

THE PRIVATE SECURITY

SECTOR IN AFRICA

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FOREWORD

This monograph on private security in Africa is the part-result of a two-year research project, Regulation of the Private Security Sector in Africa, of the Institute for Security Studies (ISS), Pretoria, South Africa. The project was made possible through the generous support of the International Development Research Centre (IDRC) and United Nations University (UNU). The monograph is a series of three country case studies that focus on private security in the Democratic Republic of the Congo (DRC), Republic of Uganda and Republic of South Africa. In these countries private security companies are involved in a number of security-related operations.

This research project was inspired by the need for Africa to engage in the debate around the manifestation of the private security sector on the continent, and to support its effective regulation through the establishment of a consistent and logical regulatory framework for national, sub-regional and regional legislation and protocols. Its principal focus is the revision of the 1977 OAU/AU Convention for the Elimination of Mercenarism in Africa (the Mercenary Convention) and the development of pro forma regulatory frameworks for the private security sector at national and regional level. Little research has been undertaken to inform a thorough understanding of the private security industry in Africa. To this end, the country reports provide insightful findings and are aimed at influencing policy making at national, sub-regional and regional level.

Before any effective regulation of the private security sector can take place, it is important to consider certain aspects that each case study attempts to address:

- The context in which the industry is operating
- Security threats in these countries
- The extent of the private security industry in the forms of private security companies (PSCs) and private military companies (PMCs)
- The reasons for the development of the private security sector

- The services that PSCs and PMCs provide
- The effect of the private security industry on human rights and women's rights in particular
- The advantages and disadvantages of the private security sector
- The policy frameworks (if any) of security establishments for outsourcing and public and private partnerships and their implications
- The extent to which mercenary activities are taking place
- The regulatory framework for PSCs and PMCs
- The use of firearms and uniforms by PSCs and PMCs
- The issues of governance, professionalism and training of private security providers
- The exportation of security and military assistance by citizens
- The identification of gaps, inconsistencies and areas of improvement in the private security industry

These reports provide a comparison of the scope and role of private security which would inform the manner in which the industry could be effectively controlled and regulated at national, sub-regional and regional level. The methodology included the development of an extensive questionnaire that systematically guided three field researchers in compiling detailed reports for the selected countries. These studies represent perspectives from three African regions, namely East, Central, and Southern Africa. The three countries have different histories, which largely inform the level of engagement of the private security sector and its regulatory framework.

That the private security sector in Africa is generally not effectively regulated is cause for concern. There is no continent-wide policy on the importation and exportation of security-related expertise in Africa. Many foreign private security companies are in operation in Africa, and many Africans are recruited to render security-related work outside the continent. While the exact figures of the latter are not concrete, there is ample evidence that foreign private security companies recruit Africans to work in volatile situations such as Iraq and Afghanistan. Foreign private security companies working in Africa

render a number of services, including security sector reform in post-conflict situations.

As the debate around the private security industry continues, Africa in principle should not be isolated from it, because, if not properly understood, let alone effectively regulated, the industry could cause a major security threat to Africa. As the globalisation process continues to affect the African continent – both negatively and positively – there is a need to engage the private security sector with the understanding that its main purpose is to provide security to the African citizenry, thus ensuring peace and stability. Any engagement beyond this purpose cannot be encouraged. The aim of these country reports, therefore, is to realise the ISS vision of a stable and peaceful Africa, characterised by sustainable development, human rights, the rule of law, democracy and collaborative security.

EXECUTIVE SUMMARY

In this monograph, three country case studies are featured: the Democratic Republic of the Congo (DRC), South Africa and Uganda. These states present very interesting perspectives of the private security industry, particularly its growth, impact and regulatory frameworks. The contexts in which the industry operates in these countries differ because they are informed largely by social, economic, political and security dynamics. While the case studies cannot be conclusive in their findings for many reasons, they cover the private security industry in these countries, thus enhancing an understanding of the role that its actors play there.

These reports are focused on the internal dimension of the private security industry rather than the external one. The findings are therefore country-specific and not necessarily confined to thematic areas. More research is needed, for instance, in understanding the involvement of the industry in African conflicts, peacekeeping missions and humanitarian assistance. The methodology involved the development of a questionnaire that guided researchers. Field and desk researches were also used. The studies involved interviews with users and providers of private security as well as government officials. In addition, the regulatory frameworks in these countries were analysed in these reports.

