

BASELINE STUDY ON PRIVATE SECURITY REGULATION IN THE SOUTHERN AFRICA REGION



Sabelo Gumedze

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DCAF - Geneva Centre for Security Sector Governance

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Cover image: Security guard, guarding a door

Cover image by Fresnel

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Special appreciation goes to the Geneva Centre for Security Sector Governance (DCAF) for the financial, technical and substantive support that made this work possible. Special thanks goes to Dr Alan Bryden, Ms Marlène Wäfler and Ms Gabrielle Priklopilova for their role in the shaping of this study. As the Chinese proverb says, “a journey of a thousand miles begins with a single step.” It is hoped that this study will be the beginning of that journey that will culminate in the effective regulation of the private security industry in the region. It may not be tomorrow but in the not-so-distant future.

Special thanks also goes to the staff members of the Private Security Industry Regulatory Authority for participating in the hosting of a workshop between 20-21 June 2019 which brought interesting perspectives, which were well noted and included in this report. This workshop was a collaborative effort between DCAF and PSiRA. The workshop focused on sharing good practices between private security regulators in the Southern Africa region. Ms Nomnotho Zama captured the proceedings of the workshop in a report which assisted in the finalization of this study.

Trying to keep abreast of a rapidly changing private security industry and its regulation in the region is no easy task. I will have made errors, for which I take full responsibility. Even so, I hope I have done a reasonable job in producing an accurate account of what obtains in the region. Finally, on a wider issue, I hope and trust that the baseline study goes some long way to improving an understanding of the role of states in regulating the private security industry in the region.

ACRONYMS

AOA	Angolan Kwanza
CIT	Cash in Transit
CSOS	Civil Society Organizations
DCAF	Geneva Centre for Security Sector Governance
DRC	Democratic Republic of the Congo
DUSWO	Democratic Union of Security Workers
4IR	Fourth Industrial Revolution
ICOCA	International Code of Conduct for Private Security Service Providers' Association
IOS	International Organizations
LEFESPA	Lesotho Federation for Private Security Association
MGA	Malagasy Ariary
MT	Metical
MUR	Mauritius Rupee
NGOS	Non-Governmental Organizations
NPF	Namibian Police Force
P	Pula
PACRA	Patents and Companies Registration Agency
PRM	Mozambique Republic Police
PSCAZ	Private Security Association of Zambia
PSC	Private Security Company
PSIRA	Private Security Industry Regulatory Authority
PSOA	Private Security Services Officers Act, 2002
PSOB	Private Security Officers' Board
PSO	Private Security Officer
PSSLB	Private Security Services Licensing Board
SADC	Southern African Development Community
SAIDSA	South African Intruder Detection Services Association
SAPSWU	South African Private Security Workers' Union
SASA	The Security Association of South Africa Employees Associations
SESORB	Security Enterprises and Security Officers Regulation Board
SIA	Security Industry Alliance
SPAS	Security Professionals of Swaziland
SSEO	Security Services Employees Organization
SSGAWU	Swaziland Security Guards and Allied Workers Union
TAAPSOSA	The Association of African Private Security Owners of South Africa
TUCOSWA	Trade Union Confederation of Swaziland
USD	United States Dollar
VIP	Very Important Person
ZAPS	Zimbabwe Association of Private Security
ZAR	South African Rand
ZMK	Zambian Kwacha

FOREWORD



Across Africa, private security providers significantly outnumber public security forces. The scale and scope of the industry makes democratic oversight and accountability a key priority. Yet the governance implications of what amounts to a fundamental shift in the African security landscape receives little attention. Policy makers rarely address private security, national parliaments and regulatory bodies provide limited oversight in this area, and the interest of African media and civil society is localised and sporadic. This needs to change.

DCAF – a Geneva-based foundation dedicated to enabling good governance of the security sector – plays a leading role globally in promoting private security regulation. We recognise that good private security governance is essential for security, socio-economic development and respect for human rights. At the international level, DCAF supports innovative initiatives such as the Montreux Document and the International Code of Conduct. We also partner with international and regional bodies to promote applicable norms standards and good practices. In addition, DCAF works with a range of national partners across Africa – governments, parliaments, national human rights institutions, regulatory bodies, the media and civil society – to support effective private security regulation.

Positive examples do exist where legal and policy frameworks are being adapted, regulatory capacities reinforced and human rights concerns around private security are becoming more prominent in the public policy discourse. Where progress has been made, empirically grounded research and high-quality analysis has proved catalytic. This *Baseline Study on Private Security Regulation in the Southern Africa Region* is therefore very timely. The study provides a comprehensive overview of the nature of the private security industry and related challenges. Most importantly, it identifies entry points and offers pertinent recommendations both at the national level and for the region.

Sincere thanks go to the study author, Sabelo Gumedze, who has brought to bear his unparalleled expertise on private security in Africa. Thanks for their contributions also go to the national experts and partners as well as to the Business and Security team at DCAF. The study was informed by a joint workshop co-organised by DCAF and the Private Security Industry Regulatory Authority of South Africa (PSiRA) which brought together national regulators and experts from across the region to share their experience. I would like to acknowledge PSiRA Director Manabele Chauke, the PSiRA team and all the participants for spirit of partnership that underpinned this important workshop. I very much hope that a vibrant community of practice can emerge from this positive first encounter.

A key message from this study is that improving private security regulation in the region requires governments, the industry and civil society to work together. As an organisation that is deeply committed to supporting such multistakeholder approaches, DCAF stands ready to support these efforts going forward.

Alan Bryden

Head, Business & Security Division

DCAF – Geneva Centre for Security Sector Governance

CHAPTER 1: INTRODUCTION

1.1. INTRODUCTION

Just like in other regions of the world, the Southern Africa region has witnessed an exponential growth of its private security industry. This exponential growth coupled with the diversification of activities by the private security industry has over the years overtaken the applicable regulatory frameworks. This resulted in the governance deficit of an industry that has now become a force to be reckoned with. In some Southern Africa countries, the private security industry has become a force unto itself as a result of absent or weak regulatory regimes. The existence and the growth of the private security industry not only requires the establishment, strengthening and promotion of effective regulatory frameworks, but also, in a first step, a deeper understanding of the operations of the industry in the region. This deeper understanding becomes critical in informing and shaping the regulatory frameworks to be put in place and how they should be strengthened and promoted to ensure safety and security in the Southern Africa region.

The general absence of effective regulatory frameworks for private security in the Southern Africa region poses serious challenges for improving the professionalism, quality and standing of the private security industry.¹ For those countries with regulatory frameworks, the growth and dynamism of the industry coupled with the technological advancement in the provision of security services² has arguably made some regulatory frameworks obsolete. In some countries, while the drafters of laws were only focusing of one aspect of the security industry, namely the guarding sector, which arguably dominates the industry, the reality is that the private security industry is much wider in its scope.

This study is aimed at contributing towards the effective regulation of private security in the region.³ Through this study, a deeper understanding of the nature of the private security

1. Gumedze, S., 'Summary' in Gumedze, S., (ed.), *Promoting Partnerships for Crime Prevention Between State and Private Security Providers in Southern Africa* (2015) 265.

2. These include the use of security robots, drones, facial recognition cameras etc.

3. The study employed both quantitative and qualitative research methods. Quantitative data were collected using a questionnaire-based survey. Four sets of questionnaires were developed to target specific categories of potential interviewees, namely: Category 1: Representatives of Regulators/Licensing Authorities; Category 2: Representatives of Security Providers (Companies/Businesses); Category 3: Representatives of Security Providers (Officers/Employees); and Category 4: Representatives of Associations/CSOs/Consumers of Private Security. Of the questionnaire sent, interviewees from 11 countries responded to the questionnaire and 5 interviewees from 5 countries did not, making the response rate almost 70%. For most of the countries, where responses were received, face to face interviews were conducted. The 30% of the unresponsive countries was largely because of the lack of data due to the absence of regulatory frameworks and/or agency for the regulation of the private security industry.

industry will be gained. An appreciation of the various regulatory regimes will also present a perspective on what gaps countries need to address in order to ensure that the private security industry is effectively regulated in the region. The study will also lay a foundation for an informed debate on the possibility of establishing a network of regulators of private security for the purpose of sharing best practices that will improve the regulation of the private security industry in the region. The ultimate goal will be to enhance knowledge on challenges and opportunities for the promotion of effective oversight and accountability of the private security industry at regional and national levels.

1.2 METHODOLOGY

This study seeks to address the following research questions:

- What is the size and scope of the private security industry in Southern African countries?
- How is the private security industry regulated in the region?
- What are the key security and human rights challenges, including oversight and accountability considerations, relating to the private security industry?
- How effective are the regulatory frameworks and the agencies in regulating and controlling the private security industry?
- What are good practices for the promotion of an effective regulation of the private security both at national and regional levels?

Available data was collected on the size of the industry in the respective countries and the implications thereof. This included available statistical data, such as the number of private security providers (businesses and officers); number of security providers per security service; number of male and female employees (gender dynamics); number of inspections undertaken; and amounts of registration fees, renewal fees, and fines. More detailed case studies were undertaken in Lesotho, Botswana, South Africa, Namibia, Zambia, Mauritius and Mozambique.

One of the main limitations to this study was the non-existence of dedicated private security regulatory agencies in several Southern Africa States. This is also linked to the absence of regulatory frameworks related to the private security industry. For states where such regulatory agencies were in existence, the data was not readily available as some officials felt that security issues must remain confidential. In order to address this shortcoming estimates were obtained from representatives of the industry. Additional information was collected through desktop and existing literature.

A two-day workshop was held in Pretoria between 21-22 June 2019 which focused on “Sharing Good Practices between Private Security Regulators in the Southern African

Region”. Information was also collected as part of the proceedings of the event in order to deepen the understanding of the private security industry in the region.

1.3 LITERATURE REVIEW

A preliminary literature review shows that past studies on the regulation of the private security industry are primarily focused on individual countries. In 2008, a country series study focusing on the Democratic Republic of the Congo, South Africa, and Uganda was undertaken by the Institute for Security Studies.⁴ The monograph provided a comparison of the scope and role of the private security industry in these countries. Focusing on the internal dimension of the private security industry (rather than the external), this study presented the growth of the industry, its impact and the regulatory frameworks. In 2017, Higate and Utas edited a book, titled, *Private Security in Africa: From the global assemblage to everyday*.⁵ This book draws on a wide range of disciplinary approaches, and encompasses anthropology, sociology and political science, offering insights into the lives and experiences of security providers and those affected by them, as well as into the state fragility which has allowed private security to thrive. While the book offers a comprehensive analysis of the rise of private security providers in some African countries, and its implications for African states and societies, it only focuses on three countries, namely, the DRC, South Africa and Tanzania. None of these three studies offers any discussion on how the private security industry is regulated and if so, how effective such regulations are.

In 2015, a study on the promotion of partnerships for crime prevention between state and private security providers in Southern Africa was undertaken by the Private Security Industry Regulatory Authority in a monograph edited by Gumedze titled, *Promoting Partnerships for Crime Prevention Between State and Private Security Providers in Southern Africa*.⁶ While the study was focused on the crime prevention partnerships in Botswana,⁷ Namibia,⁸ South Africa,⁹ and Eswatini,¹⁰ it also discussed regulatory frameworks for private security in these countries.

4. Gumedze, S. (2008) *The Private Security Sector in Africa*, Institute for Security Studies, (Monograph Series No. 146).

5. Higate, P. & Utas, M., (eds.), *Private Security in Africa: From the global assemblage to everyday* (Zed Books, 2017).

6. Gumedze, S. (ed.), *Promoting Partnerships for Crime Prevention Between State and Private Security Providers in Southern Africa* (Private Security Industry Regulatory Authority, 2015).

7. Molomo M., & Maundeni, Z., ‘Botswana’ in Gumedze S., (ed.), *Providers in Southern Africa* (Private Security Industry Regulatory Authority, 2015) 45.

8. John Nakutta, Nicole Duminy & Brian Simamuna in Sabelo Gumedze (ed.), *Providers in Southern Africa* (Private Security Industry Regulatory Authority, 2015) 95.

9. Margaret Gichanga, ‘South Africa’ in Sabelo Gumedze (ed.), *Providers in Southern Africa* (Private Security Industry Regulatory Authority, 2015) 147.

10. Simelane, H., & Maziya W., in Gumedze S., (ed.), *Providers in Southern Africa* (Private Security Industry Regulatory Authority, 2015: 211.

The study on the promotion of partnerships between state and private security providers in Southern Africa noted that the absence of effective regulatory frameworks posed a serious challenge in improving the professionalism, quality and standing of the private security industry.¹¹ It was also observed that where there existed an effective regulatory framework, as in the case of South Africa, the industry's legitimacy is, comparatively speaking, stronger.¹² In Namibia, it was found that the existing regulatory framework was not being enforced, thus eroding the legitimacy of the industry.¹³ In Botswana, where the regulatory framework is in existence, though insufficient, the legitimacy of the industry remained lukewarm.¹⁴ In Eswatini,¹⁵ where there was no regulatory framework, the legitimacy of the industry remained minimal.¹⁶

The literature review also shows that some studies have been more focused on specific countries, particularly on South Africa.¹⁷ In South Africa, some of the challenges facing the industry have included the non-compliance in the possession and use of firearms,¹⁸ as well as inadequate training standards for private security providers.¹⁹ While South Africa has a regulatory framework for private security, the framework is not effective, due to a number of factors, which include the fact that the regulatory authority is self-funded. These challenges could be better addressed through effective implementation of the law. In the case of Namibia, while the regulatory framework is in existence, the regulatory authority is not yet established.²⁰ This results in the private security industry being unregulated. There are no minimum standards for establishing a private security company. In the case of Eswatini, there is no regulatory framework for private security, and this has resulted in security officers being exploited by companies.²¹ It is important to note that what is

11. Gumedze (n 6 above) 265.

12. As above, 263.

13. As above.

14. Gumedze (n 6 above) 264.

15. Simelane & Maziya (n 10 above) 211.

16. Gumedze (n 7 above) 264.

17. Baker, D., & Gumedze, S., 'Private military/security companies and human security in Africa' *African Security Review* (Vo.16 No. 4), 2007; Berg, J. (2008) 'Holding South Africa's Private Security Industry Accountable: Mechanisms of Control and Challenges to Effective Oversight' *Acta Criminologica*, 21(1): 87-96; Berg, J. (2004) 'Private Policing in South Africa: The Cape Town City Improvement District – Pluralisation in Practice.' *Society in Transition*, 35(2): 224-250. Taljaard, R., 'Private and public security in South Africa' in Gumedze S. *The Private Security Sector in Africa*, Institute for Security Studies, (Monograph Series No. 146) 2008: 69; Penxa, V. T, The implementation of the statutory framework for skills development: a case study of the private security sub-sector (unpublished thesis, University of Pretoria, 2009).

18. See generally, Gumedze, S., *The Barrel of the Gun: Improving the Regulation and Control of the use of Firearms within the Private Security Industry in South Africa* (Private Security Regulatory Authority, 2016). See also, Gumedze, S. and Netshivhuyu, D., *Sworn to Protect: Close Protection within the South African Private Security Industry*, (Private Security Industry Regulatory Authority, 2017).

19. See generally, Gichanga, M., *Training Standards in the South African Private Security Industry* (Private Security Industry Regulatory Authority, 2016).

20. Nakutta, D., Duminy, N. & Simamuna, B. in Gumedze, S. (ed.), *Providers in Southern Africa* (Private Security Industry Regulatory Authority, 2015) 95.

21. Simelane & Maziya (n 10 above) 211.

missing from past studies is a comprehensive and comparative study for focusing on the regulatory frameworks, the regulatory agencies and the private security environment of the 16 countries of the Southern Africa region. It is also important to note that the literature is outdated as the private security industry is dynamic. This baseline study provides more detailed and updated knowledge of the contexts and analyses opportunities for improving the private security regulatory landscape in the region.

1.4 STRUCTURE

This report provides a baseline study on private security regulation in the region. First, it discusses the characteristics of the private security industry in the region. Secondly, it presents an analysis of the legislative and regulatory frameworks of the following eight countries: Botswana, Eswatini, Lesotho, Mauritius, Mozambique, Namibia, South Africa and Zimbabwe. Thirdly, the report discusses the challenges and opportunities presented by the private security industry and its regulation (or lack thereof) within the region. Lastly, the report presents recommendations and conclusions. Drawing on field trips to Southern Africa states to understand the intricacies of the private security industry, a summary of information from nine countries is provided in the annex to this report.

CHAPTER 2: PRIVATE SECURITY IN THE SOUTHERN AFRICA REGION

2.1 SIZE AND SCOPE

It is very difficult to know the exact size of the private security industry in the region. Accessing data is a challenge. Some countries have credible data while others do not. Moreover, where there are no regulatory frameworks, private security officers are not registered. This presents a major challenge in understanding the types of security services they are involved in. In fact, in some countries, the private security company would employ private security officers without any need to register them with any regulatory body or government entity. The study also reveals some reluctance on the part of authorities to share information by invoking national security reasons. In some states, the private security industry is seen to be competing with the public security actors (such as the Police) and in most of them, private security is seen to be more efficient than police. In addition, the size of the industry is difficult to ascertain due to its fluidity.²²

The security providers in the industry vary from one country to another and from one company to another. Furthermore, what defines a “security service” in one country may not necessarily be the same in another. For example, the private security sector in Zimbabwe is only confined to private investigation and security guarding.²³ In the case of South Africa, the locksmith’s industry is part of the private security industry, while in other countries, such as Botswana, it is not. In fact, the Botswana’s Control Guard Services Act No. 28 of 1984 designates a public officer as the Controller of Guard services to consider applications for a license or its renewal to engage in the business of providing security guards. The scope of the private security industry is therefore difficult to determine with precision and in a uniformly comparable way.

This being said, even if data is hard to come by and not uniform across the region, the present sub-chapter should still provide an overview of numbers.

22. In the case of South Africa, for instance, a considerable number of security officers in the car guarding sector and not registered with PSIRA. See e.g. Xulu, H., *Guardian of the Chariots: Regulation of the Car guarding Sector in South Africa* (2019). Available at https://www.psira.co.za/psira/dmdocuments/research/PSIRA%20Car%20Guards_d7.pdf (accessed 29 July 2019).

23. See e.g. the Private Security Guards (Control) Act, 1978.

2.2 TYPE OF SERVICES

Within the Southern Africa region, the private security industry offers an array of security services. For the purposes of this study, the below definition of a “security service” is instructive as it captures what obtains in the region in terms of the provision of security services.

The guarding sector, which involves the protection or safeguarding of a person or property,²⁴ dominates the private security industry in the region. Additional sectors include:²⁵

Security Services	Definition / Description
• Consultancy	Provision of advice on the protection or safeguarding of a person or property in any manner or on the use of security equipment
• Armed response	Provision of a reactive or response service in connection with the safeguarding of a person or property in any manner
• Events security	Provision of a service aimed at ensuring order and safety on the premises used for sporting, recreational, entertainment or similar purposes
• Monitoring security device(s)	Manufacturing, importing, distribution or advertising of monitoring devices
• Private investigation services	Performance of the functions of a private investigator
• Security training	Provision of security training or instruction to a prospective and/or security service provider
• Security equipment services	The installation, servicing or repairing of security equipment
• Electronic security equipment – related services	Monitoring of signals or transmissions from electronic security equipment
• Locksmith services	Provision of the functions of a locksmith
• Labour security broker	Provision of making a person or the services of a person available, whether directly or indirectly, for the rendering of any security service
• Security management	Managing, controlling or supervising the rendering of security services

24. S 1 of the South African Private Security Regulation Act No. 56 of 2001 (PSiR Act, 56 2001).

25. As above.

2.3 REGULATORY FRAMEWORKS AND AGENCIES

There is no standard regulatory regime for private security in the region. At best, it could be argued that the private security industry is either unregulated or ineffectively regulated. Of the sixteen Southern Africa countries, almost half of these countries do not have a regulatory framework that specifically regulates the private security industry.

