

SHARING GOOD PRACTICES BETWEEN PRIVATE SECURITY REGULATORS IN THE SOUTHERN AFRICAN REGION



WORKSHOP REPORT

Workshop for Private Security Regulators
from the SADC Region, co-organised
by DCAF and PSiRA

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REGULATORS IN THE SOUTHERN AFRICAN REGION
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The South African Private Security Industry Regulatory Authority (PSiRA)

The mission of PSiRA is to protect the constitutional rights of all people to life, safety and dignity through the effective promotion and regulation of the private security industry. PSiRA's mandate is to regulate the private security industry and to exercise effective control over the practice of the occupation of security service provider in the public and national interest and the interest of the private security industry itself.

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Cover photo: Informally employed security guard in car parking, South Africa

Author: Nomnotho Zama on behalf of DCAF and PSiRA

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TABLE OF CONTENTS

LIST OF ABBREVIATIONS	4
1. INTRODUCTION	5
2. OVERVIEW OF REGULATORY FRAMEWORKS	8
3. CHALLENGES AND GOOD PRACTICES IN REGULATING THE PRIVATE SECURITY INDUSTRY	12
3.1. Legal framework	12
3.2. National regulatory authorities	13
3.3. Transnational security companies	14
3.4. Labour practices	14
3.5. Training standards	15
3.6. Oversight and monitoring	16
3.7. Enforcement and compliance mechanisms	16
4. THE NEED FOR REGULATING THE PRIVATE SECURITY INDUSTRY	17
4.1. Regulation of firearms	17
4.2. PSCs in the extractives industry	18
4.3. Extra-territorial jurisdiction	18
4.4. PSCs operating in situations of armed conflict	19
4.5. Role of technology in private security industry	20
4.6. Crime prevention partnerships	21
5. CONCLUSIONS AND RECOMMENDATIONS	22

LIST OF ABBREVIATIONS

AI	Artificial Intelligence
DCAF	Geneva Centre for Security Sector Governance
DRC	Democratic Republic of the Congo
ICOC	International Code of Conduct for Private Security Service Providers
ICRC	International Committee of the Red Cross
IoT	Internet of Things
NGO	Non-Governmental Organisation
PMC	Private Military Company
PMSC	Private Military and Security Company
PSC	Private Security Company
PSiRA	Private Security Industry Regulatory Authority
PSO	Private Security Officer
SADC	Southern African Development Community
SAPS	South African Police Services
SOB	Security Officers Board
VPs	Voluntary Principles on Security and Human Rights
VR	Virtual Reality

1. INTRODUCTION

The private security industry plays an important role in providing security for state and non-state clients in the Southern African region.¹ The industry has also expanded with a diverse array of services offered: guarding personnel and local businesses; risk management and consulting; cyber security; security for detention centres; private investigations; security for extractive industries, training and operational support, collaboration in urban security partnerships with police and other public institutions, and providing support to national armed forces. At the same time, these developments have occurred under the radar of government regulators, often resulting in legislative and oversight gaps.²

Few States have reviewed their legislation on private security, not to mention regulations on their use of force, nor effective licensing, vetting or monitoring regimes. Capacities of national regulatory authorities have been hindered by a lack of understanding of the industry as comprehensive data on the characteristics and size of the private security industry in many Southern African States does not exist. National regulatory bodies in the region have also not had many opportunities to exchange on experiences, shared challenges and good practices. At the same time, PSCs have the potential to impact the security and human rights of people in the communities they operate; PSCs often operate in fragile contexts and the risk is high for the use of force. Realizable efforts must be deployed to professionalize the industry in line with international human rights standards and development of effective regulations is essential.