The study was unable to document the traditional types of mercenaries in these countries for a number of reasons, one of which was its focus on supporting the effective regulation of the growing private security sector framework for national, sub-regional and regional legislation and protocols. The countries under research are relatively stable and the study did not extend to particular zones that experience sporadic armed conflicts, which could have mercenary units or outfits. The previous era, which was characterised the use of the traditional types of mercenaries, is long gone. It has been replaced by the proliferation of so-called private security companies (PSCs) and private military companies (PMCs). This does not mean that the PSCs and PMCs are not involved in mercenary activities. Those PSCs and PMCs that may be involved in such activities do so in secret, since mercenarism is prohibited under international and national laws and no PSC or PMC would openly declare its involvement.

According to 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 to Self-Determination, PSC and PMC personnel can easily have 'de facto impunity, with these private soldiers appearing only to be accountable to the company which employs them' (Report of the Working Group 2007:20). The report states that although these private soldiers are neither civilians nor combatants (though heavily armed), they are 'new modalities of mercenarism, but could easily be associated with the unclear concept of "irregular combatants"'. The report discusses how South Africa has responded to the involvement of its citizens in such activities and to their military assistance beyond the South African borders, notably in Iraq and Afghanistan. The study did not extend to the actual operation of South Africans citizens in Iraq and Afghanistan.

South Africa has the largest private security industry, which is reasonably well regulated compared with the other countries. Uganda has also to a large extent regulated its private security industry. Owing to its post-conflict situation, the regulation of the private security industry in the DRC is minimal, and arbitrarily implemented and adhered to. Its control is ad hoc, not transparent, informal and based on personal relations. (The DRC case study extended only to Kinshasa and Lubumbashi, since the country is vast and varied.) While the use of firearms by security service providers is allowed in Uganda and to a large extent in South Africa, it is strictly prohibited in the DRC. South Africa has witnessed a high rate of cash-in-transit heists, while this is not true of the DRC and Uganda. This may be owing to the high rate of organised crime in South Africa.

In South Africa the disarmament, demobilisation and reintegration (DDR) process acted as a catalyst for the formation of the private security industry. Recent statistics as per the Private Security Regulatory Authority South Africa suggest that there are 300 000 registered security businesses, which employ a total of 296 901 active registered security officers. In the DRC the rapid growth of international and multilateral organisations and companies, which are operating within the post-conflict transition and reconstruction programmes, resulted in the development of the private security industry, which has approximately 45 registered companies. In Uganda, the liberalisation of the economy in 1998 led to private property being acquired by individuals and private organisations. This resulted in a high rate of crime, thus informing the need for the provision of security for private properties and individuals. There are currently 58 registered private security companies in Uganda, most of which operate in other African countries as well. The number of employees who are registered with the Uganda Private Security Organizations Association stands at 17 000.

Few women are employed as private security guards in these countries, because of the nature of the job, which can be very risky. The South African legislative framework seems to be advanced in terms of protecting women and children from human rights abuse. But the negative impact of the private security industry on women and children manifests in the extent to which women and children fall victim to misuse of firearms or the use of force by private security agents in cash-in-transit heists and armed robberies.

The main advantage of the private security industry in these countries is that it is a basis for direct investment, with South Africa taking the lead. It also provides employment to many Africans, especially the lower classes of society, as it does not necessarily require a high level of education, especially for ordinary security guards. Citizens feel more secure as a result of its presence. The main disadvantage is that it has resulted in an 'apartheid' of security, where only a privileged (minority) class benefit, while the underprivileged remain unprotected because they cannot afford to pay for security services. Because private security companies employ mostly ex-military and ex-police forces, especially in managerial positions, this results in the vulnerability of state security, because private security companies may become a force unto themselves, if not effectively regulated.

In Uganda the private security industry is regulated under the Police Act of 1949 and the Control of Private Security Organisations Regulation of 1997. In the DRC, there is no legislation, except for a regulation against the exploitation of guarding companies,¹ which is minimal in its control and effectiveness. In South Africa the industry is regulated mainly under the Private Security Industry Regulation Act 2001 (Act 56 of 2001) and its set of laws. In the DRC there are public and private partnerships between police and the private security companies which are formalised through a 2003 agreement.² In South Africa the state also contracts private security companies to protect its establishments, including the South African Police Service (SAPS).

No mercenary activities have been documented in Uganda and the DRC, except for PMCs and PSCs, which represent new forms of mercenary units. The best-known case of such activities by South Africans outside its borders is that of Executive Outcomes in Sierra Leone, in Ivory Coast and in the alleged coup attempt to overthrow the government of Equatorial Guinea. This has resulted in the government's restrictive approach to the exportation of security-related expertise.