States with Regulatory Frameworks for Private Security ²⁶	States without Regulatory Frameworks for Private Security ²⁷
<p>Angola Botswana Lesotho Democratic Republic of Congo Mauritius Mozambique South Africa Zimbabwe Namibia ²⁹</p>	<p>Comoros Eswatini Madagascar ²⁸ Malawi Seychelles Tanzania Zambia</p>

The regulatory agencies or governmental departments responsible for regulating the private security industry in the respective countries vary. In South Africa, the Private Security Industry Regulatory Authority (PSiRA) is responsible for regulating the industry. In Namibia, despite the framework not being implemented, the Security Enterprises and Security Officers Regulation Board (SESORB) was established to regulate the industry. In Lesotho, the Private Security Officers' Board (PSOB) is entrusted with the responsibility of regulating the industry. In Botswana, the Private Security Services Licensing Board (PSSLC) is responsible for regulating the private security industry. In Mauritius, the Police Prosecution Office (Private Security Section), under the Commissioner of Police, holds this responsibility.

26. The effectiveness of these regulatory frameworks vary from one country to the other.

27. In these countries, while there are no laws that are specific to the industry, there are various existing corporate laws for the incorporation of security companies,

28. Madagascar is in the process of developing a regulatory framework for the private security industry.

29. In the case of Namibia, the regulatory framework has not been implemented as yet.

CHAPTER 3: LEGISLATIVE AND REGULATORY FRAMEWORKS

3.1 INTRODUCTION

The general absence of (in some countries) and/or ineffective regulatory frameworks (in others) presents many security risks to the public, states, and the region. This chapter seeks to address the research question of how private security is regulated in Southern African countries. In addressing this question, similarities, differences and possible peculiarities are identified. The establishment of the regulatory agencies within the respective countries are discussed. The chapter also focuses on the requirements for the provision of security services in these countries. These requirements vary from one country to another. The chapter also discusses the monitoring and/control of the private security actors in the respective countries.

For a thorough understanding of the legislative and regulatory frameworks, it is important to focus, first and foremost, on the actual titles of the laws. This provides the context, particularly in their implementation within the given state. For instance:

- In the case of Mauritius, the law focuses on the regulation of “private security service”.³⁰
- In the case of Botswana, the law focuses on the regulation of “private security services”.³¹
- In the case of Namibia, the law focuses on “security enterprises” and “security officers”.³²
- In South Africa, the law focuses on the “private security industry”.³³
- In Zimbabwe, the law focuses on “private investigators” and “security guards”.³⁴

30. Private Security Service Act, No. 5, 2004 (Amended in 2008).

31. Private Security Services Act, No. 106, 2016.

32. Security Enterprises and Security Officers Act, No. 19, 1998.

33. Private Security Industry Regulation Act, No. 56, 2001.

34. Private Investigators and Security Guards (Control) Act, 1978. There is a “distortion on what exactly constitutes private security in Zimbabwe as most of these services are not regulated under the regulations that currently regulates the private security.” See Ndungu, B. (2009) *Investigating the need for and role of regulation in the private security industry in Zimbabwe*, (Unpublished PhD Thesis, Washington International University) 27. Available at https://www.academia.edu/38312400/Investigating_the_need_for_and_role_of_regulation_in_the_private_security_industry_in_Zimbabwe.pdf (Accessed 2 June 2019).

If one considered the case of Mauritius, for instance, “private security service” is defined as the business of providing “a security service, the services of a security guard, and the secure transportation and delivery of property.” From this definition, guarding and cash-in-transit is prominent. This is different from Zimbabwe which gives prominence to private investigation and security guarding, being the security services regulated. In the case of Lesotho, the emphasis is on security guarding, in the sense that the definition defines private security service as being rendered by a private security officer for reward by firstly, making private security guards available for the protection or safeguarding of people or property, or by secondly, advising such other person in connection with the protection or safeguarding of people or property.

ANGOLA

In Angola the private security industry is regulated by Law No. 19 of 1992 of July 31. The provision of security services to third parties in Angola is subject to the authorization by the Ministry of Interior, upon a positive opinion of the Commander of Police. The application for authorization to provide a security service must indicate the type of service to be rendered as well as the territorial scope for its operations.

According to the law, private security in Angola is for the exclusive purpose of the following ³⁵: -

- the protection of mobile goods, real estate and services;
- the monitoring and control of the accessories, permanence and movement of persons in facilities, parks, and reserves of animals;
- the preparation of safety studies, the manufacture and marketing of security materials and respective technical equipment; and
- the surveillance and protection of property and persons.

The private security provider must be a national citizen (of Angola), must not have any criminal record, and must be mentally sound. ³⁶ Once the service provider is notified of its authorization, it must within 90 days present the designs of uniform models and personal identification cards models to be used. The law prohibits the use of any uniform that is likely to be confused with the armed forces and services of safety and civil protection of the state. Private security providers must always during the course of their duties carry an identity card. ³⁷

The law provides that private security personnel are entitled to use firearms in accordance with the law. Private security personnel may only use firearms provided they have undergone competency training. Every registered private security company is required

35. Art.59 of Law No. 19/92.

36. Art. 109 of Law No. 19/92.

37. These cards may be requested by regulatory agencies personnel; armed forces or security services employees.

to organize files for their security staff and keep them up-to-date. ³⁸ The supervision of private security activities is subject to the general command of the Police. Any person who provides private security services without authorization is liable to a fine of between AOA 250, 000 (+/- USD 500) to AOA 1, 000, 000 (+/- USD 2,000).

BOTSWANA

The private security industry in Botswana is regulated by the Private Security Services Act No. 106 of 2016. The Act establishes the Private Security Services Licensing Board (PSSLB), which is comprised of: three representatives of Government, two representatives of the private sector; two representatives of the Security Association upon notification from the Minister to elect members; two representatives of the Security Officers Association, elected by the Association upon notification from the Minister to elect members; and two members of the Public. ³⁹ The functions of the board include: receiving applications for and issuing licenses; setting minimum training standards; encouraging and promoting efficiency within the industry; setting a code of conduct for the private security industry; ensuring compliance within the private security industry; and receiving inspection reports.⁴⁰ The Board is obliged to submit a comprehensive report to the Minister of Defence on its operations during the financial year. ⁴¹

The Act defines “private security service” to include the following:

-
- | | | | |
|--|--|--|---|
| <p>a) protecting or safeguarding a person or property in any manner</p> | <p>b) giving advice on the protection or safeguarding of a person or property, or on the use of security equipment;</p> | <p>c) providing a reactive or response service in connection with the safeguarding of a person or property;</p> | <p>d) providing a service aimed at ensuring order and safety on the premises used for sporting, recreational, entertainment or any similar purposes;</p> |
|--|--|--|---|
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- | | | | |
|---|--|--|---|
| <p>e) manufacturing, importing, distributing or advertising of monitoring devices or surveillance equipment;</p> | <p>f) performing the functions of a private investigator;</p> | <p>g) providing security training or instruction to a security service provider or prospective security service provider;</p> | <p>h) installing, servicing or repairing security equipment;</p> |
|---|--|--|---|

38. Art. 149 of Law No. 19/92.
 39. S 3(2) of the Private Security Services Act No. 106 of 2016.
 40. See generally, section 5 of the Private Security Services Act No. 106 of 2016.
 41. S 5(i) of the Private Security Services Act No. 106 of 2016.

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| <p>i) monitoring signals or transmissions from electronic security equipment;</p> | <p>j) performing the functions of a locksmith;</p> | <p>k) making a person or the services of a person available, whether directly or indirectly, for the rendering of any service referred to in the above paragraphs to another person</p> | <p>l) managing, controlling or supervising the rendering of services referred to in paragraph (a) to (j).⁴²</p> |
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-According to the Act, a security guard is any person who falls under four categories as follows⁴³ :-

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| <p>a) Any person employed by another person, and who receives or is entitled to receive from such other person any remuneration, reward, fee or benefit, for rendering one or more security services;</p> | <p>b) Any who assists in carrying on or conducting the affairs of a security service provider, and who receives or is entitled to receive from such other security service provider, any remuneration, reward, fee or benefit, in respect of one or more security services.</p> |
| <p>c) who renders a security service under the control of security service provider and who receives or is entitled to receive from any other person any remuneration, reward, fee or benefit for such service;</p> | <p>d) whose services are directly or indirectly made available by a private security service provider to any other person, and who receives or is entitled to receive any remuneration, reward, fee or benefit for rendering one or more security services.</p> |
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According to the Act, no person shall establish or carry on the business of providing security services unless such person is issued with a licence by the PSSLB.⁴⁴ Non-compliance with this provision attracts a fine not exceeding P50, 000 (+/- USD 4,500) or imprisonment for a term not exceeding twelve months, or both. In considering applications, the PSSLB must consult with the Commissioner of Police and may make whatever investigations it deems fit, having regard to the interests of the public of Botswana, and thereafter determine the application.⁴⁵ Once a license is issued by the PSSLB, the law provides that the license holder shall not employ a person as a security guard, without the written permission of the Board, if the person has a conviction of which dishonesty is an element, within or outside Botswana, or criminal proceedings are pending against him/her within or outside Botswana, and the licence holder knows or suspects the same.⁴⁶

42. See s 2 of the Private Security Services Act No. 106 of 2016. The definition of a “security service” is almost similar to the definition provided in the South African Private Security Industry Regulation Act, No. 56 of 2001.

43. S 2 of the Private Security Services Act No. 106 of 2016.

44. S 16 of the Private Security Services Act No. 106 of 2016.

45. S 18 of the Private Security Services Act No. 106 of 2016.

46. S 20 of the Private Security Services Act No. 106 of 2016.

For purposes of implementing the law, the Act provides for the appointment of private security inspectors by the Minister.⁴⁷ The private security inspectors are given the latitude of inspecting the affairs of a person licensed under the Act at any time. To this end, the inspectors may check whether the license holder is complying with the law and the conditions of the license.⁴⁸ The Act provides for the enactment of regulations by the minister for the purpose of giving effect to the Act. Such regulations may provide for the display of licenses, fees to be paid, forms to be used, code of conduct, uniforms to be worn, labelling of vehicles, the use of animals and training standards for security guards.⁴⁹

ESWATINI

Eswatini does not have a specific legislation dealing with regulation of the private security industry. It nevertheless has a regulation of wages for security services officers. This regulation, otherwise known as the Regulation of Wages (Security Services Industry) Order, 2011 (Order), came into force on 1 November 2011.⁵⁰ The Order covers “all persons employed in detective, investigative, cash in transit, patrolling and security services, providing protection against burglary, fire, personal injury and similar services connected with or related to the foregoing.”⁵¹

Five groups of private security officers are categorised by the Order, namely: - group A, meaning an employee, other than a patrol supervisor, with three months or less service; group B, meaning an employee with more than three months’ service; group C, meaning a patrol supervisor Grade II; and group D, meaning a patrol supervisor Grade I.⁵² In terms of section 4 of the Order, the basic minimum wage to be paid to an employee shall be in accordance with a schedule (First Schedule) reflecting the above categorization and including a ration allowance.⁵³ The Order also provides, in terms of section 5, that the basic week shall consist of seventy-two hours spread over a period of six days.

Other general laws applicable to private security include the following: the Trading Licence Order No. 20 of 1975; the Occupational Safety and Health Act of 2001, the Employment Act of 1980, the Wages Act of 1964, the Workmen’s Compensation Act of 1983, and the Arms and Ammunition Act of 1964.

47. S 26 of the Private Security Services Act No. 106 of 2016.

48. S 27 of the Private Security Services Act No. 106 of 2016.

49. S 35 of the Private Security Services Act No. 106 of 2016.

50. S 1 of the Regulation of Wages (Security Services Industry) Order, 2011. See Legal Notice No. 139 of 2011.

51. S 2(1) of the Regulation of Wages (Security Services Industry) Order, 2011. S 2(2) of the Order states it clear that it does not apply to persons employed by the Government and a local Authority. The Order addresses the following issues: - minimum wages under section 4; hours of work under section 5; overtime under section 6; annual leave under section 7; maternity leave under section 8; compassionate leave under section 9; sick leave under section 10; particulars of employment under section 11; paid public holidays under section 12; day off under section 13; travelling expenses under section 14; lay-off under section 15; pay day under section 16; and uniforms and protective clothing under section 17.

52. S 3 of the Regulation of Wages (Security Services Industry) Order, 2011.

53. S 4(1) of the Regulation of Wages (Security Services Industry) Order, 2011.

LESOTHO

In Lesotho the Private Security Officers’ Act, 2002 (PSOA) regulates the private security industry. The Act provides for the establishment of the Private Security Officers’ Board (PSOB), to regulate and exercise control over the Private Security Officers and Private Security Guards in Lesotho.

Published in the Lesotho Government Gazette Extraordinary on 30 March 2002,⁵⁴ the PSOA differentiates between a “private security guard” and a “private security officer”. Accordingly, “private security guard” means a person employed to protect or safeguard people or property and the “private security officer” means a person who engages in the business of providing security.⁵⁵ For the purposes of the Act, “private security service” is a service rendered by a private security officer for reward by firstly, making private security guards available for the protection or safe guarding of people or property in accordance with an arrangement concluded with such other person; or by secondly, advising such other person in connection with the protection or safeguarding of people or property.⁵⁶

The Act establishes the Private Security Officers’ Board (PSOB) which consists of ten (10) members as follows⁵⁷: -

• Principal Secretary for the Ministry of Home Affairs	• Commissioner of Police; the Director of National Security Service	• Commander of the Lesotho Defence Force	• Principal Secretary of Trade and Industry	• 4 members who have wide experience in security matters	• Legal expert nominated by the Minister. ⁵⁸
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The tenure of office for Board members is a period of five years and their appointment by the Minister is informed by the advice of an association of Private Security Services or Companies in the Lesotho.⁵⁹ All members of the PSOB must be of Lesotho citizenship.

The PSOB is required to meet at least once every three months, with the Chairperson generally presiding in all meetings.⁶⁰ The functions of the Board include prescribing conditions of training for private security guards, types and number of firearms to be used in the industry, types of uniform and badges of rank for private security guards, and types of armories and storage of firearms, uniform and other equipment.⁶¹ The Private

54. Vol. XLVII, No. 30.

55. S 1 of the Private Security Officers’ Act, 2002.

56. As above.

57. S 3(4) of the Private Security Officers’ Act, 2002.

58. S 3(2) of the Private Security Officers’ Act, 2002.

59. S 3(3) of the Private Security Officers’ Act, 2002.

60. S 5(1) & (2). In the absence of the Chairman, the members present elects one of their number to preside over the meetings.

61. S 4(1)(a) of the Private Security Officers’ Act, 2002.

Security Officers' Board is also responsible for screening applications for prospective private security officers and private security guards for any criminal record and in order to ascertain if they are fit and proper persons to be employed in the private security sector.⁶² While the Board has the power to issue certificates of registration, it also has power to suspend, withdraw or remove the name of a registered private security officer or private security guard.⁶³

The Act empowers the PSOB to make rules necessary or expedient for the performance of its functions and duties. The Board may, for instance, prescribe the manner in which complaints or charges are brought against a person registered under the Act and also the method of summoning an accused person, to attend an inquiry and the penalties for failure or refusal to adhere to the Board's directives.⁶⁴ When considering applications, the Board must satisfy itself that the person making the application complies with all the requirements enunciated in terms of section 9 of the Act. Any person (including directors and partners of companies) wishing to make the application should do so in the prescribed form,⁶⁵ which must be accompanied by clear and complete set of fingerprints, a prescribed application fee, and a statement from a local bank.⁶⁶

Registration as a private security officer or guard is not automatic in Lesotho. Section 10 of the Act, which also applies to directors and/or partners of companies,⁶⁷ provides that no person shall qualify to register as a private security officer if the following exist: -

- if he was at any time, whether before or after the commencement of the Act, convicted in Lesotho or elsewhere for any offence punishable by imprisonment;
- if he has been found guilty of any offence involving dishonesty or use of dangerous weapons;
- if he suffers from mental incapacity as defined by Mental Health Law;
- if he is under the age of 18 years;
- if he is an unrehabilitated insolvent; or
- if he suffers from habitual drunkenness, narcotics addiction or dependence.⁶⁸

The contravention of this provision attracts criminal liability and upon conviction, a person is liable to a fine of not less than M10, 000 (+/- US\$ 1,000) but not exceeding M20, 000 (+/- US\$ 2,000) or to imprisonment for a period not exceeding 5 years or both.⁶⁹

62. S 4(1)(b) of the Private Security Officers' Act, 2002.

63. S 4(1)(d) & (e) of the Private Security Officers' Act, 2002.

64. S 6 of the Private Security Officers' Act, 2002.

65. S 9 (1) of the Private Security Officers' Act, 2002.

66. S 9(2) of the Private Security Officers' Act, 2002.

67. S 10(2) of the Private Security Officers' Act, 2002.

68. S 10(1) of the Private Security Officers' Act, 2002.

69. S 10(3) of the Private Security Officers' Act, 2002.

The law prohibits any person (including any legal person) from rendering a private security service without a certificate of registration.⁷⁰ Non-compliance with the provision relating to prohibiting of the rendering of private security service without a certificate of registration attracts criminal liability, which, upon conviction, carries a fine of not less than M10, 000 (+/- US\$ 1,000) but not exceeding M20, 000 (+/- US\$ 2,000) or to imprisonment for a period not exceeding 5 years or both.⁷¹

The Act provides for the appointment by the Minister of a Registrar whose responsibility is two-fold: to establish and maintain a register of all private security officers and private security guards; and, to be responsible for the day to day running of the business of the Board.⁷² The Registrar's appointment is subject to the laws relating to the Lesotho Public Service. The Private Security Officers' Board is responsible for issuing a certificate of registration.⁷³ Upon being satisfied as to its loss, destruction or defacement, the Board shall issue a duplicate certificate of registration to the private security officer.⁷⁴ The Registrar is responsible for collecting the annual fees in terms of section 15 of the Act. Failure to pay this amount may result in the suspension of the registration of the private security officer until payment is made.

It is a requirement that every private security officer must "exhibit in a conspicuous place in any premises in which he carries on business, a certificate of registration issued to him under subsection (1) of section 11 or a certified copy of such certificate issued under subsection (2) of that section."⁷⁵

The Board further has the power to cancel registration of a private security officer or private security guard on grounds listed under section 13 of the Act.⁷⁶ Once the certificate of registration is withdrawn, it must be returned to the Registrar, within 30 days of receiving the notice of the withdrawal.⁷⁷ The Board also has disciplinary powers in terms of section 17 of the Act and powers in relation to obtaining evidence and the conduct of proceedings in terms of section 18 of the Act.

The PSOA provides for the rights of a police officer in enforcing the Act. A police officer is, at all reasonable times and without a search warrant, empowered to enter any premises or any other place, where he reasonably suspects that an offence under the PSOA is being committed by a person performing a function of a private security officer or private security

70. See S 8 of the Private Security Officers' Act, 2002.

71. S 8(3) of the Private Security Officers' Act, 2002.

72. S 7 of the Private Security Officers' Act, 2002.

73. S 11(1) of the Private Security Officers' Act, 2002. This provision also provides that in the event that the certificate is lost or destroyed or defaced, the private security officer may apply in writing to the Registrar for a duplicate certificate of registration.