On 20-21 June 2019, the Private Security Industry Regulatory Authority (PSiRA) in partnership with the Geneva Centre for Security Sector Governance (DCAF) organized a workshop focused on 'Promoting Network Building and Sharing Good Practices between Private Security Regulators in the Southern African region. The workshop gathered over 30 participants from 13 States.³ Discussions were also informed by members of civil society organizations working on issues of PSC regulation, as well as academia and experts in

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

2. Ibid.

3. Delegates of the following countries attended the workshop: Botswana, South Africa, Zimbabwe, Lesotho, Mauritius, Madagascar, Democratic Republic of Congo, Swaziland, Zambia, United Republic of Tanzania, Mozambique, Namibia and Malawi.

international initiatives, namely the Montreux Document Forum and the International Code of Conduct Association.

These delegates were representatives of regulatory agencies, academics and experts on the private security industry.

The workshop sought to initiate and stimulate discussions with countries within the Southern Africa region, regarding the status of the private security industry. In addition, the workshop facilitated the sharing of good practices to improve or ensure the effective regulation of the private security industry. The objective was to collaborate shared expertise on knowledge and structure of the private security industry to ensure the effective regulation of the industry. Participants considered the possibility of establishing a network of private security regulators in the region.

This report provides an overview of the discussions and debates shared during the meeting. The report also outlines participants' presentations regarding the status of regulatory frameworks across the Southern Africa region and discusses the challenges and good practices in regulation. Third, it unpacks the need for regulation of the industry in the region and presents workshop conclusions and practical steps forward, focusing on the establishment of a network of regulators to support national regulatory authorities in their respective countries.





2. OVERVIEW OF REGULATORY FRAMEWORKS

Countries in the Southern Africa region have addressed the importance of the regulation of private security companies in regional policy documents. In implementing its Protocol on Politics, Defence and Security (1999), SADC member States have identified the regulation of private security companies as a key challenge for the security sector.⁴ The African Union has also called on States to address the regulation of PSCs in line with international law; in 2016, the AU Commission on Human and Peoples' Rights launched the "Principles and Guidelines on Human and People's Rights while Countering Terrorism in Africa," appealing to States to ensure accountability of private security with which they contract.⁵ These declarations have indeed drawn regional and national attention to the issue; governments are increasingly recognizing the need for effective regulation to protect human rights. At the same time, national frameworks are struggling to regulate the industry. Moreover, there are significant gaps in information when it comes to the size and characteristics of the industry in Southern Africa States, as well as regarding on-the-ground challenges and regulatory frameworks.

To kick off the workshop, delegates were given the opportunity of providing a brief overview of the industry and its regulation and oversight in their respective countries. The statements also discussed the services offered, labour issues, levels of training, use of force, gender dynamics, as well as practices in contracting and procurement of PSCs by private and public clients.

This section provides a summary of workshop discussions related to regulatory frameworks in the countries represented during the workshop. From the presentations, it was noted that in Zambia, there is no regulatory framework for the private security industry and that the labour force of PSCs includes the elderly and pensioners who are recruited as security service officers. The deployment of elderly and pensioners opens the industry to further exploitation of wages and working conditions.

In Botswana, there are reportedly over 4000 companies registered as private security service providers. It was further reported that there is a new regulatory framework in

4. SADC, Strategic Indicative Plan for the Organ on Politics, Defence and Security Cooperation, 5 August 2010, https://www.sadc.int/files/3213/7951/6823/03514_SADC_SIPO_English.pdf.

5. African Commission on Human and People's Rights, Principles and Guidelines on Human and Peoples' Rights while Countering Terrorism in Africa, 2016, <https://www.achpr.org/legalinstruments/detail?id=9>.

place; however, as of the date of the workshop, it was not yet operational.⁶ This regulatory framework seeks to extend security services beyond guarding services to include cash-in-transit. Although there are no minimum qualification standards to register as a private security service provider, a person who wishes to be part of the industry had to be 18 years or above and have no previous convictions. Oversight of the security sector is undertaken mainly through parliamentary committees such as the Public Accounts Committee, Finance and Estimates Committee, Foreign Affairs, Trade and Security Committees, Intelligence Committee, Committee on Population and Development, and Labour Relations Committee.⁷

Due to lack of resources within the responsible parliamentary committee, vetting of security service providers is undertaken by an external service provider appointed by the Botswana Intelligence Agency. This has resulted in many delays in the registration process. Outsourcing means that applicants who want to trade as security service providers must wait longer to find out if their application has been approved.