In South Africa, the Foreign Military Assistance Act 1998 (Act 15 of 1998) has been replaced by the Prohibition of Mercenary Activities and Prohibition of Certain Activities in Areas of Armed Conflict Act 2006 (Act 27 of 2006). This was

a result of the ineffectiveness of the former. The act was passed by parliament and the National Council of Provinces on 17 November 2006 and came into force on 12 November 2007. The new act has effectively repealed and replaced the Regulation of Foreign Military Assistance Act (RFMA) 1998 (Act 15 of 1998). It is yet to be seen how effective this piece of legislation will be.

Through its regulations, the act discourages the provision of assistance or services of a military or related nature to a country of armed conflict, and the enlistment of South African citizens or permanent residents in other armed forces. This is in line with the Constitution, the supreme law of South Africa. Section 198(b) provides that 'the resolve to live in peace and harmony precludes any South African citizen from participating in armed conflict, nationally or internationally, except as provided for in the Constitution or national legislation'. The new act therefore provides for a legislative measure to curtail unauthorised and opaque private security sector business operations and the recruitment of South African citizens and permanent residents outside South Africa.

Uganda ratified the Mercenary Convention, but does not have specific legislation on mercenaries. The same is true of the DRC. In South Africa mercenarism is prohibited by the acts of 1998 and 2007 (above). The definition of a 'mercenary' provided for in these instruments, however, is different from that given under the convention. This is because South Africa faces mercenary challenges that are not necessarily the same as those that were faced by Africa when the convention was adopted, such as recruitment of its citizens to fight in Afghanistan and Iraq, in the wake of 9/11.

The DRC lacks effective oversight and control mechanisms for the private security industry for obvious reasons. It has a very weak governance system in place and is slowly recovering from protracted conflicts that rendered governmental systems ineffective. In Uganda, unlike South Africa, there is no national law against exporting military expertise. As a result, Ugandans are contracted to work in countries such as Iraq without proper guidelines. Nor is there a training manual for private security companies, as prescribed by the legislation. Thus heavy reliance is placed on the South African training manual, which is tailored to Ugandan standards.

In South Africa, the aspects of screening security personnel, improving training curricula, and tightening provisions on firearms require more attention. The growth of the private security industry there has resulted in the need:

- To increase monitoring capacity to execute the core regulatory mandate by the Private Security Industry Regulatory Authority (PSIRA)

- To review the regulatory legislative framework based on lessons learned from implementation to date
- To encourage closer cooperation between the private security industry and other state law enforcement agencies
- To encourage self-regulation, research, development and international 'best practices'

The private security industry is usually neglected in security sector reform (SSR) assessments and programmes. As a result, there is a lack of experience for practitioners to draw on when designing and implementing SSR programmes. The increasing demand for private security services reflects serious shortcomings on the part of the public security services. There is an urgent need to address the issue of privatisation of security, given its increasingly central role in the configuration of the security sphere and its impact on state capacity to control the instruments of violence. Although regulatory frameworks are needed to curb actions by private security actors for which they are not held accountable, given state weakness to monitor and enforce regulations, other options should be investigated. There is a lack of empirical knowledge of the private security arena and how it operates, and this gap needs to be closed through research.

These case studies compare the scope and roles of the private security industry, though each country's approach is informed largely by security threats, coupled with its social, economic and political dynamics. Because Africa is not infiltrated only by internal private security actors, it is facing challenges from the proliferation of external private security actors who are involved in Africa's SSR programmes, especially in post-conflict states. Other African countries may wish to draw lessons from these reports, especially when about regulation and control of the private security industry, which has permeated all spheres of African societies. Their ultimate goal is to ensure that despite the proliferation of PSCs and PMCs, African states remain peaceful, stable and secure, for the benefit of all their citizens.

Notes

- 1 Arrêté Ministeriel no 98/008, 1998.
- 2 Ordre Ops no 1560, 2003, and Directive no 1538, 2003.

