of harmonisation and alignment in key legislation

While 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 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 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 licence to a person younger than 21 years of age, this ought to be spelt out 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 ‘licence 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 PSC provisions in the FCA and PSIRA Act.

8. **Criminal cases against PSIRA members**

Every PSIRA annual report contains a heading ‘Criminal Investigations’, yet the reports don’t detail reasons for and progress of these investigations other than a broad statement of ‘criminal contraventions of the Act’. This could include all manner of crimes and violations, including threats to public safety. The reports indicate that these 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, an increase from 104 new cases in the previous Annual Report. There also appears to be a significant backlog of 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. While the details remain unclear this is an unacceptable level of illegality.

**The Central Firearms Registry**

**Comment by Gun Free South Africa:**

Almost two years ago the Minister of Police publicly admitted to the “malfunctioning” of the Central Firearm Register, which had resulted in a backlog of firearm licence applications. The Minister promised then to turn the CFR into a “functional unit” that would deal with the backlog within 9 months (i.e. by July 2011).

Since then the CFR has been under mounting pressure to issue firearm licences - whether new or renewed - as quickly as possible. This is not the way to implement the law, and GFSA is greatly concerned that people who are not fit and proper have been granted firearm licences. We urge that correct procedures to be followed and if that means it takes a long time for a licence to be issued or reissued; then it needs to take that long.

**Policy recommendations**

In addressing the problems described above, Jaynes makes the following policy recommendations:

1. **Harmonise and consolidate legislation**

The FCA and the PSIRA Act and Regulations need to be more closely aligned. 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.

2. Strengthen and professionalise cooperation between oversight bodies
There needs to be 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. This is a common refrain in the PSIRA reports; the parliamentary Police 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 fulfil an ombudsman role. 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. 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. However once again, the follow through has not transpired.

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, relevant legislation and policy directives need to take cognisance of this fact, and cite PSCs as relevant actors. 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.

4. Strengthen oversight over the PSC sector
Given the growth of the PSC sector, and its increasing role as a policing agent, the sector ought to be governed by similar oversight as the SAPS. Currently, oversight over PSCs is shared by PSIRA, SAPS (the CFR specifically) and the Police Portfolio Committee. Yet both PSIRA and the CFR 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.
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. 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 firearm 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.

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’. 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.

7. **Introduce client responsibility**

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. 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.

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.

**Endnotes**


iii  Minutes by Parliamentary Monitoring Group of presentation by Private Security Industry Regulatory Agency on its 2012 Strategic Plan to Police Portfolio Committee, 16 May 2012.