Prior to the enactment of the Statutory Instrument of 1998, international companies dominated the private security industry.⁸ In response to this, the Statutory Instrument of Botswana (2014) allows companies to register only if they are citizen-owned.⁹ In terms of the regulation, currently, private security companies in Botswana are governed by the Control of Security Guards Services, Act 28 of 1984 (CSGSA) which covers security guards.¹⁰ However, the Act only provides for security guards, whilst the industry had developed to include other private security services, such as; alarm and alarm response units, dog sections, closed-circuit television, cash-in transit and others.¹¹ Botswana then drafted the Regulation of Private Security Bill of 1998 in an attempt to address the gaps.¹² Discussions around the regulation of private security stalled until 2015. As a result of the shortcomings of the Control of Security Guards Services Act and in an effort to address some of the issues that exist within private security, the Minister of Defence, Justice and Security presented the Private Security Services Bill, 2015 (No.9 of 2015) before Parliament for a second reading.¹³ This bill provides for more effective regulation of the private security services industry.¹⁴

6. Feedback from workshop participants; for other information see Botswana Daily News, "Tsimako urges security companies to comply," 20 February 2018, <http://www.dailynews.gov.bw/mobile/news-details.php?nid=40988&flag=>.

7. Hendricks, C. and Musavengana, T., 2010. The security sector in Southern Africa. *Institute for Security Studies Monographs*, 2010(174), p.213.

8. Ibid.

9. Ibid.

10. Ibid.

11. Ibid.

12. Ibid.

13. Lorato Gaofise, <http://www.dailynews.gov.bw/news-details.php?nid=21500>.

14. Ibid.

In Mauritius, there has been a steady increase of private security service providers, which was prompted by high crime rates and growing tourism in the country. It was reported that the national regulatory framework does not define what services can be offered by the PSC industry. The regulatory agency for the private security industry in Mauritius is the police force, which also issues licenses. In Mauritius, private security companies are obliged to renew their licenses on an annual basis. It was further reported that there are no monitoring/oversight mechanisms in place relating to the conduct or actions of the private security companies.

Regarding Eswatini, the country does not have an independent regulatory body and private security companies are required to register with the Registrar of Companies. No minimum qualification standards are required to be a security service provider. The participant from Eswatini commented that national oversight mechanisms relating to private security are non-existent. Among the issues raised was that of low wages and high levels of labour exploitation within the security service industry. There is a recent increase in the number of women engaged or rather providing security services whereas it was previously a male dominated industry. The participant expressed that from her point of view, the integration of women in the private security industry not only means more job creation but also that the industry is evolving into being more gender balanced. There are however still some significant challenges within the industry. In the case of Eswatini, there were incidents of private security service providers involved in criminal activities such as theft. In one such case, justification for the commission of such acts was that ‘they were paid slave wages’.

It was mentioned that in Namibia, the private security industry is not well regulated despite the existence of a legal framework. The representative indicated that this relates to an uneven implementation of the legislation. It was reported that the failure to have effective oversight and monitoring mechanisms opens the industry up to exploitation by unlawful companies. The participant also noted that Namibia permits the use and possession of firearms by PSC personnel. The firearms regime is regulated under the Ministry of Safety and Security.

It was stated that in the DRC, ownership of private security companies is dominated by internationals while employees are mainly Congolese.¹⁵ PSCs fall under the responsibility of the Department for Civil Protection of the Ministry of Interior. The industry is largely unregulated¹⁶ and there is limited oversight.