LIST OF ACRONYMS

AFDL	<i>Alliance des Forces Armées pour la Libération du Congo</i>
AGI	<i>Accord Global et Inclusif</i>
ANR	National Intelligence Agency (<i>Agence nationale de renseignements</i>)
CONADER	<i>Commission Nationale de la Demobilization et Reinsertion</i>
CSG	Committee of Security Companies (<i>Committee des Sociétés de Gardiennage</i>)
DDR	Disarmament, demobilisation and reintegration
EUPOL	EU Police Mission
EUSEC	EU Security Sector Reform Mission
FARDC	<i>Forces Armées de la République Démocratique du Congo</i>
FEC	Congolese Federation of Employers
GMRRR	Mixed Reflection Group on Reform and Reorganisation
GPRS	General packet radio service
GR	Republican Guard
INGOs	International non-governmental organisations
MLC	<i>Mouvement de Libération du Congo</i>
MONUC	United Nations Mission in the Democratic Republic of Congo
OPJ	<i>Officier de police judiciaire</i>
PIR	Rapid Intervention Police
PNC	National Congolese Police
PSC	Private Security Company
PMC	Private Military Company
RCD	<i>Rassemblement congolais pour la démocratie</i>

RCD-K/ML *Rassemblement congolais pour la démocratie- Kisangani/
Mouvement du Liberation*

RCD-N *Rassemblement congolais pour la démocratie-National*

RCD-Goma *Rassemblement congolais pour la démocratie-Goma*

CHAPTER 1

PRIVATE AND PUBLIC SECURITY IN UGANDA

Solomon Wilson Kirunda

Introduction

The term 'private security' refers to security services provided to clients by non-state agencies. It is a new concept in Africa. Its growth has been facilitated by the desire to reduce the burden on state agencies of protecting their citizens. Inadequate resources to equip state organs for their principal role of protecting the security of their citizens have been a major decision driver in the growth of the sector in Uganda and in Africa. Another reason has been the increase in numbers of the propertied class that need a secure environment in order to continue investing. But the privatisation of security has brought challenges to states, providers and recipients, all of which are discussed in this paper. This paper examines the private security sector in Uganda and analyses the regulation and control of this phenomenon by the state through legislation, and prevailing practices. It also assesses whether the emergence of private security has improved the security of the citizens.

An examination of the circumstances of the growth of the private security sector reveals that private security has benefited only wealthy people and businesses that can afford to pay the bills of the firms or personnel that provide the security. People in rural areas are still exposed to the security dangers and risks that prevailed before its privatisation. The term 'private security organisations' (PSOs) is used interchangeably with 'private security companies' (PSCs) because Ugandan legislation refers to private security providers as organisations rather than companies.

Background

Uganda is a land-locked country in eastern Africa. It is bordered by Tanzania and Rwanda in the south, the Democratic Republic of Congo (DRC) to the west, Sudan to the north and Kenya to the east. Uganda has a land surface of 241,139 square kilometres, and several fresh waters, including Lake Victoria, which it shares with Kenya and Tanzania and from which the River Nile starts

Uganda's history has been tainted by insecurity, high crime rates and corruption. This has created a security-conscious citizenry. Private security providers have emerged to meet their needs. The regimes of Milton Obote and Idi Amin were characterised by gross human rights violations that were perpetrated through government agencies. During these regimes, security of neither person nor property was guaranteed, but was threatened by the state and its agencies. The most notorious proponent of violations was the army.

Since then, Ugandans have lived in a security-conscious setting for fear of the security situation relapsing into what they experienced during the regimes of Obote and Amin. However, since the National Resistance Movement (NRM) government took power on 26th January 1986 – with the exception of northern and southern Uganda – the country has been relatively peaceful. Security is a sensitive area in this post-conflict country, and several institutions participate in its maintenance. These include the Uganda People's Defence Force (UPDF), the Uganda Police, intelligence organisations such as the Chieftaincy of Military Intelligence, and internal and external security organisations. These agencies and organisations are governed by laws and regulations.

Uganda's constitution was promulgated by the Constituent Assembly on 22nd October 1995 and replaced the 1967 constitution. In chapter 4 it guarantees human rights for all persons in Uganda. Although no specific provision guarantees peace and security, this protection is contained in the provisions that guarantee the right to life,² personal liberty,³ dignity and protection from inhuman treatment.⁴ Article 45 provides that 'rights, duties, declarations and guarantees relating to fundamental and other human rights and freedoms specifically mentioned shall not be regarded as excluding others not specifically mentioned'. The human rights of Ugandans are protected under the constitution, the Police Act, chapter 303 of the Laws of Uganda, and all other laws made under the constitution to maintain peace.

The government is responsible, among others, for defence, security and maintenance of law and order.⁵ The police force⁶ is charged principally with maintaining security on behalf of the government. Its functions include protection of life and property, preservation of law and order, prevention and detection of crime, and cooperation with the civilian authority and other security agencies established under the constitution.⁷

Article 214 of the constitution empowers parliament to make laws providing for the organisation and administration of the police force and generally regulating the force. In exercise of this authority, parliament passed the

Police Act. This Act reiterates the functions of the force, with the addition of maintaining security in Uganda, enforcing the laws of the country, ensuring public safety and order, and performing any other duty assigned to it.