74. S 11(2) of the Private Security Officers' Act, 2002.

75. S 16 of the Private Security Officers' Act, 2002.

76. This section essentially covers sections 8 and 10 of the Private Security Officers' Act, 2002.

77. S 14 of the Private Security Officers' Act, 2002.

guard.⁷⁸ The police officer also has a right to require a private security officer or a private security guard to identify himself and to give proof of his registration as a private security officer or guard.⁷⁹ Further, the police officer may examine any book, record document or any other information in the possession of that person or make extracts from copies of such document, book, record or information.⁸⁰

For the purposes of implementing the Act, section 25 provides for the Minister's power to make regulations required or permitted to be prescribed by the Act. These regulations may cover prescribing fees in respect of registration, the procedure for appeals, training and uniforms.⁸¹

MAURITIUS

The private security industry in Mauritius is governed by the Private Security Act No. 5 of 2004 (Principal Act), which was amended by the Private Security Service (Amendment Act) of 2008.⁸² The Act applies within Mauritius and there is no provision for its application extraterritorially. The Act defines a "private security service" as "the business of providing, for remuneration or reward, a security service, the services of a security guard, and the secure transportation and delivery of property."⁸³ As already stated, the definition only confines the private security service to three distinct but related services.

The first service includes the provision of security through electronic means or any other device.⁸⁴ The second service is that of a security guard, who is obliged to make an application for a certificate of registration to the Commissioner of Police.⁸⁵ The third service is the secure transportation and delivery of property. In defining a "security guard", the Act refers to a person employed by a private security service who guards, patrols or provides any other security service for the purpose of protecting a person or property."⁸⁶

A "security guard" also included "a person who is employed permanently or on a casual or contractual basis, by the licensee, owner or operator of a nightclub, discotheque, private club, restaurant, café, pub or bar, or by any licence under the Gambling Regulatory Authority Act, for guarding, patrolling or providing any other security service for the purpose of protecting a person or property."⁸⁷ The Act requires every security guard to wear a badge conspicuous on his/her uniform and to carry his/her certificate, and on request from a

78. S 24(1)(a) of the Private Security Officers' Act, 2002.

79. S 24(1)(b) of the Private Security Officers' Act, 2002.

80. S 24(1)(c) of the Private Security Officers' Act, 2002.

81. S 25(2) of the Private Security Officers' Act, 2002.

82. Hereinafter referred to as the Principal Act together with the Amendment Act will be referred to as the Act.

83. S 2 of the Act.

84. S 2 of the Act.

85. S 7 of the Act.

86. S 2(a) of the Act.

87. S 2(b) of the Act.

police officer or any other person acting in the lawful exercise of his duties, produce his certificate for inspection.⁸⁸

In terms of its application, the Act excludes the following people: a person who is employed by another person for the purpose of protecting that other person or his property; and, a person who is not employed by a private security service.⁸⁹ Accordingly, any person wishing to operate a private security service is obliged to make an application for a licence to the Commissioner of Police.⁹⁰ In order for the Commissioner to consider the application, certain information must be furnished. The Commissioner may also decide to conduct investigations relating to the applicant's character, financial position and competence.⁹¹ Upon receipt of the application, the Act obliges the Commissioner to cause notice to be published in the Gazette for 3 consecutive days, in not less than 2 daily newspapers.⁹² Furthermore, the Commissioner is obliged, through the said notice, to invite all interested persons who so wish to lodge with the Commissioner any objection against the application for a licence to operate a private security service.⁹³

The criteria used by the Commission to determine whether to grant an application for a licence includes a consideration of whether there is a valid objection lodged against the application or whether or not the applicant is disqualified in terms of the Act.⁹⁴ The Act provides that the Commissioner may turn down an application where one or all of the following exist⁹⁵: -

- if the Commissioner reasonably believes that the applicant is not a fit and proper person to be granted the licence;
- if the applicant is a company, a partnership or an association and the Commissioner reasonably believes that, in view of the past and present conduct of its members, officers or directors, it is not a fit and proper entity to be granted a licence;
- if the applicant, or the person who will manage the private security service, does not have the experience and training, that are necessary to operate such a service;
- if the facilities proposed for the operation of the provide security service are inadequate;
- if the applicant or where the applicant is a company, a partnership or an association, a member officer or director, thereof, has been convicted in Mauritius or elsewhere of an offence involving fraud and dishonesty;
- if the applicant is medically unfit to operate a private security service; or
- if the applicant is under the age of 18.

88. S 11 of the Act.

89. S 3 of the Act.

90. S 4(1) of the Act.

91. S 4(4) of the Act.

92. S 4(2)(a) of the Act.

93. S 4(2)(b) of the Act.

94. S 4(5) of the Act.

95. S 4(6) of the Act.

In the event that the Commissioner grants the application for a licence, he/she is obliged to issue a licence in the prescribed form upon payment of a prescribed fee and the applicant furnishing the guarantee required in terms of the Act.⁹⁶ The Commissioner may attach conditions in granting the licence, which include the training of security guards, the taking out of a requisite firearm licence under the Firearms Act; and the type of uniform to be worn by the security guards.⁹⁷

Once the licence is granted, the licensee, must comply with the provisions of the Act. The licence holder must display a copy of the licence in a conspicuous place in the office of the licenced premises. In the event that the licensee has one more offices, he/she is obliged to display a copy of the licence in his/her main office and in every sub-office.⁹⁸ Other requirements include the display of a signboard in a conspicuous place outside each of his /her office which reads 'LICENCED UNDER THE PRIVATE SECURITY ACT'.⁹⁹

The Act further obliges the licence holder to notify the Commissioner in writing within seven days of any change in address of his/her office, or sub-office, as the case may be; any change in its offices, directors, or members, where the licensee is a company, partnership or an association. The licence holder is required to give notification regarding the recruitment or termination of employment of a security guard.¹⁰⁰ This provision is also buttressed by section 9A of the Act, which provides that where the licensee, owner or operator of a nightclub, discotheque, private club, restaurant, café, pub or bar, or a licensee under the Gambling Regulatory Authority Act, recruits or terminates the employment of a security guard, he shall notify the Commissioner within 7 days of the recruitment or the termination of employment.

The Commissioner may specify the type of uniform to be worn by the security guard under the holder of a licence.¹⁰¹ In terms of the Act, every licence holder must keep such documents or records, as may reasonably be required by the Commissioner and ensure that they are readily accessible.¹⁰² The licence granted by the Commissioner is only valid for a period of one year.¹⁰³ During this period, the Commissioner has a right to cancel or suspend the licence or certificate. The reasons for canceling or suspending the licence or certificate include the disqualification of a licensee or certificate holder, a partner withdrawing from a partnership, a licence obtained by fraud or representation, and failure to comply with the requirements of the Act.¹⁰⁴

96. S 7 of the Act.

97. S 7(a)-(c) of the Act.

98. S 5 (a) of the Act.

99. S 5 (c) of the Act.

100. S 5 (d) of the Act.

101. S 9B of the Act.

102. S 5 (c) of the Act.

103. S 8(1) of the Act.

104. See generally S 13 (1) & (2) of the Act.

Following cancellation or suspension, the Commissioner is required to notify the licensee or certificate holder in writing, requesting him/her to surrender the licence or certificate and badge, as the case may be, within a period of five days of receipt of the notice.¹⁰⁵ The Commissioner is further obliged to cause a notice thereof to be published in the Gazette and for three consecutive days, in not less than 2 daily newspapers.¹⁰⁶

The licence holder has a right to renew the licence after the period of one year. In terms of the Act, the licence holder must apply to the Commissioner for renewal within 21 days before the expiry of the licence or certificate.¹⁰⁷ The Act further requires that the application for the renewal must show the following: -

- the name and address of every security guard who was employed by him/her during the preceding year;
- the address of the office, or main office or sub-office where he/she proposes to continue to operate his private security service;
- the services offered during the preceding year; and four, such other information as the Commissioner may require.¹⁰⁸

Having considered that the licence or certificate holder is still qualified to hold a licence or certificate and that payment of the prescribed fee has been made, the Commission may renew the licence or certificate.¹⁰⁹

There is a possibility that the renewal may be made after the expiry of the period of one year. If the application for renewal is made within 15 days after the expiry date, the Commissioner may renew the licence or certificate provided the licence or certificate holder pays a surcharge of 50% in addition to the prescribed renewal fee.¹¹⁰ Failure to submit an application for renewal within 15 days after the expiry of the licence or certificate, lapses the licence or certificate.¹¹¹

The Act also provides for a possibility of the cessation of business. In the event that a licensee does not intend to renew, the Commissioner must be notified at least 3 months before the expiry date of the licence, surrendering the licence within 15 days of the expiry of the licence or certificate.¹¹² Should the licensee cease to provide a private security service as authorised by the licence, the Commissioner should be notified and the licence returned within a period of five days for cancellation.¹¹³ As soon as the notification is

105. S 13(3)(a) of the Act.

106. S 13(3)(b) of the Act.

107. S 8(2) of the Act.

108. S 8(3) of the Act.

109. S 8(6) of the Act.

110. S 8(4) of the Act.

111. S 8(5) of the Act.

112. S 9(1) of the Act.

113. S 9(2) of the Act.

received, the Commissioner is required to cause a notice thereof to be published in the *Gazette* and for 3 consecutive days, in not less than 2 daily newspapers.¹¹⁴

The Act also provides for offences in the event of its provisions being violated. If the abovementioned provisions are not adhered to, that is, in the case where a person operates a security business in contravention of the Act, the person is deemed to be committing an offence under section 18(6) of the Act. Such a person shall on conviction be liable to a fine not exceeding (+/-US\$ 800) 25,000 rupees and to imprisonment for term not exceeding 5 years.¹¹⁵

The Commissioner is required by the law to keep under review the provision of private security services or of private security guards.¹¹⁶ The Commissioner is further obliged to monitor the activities and effectiveness of persons providing private security services or of private security guards.¹¹⁷ This is mainly undertaken in order to protect the public. The Commissioner is further obliged to carry out inspections of the activities of private security services or of private security guards.¹¹⁸ The Commissioner is also required to establish and maintain a register of persons licenced or granted a certificate and badge under the Act.¹¹⁹

The Act allows any person to conduct training courses for licensees and security guards.¹²⁰ This responsibility is subject to any other enactment and to the approval of the Commissioner.¹²¹ Guidelines or specifics on training are not stated in the Act.

In terms of the Act, the Minister (to whom the responsibility for the subject of home affairs is assigned) is entrusted with the responsibility of making regulations as he/she thinks fit for the purposes of the Act.¹²² The regulations made by the Minister provide for the payment of fees and levying of charges; the criteria for the setting up and management of, and recruitment of personnel by private security services; the standard to be maintained by private security services; and the codes of conduct and guidelines for private security services and security guards.¹²³

The Act provides for an Appeals Board, appointed on an *ad hoc* basis by the Minister responsible for home affairs¹²⁴ consisting of a Chairperson, who shall be a barrister of not less than 10 years' standing and two public officers not below the rank of Principal Assistant

114. S 9(3) of the Act.

115. S 18(6) of the Act.

116. S 1(a) of Act.

117. S 17(b) of the Act.

118. S 17(c) of the Act.

119. S 10 of the Act.

120. S 16 of the Act.

121. S 16 of the Act.

122. S 19(1) of the Act.

123. S 19(2) of the Act.

124. S 15 (3) of the Act.

Secretary.¹²⁵ The role of the Appeals Board is to consider appeals from people aggrieved by the refusal of the Commissioner to grant a licence or a certificate, or the suspension or cancellation of a licence or certificate, or the refusal to restore the licence or certificate.¹²⁶ The process to be followed after a decision has been made by the Commissioner requires that the appellant must within 21 days of notification, submit to the Minister and serve on the Commissioner a written notice of appeal stating the grounds for such an appeal.¹²⁷ Having considered the appeal, the Appeal Board may confirm, set aside or vary the Commissioner’s decision, setting down in writing the reasons thereof.¹²⁸ The decision of the Appeals Board must be communicated to the appellant and the Commissioner within 7 days.¹²⁹

MOZAMBIQUE

In Mozambique, the private security industry is regulated by Decree No. 9/2007. For purposes of the regulations, the definition of a “private security company” is a legal entity whose corporate purpose is to provide private security and protection services.¹³⁰ The Decree provides that a “guard agent”/ *“guarda”* or “group of agents” is a person who, at any given time, ensures the protection and safety of persons, property and installations.¹³¹ The Decree further defines a “Garrison”/ *“Guaranicao”* to be a set of guards stationed in certain installations with specific tasks. The Decree defines “electronic system” as electronic equipment with a connection circuit system used for the protection of property (including installations).¹³² The Decree further defines “safety material and equipment” as electrical or electronic devices intended to detect and signal the presence, entry or attempt of intruder entry into a protected building or facilities.¹³³

According to the Decree, private security services can only be carried out by private security providers licensed as such in Mozambique.¹³⁴ The Decree specifies the major types of private security services to be rendered, namely, protection and safety of persons, goods and services, and surveillance and control of property, installations and movement of persons in premises, buildings and places closed or prohibited by law to the general public, and security training.¹³⁵ In so far as the manufacturing and marketing of security

125. S 15(4) of the Act.

126. S 15 (1) of the Act.

127. S 15 (2) of the Act.

128. S 15(5) of the Act.

129. S 15(6) of the Act.

130. Art 1(c) of Decree No. 9/2007.

131. Art 1(c) of Decree No. 9/2007.

132. Art 1(g) of Decree No. 9/2007.

133. Art 1(h) of Decree No. 9/2007.

134. Art 2 of Decree No. 9/2007.

135. Art 3 & 4 of Decree No. 9/2007.

equipment is concerned, the Decree only permits it provided it is authorized by legislation under the Ministry of Industry and Commerce and with the approval of the Ministry of Interior.¹³⁶

The Decree provides for requirements to be appointed as director or manager of a private security company:

- Mozambican nationality;
- resident where the company is headquartered;
- must not have been convicted of any felony, whether by Mozambican courts or abroad;
- must not hold any position of management and leadership in the civil service.¹³⁷

The contravention of this provision attracts a fine of between 10, 000 to 50, 000 MT (+/- USD160 - 800).¹³⁸

Sole proprietorship for a private security company must be exclusively held by a Mozambican national.¹³⁹ The Decree further provides that for commercial companies, the majority shareholding must be held by Mozambican citizen.¹⁴⁰ Private security companies must provide guarantees for collateral and liability insurance as part of their application for a license.¹⁴¹ Article 9 of the Decree provides that a bond must be lodged with the Ministry of Interior as a bank deposit, bank guarantee or collateral insurance in institutions based in Mozambique of no less than 250, 000 MT (+/2 USD 4,000). Liability insurance for unlawful acts and for damages to third parties of at least 750, 000 MT (+/- USD 12, 000) is also required.¹⁴²

The Decree provides that before commencing business, a security company shall request the office of the Minister of Interior to inspect the installations and of all materials and equipment to ensure that they are safe and intended for providing a security service.¹⁴³ The Minister of Interior may delegate these powers to senior police commanders.¹⁴⁴ The Minister of interior may, by simple order, fix the maximum number of private security companies to be created at a given time, taking into account economic development, level of crime and operational capacity of the Mozambican police.¹⁴⁵ For every private security company operating in Mozambique, the Minister of Interior appoints a delegate whose responsibilities are to ensure the coordination between the Mozambique Republic

136. Art 3(2) of Decree No. 9/2007.

137. Art 5 of Decree No. 9/2007.

138. Art 5(3) of Decree No. 9/2007.

139. Art 6(1) of Decree No. 9/2007.

140. Art 6(2) of Decree No. 9/2007.

141. Art 8 of Decree No. 9/2007.

142. Art 9 of Decree No. 9/2007.

143. Art 10 of Decree No. 9/2007.

144. Art 42 of Decree No. 9/2007.

145. Art 43 of Decree No. 9/2007.

Police (PRM) and the private security industry; to supervise the operation of the security company in accordance with the law; to report every six months on its activity; and to perform other tasks as identified by the Commander General of the Police.¹⁴⁶

The requirements for a security guard to operate are:

- must be in the full enjoyment of their political rights;
- must be over the age of 21 years;
- must have the necessary physical robustness and mental health proven by a medical board certificate;
- must have an appropriate moral and civil behaviour, proven by police clearance certificate; and
- must have completed a security guard training at Bscola or Training recognized by the Ministry of Interior.¹⁴⁷

A security company hiring an officer which has not met these requirements is liable to a penalty of between 10, 000 MT (+/-USD 160) – 20, 000 MT (+/- USD 320) for each security guard hired.¹⁴⁸

The Decree further provides for special duties for security companies as follows¹⁴⁹:

The Decree also provides for special duties of security personnel, which includes reporting the commission of a crime to the police as well as arresting any citizens in the act of

immediately inform the police authorities, the prosecutor or court if they have knowledge of a commission (or planned commission) of a crime in the exercise of their duties

in the course of their duties, they must not be confused by the public for being part of the military or members of the police or state security

they must refer to the Minister of Interior the nominal list of security personnel within 30 days from the start of their activity and to report within 48 hours after every alteration of the list

they must submit to the Minister of Interior within 30 days from the beginning of the activity, the inventory of armaments and ammunition, and to report any alterations within 48 hours

they must submit to the ministry of interior by 30 January of each year their annual activity report

146. Art 45 of Decree No. 9/2007.

147. Art 17 of Decree No. 9/2007.

148. Art 19 of Decree No. 9/2007.

149. Art 20(1) of Decree No. 9/2007.

committing a crime and handing them over to the police.¹⁵⁰ During the course of their duties, private security guards may make use of appropriate material and equipment, including means of communication, defense firearms, police dogs, vehicles, electric batons, bullet vests, protection, handcuffs; and whistles.¹⁵¹ The possession and use of firearms by security guards must be licensed by the PRM Commander General.¹⁵²

With regards to the vehicles used by the private security industry in Mozambique, the law only permits the use of vehicles licensed by the Ministry of Transport and Communication. These vehicles must have a model badge approved by order of the Minister of Interior.¹⁵³ The uniform used by private security guards must also be authorized by the Minister of Interior and these uniforms must not confuse the public with respect to public security forces.¹⁵⁴ It is required by law that all private security guards possess identity cards which are visible on their chests over the left shirt pocket or coat.¹⁵⁵

In Mozambique, all supervision and inspection of activities by the private security industry are undertaken by the police.¹⁵⁶ The police are also entrusted with the responsibility of producing an annual report on the activities of private security for consideration by the Minister of Interior.¹⁵⁷

NAMIBIA

The Namibian private security industry is regulated by the Security Enterprises and Security Officers Act, No. 19 of 1998 (Principal Act).¹⁵⁸ This Act was amended by the Security Enterprises and Security Officers Amendment Act, No 21 of 2002 (Amendment Act).¹⁵⁹ The principal Act does not comprehensively define “security enterprise” and “security officer” except to provide that an application or registration as a security enterprise shall be made to the Security Enterprises and Security Officer Regulation Board (SESORB), which is established in terms of section 2 of the principal Act.

According to section 15 (1) of the principal Act, the application is made to the SESORB on a prescribed form and is accompanied by a clear set of fingerprints and a prescribed fee,

150. Art 20(2) of Decree No. 9/2007.

151. Art 23 of Decree No. 9/2007.

152. Art 26 of Decree No. 9/2007.

153. Art 28 of Decree No. 9/2007.

154. Art 29 of Decree No. 9/2007.

155. Art 30 of Decree No. 9/2007.

156. Art 39 of Decree No. 9/2007.

157. Art 40 of Decree No. 9/2007.

158. Available at <http://www.saflii.org/na/other/NAGovGaz/1998/129.pdf> (Accessed 13 June 2019). This Act was passed by the Namibian Parliament and signed by the President in terms of the Namibian Constitution and published in terms of Article 56 of that Constitution.

159. Available at http://www.commonlii.org/na/legis/num_act/seasoaa2002551.pdf (24 June 2019).

among other things. A business cannot be registered as a security enterprise unless the owner (being a natural person in the case), every director, member or partner (in the case of a company, close corporation or partnership) is also registered as a security officer.¹⁶⁰

The principal Act provides for disqualification from registration if the following occur:

- the person was during the period of 10 years immediately preceding the date of commencement of the Act or at any time after that date, found guilty of an offence specified in the Schedule to the Act;¹⁶¹
- the security officer is a person whose previous registration as a security officer has been withdrawn in terms of the Act; and
- the person is under the age of 18 years.