In South Africa, the private security industry is increasingly performing functions, which used to be the sole responsibility of the police.¹⁷ It is important to ensure that the roles and responsibility of public and private security are carefully distinguishable and made clear to

15. Note 4 above.

16. Ibid.

17. Irish, J., 1999. Policing for profit: the future of South Africa's private security industry.

the public.¹⁸ While the police seek to protect the public at large, the private security industry operates on a profit motive.¹⁹ In South Africa, the number of security service providers is double the size of the South African police and defence forces combined. The private security industry is regulated by the Private Security Industry Regulatory Authority (PSiRA), which derives its funding from the industry. The PSiR Act determines the requirements, which allow a person to trade within the private security industry. For example, in order to be a security service provider, one needs to register with PSiRA, and must have obtained the required training. Challenges within the South African context include the exploitation of private security officers who are paid wages below the stipulated minimum wage. In the case of South Africa, the Department of Labour regulates the payment of wages. The law permits the use of firearms in performing security services subject to certain conditions. The firearms must be registered in terms of the Firearms Control Act 2000. The inspectors in the law enforcement unit within PSiRA conduct inspections of the various security service providers. Moreover, where there has been an alleged commission of an offence or contravention of the PSiR Act, there is a legal unit, which prosecutes the offending private security provider.

It was reported that in Tanzania, the office of the Commissioner of Police oversees regulating the private security industry. The oversight and monitoring of the industry are impacted by a lack of resources. There is also no proper record keeping; the private security companies do not record all the security service personnel employed by them in the government database. It was reported that the industry is plagued to some extent by companies who seek to avoid taxes and do not cooperate in providing information to the relevant bodies.

In Lesotho, it was reported that there is a legislative framework from 2002 that governs the private security industry.²⁰ It was further reported that previously there was a practice whereby depending on the country's market or economic strength, private security service companies would register and trade in the industry however, as soon as there was a downturn, the security service providers would leave the industry. This made it difficult to identify and track how many companies were trading within the private security industry. The government of Lesotho has since imposed penalties for companies that engage in such conduct. Additionally, the use of firearms is permitted but restricted to the list of firearms stipulated in the domestic laws of the country. The Commissioner of Police has the power to close a company for non-compliance.

18. Ibid.

19. Ibid.

20. Lesotho: Private Security Officers Act, 2002.

3. CHALLENGES AND GOOD PRACTICES IN REGULATING THE PRIVATE SECURITY INDUSTRY

This section summarizes the workshop's discussions on the challenges and opportunities in the private security industry within the Southern Africa region.

3.1. LEGAL FRAMEWORK

Participants in the workshop discussed that although the private security industry is growing at an exponential rate, most countries within the region do not have a legal framework that regulates the private security industry. Further, the countries with legal frameworks have laws which are outdated and arguably cannot be applied to the current context of the private security industry. Laws regulating the private security industry should be applicable to the current and evolving challenges that exist within the private security industry. It must be considered that the regulatory framework will vary from country to country based market dynamics, size, and resources. Participants agreed that establishing a legal framework provides for a more formal way of regulating the private security industry. A legal framework allows the industry to be more professionalized and allows also for the implementation of better working conditions, such as the regulation of the working hours. Regulatory frameworks for the private security industry must be context-based. One participant raised the point that the regulation of the industry is also now impacted by the “fourth industrial revolution” or the rapid growth in new technology, in the private security space. Examples of such technology include the use of drones as well as smartphone applications for surveillance. The need for Southern African countries to adapt their laws to the dynamic changes within the industry cannot be overemphasised.

3.2. NATIONAL REGULATORY AUTHORITIES

The regulation of the private security industry can only be effective provided it is implemented by a well-funded regulatory agency, with fully trained officials supported by the right human resources and skillsets. Participants discussed that this is a major challenge in the region. In fact, even the most advanced regulatory agency, the Private Security Industry Regulatory Authority of South Africa (PSiRA) is not adequately funded. PSiRA remains a self-funded government entity and relies on annual fees, registration fees, course reports sale of goods, interest received, fines and penalties, rendering of services, debts recovered, and sundry income. Participants from PISRA discussed that this funding model for PSiRA is not viable for the purpose of ensuring that it fulfils its mandate. For example, if the size of the industry diminishes, PSiRA would not be able to continue operating as it depends on a large-scale industry for its funding. Indeed, a re-examination of the current funding model is currently underway. This example demonstrated that the need for regulatory agencies in the Southern Africa region to be adequately funded is very critical.