Uganda is party to various international instruments relating to peace and security.⁸

Security threats

According to UPDF spokesperson Major Felix Kulayigye,⁹ the main security threat that Uganda faces emanates from the Nile basin. As the water levels of the Nile recede and the desert expands, control of the basin is becoming more crucial. The Nile basin is shared by Rwanda, DRC, Sudan, Eritrea, Ethiopia, Kenya, Tanzania, Uganda and Egypt. Most of these countries have been riddled with civil unrest that has been exploited to dump weapons (small arms) uncontrollably in Uganda. Uganda is believed to have large stockpiles of small arms and light weapons (SALW) (NFP 2006:4).¹⁰ Trafficking in small arms along the Ugandan, Sudanese and Kenyan borders is thriving, to the extent that at the time of writing the cost of an AK-47 assault rifle had dropped from 10 cows in 1986 to two cows. On the Uganda-Sudan border, an AK-47 assault rifle sells for 100 000 Uganda shillings (UShs) (equivalent to US\$57), a pistol for UShs50 000 (US\$28.7) and a bullet a mere UShs200 (US\$ 0.114). Inside Sudan, an AK-47 rifle costs a few chickens (Allio & Candia 2007). The largest amount of small-arms holdings are in illicit possession, in the hands of insurgents, armed communities and criminals. This illegal proliferation is attributed to many factors, such as past political instability, civil wars and armed conflicts, and poor management and control of weapons. The biggest factor or threat to Uganda, therefore, is the inflow of SALW from conflicts in the region, as well as illicit transfers and trafficking from other regions, owing to inadequate regulation of international arms trade and transfers.

In Uganda and across the region, small arms have been used in conflict to kill thousands of people, as well as in cattle rustling and other criminal activities. Thousands more have been injured, terrorised, or forced out of their homes to live as refugees or internally displaced persons.¹¹ For example, the Allied Democratic Forces (ADF), a rebel group fighting against the government, used neighbouring DRC as a base to destabilise the western part of Uganda. The same applies to Somalia, which has been a source of and conduit for small arms commonly used in cattle rustling in northern Uganda. In response, the government adopted a comprehensive and coordinated approach to SALW issues. These measures are aimed at tackling

the enormous volume of weapons in circulation, strengthening legislation and its enforcement, and implementing effective weapons collection and destruction programmes.

The most significant achievement has been the formation of the Uganda National Focal Point on Small Arms and Light Weapons (NFP),¹² which has participated immensely in fora to promote the implementation of regional and international instruments on SALWs, including processes to foster the formulation, adoption and ratification of instruments, policies and guidelines for best practices in small-arms control and management. Its biggest contributions have been its role in the signing of the Nairobi Protocol,¹³ and the ratification by the Ugandan government of the UN Convention against Transnational Organised Crime, and the UN Protocol against Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition.¹⁴ Uganda also took on a representative role in designing the Agreement for the Establishment of the Regional Centre on Small Arms and Light Weapons, signed in June 2005, as a body corporate for coordination of the implementation of the Nairobi Protocol and the Nairobi Declaration.¹⁵ In addition, the NFP mandate, deriving from a number of protocols, programmes and declarations on SALWs to which Uganda is a party, stretches to national-level implementation of the UN Program of Action,¹⁶ the UN Protocol, the Bamako Declaration,¹⁷ the Nairobi Declaration and the Nairobi Protocol.

According to a UPDF spokesperson, the Aids scourge is viewed as a major threat to the country's security because it is wiping out the human resource personnel of the security forces. But this problem is being addressed through all means possible. Though he was wary of revealing what are perceived as security threats, he claimed that all the problems are being addressed through specially designed programmes. The structural changes that have been effected in the forces have been aimed at addressing prevailing problems or threats.

Security threats to the country are also posed by the insurgent groups that have destabilised certain areas. These include the Lord's Resistance Army (LRA) in northern Uganda, the ADF in the Rwenzori mountains,¹⁸ and the highly controversial People's Redemption Army (PRA), whose base is in the DRC but has never attacked in Uganda.

Uganda has a police force of about 19 000 officers. This number is inadequate to address the security problems of a population of about 28 million. Coupled with the under-facilitation of the police force, this inadequacy has been the biggest cause of the soaring numbers of PSOs.