Any disqualification may be reversed by the Minister of Home Affairs if, in his or her opinion, good reasons exists.¹⁶²

The Act outlines registration procedures with the SESORB and provides for a code of conduct to be compiled by the Minister of Home Affairs, with input from SESORB. In terms of Section 18 of the principal Act, the SESORB is responsible for keeping a register in which it enters the name and prescribed particulars of each security enterprise and security officer whose application for registration is granted in terms of section 15(3) or 16(3) of the principal Act.

The objective of the SESORB is to exercise control over security enterprises and the occupation of security officers and to maintain, promote and protect the status of security enterprises and security officers.¹⁶³ The SESORB's powers are elaborated under section 4 of the Principal Act and include: maintaining standards and regulating practices in connection with the occupation of security officer and persons pursuing or intending to pursue such occupation; gathering information relevant to the occupation of security officer in connection with persons who are security officers or applying for registration as such; and advising the Minister of Home Affairs on any matter relating to security officers.¹⁶⁴

Section 22 of the principal Act provides that every registered security enterprise or security officer shall annually pay SESORB a prescribed amount. Failure to comply with this provision attracts a suspension of registration until the amount owed is paid. If the relevant amount is not paid within three months from the date of suspension of registration, the SESORB reserves the right to withdraw such registration.¹⁶⁵

160. S 15 (4) of the Security Enterprises and Security Officers Act, 1998.

161. The Schedule to the Act lists 27 offences including high treason, murder, rape and robbery.

162. S 17(2) of the Security Enterprises and Security Officers Act, 1998.

163. S 3 of the Security Enterprises and Security Officers Act, 1998.

164. On the powers, duties and functions of the SESORB, See generally s 4 of the Principal Act.

165. S 22 (2) of the Principal Act.

The Principal Act is amended by the Amendment Act,¹⁶⁶ which defines certain expressions, provides for the reconstitution of the SESORB and delimits the power of the Minister of Home Affairs to make regulations. In reconstituting the SESORB, the Amendment Act provides that the SESORB shall consist of: one staff member of the Ministry of Home Affairs, who shall be the chairperson;¹⁶⁷ one member of the Namibian Police Force (NPF), designated by the Inspector General of Police, who shall be the vice-chairperson;¹⁶⁸ one staff member of the Ministry of Labour, designated by the Attorney-General;¹⁶⁹ one staff member of the Office of the Attorney-General, designated by the Attorney General;¹⁷⁰ and six security officers selected by the Minister from among persons whose names appear on a list compiled in terms of subsection (3) of the principal Act, of whom three shall be representative of employers and three representatives of employees.¹⁷¹

In so far as the Minister's power is concerned, the Amendment Act provides that '[t]he Minister may after consultation with SESORB make regulations not inconsistent with this Act - ".¹⁷²

SOUTH AFRICA

The main law regulating the industry in South Africa is the Private Security Industry Regulation Act 56 of 2001. The Act is supplemented by regulations and other legislation¹⁷³ including the Regulations made under the Private Security Industry Regulation Act, (2001). Regulations relating to Appeals and Applications For Exemptions, 2003; Amendments to Regulations made under the Security Officers Act (Act No. 92 of 1987); Code of Conduct for Security Service Providers 2003; Improper Conducts Enquiries Regulations 2003, Training Regulations; Documentation to be kept in terms of regulation 10(7) relating to registration; and the Basic Conditions of Employment Act No. 75 of 1997.

The Private Security Industry Regulation Act establishes the Private Security Industry Regulatory Authority (the Authority) whose objective is to regulate the private security industry and exercise effective control over the practice of the occupation of private security providers in the public and national interest and in the interest of the industry.¹⁷⁴ Over and above the establishment of the Authority, the PSiRA establishes the Council of the

166. The Security Enterprises and Security Officers Amendment Act, No 21 of 2002.

167. S 2(1)(a) of the Amendment Act.

168. S 2(1)(b) of the Amendment Act.

169. S 2(1)(b) of the Amendment Act.

170. S 2(1)(c) of the Amendment Act.

171. S 2(1)(c) of the Amendment Act.

172. S 4 of the Amendment Act.

173. These legal instruments are available at the Private Security Industry Regulatory Authority at <https://www.psira.co.za/psira/> (Accessed on 17 May 2019).

174. S 3 of the Private Security Industry Regulation Act 56 of 2001.

Authority, namely, the Chairperson, the Vice-Chairperson, and three additional councillors.¹⁷⁵ The Council reports to the Minister of Police.¹⁷⁶

Accordingly, the Private Security Industry Regulation Act requires every person (natural/juridical) who wishes to render a security service for remuneration, reward, a fee or benefit to register as a security service provider. The Act gives a description of what security service entails and also the requirements for registration.¹⁷⁷ A “security service” in terms of the Act includes: protecting or safeguarding a person or property in any manner; giving advice on the protection or safeguarding of a person or property; providing a reactive or response service in connection with safeguarding; providing a service aimed at ensuring order and safety on premises; manufacturing, importing, distributing or advertising monitoring devices; performing the functions of a private investigator (*no consent required*); providing security training or instruction to a security provider; Installing, servicing or repairing security equipment; and performing functions of a locksmith.

The Act provides for the requirements which an individual must satisfy in order to be eligible for registration (as a security provider) as follows: - be fit and proper to render a security service; be a South African citizen / permanent resident; comply with relevant training requirements;¹⁷⁸ be clear of any criminal record; be clear of improper conduct in terms of the Private Security Industry Regulation Act; submit a prescribed clearance certificate; be mentally sound; pay a relevant fee; must not be in the employ of South African Police Service, National Intelligence Agency, South African Defence Force, Directorate of Special Operations, South African Secret Service, or Department of Correctional Services.¹⁷⁹

Section 21 of the Act provides for the application process for registration as a security service provider and prescribes how an application for registration must be made to the Authority. PSiRA must keep a register in which it enters the name and the prescribed particulars of every security provider registered in terms of the Act. The Council of the PSiRA must appoint inspectors as staff members of the Authority, who perform their functions in terms of the Act subject to the direction and control of the Director of the Authority.¹⁸⁰ The PSiRA inspectors, whose powers are provided under section 34 of the Act, are entrusted with the responsibility of monitoring and investigating compliance by security providers within South Africa.

The Act provides that the Minister of Police may make regulations in order to give effect to the same.¹⁸¹ These regulations are known as the Regulations made Under the Private

175. S 6 of the Private Security Industry Regulation Act 56 of 2001.

176. S 10 of the Private Security Industry Regulation Act 56 of 2001.

177. S 1 of the Private Security Industry Regulation Act 56 of 2001.

178. SASSETA (Safety and Security Sector Education and Training Authority) is the sole quality assurance body.

179. S 23 of the Private Security Industry Regulation Act 56 of 2001.

180. S 31 of the Private Security Industry Regulation Act 56 of 2001.

181. S 35 of the Private Security Industry Regulation Act 56 of 2001.

Security Industry Regulation Act, 2001 (Act No. 56 of 2001). They regulate applications for registration as a security provider, training requirements, clearance certificates, infrastructure and capacity necessary to render a security service, registration of security service providers, change of name and status of security service provider, changes with regard to information submitted to the Authority, certificates of registration, identification and appointment, keeping of records and documents, application for suspension and withdrawal of registration, specification of numbers and other information on documents, uniforms insignia, badges and firearms, transitional and general provisions, authoritative text, and repeal of regulations.

South Africa's National Assembly is currently considering the Private Security Industry Regulation Amendment Bill,¹⁸² which is aimed at amending the current Act so as to amend certain definitions, to provide for additional powers of the Minister of police, and to provide for the Authority to promote crime prevention partnerships with other organs of the state.¹⁸³ Most importantly, the Bill is aimed at providing for the regulation of ownership and control of a business operating as a security provider and to regulate security services rendered outside the country, thus complementing the South African anti-mercenary law.

ZIMBABWE

The Zimbabwean private security industry is regulated by the Private Investigators and Security Guards Control Act.¹⁸⁴ Among other things, this Act provides for the licensing and certain duties of private investigators and security guards, and for the approval and certain duties of, and temporary permission to engage, certain employees of private investigators. The Act sets out elaborate definitions of "private investigator" and "security guard".¹⁸⁵ In terms of section 5 of the Act, an officer to be known as the Controller of Private Investigators and Security Guards is appointed. The office of the Controller forms part of the Public Service.

In order to operate as a private investigator, a license is required. The violation of this provision attracts a fine or imprisonment for a period not exceeding one year or both and such imprisonment.¹⁸⁶ The Controller considers applications for private investigators licenses and renewals. In determining an application, the Controller must, in accordance with section 7(2) of the Act, have consulted with the Commissioner of police and such other persons as he/she thinks fit.

182. Published in the Government Gazette No. 35461 of 22 June 2012.

183. See the Objects of the Bill.

184. Chapter 27:10.

185. S 3 & 4 of the Private Investigators and Security Guards Control Act Chapter 27:10.

186. S 6 of the Private Investigators and Security Guards Control Act Chapter 27:10.

Among other things, the Controller must verify the financial position, good character and reputation of the applicant. Most importantly, the Controller must ensure that the applicant has not within a period of ten years immediately preceding the date of application been convicted of certain offences within or outside Zimbabwe.¹⁸⁷ Only natural persons may be issued with a private investigators license.¹⁸⁸ A licensed private investigator is obliged by the law to open and keep a trust account at a bank in which, within six days of receiving the same, all moneys held or received by him for the purpose of meeting expenditure to be incurred in their duties must be deposited.¹⁸⁹

The private investigators licence is valid for such a period as may be proscribed by the Controller. The license may be cancelled if the holder, *inter alia*, fails to comply with the provisions of the Act, or is guilty of misconduct or negligence, or has been convicted of a prescribed offence.¹⁹⁰ In cancelling the licence, the Controller may cancel the licence after consultation with the Commissioner of police, the appropriate designated association or other persons deemed fit.¹⁹¹

In dealing with security guards, the Act provides that any person who wishes to be a security guard as defined under section 4 of the Act must be a holder of a security guards license. Failure constitutes an offence liable to a fine or to imprisonment for a period exceeding one year or to both such fine and such imprisonment.¹⁹² The application for, and issue or renewal of security guards services is submitted to the Controller in a prescribed form together with accompanying documents, fees information and photographs as may be required.¹⁹³

As in the case of determining the private investigator licence, the Controller may consult with the Commissioner of police and such other persons as he deems fit, in determining an application for a security guards licence.¹⁹⁴ Unlike in the case of a private investigators licence, a natural person, a company or partnership may hold a security guards licence. To this end, the Controller must be satisfied that in the case of an applicant who is a natural person, of the financial position, good character and reputation of the applicant.¹⁹⁵ In the case of an applicant who is a company or partnership, the Controller must be satisfied of the good character and reputation of each director or partner, as the case may be, as well as the financial position of the company or partnership.¹⁹⁶

187. S 7 3(c) of the Private Investigators and Security Guards Control Act Chapter 27:10.

188. S 7(4) of the Private Investigators and Security Guards Control Act Chapter 27:10.

189. S 9(1)(a) of the Private Investigators and Security Guards Control Act Chapter 27:10.

190. See generally, s 11 of the Private Investigators and Security Guards Control Act Chapter 27:10.

191. S11(2) of the Private Investigators and Security Guards Control Act Chapter 27:10.

192. S 12 of the Private Investigators and Security Guards Control Act Chapter 27:10.

193. S 13(1) of the Private Investigators and Security Guards Control Act Chapter 27:10.

194. S 13(2) of the Private Investigators and Security Guards Control Act Chapter 27:10.

195. S 13(3) (a)(i) of the Private Investigators and Security Guards Control Act Chapter 27:10

196. S 13(3)(a)(ii) of the Private Investigators and Security Guards Control Act Chapter 27:10.

The duration of a security guards licence is valid for such a period as may be prescribed by the Controller.¹⁹⁷ The Controller also retains the right to cancel a security guards licence, after consultation with the Commissioner of Police or other appropriate designated association and such other person as he or she deems fit. In terms of the Act, a holder of either a private investigators or a security guards licence (or their employee) is obliged to report information to the police which discloses the commission of a criminal offence for which the offender is liable to be sentenced to a fine or to imprisonment.¹⁹⁸ Failure to adhere to this provision attracts criminal responsibility on the part of the withholder of such information. The Act provides in section 25 for the making of regulations by the Minister in order to bring the Act into operation.

197. S 15 (1) of the Private Investigators and Security Guards Control Act Chapter 27:10

198. S (1) of the of the Private Investigators and Security Guards Control Act Chapter 27:10

CHAPTER 4: CHALLENGES AND OPPORTUNITIES

The private security industry in the region presents both challenges and opportunities in terms of its regulation. This chapter considers these challenges and opportunities with a view to promoting an effective regulatory mechanism for the industry. While it is true that there is no one-size fits all solution to these challenges, a window of opportunity exists, considering the general contexts within which the private security industry operates in the respective states. This chapter presents the challenges relating to the regulation of private security and identifies opportunities to improve regulation in these countries.

4.1 CHALLENGES IN REGULATION OF PRIVATE SECURITY

Challenge 1: Lack of credible and disaggregated statistical data

For the purpose of understanding the size and scope of the private security industry, there is a need for credible, readily available statistical data. The general absence of such data in the region presents a major challenge in the regulation of the private security industry. Only a few countries with regulatory agencies have credible data on the private security industry. Where data exists, it is not disaggregated, thus making it difficult to understand the extent to which the private security industry is providing different private security services. For instance, despite the knowledge of the number of private security providers in a given country, how many of those providers are involved in sub-sectors such as guarding, cash-in-transit, close protection/VIP protection, private investigation or locksmithing?

The reason why disaggregated data does not exist is that the registration systems generally require private security providers to register without specifying their focus area/sub-sector. This is partly because, the private security industry is generally not viewed as 'professional' and thus every provider is seen as a generalist.¹⁹⁹ In some countries, such as in South Africa, when applying for registration, private security providers will tick the services they are intending to provide. This does not necessarily mean that they will be actively involved in providing such services, once registered. The data, therefore, does

199. There is a misperception that private security only comprises of the guarding sector, yet there are many other specialized fields within the private security industry.

not reflect with precision which subsector private security providers are involved in. In the case of Mauritius, once licensed, a private security provider can offer any service. The data, therefore, remains aggregated. In the case of Zimbabwe, even if the data was available, it would not paint a complete picture of the private security industry in the sense that in-house security is not governed by current regulations and there are no regulatory requirements for those employed in the in-house security to register with the Controller.²⁰⁰

Challenge 2: Ineffective regulatory frameworks

The general absence of regulation in some countries and ineffective regulatory frameworks in others presents many security risks to the public, the state, and the region. Without regulation, the private security industry can be a force unto itself. As Braithwaite argues, “regulation is what we do when obligations are not being honoured.”²⁰¹ In order for private security providers to honour their legal obligations, effective regulations is critical. In those countries with regulatory frameworks in place, implementation is not adequate. One reason is the enactment of laws without understanding the private security industry in the respective countries. The Southern Africa region does not have an inter-state regional protocol on the regulation of private security. This results in regulation being fragmented and incoherent across the region.

The challenge associated with countries with regulatory frameworks, is the general absence of effective monitoring, reporting and compliance mechanisms for cases of malpractice, misconduct or human rights violations.²⁰² In the case of Madagascar, for instance, due to the absence of regulation, poor working conditions for security guards (including absence of rest time and poor salaries) are a major cause for concern. In the case of the DRC, private security officers are reportedly denied their minimum vacation days, paid below the minimum wage and work for long hours.²⁰³ There is also a general lack of effective disciplinary measures, sanctions and/or enforcement mechanisms for addressing issues of non-compliance with the law. In fact, many private security providers in the region generally break the law with impunity.

The study found that where frameworks are in place, there is generally no regulation on the import and export of private security services. In the case of South Africa, implementation

200. Ndungu (n 35 above) 34.

201. Braithwaite, J. (2002) *Restorative Justice and Responsive Regulation*. New York: Oxford University Press, p. x.

202. Malawi does have private security laws specifically dealing with human rights violations, prevention of sexual exploitation and abuse, use of firearms and other weapons, surveillance, investigation and intelligence gathering, arrest and detention, employment and labour standards, and the use of security equipment. In Tanzania, there is no specific law on the regulation of the private security industry.

203. Private Security Governance Observatory, <https://www.observatoire-securite-privée.org/en/content/democratic-republic-congo> (Accessed 31 December 2019).

of the Regulation of Foreign Military Assistance Act remains ineffective. No South African citizen operating beyond its borders and involved in illegal behaviour has been successfully prosecuted since its promulgation. This presents the challenge of the industry providing security services beyond national borders without effective monitoring and control. In some states, foreign registered and owned companies dominate the industry. This creates stiff competition for locally-owned companies, which may lack comparable expertise and reputation. There is also the challenge of outdated regulatory frameworks which are no longer applicable to the new dynamics relating to the provision of private security.²⁰⁴

Challenge 3: Under-resourced regulatory agencies

This study has found that within the region, regulatory agencies are under-resourced, particularly when linked to government departments such as the Ministries of Interior, Defense, Internal Security or Police. The private security industry is not seen as requiring special attention. This is largely because often, it is viewed narrowly as the guarding sector, whose barriers of entry are very low. Human and financial resources are generally insufficient to implement laws regulating the industry in most states. Challenges remain to put in place effective systems in areas of registration, monitoring and ensuring compliance in the private security industry. This is largely due to minimal funding for regulatory agencies.

In the case of South Africa, which has the largest private security industry within the region, the Private Security Industry Regulatory Authority has over the years struggled to effectively carry out its mandate due to financial constraints.²⁰⁵ This is a direct result of its funding model, which essentially makes the Authority financially dependent on the industry for its funding, which is received through annual fees as determined by the PSiR Act. The Authority is currently reviewing its funding model including amending the outdated Private Security Industry Levies Act, 2002 as an alternative appropriate funding model, in order to be financially sustainable and fully execute its mandate without fear or favour.²⁰⁶

Challenge 4: Licensing, regulation and accountability

Regulatory agencies in the region are more focused on licensing the private security industry than regulation, that is, monitoring and oversight of the industry. This renders

204. In Mozambique, Decree No. 9/2007 that regulates private security is considered dated and is viewed as being unconstitutional as it is not an Act of Parliament. This Decree is in the process of being reviewed.

205. See generally, Berg, J. & Gabi, V., *Regulating Private Security in South Africa: Context, Challenges and Recommendations*, November, 2011. APCOF Policy Brief No. 3. Available at http://apcof.org/wp-content/uploads/2016/05/No-3-Regulating-Private-Security-in-South-Africa_-Context-challenges-and-recommendations-Julie-Berg-and-Vavariro-Gabi.pdf. (Accessed 15 December 2019).

206. See PSiRA Annual Report 2018/2019 at p. 9. Available at <https://www.psiira.co.za/psiira/dmdocuments/PSiRA%20Annual%20Report%202019.pdf> (Accessed 20 December 2019). The Private Security Industry Levies Act, 2002 has never been in force. The Private Security Industry Regulatory Authority remains understaffed.

the industry generally unaccountable. With the licensing regime, regulatory agencies grant permission to would-be private security providers to practice. The private security providers refer to themselves as “licensed” or authorized to practice. In some states, only the private security companies and not the private security officers are subject to the licensing process. This leaves the companies with the power to determine the minimum criteria for their personnel without the involvement of the regulatory or licensing agency. The challenge is made worse by the fact that only the companies as legal entities and not its officers are accountable to the regulatory or licensing agency.