Factors such as resources, funding and capacity determine whether a regulatory body will be established. If established, to what extent will regulation be effectively implemented? The personnel working in the regulatory bodies should be properly trained and equipped with the necessary skillsets. In Namibia for instance there are laws in place governing security but there is no regulatory body to enforce the law. Some regulatory bodies are funded solely by the state, which can pose some serious challenges if national budgets are diminished, leading to reductions in the regulators' budgets. It was discussed that there are also conflicts of interest within the regulatory authorities of the region. In South Africa, the Security Officers Board (SOB) was the predecessor of PSiRA. At this time, the SOB had members sitting on the board who also had a personal or financial interest in the private security industry.

3.3. TRANSNATIONAL SECURITY COMPANIES

Several participants reported that in countries of the Southern Africa region, international PSCs have a strong presence, notably guarding international NGOs or multinational companies. PSCs registered in South Africa, for instance, are also active throughout the region. There are also South African registered security officers who are operating beyond South Africa's borders.

Another key challenge discussed by participants is related to the transnational nature of PSCs and questions of jurisdiction. In the case where there are companies headquartered or based in one country but operating in multiple countries, the question revolved around the applicable law. It was recommended that perhaps the accountable director must be a citizen of the country in which the company is operating as is the case in South Africa where ownership is restricted. In terms of the Private Security Industry Regulation Amendment Act, 2013 (Bill)²¹ ownership should be attributed at a rate of 51% minimum to a South African citizen while 49% can be owned by a foreign national. One of the objectives of the Bill is to regulate foreign ownership and control of private security firms in South Africa and to regulate private security firms outside of South Africa. The participants also outlined the issue of countries that do not have a regulatory framework that addresses the operations of transnational companies. The countries that did have a regulator only regulated PSCs through their domestic legislation.

3.4. LABOUR PRACTICES

During discussions among the participants, it was acknowledged that the general practice in the Southern Africa region is that of high exploitation of labour and low wages paid to the security officers. Legitimizing and professionalizing the industry would ensure that private security personnel are paid fairly and equitably, according to the applicable domestic laws. By legitimizing the industry, it ensures that perpetrators who do not abide by the domestic labour laws will be sanctioned accordingly.

Fair and equitable labour practices in the PSC industry include adequate wages and working hours, appropriate equipment and uniforms for men and women employees as well as adequate facilities such as separate changing and toilet facilities, adequate and gender responsive social security policies such as sick leave and parental leave, and policies

21. Private Security Industry Regulation Amendment Act, 2013.

against sexual harassment and discrimination. These policies must also be enforced through adequate human resource departments in the companies.

In the context of the workshop, participants discussed that in South Africa the Department of Labour determines the minimum wages for security officers through a process of sectoral determination. Despite this framework there are security companies who still pay security personnel low wages, which then further creates exploitation in the industry. During the workshop it was emphasized that non-compliance with minimum wages could motivate a security officer to steal from the company or clients whose assets they are supposed to be protecting.

3.5. TRAINING STANDARDS

The participants discussed that few states have minimum prerequisite training standards, especially as related to the respect of human rights by PSCs and their personnel. Many countries have not established any minimum training standards as a requirement to become a security service provider. In the countries where security training requirements are in place, the training itself is generally not adequate to equip security officers with the skills required to provide a professional security service. Another challenge linked to the training standards is the pervasive sale of fake security training certificates by training providers. This has been evident over the years in the case of South Africa.

The need to segment the private security industry becomes critical in order to have a specific training for a specific sector with the view to professionalizing the industry in the Southern Africa region. The private security industry must be professionalized through effective standard training throughout the region. What was evident from the workshop was that the training and professional standards vary from country to country. The training standards and qualifications attained by private security service providers indicate the type and quality of services provided in the respective countries. It was noted, for example, that in Zimbabwe, directors of PSCs must have served in the public security service or have obtained experience of public security before being permitted to establish a private security company.