Extent of PSCs and PMCs

Uganda has 58 registered PSCs.¹⁹ Employees of these PSCs, as registered with the Uganda Private Security Organisations Association (UPSA), total about 17 000.²⁰ UPSA was formed in 2001 to create a unified voice and set standards for private security providers. These standards were supposed to be met before a PSC was accorded membership status. They include a minimum payment scale for employees at not less than US\$85 000 (equivalent to US\$48), and an annual monthly subscription. UPSA and its affiliates are members of the Federation of Uganda Employers.

UPSA, its members and their employees are unionised and belong to the Amalgamated Transport and General Workers Union (ATGWU-Uganda). ATGWU is intended mainly to be a common voice advocating for the welfare of employees of the PSOs. But when one looks at the paltry sums that employees earn, the union is doing little to benefit its members, other than siphon off annual subscriptions. An attempt by UPSA to regulate the minimum pay among PSCs caused a rift between the founders and the members who were paying less than the set minimum. It was viewed as interference in the internal running of the PSCs. They therefore broke away from UPSA to form a rival association which believed in having a collective voice without interference with the internal running of the member entities.

Most PSOs in Uganda are parent companies, save for Securicor Grey, which is a subsidiary of a South African company, and the Armour Group. Its presence in Uganda is unique, because it has never been registered, but operates under the umbrella of Alarm Protection Services (APS). This rather ambiguous relationship was forged as a way of tapping into the market provided by British and American embassies, which preferred a company that followed the US defence system (USDS), especially after the terrorist attacks on the US embassies in Kenya and Tanzania. In this light, the Armour Group, which works in Britain, provided APS with the necessary ingredients to give it a bidding advantage over other PSOs.

Most PSOs operate in the central part of the country, because that is the business hub, and the operating costs are too high elsewhere. A PSO that ventures upcountry may not be able to find paying clients. PSCs that have branches outside Uganda are Ultimate Security, KK Security and Security Group, which operate in the whole of East Africa. Tight Security, another Ugandan PSC, ventured into the private security business in the New Sudan, but despite bidding successfully, the formalisation process was tedious,

and let them down. They have not given up their dream of covering entire East Africa.²¹

According to Ugandan law, a private security provider must register as a company with the Registrar of Companies under the Companies Act.²² This registration is done on the recommendation of the Inspector General of Police (IGP), after an applicant has satisfied all the procedures for registering a PSO. Only after the production of a certified copy of the articles and memorandum of association may the IGP issue the appropriate operator's licence.

There are certain procedures for all PSOs before they are registered or their licences are renewed each year. First, a security company must be vetted and approved by the district security committee: the local committee concerned with security matters in the area (district). All applications for registration and licensing are made to the IGP through district police commanders (DPCs). The DPC looks at the shareholders, the name to be registered, type of organisation, intended use of firearms and other security equipment, and decides whether the applicant possesses adequate storage facilities for the firearms, as listed in the Second Schedule to the Regulations. If the application conforms with these requirements, the DPC instructs the district special branch officer and the Criminal Investigations Department to scrutinise the backgrounds of the directors for criminal records, the capitalisation of the company, criminal records of guards employed by the company, the welfare of the guards, and complaints from guards. The district security committee physically verifies and audits the applicant's logistics, guns, and storage. If the committee is satisfied, registration is recommended to the IGP. All the operations of PSOs are revisited every year before their licences are renewed. However, these regulations are being reviewed. It has been proposed that a provision be inserted to allow for a National Registration and Licensing Committee, which would be responsible for registration, licensing, supervision and control of PSOs. This review will usher in the Police (Control of Private Security Organisations) Regulations.

Reasons for the development of the private security industry

The first PSO in Uganda was Security 2000, which began operations in 1988. At the time, it was not so formidable. Armour Group then came in strongly in 1993, but it was unable to register. The majority shareholders were foreigners and it did not fulfil the requirements of the Uganda Investment Authority. It then formed a relationship with APS which was duly registered under

the laws of Uganda. International Investigators and Detectives (Interid) and Group 4 then emerged in 1994, Saracen in 1995, and Tight Security in 1998. For the first ten years after the first PSO was registered, the country had only five PSOs. That number has risen to 54 registered companies.

With the liberalisation of Uganda's economy in the 1990s, a lot of private property was acquired by individuals and private organisations. Since then, many people have become involved in economic activities. Crime increased in such an environment, and the need to protect lives and property intensified. Fear of crime has driven the demand for private security services (Gounev 2006). Analysis has proved that companies using the services of PSCs have a lesser chance of being victims of burglary.²³ The police/population ratio remains very low and stands at one police officer per 1 473 people. This is below the international ratio, which is 1:400.