In the case of Zimbabwe, there is no system for employees to be registered and licensed. This has resulted in some employers and employees engaging in unethical practices such as abusing human rights (including labour rights).²⁰⁷ Ndungu points out that there is no legal enforcement that requires all personnel employed in the private security industry to be registered or licensed with the regulatory authority in Zimbabwe.²⁰⁸ As a result, there is high propensity to infringe the rights of the public with impunity. In the case of the DRC, it was reported that inspections by the regulatory agency (Control Commission) were occasionally conducted and concentrated only in the urban areas.²⁰⁹

Another challenge linked to the regulation of private security is the lack of coordination between government departments. For instance, in Lesotho, it was reported that there is no coordination between the regulatory agency and other governmental bodies that are relevant to overseeing the laws, regulations, standards and policies applicable to private security providers. In Lesotho, there is also a misalignment of the labour law (Labour Code Exemption of 1995) and the private security laws, particularly when it comes to the working hours and other conditions of service for private security officers. For instance, the Labour Code Exemption of 1995, refers to security officers as “watchmen”, when in fact private security provisions go beyond “watchman” services.

In Lesotho, the absence of monitoring, reporting and complaint mechanisms for cases of malpractice, misconduct or human rights violations by private security providers were identified as serious challenges facing the industry. It was reported that there were no disciplinary measures, sanctions or enforcement mechanisms available to address these issues, thus making the industry unaccountable for its actions.

207. Ndungu (n 35 above) 6.

208. As above, 30.

209. See generally, Muhima Shinja, A., *La nouvelle face du secteur de sécurité privée en République Démocratique du Congo*, September, 2019. Available at <http://observatoire-securite-privée.org/sites/default/files/kcfinder/RAPPORT%20SP%20RDC.pdf> (Accessed 31 December 2019).

Challenge 5: Conflicts of interest and unfair competition

This study found that in some regulatory agencies, there exist conflicts of interest in that some stakeholders (such as the board members) have vested interests in the private security industry.²¹⁰ This compromises the agencies' independence in regulating the industry.

In some countries, especially where the police act as regulatory/licensing/controlling agencies, conflicts of interests exist where police officials have an interest in the private security industry. In the case of Mozambique, for instance, it was reported that the private security industry is facing unfair competition because most private security companies are owned by police officers, or their relatives. This presents a challenge as the police are involved in the implementation of the regulation for private security in Mozambique, including carrying out inspections on private security companies. Relatedly, it is alleged that in some cases ordinary citizens find it difficult to register a private security company without paying a bribe.

Challenge 6: The absence of vetting processes or a “fit and proper” test

Within the region, almost half of the countries do not have vetting processes in place for those wishing to provide private security services. This essentially means that the private security industry in these countries includes officers that are not “fit and proper” to render security services,²¹¹ which is largely due to the absence of specific regulatory frameworks in these countries. Consequently, there are no guarantees that private security officers have clean criminal records. This exposes the consumers of private security services and the public at large to multiple security risks. In these countries, it is also difficult to determine the size of the industry. Due to the absence of official vetting processes, any vetting remains the responsibility of security companies.

The study found that the application of the “fit and proper” test as a condition for being part of the private security industry is not uniform. This goes to the heart of the credibility of the industry. While in some states, anyone can join, others set minimum requirements, which ensure that the personnel are able to render security services without compromising the profession or exposing the public and the state to risk. In some jurisdictions, the requirements go as far as requiring a clean bill of health, including a confirmation of mental stability. Another requirement is police clearance, which ensures that the industry

210. This is despite that Board Members of the Private Security Services Licensing Board signing a conflict of interest declaration form before sitting at any meeting and the possibility of a member who feel conflicted to exercise their right to recuse themselves.

211. One of two main challenges facing the private security industry in Malawi is the non-existence of vetting processes and the absence of standardized training. The absence of vetting leads to security guards with criminal records being part of the industry. This is largely because of the absence of a specific regulatory framework for private security in Malawi.

is not infiltrated by criminals. It is important to note that ensuring that PSOs are ‘fit and proper’ also gives the assurance that the industry will effectively contribute to the safety and security of its clients.

Challenge 7: Low barriers of entry and exploitation

The private security industry is one of the biggest employers in the region. Be that as it may, the industry is highly exploitative. Many companies pay their security officers below the minimum wage. Security officers report that they work long hours under harsh conditions of service. Indeed, the study shows that most employers do not respect international and national labour standards in terms of conditions of service, minimum wages and general respect for human rights, particularly labour rights.

In countries such as Mauritius where the private security industry has a high proportion of retirees, effectiveness is compromised. In other countries, the majority of private security sector is made up of young employees, often unable to pursue their studies for socio-economic reasons. For many security officers, particularly in the guarding sector, private security is a job of last resort, exposing employees to all kinds of human rights violations. In Mozambique, many companies reportedly ignore the maximum 48 hours working week. It was alleged that some companies overwork security officers by making use of 2 security officers instead of 3 for a given task. Some companies allegedly did not pay the minimum wage or cover their employees under the social security scheme. In the case of Madagascar, it was reported that some security officers received barely half the stipulated minimum wage.

The study also found that many security officers are not provided with proper uniforms and security gear. In some countries they are forced to buy their uniforms. In the case of South Africa, the car guarding sector is the most exploitative in that security guards are not paid a salary but instead are made to pay an amount known as a bay fee (collected from the tips or donations from car owners) to a security company in charge of parking lots in shopping complexes and malls.²¹² The only amount they are entitled to are tips less the bay fee. They are also forced to pay the security company for the purchase of their uniform. Both the non-payment of salaries and non-provision of free uniform is in contravention of the law.

Challenge 8: Absence of minimum training standards

Minimum training standards vary from one state to another across the region. Where there are no regulatory frameworks, anyone can be employed, compromising professionalism.

212. See Xulu (n 22 above).

Where a licensing approach is followed, the PSC determines the minimum training standards required. Where minimum standards are set out under legislation, in certain cases, training centres may compromise on the training or sell fake certificates. This undermines the development of professional skills. In other cases, training standards are generally not commensurate with the security services to be rendered.

In the case of Mozambique, for instance, where there are no minimum training standards for the private security industry, it is every company's prerogative to determine its own minimum training standards for its employees.²¹³ The training is largely influenced by the company owner's security experience, that is, whether they have a police or military background. In the case of Zimbabwe, there are no minimum training standards for private security officers. Ndungu argues that the only training that seems to be provided is for in-house security, which only takes about five days.²¹⁴ In Madagascar, training is undertaken by the employer security company and not by dedicated training bodies.²¹⁵ In the DRC, training is not standardized and usually only in the capital city, Kinshasa, thus requiring private security officers to travel long distances.²¹⁶

Challenge 9: Violation of human rights and gender inequality

Allegations of human rights violations within the private security industry are not uncommon. Over and above the issue of underpayment, there are reports of sexual abuse, exposure to harsh weather conditions, and unfair discrimination. This is largely because of overall insufficient legislative and regulatory frameworks, including the general absence of codes of conduct for the private security industry. However, the existence of a law or a code of conduct is not a guarantee that human rights will be respected. In the case of South Africa, where a Code of Conduct for Security Providers²¹⁷ exists, improper conduct dockets against service providers for allegations of failing to pay the statutory minimum wage to employees and failing to comply with the private security sector provident fund, have been opened.²¹⁸ In many countries, laws and regulations exist but they are not implemented or enforced.

213. It was reported that while the general practice for the duration for security training is 21 days, most private security companies did not train their employees for this duration.

214. Ndungu (n 35 above) 7.

215. This training for security officers is usually 8 sessions.

216. Private Security Observatory (n 204 above).

217. Available at https://www.psira.co.za/psira/dmdocuments/Code%20of%20Conduct/2014_Code_of_Conduct.pdf (Accessed 3 December 2019). Among other things, the purpose of the code is to ensure the payment of applicable minimum wages and compliance with standards aimed at preventing exploitation or abuse of employees in the private security industry, including employees used to protect or safeguard merely the employer's own property or other interests, or persons or property on the premises of, or under the control of the employer.

218. See generally, the PSiRA Annual Report, 2018/2019, at p. 53-54. Available at <https://www.psira.co.za/psira/dmdocuments/PSiRA%20Annual%20Report%202019.pdf> (Accessed 4 December 2019).

The private security industry in the region remains male-dominated. Women security officers are usually found in government offices, control rooms or other “soft” operational roles such as operating scanning machines. It was alleged that physiological reasons counted against women joining the private security industry. Moreover, very few women are owners of private security companies. This is largely because the majority are ex-police or military officers and thus hail from male-dominated institutions.

Reports of violations of women rights remain pervasive in the private security industry. In the case of *Numsa and Others v. High Goal Investments CC trading as CHUMA Security Services*,²¹⁹ 28 female security guards were dismissed by their employer under the guise of the client’s operational requirements. The South African Labour Court found that the women were dismissed solely based on their gender. The other challenge linked to the gender imbalance is the fact that most regulatory agencies are staffed by men. In fact, the high position at board-level, executive and management level are mostly occupied by men. Within the Southern Africa region, no country has integrated a gender perspective into the regulation of the private security industry. Integrating a gender perspective means “seeing or analyzing the impact of gender roles, gender stereotypes and gendered power structures in society and institutions.”²²⁰

4.2 OPPORTUNITIES

> Availability of good practices and demand for effective legislative and regulatory frameworks

There exists a great opportunity to support countries without specific legislative and regulatory frameworks. Good practices could be shared and adapted from those Southern Africa countries with the legislative and regulatory frameworks in place. There are countries where the industry itself is active in mobilizing national authorities to develop regulatory frameworks. For instance, in Eswatini the Security Professionals of Swaziland noted in a *Resolution on the Need for Regulating the Private Security Industry in the Kingdom of Swaziland* that “[t]he private security industry needs to be regulated by a professional authority or special entity that will ensure that the industry is professional, accountable and respects the law.”²²¹ In Zambia, the Private Association of Zambia was established by the private security industry to, among other things, assist the Zambian government in ensuring compliance within the industry. The involvement of these associations in the development of regulatory frameworks presents great opportunities for collaboration

219. Judgement, The Labour Court of South Africa, Cape Town, (C844/15) [2016] ZALCCT 34 (18 October 2016)

220. DCAF, OSCE/ODIHR and UN Women (2019) “Gender and Private Security Regulation”, in *Gender and Security Toolkit*, Geneva: DCAF, OSCE/ODIHR, UN Women. at p. 3.

221. See Mountain Inn Resolution, 2015 in Swaziland Workshop Report, 2016. The Private Security Industry Regulatory Authority at p. 11.

between the industry and the state in the development and implementation of effective regulatory frameworks.

In the case of Lesotho, where a regulatory framework already exists, ²²² the Lesotho Federation for Private Security Association has recommended that it should be recognized as an advisory body to private security stakeholders, sensitizing the industry on the regulatory framework and compliance issues.

The private security industry should be a critical stakeholder in the development of legislative and regulatory frameworks as well as in ensuring compliance with existing frameworks for private security across the region. Despite its members competing in the private security market, private security industry associations also provide a platform for industry players to share good practices, including legal compliance issues. There is also an opportunity for states to review and strengthen existing legislative and regulatory frameworks, taking into account best practices from other countries. There is a clear demand for effective regulation, standards of operation and codes of conduct for private security companies and employees in the region.

> Ensuring capacities of regulatory bodies

The operations of regulatory agencies need to be reinforced, particularly in ensuring compliance and monitoring the industry. Notably, there is a need to provide training for the regulatory agencies staff and board members in order to effectively carry out their respective functions, and a need to invest in infrastructure. Opportunities exist for regulatory agencies to revise their funding models as part of a wider review of their regulatory frameworks. For instance, agencies could enter into policy dialogues with parliamentarians or government representatives to lobby for further support. Regulatory agencies could also consider going beyond the payment of annual license fees, which is the current situation in most jurisdictions. Annual license fees could be increased and (additional) government funding made available. Companies derive benefits from higher standards and more stringent regulation which drives out illegal companies and ensures a more professional market. For this reason, companies may be willing to contribute to more efficient regulation.

222. It was recommended that for Lesotho, there was a need to carry out a complete overhaul of Lesotho's regulatory framework in line with best practices. The regulatory agency must be empowered to effectively monitor compliance and enforce the private security law within the industry.

> Gender mainstreaming recognised as creating more professional private security services

Integrating a gender perspective in the regulation of private security in the region is essential. There is a need to analyse the potential and actual impact of private security operations on different groups of men, women, boys and girls. Women's as well as men's concerns and experiences should be an integral dimension of the design, implementation, monitoring and evaluation of private security regulatory frameworks. Since women face discrimination and barriers in seeking effective remedies, integrating a gender perspective in the regulation of private security would go a long way in addressing the abuse of women's rights within the industry.

The need to transform the private security industry in order to address the gender disparities cannot be overemphasized. It has been argued that integrating a gender perspective into the regulation of private security is a win-win for both the industry and governments.²²³ Those companies implementing positive changes in policies and institutional (or workplace) culture have the advantage of retaining a diverse and inclusive workforce. For the government, the spin-off is increased professionalism in the private security industry, which in turn prevents human rights abuses within the industry. In the final analysis, the private security industry must achieve gender equality, which essentially embodies the idea that human rights cannot be achieved without guaranteeing both men and women enjoy full and equal, and equal access to responsibilities and opportunities.²²⁴

> Integrating private security within a broader approach to peace and security

Across the region, the private security industry plays a role in combatting terrorism, piracy, armed conflicts, mercenarism, peacekeeping, post-conflict reconstruction and development. However, this role has generally not been spelt out in regulatory frameworks. There is a pressing need to clarify what private security providers can and cannot do in these areas. It is important that the involvement of the private security industry must be made transparent. This could be addressed within the regulatory frameworks.

In the case of Mozambique, for instance, there is a discussion around if the private security industry could assist the police in the conflict-prone region of Pemba, in the northern part of the country. This argument is supported by the fact that every registered private security company has a police delegate, who ensures that the private security company complies with the law and provides advice on crime prevention, among other things. While recognizing the need for clear rules and boundaries and the distinction between public and private roles, such an approach may be applicable in other contexts.

223. DCAF, OSCE/ODIHR and UN Women (2019) (n 223 above) 3.

224. As above, at p. 4.

> Partnering for crime prevention

Though focused on paying customers, the private security industry complements public security providers in the region. While this role is compromised by the absence of effective regulatory frameworks and the general lack of professionalism on the part of the industry, there exists a great potential for the private security to play a role in crime prevention partnerships.²²⁵ This is founded on the principle that private security providers are usually the first responders to the commission of crime. Their collaboration with the police therefore remains critical. In some countries, this collaboration is easily forged as the owners of the security companies are former members of the police or military.²²⁶ This is not the case where the industry is yet to prove that it is a professional and legitimate force to be reckoned with. Nevertheless, an opportunity exists to bring together the private security industry and the police in addressing crime. This can only be successful provided the private security industry is professional, respectful of human rights, and accountable.

> Impact of the fourth industrial revolution on the private security industry

Technological change and the fourth industrial revolution are transforming the global business landscape in general and the private security business in particular. The private security industry is innovating using technologically advanced security equipment, including drones, robots, spy cameras, tasers, facial recognition cameras, predictive policing software, to name but a few. As the private security industry is dynamic, with the constant introduction of new innovations, privacy laws and other regulations have not kept pace with the technological developments in the provision of private security services.

> Strengthening civil society oversight

Civil society is a critical player in promoting good governance within the private security industry. Yet the role played by civil society in the regulation of the private security industry in the region remains minimal. An opportunity exists for civil society to play a strong role, particularly in addressing human rights violations in the industry. The Private Security Governance Observatory²²⁷ is a network of over 80 African civil society organisations that seeks to share knowledge and reinforce organizational capacity of non-governmental organisations to promote good governance of the private security sector. The Observatory provides capacity building for civil society and offer practical ways to increase engagement between CSOs and with governments and the private sector. Through the Observatory

225. See generally, Gumedze, S.(ed.), *Promoting Partnerships for Crime Prevention Between State and Private Security Providers in Southern Africa* (2015).

226. For instance, in the case of Mozambique, private security undertakes joint patrols with the Police.

227. <https://www.observatoire-securite-privee.org/en>.

or other avenues, CSOs could partner with regulatory agencies to raise awareness with the general public on compliance issues as well as engaging with PSCs and clients on legal requirements for private security providers. There is a need to empower employee associations, which have remained active in the promoting labour rights within the private security industry in the region.²²⁸

228. It was recommended that in Lesotho, the Lesotho Federation for Private Security Association (LEFESPA) should be recognized as an advisory body to all private security stakeholders. The LEFESPA should be mandated to sensitize the private security industry on the regulatory framework and on compliance issues. Collaboratory efforts should be made between employers' associations, the chamber of commerce and the LEFESPA. There was also a need to ensure that the consumers of private security understand the legal requirements for the provision of private security services. Regular communication and meetings should be undertaken by the regulatory agency.

CHAPTER 5: CONCLUSION AND RECOMMENDATIONS

INTRODUCTION

For any effective regulation of the private security to take place, significant effort is required from states to address the challenges discussed in this study. The private security industry and civil society also have critical roles to play in ensuring that challenges are addressed. It is for this reason that opportunities must be seized to advance private security regulation in the region. While regulation of the private security industry in the Southern Africa region is effective in some countries, it remains weak in others. Having analyzed the various legal and regulatory regimes, it is evident that even in the more advanced systems, such as in South Africa, challenges remain (as evidenced by the scale of the fines collected for non-compliance with the law).

Despite the challenges relating to private security, the effective regulation of the private security sector in the region is possible. For those countries without regulation, there is scope to develop such frameworks. For those states with weak regulatory frameworks, strengthening these frameworks is also possible. Improving collaboration is critical. Improving the exchange of experiences, lessons learned and good practices amongst the different countries facing similar challenges is also of capital importance. The need to ensure that the private security industry is professional, accountable and respects human rights, requires a multi-stakeholder approach including governments, the industry and civil society. In order to draw on best practices and develop new strategies, local, regional and international networking remain critical.

Based on the analysis contained in this study, specific recommendations are proposed to advance the effective regulation of the private security sector in the region. These recommendations are directed to national governments, regulatory agencies/bodies, the private security industry and civil society.

5.1 NATIONAL GOVERNMENTS

The private security industry can only contribute towards safety and security provided it is effectively regulated. Regulatory frameworks for the private security industry in the region must be developed and brought in line with best practice in such a way that they

advance the public interest, meet the industry's imperative to make profit and contribute to the obligation of the state to maintain safety and security. The private security industry is certain to remain a prominent component of the security architecture in the Southern Africa region for the foreseeable future. As a result, governments in the region should take a strong interest in ensuring they are properly vetted, trained, supervised and held accountable for wrongdoing. The Montreux Document, a compilation of relevant international legal obligations and good practices, provides a useful framework for addressing many of the existing gaps in regulation and enforcement of the activities of PMSCs in Africa. The Document should be disseminated more widely through bilateral engagement to ensure that knowledge and understanding increases. This engagement could be undertaken by the Co-Chairs of the Montreux Document Forum, namely Switzerland and the ICRC through their regional representations or the technical Secretariat, namely DCAF. However, outreach efforts can also be undertaken by Montreux Document participants themselves and regional organizations. Montreux Document participants could undertake bilateral outreach briefings to their neighbours to raise awareness.

National governments should also join relevant multi-stakeholder initiatives, such as the International Code of Conduct for Private Security Service Providers' Association (ICoCA), whose purpose is to promote, govern and oversee the implementation of the International Code of Conduct and to promote the responsible provision of security services and respect for human rights and national and international law in accordance with the Code.²²⁹

5.2 REGULATORY AGENCIES/BODIES

Regulatory bodies have a central role to play in ensuring a transformation of the private security industry in the region. The industry must become professional and respected, recognized as contributing to a public good, being safety and security. Common standards within the region and codes of conduct must be developed for the betterment of the region. This requires cross-regional collaboration among the regulatory agencies/bodies.