3.6. OVERSIGHT AND MONITORING

The participants agreed that there is currently a lack of effective oversight and monitoring mechanisms in the region. This section provides an overview of why oversight and monitoring of private security policing activities is important and highlights some of the challenges that exist and could potentially arise as a result of lack of and ineffective oversight. It was thus concluded that emphasis should be placed on cooperation among all stakeholders and regulatory agencies. Most importantly, coordination of activities and sharing of good practices should be enabled.²²

Across the region it was noted that oversight and monitoring mechanisms were few and far between. Participants from countries with regulatory frameworks conceded that the oversight tools were not effective in monitoring the industry. The challenges included lack of resources, independence, and know-how or capacity. Participants identified priority monitoring and oversight functions as the vetting of personnel, removing fly-by-night security service providers, and monitoring compliance with licenses. It was discussed that companies and their industry associations also play significant roles to play in monitoring through the enforcement of industry standards and codes of conduct.

In a number of countries, the police have the primary oversight role. In terms of additional monitoring measures, some States require private security companies to submit annual financial reports. It was discussed that governments should ensure they adapt monitoring measures with current technological advancements such as smartphone applications. Additionally, vetting of PSC personnel should include not only criminal record checks but thorough of references and other background elements.

3.7. ENFORCEMENT AND COMPLIANCE MECHANISMS

The effectiveness of compliance depends on who has the responsibility to enforce such compliance. Enforcement mechanisms differ from country to country. Generally, the regulatory agencies in the region are more focused on licensing the private security industry than regulation. This regulation must take the form of monitoring and controlling the industry. The general focus on licencing by the regulatory bodies renders the industry generally unaccountable. Private security providers are expected to renew their licence yearly, but no regulatory body monitors these companies on compliance issues. An important question raised was to whom do the regulatory agencies report?

22. Minnaar, A., 2007. Oversight and monitoring of non-state/private policing: The private security practitioners in South Africa. Private security in Africa: manifestation, challenges and regulation, pp.127-150.

4. THE NEED FOR REGULATING THE PRIVATE SECURITY INDUSTRY

Participants discussed that the needs for regulating different aspects of the industry are heavily context dependent. States should therefore gather good practices and apply them to their own context. Furthermore, States not emulate others wholesale but rather understand the industry and challenges through targeted research and baseline studies. This will inform how the regulatory framework should be drafted in their respective countries. A balancing act is required as all the stakeholders have their own views on how to regulate the industry.

4.1. REGULATION OF FIREARMS

Laws vary relating to the use and regulation of firearms in the region within the private security industry. In South Africa, the legislation that governs the use and possession of firearms is the PSiR Act and the Firearms Control Act 60 of 2000. The South African Police Service is mandated by the Firearms Control Act to deal with matters concerning the use and possession of firearms. The purpose of the Firearms Control Act is to ensure there are more vigorous control processes. In South Africa, there are three categories of persons in possession of firearms, namely, individuals who possess duly registered firearms, individuals in possession of illegal firearms and armed forces that are issued with firearms by the state. For a person to legally obtain a firearm such person must be in possession of a firearms competency. The solution is that there needs to be stringent measures put in place for being in possession or using a calibre a person should not be using. What was evident from the discussions is that the use of illegal arms is not just an issue in South Africa but in the continent.

Stringent laws should be implemented which govern the use and possession of firearms, these laws must also apply to firearms training centres. Firearms training centres must register with the relevant regulatory bodies. Additional restrictive measures should be implemented to reduce the proliferation of firearms. Information sharing networks and mechanisms should be developed between the regulatory bodies and the firearms licencing authorities. This form of cooperation between the regulatory bodies will assist in ensuring

compliance within the industry. Further, it will assist in accounting for how many firearms have been issued within the industry.

It was indicated during the discussions that there are countries that prohibit the use and possession of small arms and light weapons such as in Madagascar and Tanzania. In some countries, the government permits private security service personnel the use and possession of light arms but within a specific sector such as armed guards or cash in-transit situations. In Zambia for example, the firearms must be surrendered to an armoury.