With such a ratio, coupled with inadequate resources in the police force, cries of police inefficiency and ineffectiveness were rife, especially from property owners. It was therefore deemed necessary to relinquish some police functions to private security organisations as one way of addressing the problem (Sakira 2004). According to Sakira (2004:5), this step was influenced by the paradigm of new managerialism, which started in America in the 1980s. He argues that managerialism, as opposed to traditional public administration, *inter alia* prescribes de-monopolising the delivery of goods and services by a single bureaucracy as one of the ways of ensuring efficient provision of goods and services to the public. Delivery by bureaucracy is not the only way to provide goods and services by government. Government can operate indirectly, instead of being the direct provider. Flexible management systems pioneered by the private sector are being adopted by governments (Owen 1994).

The concept of new managerialism is a product of neo-liberalism. Neo-liberalism is a philosophy in which the existence and operation of a market are valued in themselves, and where the operation of a market or market-like structure is seen as an ethic in itself, capable of acting as a guide for all human action, and replacing all previous ethical beliefs. To the neo-liberalists it is not sufficient that there is a market: there must be nothing which is not market.²⁴

Community policing, which came to prominence in Uganda in the 1990s, is part of the new managerialist appeal for governments not to be the direct providers of certain services. Communities are encouraged to secure themselves by introducing means such as neighbourhood watch, target

hardening, target removal and community patrols. Where communities are unable to handle their security by these means, they are encouraged to seek the services of PSOs. In the Ugandan example, the notion of reducing the workload of the police force gave rise to the soaring numbers of PSOs.

Uganda is densely populated, which increases the demand for security. State organs are not wholly sufficient to ensure this, and are therefore complemented by private security. This is provided by private organs, which include Saracen, Interid, and Securicor. The minister for internal affairs, in exercising the authority under section 74(1)(p) of the Police Act, may, *inter alia*, in consultation with the police authority, make regulations for the control of PSOs.

These regulations are supposed to cover

- Control of the establishment and operation of PSOs
- The requirements for the registration of PSOs
- Conditions under which PSOs may employ any person
- Use of uniforms and other equipment by a PSO
- Prescription of fees and forms for any of the above purposes

The Control of Private Security Organisations Regulations, 1997, was promulgated in furtherance of that power. The definition of a PSO includes any organisation that undertakes private investigation of facts or character of a person or one which performs services of watching, guarding or patrolling for the purpose of providing protection against crime, but does not include the Ugandan Police Force, Prison Service or Armed Forces.²⁵ Such an organisation, however, ought to be registered under the Companies' Act.²⁶ Under section 73(3) of the act, the authority to determine whether an organisation constitutes a PSO lies with the minister for internal affairs.²⁷

Gounev (2006:122) states that hiring a private guard in Uganda makes sound business sense for many companies, because it is relatively inexpensive. It is certainly cheaper than hiring military, police or law enforcement personnel. Furthermore, hiring a guard has become more of an 'industry standard', particularly for retail and wholesale enterprises, since business owners remain cautious, pointing to reputation and trust as the two key criteria in selecting a PSC, instead of quality or price.

PSOs work closely with the national police force. Ugandan law envisages that they should complement one another in the protection of life and property. Regulation 12 provides that

The constitutional responsibility for life and property is vested in the Uganda police force under the command of the IGP and therefore all private security organisations shall be deployed as part of a complementary force to assist the national police force in protecting life and property.

The police force has moved to ensure that the regulation is implemented. According to the police chief

The Police have initiated a community policing partnership with private security organisations (PSOs) that will see the two teaming up in patrols in a bid to make the city more secure. The partnership will see both the policemen and private security guards carry out joint motorised patrols aboard PSO patrol trucks. Kampala Police Chief ... lauded the partnership, describing it as another step in community policing. Under the arrangement, he said, the PSOs will allow on board two policemen who will carry out patrols with PSO personnel. 'It is a partnership with PSOs in policing the areas they work in, to make the city more secure. It's a new means of community policing'... The partnership, he said, was being piloted with one security firm, KK security, in areas under Jinja Road and Kireka police stations ... 'A final meeting is slated for Saturday to get others on board and see how to expand the partnership other areas,' he said. The PSOs, he said, will provide and fuel the vehicles. KK security, he said, had fitted radio equipment in the police radio room (Candia 2006).