Regulatory agencies must promote high standards in the training of security providers and prospective security providers in their respective countries.²³⁰

229. For more information on ICoCA, see <https://www.icoca.ch/en/association> (Accessed 26 December 2019).

230. S 4(k) of the PSiR Act, 2001 provides guidance in this regard.

HIGH QUALITY TRAINING

- the accreditation and withdrawal of the accreditation of person or institutions providing security training;
- the monitoring and auditing of the quality of training functions performed by accredited persons;
- the participation in the activities of other bodies and persons entitled by law to set standards in respect of training of security service providers or bodies entitled to formulate, implement or monitor skills development plans for the private security industry;
- the appointment of persons to monitor and assess achievements or outcomes in respect of standards applicable to training;
- the determination and accreditation of qualifications required by security service providers to perform particular types of security services;
- the taking of reasonable steps to verify the authenticity of training certificates.

The establishment of a network among regulatory agencies across the region can contribute to more effective regulation of the private security industry. Many challenges faced by the regulatory agencies in the region are similar. Establishing a network of regulators that fosters information sharing, exchange of best practices will strengthen the effective regulation of the private security industry.

5.3 THE PRIVATE SECURITY INDUSTRY

It is recommended that PSCs establish company and employee associations. In this way, issues of compliance, human rights (particularly, labour rights), private security governance, and other relevant issues related to the effective regulation of private security can be discussed and presented to the regulatory agencies and well as to the states.

Companies should ensure the application of minimum training standards, including on human rights issues. This requires an investment by companies in training.

Private security companies should sign the International Code of Conduct for Private Security Providers, which contains a commonly agreed set of principles for private security companies and establishes a foundation to translate these principles into related standards.

5.4 CIVIL SOCIETY

Civil society organizations have a critical role to play in promoting good private security governance. They should contribute to legal and policy reforms, engaging with various governmental and business actors to promote respect for human rights.

It is recommended that civil society organizations raise awareness on matters relating to human rights and private security. It is recommended that civil society organizations in the region consider joining the Private Security Governance Observatory,²³¹ a network that seeks to share knowledge and reinforce their organizational capacity to promote good governance of the private security sector. Civil society organizations can benefit a great deal by joining this network.²³²

For regulatory agencies to effectively regulate the private security industry, they must understand its workings. This includes labour rights issues within the industry as well as wider issues relating to an industry which is largely seen as exploitative and where abuses of human rights are prevalent.

However, within the Southern Africa region, there is a dearth of literature on the regulation of the private security industry. Research organisations, think-tanks and academic institutions should be supported to undertake cutting edge research work that will assist regulatory agencies to develop effective regulatory options. A plethora of research topics could be developed, such as the use or(misuse) of firearms, the conditions of service of security providers, among others.

Civil society organizations should also consider joining the ICoCA. By joining ICoCA, civil society organizations can contribute to safeguarding the human rights focus of the association.

231. For more information on the Private Security Governance Observatory, see <https://www.observatoire-securite-privee.org/en> (Accessed 26 December 2019).

232. The main objectives of the observatory are as follows:

- to provide capacity building support for civil society and offer practical ways to increase engagement between CSOs;
- to build a strong network and reinforce dialogue between CSOs to identify practical ways to improve and strengthen monitoring of the private security sectors in specific national contexts;
- to provide a repository of knowledge on national, regional and international regulatory mechanisms;
- to increase awareness on the nature and challenge of private security regulation, as well as to promote security and human rights to encourage multi-stakeholder dialogue between governments, industry and CSOs.

RECOMMENDATIONS

Bringing about effective private security regulation in the region requires a multi-stakeholder approach including governments, the industry, civil society, and clients to address the challenges discussed in this study. Indeed, not only does regulation vary across countries, but the analysis shows that even in more advanced systems, such as in South Africa, challenges remain (as evidenced by the scale of the fines collected for non-compliance with the law). This said, effective regulation of the private security sector in the Southern Africa region is possible. For those countries without regulation, there is scope to develop such frameworks. States with weak regulatory frameworks can strengthen them. In order to draw on good practices and develop new strategies, local, regional and international networking remain critical.

Based on the analysis contained in this study, specific recommendations are proposed to advance the effective regulation of the private security sector. These recommendations are directed to national governments, regulatory agencies, the private security industry, civil society, and clients.

Governments

The private security industry can only contribute towards safety and security provided if it is effectively regulated, controlled and monitored: it is the Governments' duty to enable this process. The following recommendations are made to Governments:

- Ensure procurement and contracting of private security by the state is effectively regulated

The role of clients is fundamental, as commercial incentives and restrictions imposed in the contract can further compel private security providers to adhere to relevant human rights regulations and IHL obligations. Contracts can be a powerful tool to reinforce high standards yet there is little shared information and experience to support formulating contracts that ensure respect with these principles and rules. On this basis, guidance on best practices in contracting of PSCs is required. Furthermore, very often the selection of a potential contractor is exclusively based on the 'lowest price' criteria. However, relying solely on the lowest price can also be harmful to a client's reputation and can lead to lower standards in the industry in general. Once a private security company is hired, the behaviour and profile of the company and its personnel may also be associated with the client's image. Reputational risks can also be mitigated with a contracting process which includes effective screening and vetting procedures.

- Make sure to include private security in wider national security strategies or policies

National security strategies or policies (NSS or NSP) constitute key frameworks for a country to define the basic needs and security concerns of citizens and address external and internal threats to the country.²³³ Nevertheless, despite the increasingly important role that private security has been playing into the security landscape across Africa, it is currently rarely taken into consideration in these documents. The inclusion of private security into wider security frameworks will help improve general awareness about the sector and can facilitate cooperation and coordination with public security forces.

- Adopt a specific legal and regulatory framework to regulate the activities of PSC, in line with international norms and good practices

As it has been mentioned in this study, many countries across the region have no specific private security legislation and/or regulation, while many other countries only have ineffective or outdated legal and/or regulatory frameworks. Regulatory frameworks for the private security industry in the region must be developed or brought in line with good practices in such a way that they advance the public interest, contribute to the obligation of the state to maintain safety and security, and meet the industry's imperative to make profit.

The legal and regulatory framework should imperatively respond to the national context and take into consideration international standards and good practices. The Legislative Guidance Tool for States to Regulate Private Military and Security Companies²³⁴ provides guidance on how to develop or update national legislation related to PMSCs, in line with international norms and good practices and can be used as a check list, either to draft a new legal and regulatory framework or to update an existing one.

- Consider joining the Montreux Document and using the expertise available in the Montreux Document Forum

The Montreux Document is currently the only international document underlining State obligations in the regulation of private military and security companies. Supporting it and implementing its norms and good practices into national legislation and regulation would send a clear political message about the government's intent to adequately regulate the industry. Additionally, it would provide for access to the expertise available in the Montreux Document Forum amongst participating states.

- Consider adhering to the International Code of Conduct for Private Security Providers

Governments should not only join the ICoCA but also implement Code good practices into national legislation and regulation.

233. <https://issat.dcaf.ch/Learn/SSR-in-Practice/Thematics-in-Practice/National-Security-Strategies>

234. <https://www.observatoire-securite-privee.org/sites/default/files/ressources/Legislative%20Guidance%20Tool%20-Final%2005.09.2016-compressed.pdf>

- Creation of a specific national regulatory agency specially tasked with and designed for the effective regulation, control and monitoring of the private security industry

As seen in this study, not every State currently disposes of a specific national regulatory agency responsible for the PMSC sector. In consideration of the many challenges presented by this sector and the complex responsibilities its regulation, control and monitoring entails, Government should consider creating a designated national regulatory authority for private security. This agency should dispose of sufficient human and financial resources to carry out its mandate. Its personnel will also require specific expertise and experience to be able to effectively accomplish their responsibilities, including in-depth familiarity with the private security sector, State security needs, and with IHL and human rights law. The national regulatory authority should also be given sufficient independence by law to prevent risks of political interference and corruption, and its personnel should be vetted for conflict of interests. While the agency might not cover each and every aspect of governmental action regarding the industry (weapons' licensing, for example, might be located with another agency) it should actively promote an effective whole-of-government approach.

- Set training requirements

Regulatory agencies must promote high standards in the training of security providers and prospective security providers in their respective countries. Minimum training requirement should be inscribed into the regulatory framework, and a national training curriculum should be adopted to ensure uniform training of private security guard across the country. They must set requirements and ensure effective monitoring to ensure a high quality of training. The following aspect should be included:

- Task a national entity with the design and oversight of mandatory training for PSC managers and personnel.
- Ensure that the mandatory training includes requirements for human rights and IHL training tailored for both managers and personnel.
- Define mandatory additional training for specific activities carried out by PMSCs, in particular those taking place in complex environments and those bringing actors of different cultural backgrounds together. This could include sensitivity or gender training.
- Set minimum training requirements for all PSC personnel on the use of force. Additionally, personnel allowed to carry weapons and firearms in the course of their duties should be trained as a minimum in : Technical use of equipment, weapons or firearms; Situations in which it is permissible to use weapons or firearms; Specific weapons management training.

- Establish a systematic, diligent and institutionalised monitoring mechanisms within the private security regulatory authority
- Establish mechanisms for remedies to victims that provide at a minimum:
 - Equal and effective access to justice;
 - Adequate, effective and prompt reparation for harm suffered;
 - Access to relevant information concerning violations and remedial mechanisms
- Networking private security regulatory authorities

Regulatory bodies have a central role to play in ensuring the transformation of the private security industry in the region. The industry must become professional and respected, recognized as contributing to a public good: safety and security. Given similar challenges across the region, establishing a network of regulators that fosters information sharing and exchange of good practices will strengthen effective regulation, as can the development of common norms and standards.

Private security industry

- Establish PSC employee's association

It is recommended that PSCs establish company and employee associations. In this way, issues of compliance, human rights (particularly, labour rights), private security governance, and other relevant issues related to the effective regulation of private security can be discussed and presented to the regulatory agencies and well as to the states. Private security associations should adopt a code of conduct, and require compliance as a requirement for membership.

- Consider signing up to the International Code of Conduct and joining its Association

Private security companies should sign the International Code of Conduct for Private Security Providers, which contains a commonly agreed set of principles for private security companies and establishes a foundation to translate these principles into related standards.

- Set minimum training standards

Companies should ensure the application of minimum training standards, including on human rights issues. This requires an investment by companies in training.

Civil society

- [Contribute to knowledge building](#)

Civil society has a crucial role to play in deepening and sharing knowledge and experience related to the private security sector and contributing to addressing the lack of reliable and systematic data on the sector and its impact. For regulatory agencies to effectively regulate the private security industry, they must understand its workings. However, within the region, there is a dearth of literature on the regulation of the private security industry. Research organisations, think-tanks and academic institutions should be supported to undertake cutting-edge research work that will assist regulatory agencies to develop effective regulatory approaches. A plethora of research topics could be developed, such as the use (or misuse) of firearms and the conditions of service of security providers, among others.

- [Contribute to awareness-raising and contribution to national policies](#)

Civil society can help raise awareness and is uniquely placed to engage with all relevant stakeholders (including national authorities, the industry, the public and other relevant actors). It is recommended that civil society organizations raise awareness on matters relating to human rights and private security. This includes labour rights issues within the industry as well as wider issues relating to an industry which is largely seen as exploitative and where abuses of human rights are prevalent. Civil society organizations can also provide capacity building support to the industry on the respect for human rights.

Civil society organizations have a critical role to play in promoting good private security governance. They should contribute to legal and policy reforms, engaging with various governmental and business actors to promote respect for human rights.

- [Contribute to monitoring](#)

Lack of adequate monitoring process or the lack of sufficient resources to monitor PSC activities has been identified as a challenge in many different contexts of the region. CSOs, present on the ground and capable of interacting with all relevant stakeholders, can play a key role in the monitoring of PSC activities. It is recommended to build the capacity of civil society to fulfill a monitoring role.

- [Facilitate complaint management and victim support](#)

Civil society should also contribute to addressing the absence of mechanisms to file and handle complaints about allegations of human rights abuses relating to the private security sector, or to supplementing existing mechanisms.

- Consider joining ICoCA and the Private Security Governance Observatory

It is recommended that civil society organizations in the region consider joining the Private Security Governance Observatory,²³⁵ a network of civil society organizations that seeks to share knowledge and reinforce their organizational capacity to promote good governance of the private security sector. Civil society organizations can benefit a great deal by joining this network.

Civil society organizations should also consider joining the ICoCA. By joining ICoCA, civil society organizations can contribute to safeguarding the human rights focus of the association.

Clients

- Adopt a specific and systematic vetting process for the selection and contracting of PSCs.

This entails at a minimum only hiring PSCs that are registered and overseen by a national regulatory authority. Additional hiring criteria could be whether a PSC has implemented ISO standards for PSCs or is an ICoCA member company.

- When drafting a contract, include a clause imposing compliance with IHL and human rights law

235. For more information on the Private Security Governance Observatory, see <https://www.observatoire-securite-privee.org/en> (Accessed 26 December 2019). The main Objectives of the Observatory are:

- to provide capacity building support for civil society and offer practical ways to increase engagement between CSOs;
- to build a strong network and reinforce dialogue between CSOs so as to identify practical ways to improve and strengthen monitoring of the private security sectors in specific national contexts;
- to provide a repository of knowledge on national, regional and international regulatory mechanisms;
- to increase awareness on the nature and challenge of private security regulation, as well as to promote security and human rights; and
- to encourage multi-stakeholder dialogue between governments, industry and CSOs.

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ANNEX: SOUTHERN AFRICA COUNTRY INFORMATION

This annex provides information drawn from 9 country cases.

BOTSWANA

The private security industry in Botswana is found in cities, towns and major villages. Most government institutions and facilities, including schools, hospitals, clinics, and local authority offices are guarded by private security providers. There is a high concentration of private security providers in mining towns, particularly diamond mining towns as well as copper, coal and soda ash mining areas. Major companies are G4S Botswana, an international company, and Security Systems, which is co-owned by a British citizen and a Motswana.

Botswana has approximately 4000 registered private security companies with half the number being operational. There are more men than women in the industry. In the main, female private security guards are found in government offices and other “soft” operational areas. In the last five years, the number of registered security companies has doubled. This increase results from the fact it is easy to acquire a private security licence. In fact, there is a view that owning a license for private security is a gateway to acquiring riches/wealth in Botswana.

Reflecting a growing demand for safety and security in Botswana, the ratio of public security to private security providers is estimated to be 1:3. There is a high demand for private security in government offices, parastatals, and private residences, particularly in urban areas. The Botswana Private Security Licencing Unit keeps records of licensed private security companies operating in the country.

Services provided by the private security industry are predominantly guarding and the installation electronic security equipment, particularly CCTV cameras. To a lesser extent, other services offered include private investigation and close protection services. The Private Security Licencing Unit keeps a record of the private security companies involved in guarding services. Sectors of engagement of the private security sector also vary from

the extractive industries, banking sector, corporate offices, shopping malls, government offices, hospitals, and hotels.

In Botswana, there are two main private security industry associations, namely, the Security Association of Botswana and the Private Security Officers Association. Membership is voluntary. There is only one registered employees union, known as the Private Security Workers Union. This union is important in the fight against exploitation and respect for labour laws. In Botswana, private security companies are generally paid late by their clients and this has a knock on effect on the security officers, whose salary payments are also delayed. The non-payment of employees, late payment, non-payment of leave days, overtime and severance benefits is punishable under the Employment Act. In some instances, registration of a licence may be terminated, renewal denied upon notification that the service providers violates the Private Security Services Act or any other laws of Botswana.

It has been observed that the level of awareness and compliance with human rights and professional standards is low for both the private security companies as well as the private security officers. The level of awareness and compliance with the prohibition of sexual exploitation and abuse by private security providers in Botswana is neither high nor low. There is a high standard of discipline expected to be maintained in the extractive industry which results in high attrition rates.

When crimes are committed, private security officers are always viewed as the first responders because of their 24/7 availability and in this way they play a complementary role to the Botswana police. The public perception of private security is that their level of competence is low. This is despite the fact that there are specific laws addressing training and capacity building within the industry, prevention of sexual exploitation and abuse, surveillance/investigation and intelligence gathering, security, cooperation and engagement, employment and labour standards, and the use of equipment and security technology.

In Botswana, the private security industry is regulated by the Private Security Services Act No. 106 (2016) and implemented by the Private Security Services Licensing Board (PSSLB). As the law is still new, it has not been fully implemented by the government. Issues relating to the implementation of the Act are shared with key stakeholders and where possible with the High-Level Consultative Council chaired by the President of Botswana. The regulatory PSSLB works closely with other governmental departments as it falls under the ministry of Defense.

In Botswana the general view is that civil society must play a role in promoting good governance in the private security sector as it fully understands the role of the private security industry in crime prevention. It is therefore important to promote collaboration between civil society and the private security industry. There is also a formal arrangement wherein private security service providers are members of Business Botswana (formerly Botswana Chamber of Commerce). Through this arrangement, there is a recognition that private security providers in the country are essentially business entities working in the crime prevention landscape.

The level of awareness and compliance with the private security law in Botswana is neither high nor low. This could be as a result of the fact that the law is still new. To improve this situation, it has been suggested that the use of the print and electronic media could be important. It has also been suggested that public addresses at Kgotla, Full Council Meetings and private security Pitso/gatherings could be great platforms in fostering such awareness. It is important to note that Botswana are generally law abiding citizens and do not require coercion to abide by the law. Any laws promulgated would be easy to implement, provided awareness is facilitated.

In so far as the monitoring, reporting and compliant mechanism is concerned, in Botswana, this is done through regular inspections and triggered inspections. Public campaigns are also used in order to encourage compliance and deter would be violators. The penalties meted out range from low to high fines to cancellation of private security licenses, particularly for gross violations.

According to the law, the Minister of Defence is empowered to formulate regulations as and when necessary. If needed, the Minister tables amendments to Parliament. An amendment can also be tabled through the Private member's bill or motion.

Some of the key challenges of the PSSLB include the fact that it is deficient in human resources, technical expertise, ICT skills and funding. There are still challenges of putting in place systems in areas registration, monitoring and ensuring compliance by service providers. Infrastructure remains inadequate for pursuing its mandate. There is a need for the Board to gain exposure in the area of regulating the private security industry.

In order to address issues of conflict of interest within the PSSLB, Board Members sign Conflict of Interest Declaration form before seating at any meeting. Where a member or members feel conflicted, they have a right to recuse themselves from meetings. Compliance monitoring is undertaken by persons of good standing who are appointed by the Minister. In the execution of their work they are also supported by the Police and officers from the

Commissioner of Labour. The decisions made by the Private Security Services Licensing Board are open for review by the Appeals Committee. The Committee which is appointed by the Minister provides oversight over the Board.

COMOROS

In the case of Comoros, it is estimated that there are about five private security companies operating in the country.²³⁶ These companies offer custodial services and the protection of buildings such as ministries, embassies and the central prison. It was also noted that as a result of the discovery of hydrocarbons, including oil and natural gas in Comoros, the number of private security companies was bound to increase.

Comoros is confronted by rising crime risks in urban and tourist areas. According to Garda World, visitors are at greatest risk of carjacking, home break-ins or robbery. During periods of political instability, which are becoming more frequent after controversial electoral changes, crime rates are more likely to be on the increase due to the over-commitment of security forces. Most importantly, in Comoros, poorly resourced, paid and motivated security forces do not have the ability to curb the crime rates significantly.²³⁷

Comoros does not have a legal framework for the regulation of private security industry. During the visit of the Working Group in 2014, it was reported that Comoros had begun working on a bill to address the issue.²³⁸ To date Comoros does not have a regulatory framework for private security despite the fact that the Working Group underlined “the need to regulate the activities of private security companies and promptly to enact legislation.”²³⁹ The Working Group recommended that the Government of Comoros must “require all private security companies must register in order to be allowed to operate in Comoros ...and that as a precondition for registration, all private security companies should join the International Code of Conduct for Private Security Providers’ Association (ICoCA).”²⁴⁰ The Working Group further underscored the fact that “the likelihood of an increase in the number of security companies operating in Comoros and the current concerns surrounding maritime delimitation issues require the introduction of appropriate legal regulations.”²⁴¹

236. See p. 14 of the Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, Mission to Comoros. A/HRC/27/50/Add.1. 4 August 2014.