4.2. PSCs IN THE EXTRACTIVES INDUSTRY

The use of PSCs to guard extractive industry operations and sites is not a new phenomenon. According to the World Bank, “Africa is home to about 30% of the world’s minerals reserves, 10% of the world’s oil and 8% of the world’s natural gas”.²³ As the demand for minerals became greater, extractive companies began operating and extracting in more remote areas where oversight becomes more difficult, and where the risk of negatively impacting human rights is greater.²⁴ The type of services offered by PSCs in the extractive industry includes risk-consulting, protection of assets, site and personnel, pipeline protection and security during transportation of minerals. The value of the resources being extracted often drives companies to hire private security. The private security companies working in the extractive sites are deployed to work in remote areas making regulation of PSCs in this sector more challenging.

In a number of contexts, the lack of scrutiny and monitoring mechanisms within the extractive industry has given rise to human rights violations. This includes gender-based violence by private security providers on local populations, violence against demonstrators or environmental/social protestors, and attacks on human rights defenders and journalists. Furthermore, several participants discussed that access to remedy by victims/survivors has not adequately been addressed by national regulatory frameworks or alternative multi-stakeholder or company efforts.

4.3. EXTRA-TERRITORIAL JURISDICTION

Extra-territorial jurisdiction allows regulatory bodies to exercise authority over PSCs operating outside the borders of their country of origin. During the workshop, participants discussed

23. Workshop on Sharing of Good Practices: Presentation on extractive industries by Ms. Sheila B. Keetharuth, Extractive industries.

24. Spearin, C., 2001. Private security companies and humanitarians: A corporate solution to securing humanitarian spaces?. *International Peacekeeping*, 8(1), pp.20-43.

that extraterritorial jurisdiction is largely lacking in their countries. It can be said that South Africa is the only country within Southern Africa that has advanced legislation when it comes to the issue of extra-territorial jurisdiction. Countries without a legal framework, which addresses extra-territorial jurisdiction were encouraged to work towards establishing and implementing legislation. Developing laws regulating extra-territorial jurisdiction will respond to the overall issue of accountability. This is one area where networking can facilitate information sharing to assist the countries without legislation. In terms of extra-territorial jurisdiction, the role of a network would be in identifying the countries where the private security service provider is operating, ensuring that the legislation is adhered to and that it is correctly implemented.

4.4. PSCs OPERATING IN SITUATIONS OF ARMED CONFLICT

The rapid and increasing outsourcing of military contractor services by states to private military and security companies (PMSCs) has served as one of the catalysts for long overdue regulation of the global industry.²⁵ PMSCs in armed conflict environments provide services such as close protection, asset protection, pre-employment screening and supporting humanitarian organizations in disasters. One of the participants stated that PMSCs contracted by national militaries tend to undertake functions that should only be carried out by the military. These functions often bring PMSC personnel in proximity of armed conflict and risk them becoming involved in hostilities.

Private military and security personnel are referred to as civilians in terms of international law. However, their protection changes depending on their conduct in combat situations. The law regulating armed conflict states that, if a person is a civilian, they are protected, they cannot be targeted, and they are not a legitimate target. Except in instances where one takes a direct part or engages in hostilities, that person then loses their protection. The problem arises where PMSCs are deployed to perform functions that are semi military or undertake state functions such as use of highly automated and very technologically advanced weapon systems. Where PMSCs have a mandate in a conflict zone they may become involved in hostilities due to the rapid evolution of the situation on the ground. PMSC personnel are generally not adequately trained to operate in such environments. Most PMSC personnel do not have training on international humanitarian law and human rights law. Furthermore, in relation to use of force, PMSC are not always trained on how to mitigate violence. Subsequently their use of force is always excessive as it results in harm to civilians.

25. Note 19 above.

Issues of adequate training and restrictions on the activities of PMSC personnel are highly relevant as there have been situations where large international PMSCs have employed citizens of Southern Africa countries. In a number of cases, individuals have become involved in armed conflict situations, as recently a 2015 in the fight against Boko Haram in Nigeria where a South African citizen was killed.²⁶ South Africa had banned its citizens from being employed by international PMSCs.²⁷

Participants discussed how strengthening the respect for international humanitarian law (IHL) could support regulation of the industry. Participants discussed the obligation of States to implement IHL and especially their obligation to ensure that PMSCs and their personnel abide by IHL, for example by requiring adequate training of those personnel that are operating in situations of armed conflict. Participants also discussed that the national legislative framework should provide for adequate penal sanctions for violations of IHL.

4.5. ROLE OF TECHNOLOGY IN PRIVATE SECURITY INDUSTRY

Private security companies often use a whole range of technologies and practices, similar to those used by public security.²⁸ In a few States, PSCs' technology is more advanced than in the public security sector. Participants discussed that increasing cooperation among public and private security could also enable law enforcement to benefit from technologies developed by PSCs.

In July 2018, PSiRA introduced a mobile app in order to provide services more efficiently to its clients. In addition, PSiRA has a website to ensure effective and efficient service delivery. PSiRA is the first regulator in the private security industry to introduce a mobile app allowing clients to schedule an appointment with the Authority and enabling them to access and view their registration status. It includes a wage calculator which enables the security service personnel to view how much they are supposed to be earning. The app demonstrates in real time the number of security officers (disaggregated, male and female) and companies that are operating. It was recommended that a mobile app can be utilized as a networking tool not just in South Africa but throughout the region tailored to address the context or the security industry of the respective country. A regional app should include the dominant languages of English, Portuguese and French.

26. O'Grady, S. and Groll, E., 2015. Nigeria Taps South African Mercenaries in Fight Against Boko Haram. Foreign Policy. <https://foreignpolicy.com/2015/03/12/nigeria-taps-south-african-mercenaries-in-fight-against-boko-haram/>.

27. Regulation of Foreign Military Assistance Act, 1998, 2006.

28. Abrahamsen, R. and Williams, M.C., 2007. Securing the city: private security companies and non-state authority in global governance. International relations, 21(2), pp.237-253.

4.6. CRIME PREVENTION PARTNERSHIPS

Across the region, crime prevention partnerships between police and private security are increasing. During workshop discussions, participants identified that a relationship of trust must be established between the public and private security sector to ensure cooperation and coordination on issues of crime prevention. Participants also discussed that cooperation cannot be imposed and it must have a mutual benefit on both sides. Moreover, the public security sector must acknowledge the role played by the private security industry in providing security services. There is a need for platforms where information is shared between private and public security. There should be a collaboration on establishing and implementing minimum training standards aimed at crime prevention.



5. CONCLUSIONS AND RECOMMENDATIONS

The workshop was a first step in networking and connecting national regulators and experts in private security regulation in the Southern Africa region. Building on the discussions of challenges and needs, as well as the limitations of capacities of States in the region, participants agreed on the need for more **sharing of good practices, knowledge and expertise**. Nothing can be achieved when regulatory agencies /bodies work in isolation. By fostering a network on private security regulation, African States could avoid working in seclusion on challenges that may be common to their neighbours. Workshop participants therefore identified one key recommendation: **developing a coherent network of national regulatory authorities**. Participants also proposed tools, which could be developed to support the network, such as **region-specific guidance tools** on private security regulation and oversight. More specifically, participants discussed on the need for the network to identify a common vision and goal, as well as an effective structure, modalities, and priorities for activities. As a starting point, participants felt there was a need to focus on **context-specific research and development of data** to have a better understanding of the industry within the region.

Looking ahead, participants foresaw that the creation of a network could support States to develop laws in line with regional and international good practices for regulating the private security industry in the respective countries. In addition, there is a need to facilitate capacity building of the national regulators, ensuring the independence of regulators, as well as to support better monitoring and to define common standards in terms of training. The network could engage in constructive dialogue with government, civil society (including women's and children's rights groups, labour unions, and human rights defenders), as well as companies and industry associations and international partners. This constitutes a key message from the workshop: only by bringing stakeholders together to work in partnership can we effectively address security and human rights challenges relating to private security in the region.





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