237. As above.

238. As above.

239. As above.

240. As above.

241. As above, p. 15.

DEMOCRATIC REPUBLIC OF THE CONGO

PSCs in the DRC are formally registered corporations which provide an array of security services, ranging from static guarding to risk assessment and from cash-in-transit to body guarding.²⁴² There are more than 294 PSCs in the DRC, otherwise known as *societies de gardiennage*.²⁴³ In 2017, private security officers were estimated to number over 30, 000, spread throughout the country with high concentration in the copper belt in Katanga and the volatile parts of the Eastern Congo. The services provided by the industry is predominantly guarding services, otherwise, referred to as manned security. These account for about 95% of the private security industry in the DRC. Other services include security consulting, electronic security and cash-in-transit. The DRC private security industry has been growing over the past five years. In 2017, it was reported that employment in this sector was growing at an estimated rate of 5% or by about 1,500 annually.²⁴⁴

The private security in the DRC is dominated by a number of larger firms, often with expatriate management and/or ownership, existing side by side with a large number of smaller, national – and often partly formalized PSCs.²⁴⁵ PSCs include G4S, Delta Protection, New Escokin, Magenya Protection, Bras Security, Graben Security, GSA, ASCO, HWD, and Top SIG. The growth of the private security industry in the DRC is linked to the country's violent history, reflecting the need of non-governmental organizations (NGOs), international organizations (IOs), and companies for safety and security.²⁴⁶ These NGOs and IOs are involved in disaster relief, humanitarian aid and other development activities associated with peacekeeping and state-building and reconstruction in the DRC.²⁴⁷ In addition, affluent citizens and companies in the DRC contract PSCs as a response to weak public security and the general insecurity in the country.²⁴⁸

The regulation of the private security industry in the DRC falls under the Department for Civil Protection of the Ministry of Interior, which is in charge of registering PSCs. This is in terms of the Ministerial Order No. 25/CAB/MININTERSECDAC/037/2014 of 27 June 2014 amending and supplementing Ministerial Order No. 98/008,²⁴⁹ It was observed that the

242. Schouten, P., "Parapluies politiques: the everyday politics of private security in the Democratic Republic of Congo" in Higate, P. and Utas, M. (eds.), *Private Security in Africa: from the global assemblage to the everyday* (London: Zed Books, 2017) 145.

243. Private Security Governance Observatory, *Étude sur l'industrie de la sécurité privée en République Démocratique du Congo: Analyse des Provinces du Haut Katanga et du Lualaba* at 32. Available at [http://observatoire-securite-privee.org/sites/default/files/kcfinder/Etude%20de%20Base_DRC_FINAL%2002102019\(3\).pdf](http://observatoire-securite-privee.org/sites/default/files/kcfinder/Etude%20de%20Base_DRC_FINAL%2002102019(3).pdf) (Accessed 31 December 2019).

244. Schouten (no 243 above) 145.

245. As above.

246. As above, 147.

247. As above.

248. de Goede, M., "Private and Public Security in Post-war Democratic Republic of Congo" in Gumedze, S. (2008) *The Private Security Sector in Africa*, Institute for Security Studies, (Monograph Series No. 146) 42.

249. For more information on the Ministerial Order No. 25/CAB/MININTERSECDAC/037/2014 of 27 June 2014 amending and supplementing Ministerial Order No. 98/008, see <http://cpsrdc.com/MININTERSECDAC0372014.pdf> (Accessed 31 December 2019).

current legal framework for regulation of private security in the DRC does not focus on the supervision of private security company activities and to this end, a majority of PSCs operate without permits and do not pay their annual fees.²⁵⁰ The private security industry in the DRC is characterized as “ill regulated and poorly legislated [and] much depends on personal relations and one-on-one arrangements.”²⁵¹ This presents one of the main challenges for the regulation of the industry. In fact de Goede pulls no punches by arguing that “[t]here is no legislation on the private security sector; only a minimal regulation against the exploitation of guarding companies.”²⁵²

By law, private security officers are not allowed to carry firearms. Instead, armed police are hired to back up the security arrangements with coercive power.²⁵³ The law does not permit active or former elements of the armed forces or police to be recruited by PSCs in the DRC. In 2008, it was reported that in order for a PSC to operate it requires a permit of USD 10, 000 and to obtain its annual extension permit costs USD 5000.²⁵⁴ It is reasonable to conclude that these fees have increased drastically.

The absence of an effective regulatory framework in the DRC has been summarized as follows:

The Ministry of Interior does not prescribe any form of the governing structure of PSCs or annual reporting...there are no minimum skills, professionalism, use of equipment and basic dos and don'ts. Obviously such minimal legislation is not sufficient to effectively regulate the guarding companies, let alone the rest of the private security industry.²⁵⁵

It has been argued that the a registry of PSCs or personnel does not exists, thus creating a serious obstacle to monitoring and regulating the industry in the DRC.²⁵⁶ Control and oversight is done through an *ad hoc* commission and informal one-on-one meetings between directors of PSCs and the director of the Department for Civil Protection.²⁵⁷ The so called *ad hoc* commission, which consists representatives of the ANR and national police, follows the activities of the PSCs and investigates suspected malpractices. Of great importance is that this commission advises the Minister on the issuance of permits and their yearly extension for PSCs operating in the DRC.²⁵⁸

250. Private Security Governance Observatory (n 24 above).

251. de Goede (n 249 above) 55.

252. As above.

253. Schouten (no 243 above)146.

254. de Goede (n 249 above).

255. As above.

256. See general information at <https://www.observatoire-securite-privee.org/en/content/democratic-republic-congo> (Accessed 31 December 2019).

257. de Goede (n 249 above) 56.

258. As above

ESWATINI

Private security is a thriving industry in Eswatini. While in 2013, the number of security companies was in the region of 70, it is estimated that the figure is now over 100.²⁵⁹ Previous estimates of private security officers were around 10, 000²⁶⁰ and today are in the region of 12, 000. Just like in other countries, the guarding sector dominates the industry in terms of the number of private security officers. The estimated ratio of private security officers to the police is 1:2. The major private security companies include Guard Alert, VIP Protection and Buffalo Soldiers, which provide guarding services in the main. Other companies, which take the lead in the electronic security space include Chubb Electronic Swaziland and Swazitronix. The majority of private security companies are owned by retired police or army officers.

In the past five years, the private security industry in Eswatini has flourished due to economic growth and the emerging middle class. The demand for private security has been steadily increasing. The clientele for the industry is both national and international. The private security industry is involved in the provision of security services to the banking sector, factories, corporate offices, shopping malls, as well as private homes. They also offer services to embassies, hotels, intergovernmental and non-governmental organizations, particularly in the cities. Most private security companies operate along the Mbabane-Manzini corridor, which is the economically advanced area of the country.

In addition to guarding services, cash-in-transit services are also offered to the banking sector, with companies such as Cash Security services, Fidelity, VIP Protection Services, Swaziland Security Guards, Swaziland Lumber Security Services and Stealth Security Services, being the main players. Some of these companies are subsidiaries of South African-based private security companies.

Eswatini has an established association known as the Federation of Swaziland Employers, which is a voluntary, non-profit making member-based organization representing employers and businesses in all sectors of the Eswatini economy, including the private security industry. In 2015, the owners of private security companies established the Security Professionals of Swaziland (SPAS). During its launch, in a Resolution on the Need for Regulating the Private Security Industry in the Kingdom of Swaziland (Mountain Inn Resolution), the SPAS stated that “[t]he private security industry needs to be regulated by a professional authority or special entity that will ensure that the industry is professional, accountable and respects the law.”²⁶¹

259. These figures are pure estimates as private security companies as well as government officials are reluctant in sharing information on the private security.

260. Simelane & Maziya (n 10 above) 217.

261. See Mountain Inn Resolution, 2015 in Swaziland Workshop Report, 2016. The Private Security Industry Regulatory Authority at p. 11.

In Eswatini, the Swaziland Security Guards and Allied Workers Union (SSGAWU), which is affiliated to the Trade Union Confederation of Swaziland (TUCOSWA). In 2010, there were a total of 4000 members affiliated to the SSGAWU.²⁶² According to reports gathered from the SSGAWU,²⁶³ one of the main challenges facing the industry is under-payment of private security officers. In some cases, security officers were forced to pay for their uniforms, (which is illegal). The private security companies were generally not complying with the Regulation of Wages of the Security Industry Notice, 2008. Most disturbingly, several security companies were operating without trading licenses. It has been reported that within the private security industry, there is widespread sexual abuse, exposure to harsh weather conditions, among other challenges faced by private security officers.²⁶⁴ Whilst the level of awareness with the prohibition of sexual exploitation and abused is characterized as high, this compliance is generally poor.

Eswatini has no specific private security regulation. This is a major challenge and concern. All that is required of private security companies is to obtain a trading license in terms of the Trading Licences Order No. 20 of 1975. Private security companies do not have to meet specific security-related requirements for operating a security company. They can also hire private security officers without any legally sanctioned minimum requirement. This means that any person may be hired to work as a security officer without a screening or vetting process. Whether or not an individual has a criminal record, they can be part of the private security industry. The barriers of entry into the private security industry is thus very low. Moreover, each company determines its own minimum training standard. As a result, the level of professionalism remains low. The industry is nevertheless seen as creating job opportunities, particularly for the youth.

There is no government agency responsible for enforcing relevant regulations or codes of conduct. Companies have to comply with the general laws for operating any business, as well as the Occupational Safety and Health Act of 2001, the Employment Act of 1980, the Wages Act of 1964, and the Workmen's' Compensation Act of 1983. These laws are generally not observed with by the security companies. The other law applicable to the private security industry is the Arms Control and Ammunition Act of 1964. In Eswatini, only the private security officers involved in the cash in transit sector are permitted to possess and use shotguns and handguns whilst on duty.

Despite the growth of the industry, particularly in the urban, industrial, and affluent areas, the regulatory framework for the private security industry remains absent. The need for

262. See Danish Trade Union Council for Development Cooperation, 'Swaziland Labour Market Profile 2013', http://www.ulandssekretariatet.dk/sites/default/files/uploads/public/PDF/LMP/lmp_swaziland_2013_final_version.pdf (Accessed 30 July 2018).

263. See also Maphalala, I., 'Security companies operating illegally', Times of Swaziland, 5/01/2009. Available at <http://www.times.co.sz/index.php?news=3033> (Accessed 30 July 2019).

264. See Simelane & Maziya (n 10 above) 220.

regulating the industry has been raised over the years, including by both trade unions as well as the owners of the security companies. The Mountain Inn Resolution, 2015 captured the aspiration of the SPAS to regulate the ever-growing industry in Eswatini. The Resolution underscored the need for a governmental policy to inform the development of a regulatory framework. Among other things, the Resolution stated that the regulatory framework should provide for a definition of security services, minimum training standards, an effective monitoring mechanism to ensure compliance within the private security industry.

LESOTHO

In Lesotho, the private security industry is regulated under the Private Security act of 2002 Regulations 2003. These laws are also complemented by the Labour Code and the Internal Security Law. The number of security companies registered are 66,²⁶⁵ and they are free to employ their preferred number of employees. Of these registered companies, 10 are run by women. In the last five years, the number of companies has increased to high unemployment rates. In terms of the Lesotho laws, both citizens and non-citizens can participate in the private security industry.

The type of services offered include protection services. In the main, these services are offered in instructive industries, banking sector, manufacturing and production sectors, shopping malls, and hotels. The sector offers 90% services to national clients and 10% to international clients based in Lesotho. Lesotho is faced with political instability and gangsterism involving the Famo music gangs who often engage in deadly fights. The deadly clashes among the Famo gangs spawn reprisals and revenge killings. In addition, high rates of armed robbery and general crime demands the intervention of the private security industry. The industry is also facing high rate of cash-in-transit heists.

The Association of Lesotho Employers and Business comprises of owners of PSCs in Lesotho. There is also the Lesotho Workers Association and Transport, Security and Allied Workers Union.

It must be noted that not all PSCs in Lesotho comply with human rights and professional standards. Nevertheless, there is a high awareness and compliance with the prohibition of sexual exploitation and abuse by private security providers operating in Lesotho, both by the PSCs and the private security officers.

265. As at 31 May 2019.

MALAWI

Malawi has witnessed a proliferation of PSCs in the last 5 years. These companies are established by former military and police officers. While there are no available official statistics, it is estimated that there are about 300 PSCs in Malawi. Among these are international security firms such as G4S, KK Security and Pro-Tellineng. Most PSCs in Malawi are based in the cities, towns and at district headquarters. The majority of these companies have about 100 security guards in their employ. Despite the absence of a regulatory framework, the level of trust for the private security industry is high.

Reasons for the increase in the number of PSCs in Malawi include the fact that it is relatively easy to register a company and the availability of cheap labour due to high unemployment rates. The ratio of private security officers to public police is 7:10. It is important to note that in Malawi, private security guards are not allowed to bear arms. They are also not allowed to use blue (flashing) lights on their vehicles. Most private security guards are not provided with proper uniform and safety wear.

In so far as the regulatory agency for private security is concerned, the Ministry of Home Affairs and Internal Security is responsible for private security companies. A desk officer is the designated official who gives authorization for the establishment of a PSC in Malawi. In addition, all private security companies in Malawi must be registered with the Registrar of Companies. It is important to note that the Registrar of Companies and the Desk Officer in the Ministry of Homeland Security work independently of other. The non-integration of these two portfolios has been identified as a major cause for concern in so far as the regulation of the private security industry in Malawi is concerned.

Guarding represents the primary service offered by private security providers in Malawi . It is important to note that security guards in Malawi are unarmed. They are only allowed to carry batons. Rapid response/armed response services are the most sort after private security services. Other services include cash-in-transit, which is mostly used by banks, close protection, which is mostly required by VIPs and video surveillance of property mostly required by the elite in Malawi. The level of cash-in-transit heists and general crimes have led to a high demand for private security providers.

The areas of operations and engagement of the private security sector in Malawi ranges from shopping centers, corporate offices, banking sector, to private homes. The approximate percentage of international clients (such as embassies and industrial establishments) is 10% while the national clientele is 90%.

Malawi does not have any formalized private security association of employers. However, there is the Hospital and Guards Workers Union which is an employee association.

MAURITIUS

There are 43 registered PSCs in Mauritius.²⁶⁶ The industry has grown in the last five years due to the demands for the prevention of crime. The list of companies operating in Mauritius is readily ascertained from the licencing authority responsible for regulating private security. Big companies include Brinks which employees over 8000 people. Other companies are Caudan Security Services, Pro-Guard Limited Alarm System; G4S Security Services. As in the case of most countries, there are very few women owners as the industry is dominated by male owners. The majority of whom have security background. Licensing is only conducted for companies and not individuals. The ratio between private security officers to public security is 1:2. This could be as a result of Mauritius being a generally safe environment.

As a tourist destination, the Tourism Authority publishes the list of security service companies on its website as approved by the Tourism Safety Panel.²⁶⁷

Security services in Mauritius vary from one security company to the other. These include guarding services, close protection, cash-in-transit, CCTV and armed response. The level of demand for guarding services, otherwise known in Mauritius as “watchmanship”, is high, followed by CCTV and armed response. It is important to note that licenses issued do not state what services the company license holders will be providing. The license is general and once obtained, the company may provide any security services, depending on business opportunities and interests. In Mauritius, in-house security is not regulated by the law and private security providers offering in-house security are not registered with the licensing authority (the Commissioner of Police).

The sectors where private security operate in Mauritius include the banking sector, manufacturing and production, private residences, corporate offices, shopping malls and business outlets, hospitals, and hotels. There are also companies offering maritime security services to ships which pass through the Somali region as a result of piracy. These usually employ retired police officers with experience in maritime security. It is noted that that private security officers of African descent are often employed in discotheques as a result of their physique.

The level of awareness and compliance with human rights and professional standards by private security providers (businesses and officers) is very high. It is important to note that

266. For a private security company to operate in Mauritius, the following documents are required: two passport size photographs; copy of national identity card; copy of birth certificate; copy of certificate of incorporation with names and addresses of Board of Directors; a copy of a recent Certificate of Morality; original of medical certificate as to fitness to operate a private security company; original security deposited; certificate of experience and training; security training report. Information obtained from the form for application/renewal for a licence to operate a private security service.

267. Available at <http://www.tourismauthority.mu/download/73.pdf> (Accessed 12 July 2019).

the powers of private security providers are very limited. For example, the law does not allow private security officers to conduct searches in public spaces and to arrest. The rule of law in Mauritius is of paramount importance. Private security officers are not allowed to be armed in Mauritius – they do not even carry batons.

One of the main challenges faced by the private security industry is the low salaries paid to security officers, not more than MUR 10, 000 (+/- USD 267) a month. The barriers of entry is low which leads to private security officers being exploitation as they mostly underpaid. The majority of private security companies in Mauritius employ retired people from the public sector. This makes the average age within the industry relatively high. The sector is also generally fluid because young people who are hired after completing school move from one company to the other in search of better opportunities. Companies are therefore continuously hiring employees. There is no control over training standards which are dependent upon individual companies.

The private security industry is regulated by the Private Security Act No. 5 of 2004 (Principal Act), which was amended by the Private Security Service (Amendment Act of 2008).²⁶⁸ Other applicable laws relate to firearms, employment rights and directives issued by the national remuneration bureau. There is no specific Code of Conduct for the private security industry. In Mauritius, the issuing authority for private security licenses is the Commissioner of Police. For a company to have a licence, there is a requirement of a security bank guarantee of MUR 3 million (+/- USD 80'000), which is quite high. This also explains by there are not so many registered security companies in Mauritius.

The law on private security industry is implemented by the police in the different jurisdictions in Mauritius. Officers receive applications and hand over the application to the head office. Those companies with firearms licenses are also checked by the police. This is done on an *ad hoc* basis. Sometimes there are joint operations between the regulatory authority, labour department and other police agencies which are usually compliant-driven. There is no formal cooperation between private security providers and public security officers. Any collaboration is usually on an *ad hoc* basis and is usually informal.

Mauritius is in the process of amending the current law on private security. The amendment law will be able to strengthen the regulation of the private security industry in the country. This amendment process is being undertaken within the internal government structures and is not yet public.

268. Proclaimed by [Proclamation No. 5 of 2008] w.e.f. 1st July 2008.

MOZAMBIQUE

Mozambique has 108 registered PSCs and about 80, 000 private security officers. Among the multinational PSCs operating in Mozambique are Mega Group, G4S, Omega RK Solutions, Guardia World, and Securitas. The main activities of the private security industry is guarding services (including VIP protection), Cash-in-Transit, and Security Technology systems. In terms of percentage, men make up 80% of the security officers, while women make up 20%.

Over the past five years, the private security industry has been steadily increasing with registered PSCs currently standing at about 80. It is estimated that there are more security officers than the public police. This is as a result of high crime rates owing to the economic situation and the low barrier of entry into the private security industry. It is also reported that kidnappings specifically involving foreign investors of Asian descent, in particular, are on the rise towards the end of the year, during the festive season. Cash-in-transit heists are also on the rise towards the end of the year, which has resulted in the private security operating in this space.

The Ministry of Interior is responsible for regulating the private security industry in Mozambique. The Ministry has a specific department in charge of licensing PSCs. This department has a staff complement of between 10 and 15 officers based in Maputo responsible for registering PSCs and conducting inspections, including issuing fines to non-compliant PSCs. The department issues firearm licenses to the industry and provides training in firearms handling. Within each of the 10 provinces in Mozambique, the department is represented by a special police officer responsible for the private security industry.

Each registered PSC in Mozambique has a police officer delegate within its offices under the payroll of the Mozambique Police service. It is reported that some police are paid a salary by the PSCs over and above their police salaries. Big companies have more than one police officer delegate. The idea of having such delegates within registered PSCs is to foster coordination between the Ministry of Interior and the companies. It also strengthen information-sharing between the police and the private security industry. The police officer delegate shares information on national security with the PSCs.

In Mozambique, there is one private security employer association, called AEMPS. In so far as private security employee associations are concerned, there are two unions. The first, which is the biggest, is called SINTESP ²⁶⁹ and the second is the SINTSPRIMO. ²⁷⁰ In terms of the level of compliance within the industry, particularly with the close proximity to the Mozambican police, the level of awareness and compliance with human rights and

269. National Union of Worker of Private Security Companies and Guards.

270. National Union of Private Security Workers of Mozambique.

professional standards is low. This is largely due to the fact that there are no minimum standards of training in Mozambique. Each company trains its own security officers according to its own standards.

NAMIBIA

In Namibia, there are approximately 300 registered PSCs which employ about 20, 000 security officers. PSCs are both local and international companies. The percentage of women in the private security industry is relatively low compared to men. While men account for 70% of the industry, women only account for 30%. In the past five years, the private security industry has been steadily increasing. One of the main reasons for the growth of the industry in Namibia is the high rate of crime, particularly robberies. The private security industry also provides employment opportunities for the youth in Namibia. The ratio of police to private security is 1:1.

The main security service offered by the private security industry is guarding services. The main clients include the banking sector, industries, houses/private homes, corporate offices, shopping malls/business outlets, government offices, schools and educational institutional institutions, hospitals and hotels. The private security industry services approximately 80% of national clients and 20% of international clients in Namibia. The private security industry also plays a role in preventing crime and maintaining peace and order.

In Namibia, there is only one association for private security employers, namely, the Security Association of Namibia (SAN), which has little engagement with the regulatory agency. There are currently three employee associations, also with little engagement with the regulatory agency. It is reported that the level of awareness and compliance with the prohibition of sexual exploitation and abuse by private security providers operating in Namibia is low. In the event that private security providers commit sexual exploitation and abuse, disciplinary action is taken against the perpetrators.

The challenges faced by PSCs in Namibia include the following: unfair competition; high turnover of employees; lack of support from the government (in terms of monitoring and controlling the industry); and lack of proper regulations. The level of professionalism within the private security remains low. PSCs have insufficient funds to adequately train their workers. As a result, security officers in Namibia are not equipped with all necessary skills to deal with all security issues. This leads to the industry not being professionalized and a perception that the industry is corrupt.

In Namibia, there is a specific regulatory framework for private security. In addition, laws deal with arms control, labour, and social security for the private security industry. The law on private security is implemented through the Ministry of Labour and Ministry of Safety and Security. In Namibia, civil society does not play any major role in promoting good governance in the private security industry. Civil society could contribute to private security governance by providing necessary support in terms of promoting respect for human rights.

One of the main challenges faced by clients is that their level of awareness and compliance with the private security law is very low. This is largely because implementation of the law is ineffective. There is no mechanism in place for monitoring, reporting and complaints established to address cases of malpractice, misconduct or human rights violation by private security providers in Namibia. As a result of the non-existence of a regulatory authority, there are no disciplinary measures, sanctions or enforcement mechanisms. There is a need to review the regulatory framework and its implementation in order to establish a fit for purpose regulatory agency in Namibia.

The Namibia regulatory framework has been in existence for almost 21 years, yet it has never been implemented. The absence of a regulatory agency remains a cause for concern. It is therefore important for Namibia to review the current regulatory framework and provide for a law that will establish a regulatory agency to effectively regulate the private security industry. There is a need to ensure that such a regulatory agency is well resourced. There must also be an awareness raising campaign relating to compliance issues for the private security industry. The regulatory agency must also be well equipped to monitor and exercise oversight on the private security industry.

The lack of a code of conduct for private security providers contributes to the violation of human rights by private security providers. There are cases of assaults on private security officers by their supervisors including sexual harassments. Examples are also described of security officers reportedly assaulting people in shopping malls and other business outlets. This is usually linked to theft committed in these premises.

In Namibia, not all PSCs respect their obligations to staff welfare, wages and pensions. In fact some PSCs do not even provide proper uniform for their employees. Others provide the uniform and other equipment to their employees and deduct money from the officers' salaries to cover the uniforms and equipment. The non-payment of wages on time, high fines for misconduct, non-payment of minimum wage, non-compliance with labour laws and other relevant laws is common in the private security industry in Namibia.

The level of engagement and cooperation between private security providers and public security is minimal. In the event that private security providers detect a possibility of

armed robbery at any site where they are guarding, they usually report this to the police. In Namibia, private security providers do engage and cooperate with informal security structures such as neighbourhood watch groups.

SEYCHELLES

According to the Seychelles Licensing Authority, as at 16 January 2019, there were 61 licensed PSCs in Seychelles.²⁷¹ These are otherwise known as Labour Contractors specializing in security services.²⁷² Prominent private security companies include Seychelles Technical Services, Smart & Secure, Modelco, Technoguard, Pilgrim Security, MEJ Electrical Ltd, Pegasus Security and Isles Security Agency Ltd.²⁷³ In 2010, it was estimated that security contracts in Seychelles were worth EUR 25 million.²⁷⁴

It is important to note that while there are requirements for the registration of labour contractors, (the security companies), there are no requirements for registration of private security officers in Seychelles. This could be largely because security services are not considered to be professional services like accountants, auditors, architects, land surveyors, marine and cargo surveyors and quantity surveyors, who are licensed with the Seychelles Licensing Authority.²⁷⁵

There are no strict regulations covering private security guards in the Seychelles, however, serving members of the armed forces cannot use their military skills to work for private security firms while on leave.²⁷⁶ The only law that concerns the private security industry in Seychelles is the Seychelles Security Guards Service Pension Act, 1979, which applies to every member of the Seychelles Security Guard Service, appointed to that service prior to 31 December, 1978, and was a member of that service on that date.²⁷⁷ “Seychelles Security Guard Service” is defined in the Act as the Security guards service provided by the Government of Seychelles at the United States of America Tracking Station at La Misere.²⁷⁸

According to the Act, the service of a member of the Seychelles Security Guards Service prior to 31st December, 1978 shall, for the purpose of the Pensions Act, be deemed to be in a civil capacity under the Government of Seychelles and the office of such member shall for the purposes of that Act be deemed to be a pensionable office.²⁷⁹

271. The data of licensed security companies available at the Seychelles Licensing Authority.

272. <http://www.sla.gov.sc/wp-content/uploads/2019/01/Security-Firms-16.01.19.xls> (Accessed 12 April 2019).

273. <http://www.commonwealthofnations.org/sectors-seychelles/business/security/> (Accessed 12 April 2019).

274. As above.

275. See for instance, <http://www.sla.gov.sc/list-of-active-license-holder-per-category/> (Accessed 12 April 2019).

276. <http://www.commonwealthofnations.org/sectors-seychelles/business/security/> (Accessed 13 April 2019).

277. S 3 of the Seychelles Security Guards Service Pension Act, 1979.

278. S 2 of the Seychelles Security Guards Service Pension Act, 1979.

279. S 4 of the Seychelles Security Guards Service Pension Act, 1979.

SOUTH AFRICA

The South African private security industry is the largest in the region in terms of its size and diversity. According to the latest statistics, there are 9, 906 registered businesses and 2, 445, 618 registered security officers. ²⁸⁰ Of the registered private security officers, there are 785311 female and 1660307 male. It is important to note that the number of public police stands at 151, 651, ²⁸¹ making the ratio of public police to registered private security officers, 1: 16

The private security industry is spread throughout the country as follows : - ²⁸²

Province	No. of Security Officers
Kwazulu Natal	82728
Gauteng	170033
Western Cape	53125
Limpopo	40449
Eastern Cape	38922
Mpumalanga	34075
Northwest	22623
Free State	15302
Northern Cape	4998

In terms of the categories of security services offered in South Africa and their sizes, the following is extrapolated from the PSiRA database: -

Security Guards: 6,919	Reaction services: 3,820	Training: 2,066	Special events: 3,034	Fire prevention and detection: 38	Anti-poaching: 11
Security guards cash-in-transit: 3,074	Entertainment/venue control: 2,771	Security equipment installer: 2,289	Car Watch: 1,867	Consulting engineer: 12	Rendering of security service: 2083
Body guarding: 2754	Manufacture security equipment: 1,302	Locksmith/key cutter: 990	Insurance: 68	Dog training: 18	Security and Loss Control: 71
Security consultant: 2,497	Private investigator: 1,837	Security control room: 2,487	Security and loss control: 84	Alarm installer: 78	Other: 323

280. According to PSiRA database as at 31 July 2019.

281. See the South African Police Annual Report 2016/2017, at p. 28.

282. According to PSiRA database as at 31 July 2019.

The private security industry has increased in the last five years in terms of its size. The main reason for the increase is the fact that South Africa's crime statistics are quite high and the need for safety and security remains paramount, particularly for those who can afford to pay. There has been a steady increase of gated communities and office parks, which requires safety measures to be taken in order to ensure the safety and security of persons and their property. South Africa has in the recent past experienced cash-in-transit heists, which have at times reached rampant proportions, often characterized by military-style execution. Cash point robberies have also been on the rise, where automated teller machines (ATMs) are blown up in order to steal cash. In some provinces, there has been a spate of taxi violence caused by competition for lucrative routes. Serious crimes, such as murder, rape, armed robberies, and carjacking have also been in the rise. Private security plays a complementary role to the South African Police Service (SAPS) efforts in crime prevention.

In South Africa, services offered to clients by the private security industry are wide ranging. The highest demanded service is guarding services. The clientele for private security providers is also diverse, from the private to the public sector to private citizens. In fact, the private security industry is found in almost every business sector, every governmental department or agency, including SAPS establishments. It is difficult to determine the number of national and international clients of private security companies, save to say that both national and international clients benefit from the private security industry.

In South Africa, there are a considerable number of security associations of private security employers, the main ones being the Security Industry Alliance (SIA), the South African Intruder Detection Services Association (SAIDSA), the Association of African Private Security Owners of South Africa (TAAPSOSA), and the Security Association of South Africa (SASA). Employees associations include the South African Private Security Workers' Union (SAPSWU), Security Services Employees Organization (SSEO), and Democratic Union of Security Workers (DUSWO).

The level of awareness and compliance with human rights and professional standards by private security providers is low, for both private security companies and officers. The level of awareness and compliance with the prohibition of sexual exploitation and abuse is also low for both private security companies and officers. The South African law prohibits sexual exploitation and abuse against private security providers.

A significant challenge faced by security companies is the slow transformation of the industry, which is still dominated by international private security companies and white owned security companies as a result of South Africa's past apartheid legacy. The maritime security industry is generally unregulated due to the regulatory challenges from the regulatory authority, PSiRA.

The barriers of entry into the South African private security industry is quite low. This, among other things, compromises professionalism within the industry. Despite this shortcoming, the private security industry plays a pivotal role in crime prevention, particularly, the guarding sector.

The private security industry in South Africa is regulated by the Private Security Industry Regulation act No. 56 of 2001. This Act also establishes the Private Security Industry Regulatory Authority, which is mandated to regulate the industry in the interest of the public, state and industry. PSiRA has an elaborate Code of Conduct for private security providers. PSiRA also implements and enforces the law on private security in South Africa. The level of awareness with the private security law is high, particularly among the private security providers. The private security industry is generally non-compliant, particularly if one considered the fines which PSiRA collects for non-compliance on a yearly basis. For example, during 2017/2018, 1705 cases relating to non-compliant security service providers were finalized, most of which resulted in the imposition of fines.²⁸³ The fines and penalties in relation to the non-compliant private security providers amounted to ZAR 14, 887, 573 (+/- USD 1, 084, 080).²⁸⁴ Considering the amount received as fines and penalties, it is clear that the implementation of the private security law by the Authority is very effective.

PSiRA has an effective monitoring, reporting and compliance mechanism. The Private Security Industry Regulation Act, 2001 provides for the appointment of inspectors to ensure that the law is effectively implemented. The enforcement approach induces compliance through punishment for improper conduct by imposing sanctions. PSiRA adopts this approach when security providers deliberately choose to evade the statutory requirement. In this way, the Authority endorses the accusatory, penal and adversarial styles of enforcement in cases of improper conduct. In terms of the Authority's Law Enforcement Department's operational policy, all enforcement inspectors must finalize a minimum number of investigations per month. For example, during the year 2017/2018, a total of 3,144 investigations were finalized.²⁸⁵ In the same financial year, a total of 963 criminal cases were opened by the PSiRA Inspectors against private security providers.²⁸⁶

283. PSiRA Annual Report 2017/2018 at p. 15.

284. PSiRA Annual Report 2017/2018 at p. 114. It is important to note that fine and penalties are economic benefits received by PSiRA as a consequence of the individual or other entity breaching the requirements of the laws and regulations.

285. PSiRA Annual Report 2017/2018 at p. 40.

286. PSiRA Annual Report 2017/2018 at p. 51.

The Private Security Industry Regulation Act and the Private Security Industry Levies Act (Act. No. 23, 2002),²⁸⁷ are currently under review. The Private Security Industry Regulatory Act of 2001 is viewed as outdated and requires a review in order to ensure its effectiveness. Of significance is the issue of ownership of private security companies. The Levies Act, which supplements the Private Security Industry Regulation Act, (Act No. 56, 2001),²⁸⁸ was never assented to by the State President. As a result, the Levies Act has not been operational.²⁸⁹

PSiRA remains a self-funded government entity, which relies on annual fees, registration fees, course reports sale of goods, interest received, fines and penalties, rendering of services, bad debts recovered, and sundry income. One of the main challenges which PSiRA faces is that its current self-funding model is not viable for the purpose of ensuring the fulfillment of its mandate. The Authority is considering changes to the current funding model with the objective to ensure that a growing private security industry is effectively regulated. In this way, the law enforcement would also be strengthened in order to address the general non-compliance within the private security industry.

TANZANIA

The concentration of the private security industry in Tanzania is mostly in the cities and big towns. PSCs are estimated to number over 1,200, comprising over 2 million private security officers. The ratio of women to men in the private security industry is 1:50. It is important to note that the number of personnel in the industry has doubled in the past five years. This is due to the growing economy and increasing insecurity. The national police are not in a position to effectively fight crime due to limited resources.

In the main, the private security services offered in Tanzania are guarding, motor patrol, security equipment installations, cash-in-transit, consultancy services, private investigation, and fire rescue. The demand for guarding services is high, as compared to the other security services. Apart from operating in sensitive government sites, vital installations and military, police and prisons, the private security industry is ubiquitous. In the main, private security operates in private residences, shopping malls and business outlets. The estimation is that consumers of private security are 90% national clients and 10% international clients.

The regulation of the private security industry is undertaken by the Police. Currently, there is no regulatory agency for the private security industry. The Public Police, directives,

287. Hereinafter referred to as the Levies Act.

288. Hereinafter referred to as the PSiR Act.

289. Section 10 of the Levies Act provides that it will come into operation on a date fixed by the President by Proclamation in Gazette.

labour laws, corporate laws, social security laws, arms and ammunition control laws are applicable to the private security industry. In the case of Tanzania, there is one well organized business association. The relationship with the police is generally good.

ZAMBIA

According to the data from the Zambia from Patents and Companies Registration Agency (PACRA), there are about 3720 security firms in Zambia. More than 45, 000 security guards operate throughout the country, the majority being in the cities. In the copper belt, there are asset in transit companies: 6 companies at the Copperbelt and 89 in Lusaka. Most of the companies undertake physical guarding. In Zambia, it is reported that the Chinese establish their own security companies and get contracts from Chinese constructors. The security guards hired by the Chinese security companies wear uniforms obtained from China. The majority are men. Women usually shy away from the industry. The average age is between 20 and 40 years. Previously, it was 55 years and above, as security work was viewed as only for the adult men. Due to the economic situation, more young people are joining the industry.

The number of security companies has increased in the last five years with more than 20 companies formed each year. Most companies do not adhere to professional standards. The main reason is due to the low barrier of entry. Many companies simply buy overalls and have companies in operation. The ratio of the private security guards to the public security force is 1:5. Private security services offered include, physical guarding, VIP escort, Assets in transit, undercover security, private investigation, CCTV installation. Due to high crime rates targeted at Chinese establishments, armed guards are in demand.

Security guards are generally aware of their human rights obligations. It is, however, very rare to hear reports of human rights abuses in Zambia as a result of most companies ensuring that they do not lose business. No sexual abuse has been reported. However, there is a need to sensitize guards on these issues. Various companies have their own code of conduct, which is standardized within their own employees.

Challenges faced by companies include a lack of support from the government to ensure that that companies can access loans and government tenders. There is a monopoly of foreign companies such as G4S. Previously, there was also the USI Security which provided security services to the American and British embassies.

In terms of crime, in the extractive industries, particularly the Copperbelt, the level of crime is high. Hence, private security is in high demand. It must be noted that in Zambia, the private security industry is tool for employment creation – the minimum monthly salary for a security guard is ZMK 1, 999 (+/- USD 155). Many private security companies do

not comply with this minimum wage requirement. In the event that they are found to be in violation, the Ministry of Labour issues fines.

Zambia is in need for a regulatory framework for the private security industry. The absence of a specific law for regulating private security in Zambia has necessitated the establishment of the Private Security Association of Zambia (PSCAZ).²⁹⁰ The PSCAZ was established to, among other things, assist government in ensuring compliance within the industry. The Association is more of a whistleblower in relation to those companies which violate the laws. While most security companies comply with laws relating to pension, revenue, and submission of annual returns, they however violate labour laws. The Association has a close if informal cooperation with the Deputy Inspector General of Police. The majority of security company owners are from ex members of the Zambia flying squad, a police rapid response unit, and hence it is very easy for security company owners to collaborate with the Zambia police.

ZIMBABWE

In the case of Zimbabwe, there are over 100 registered PSCs. Some of the biggest PSCs include Fawcett, Guard Alert, Safe Guard and Securico. The private security industry in Zimbabwe is male dominated. The industry has increased in the last five years due to the economic hardship in Zimbabwe. There is a demand for guarding services as well as armed guards. This is due to current political instability and economic hardship which has required private organizations and government institutions to protect their assets. There is an increase in contracted private security as opposed to in-house security in Zimbabwe.

One of the realities of Zimbabwe is the fact that crime rates have increased, mainly due to the country's economic meltdown. The public police in Zimbabwe cannot adequately provide safety and security, which has made people resort to private security.²⁹¹ The government has resorted to using the private security industry to secure national infrastructure and government buildings.²⁹² The industry provides services to approximately 10% international clients and 90% national clients. There are 3 private security business associations, and chief among these is the Zimbabwe Association of Private Security (ZAPS).

In the case of Zimbabwe, PSCs can be categorized into three categories, namely, commercial security companies, in-house security and municipal police. The municipal police provide

290. It was reported during the interview that the Association is intending to change its name to a Regulatory Authority.

291. Ndungu (n 35 above) 28.

292. As above.

security services to quasi-government institutions, such as municipalities.²⁹³ It is also important to note that in Zimbabwe PSCs are predominantly family businesses and their survival revolves around the owner.²⁹⁴ This means that in the event that owner dies, the chances of the business surviving are very slim, unless the family members are well equipped to continue the business venture.

The private security industry in Zimbabwe is characterized by a rapid expansion of the level of business activities being conducted.²⁹⁵ Activities include electronic security systems installation, cash-in-transit, god handling, to name but a few. The technological revolution has resulted in the private security industry diversifying and widening its field of intervention “to reach new clients and thereby answer to various security requirements.”²⁹⁶ Accordingly, the electronic security systems installers have become one of the biggest sectors in the private security industry and yet one of the most unregulated.²⁹⁷

293. As above, 20.

294. As above

295. As above, 25.

296. As above, 28.

297. As above.

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SECURITY & HUMAN RIGHTS
IMPLEMENTATION MECHANISM (SHRIM)