The fruits of this new initiative have yet to be seen. However, the police are optimistic that it will greatly benefit their principal role of combating crime. All private security activities must take place with due and full respect of the regulations, and practical cooperation arrangements with national authorities, in particular with police forces.²⁸ In the framework of the strictest respect for the competence of each of the parties, it is therefore the responsibility of each PSC and the employees concerned to develop good communication and cooperation that is open and constructive with the police forces. This relationship is monitored by the IGP to ensure the aim of complementing one another. This has been well received on the grounds that the security providers will now be able to cover wider ground. If the review of the regulations is approved, the National Registration and Licensing Committee will share responsibility for monitoring the performance of the partnership.

Several concerns emerge in relation of the private security industry. They stem mainly from regulatory inadequacy. The regulations are not comprehensive

enough to cover all angles and answer all the questions in a citizen's mind. For example, PSOs do not have protection against political interference. There is a danger in a growing democracy such as Uganda that PSOs will be compromised by government agencies. In addition, to set the regulations, the current policy is to empower the minister, who delegates his or her powers to the IGP. This conduit will threaten the rationality and independence of the PSOs because they either please the IGP or risk not having their operational licences renewed. However, this monopoly of authority will be remedied once the Police (Control of Private Security Organisations) Regulations are passed into law.

The law is also inadequate where the conduct of security personnel is concerned (Sakira 2004:101). The PSO regulations focus on control of the private security operators (the companies) and less on the security officers (the employees) who are the principal players. In other words, the law is not clear on what security officers should/should not do when exercising their duties, apart from ensuring that their employees strictly observe human rights.²⁹

PSOs complement the police, but it is not clear whether they have the same powers and rights, such as search, investigations, interviewing witnesses, seizing property as exhibits, detention of suspect and use of force when necessary. This uncertainty cripples the work of the PSOs. Citizens may treat operatives who are trying to carry out these activities with ridicule.

Services provided by PSCs

PSCs are allowed to carry out certain services: to undertake private investigations of facts or of the character of a person; and watch, guard, escort, and patrol to provide protection against crime.³⁰ Many PSCs carry out these latter functions. By law PSCs are also required to register as limited liability companies. At registration they provide (in the articles and memorandums of associations) a list of activities that they intend to carry out legally. Some may never perform some of these functions.³¹ For example, Askar Security Services is registered to import security devices, but has delved into recruiting and sending people to Iraq.

In Uganda no PSC has the sole practice of handling cash in transit.³² Some PSCs specialise in this (and render other services as well). These include Securicor and Security Tight. Their major challenge is the participation of their employees, the operational personnel, in stealing the clients' money. This involves diverting

vehicles and stealing most cash in transit. For instance, private security guards working for Securicor Grey made off with US\$1.2 billion (equivalent to US\$690 million) belonging to Stanbic Bank, which was being transported from Mbale to Kotido, of which only US\$900 million (US\$517 000) was recovered. In another instance, a bullion van transporting US\$700 million (US\$402 000) from Mbale to Iganga was diverted and the money was also stolen by guards working for Securicor Grey. In all these robberies the bullion vans were later abandoned in case they could be tracked.

PSC personnel in Uganda, particularly those involved in escorting and guarding services, can easily be identified because they are required by law to wear uniform.³³ PSC vehicles are also easily identifiable because their names, colours and logos are inscribed on them. Most cash-in-transit vehicles are tracked from headquarters or use a tracking company.

PSCs are employed by banks to guard them day and night, especially at the entrances. They are used by forex bureaux (bureaux de change) in Kampala. Every forex bureau has a PSC operative at its entrance, especially during the day. PSCs are employed by national governmental organisations to guard their gates day and night, by some farmers in vanilla-growing areas to guard their vines,³⁴ and by some secondary and primary schools to guard at the gates. Many homes in smart city areas such as Muyenga, Kololo, Ntinda and Buziga are guarded by PSCs. PSCs are especially employed to provide security to people and their homes, properties and businesses and these are the contracts that are most sought after.³⁵

The government does not employ PSCs in the same way that private individuals or businesses do.³⁶ However, government works hand in hand with PSCs to protect life and property.

Some private security companies use Security Group; others involved in cash-in-transit activities use satellite tracking systems;³⁷ and some use modern surveillance equipments. Security Group operates in Uganda, Kenya and Tanzania. In Uganda it offers services such as:

- *Central station monitoring:* This includes remote site monitoring of CCTV and access systems; alarm monitoring and response service dispatch; satellite tracking systems of vehicles and goods in transit; and a response vehicle fleet of alarm cars.
- *Radio alarm response services:* All vehicles are electronically monitored for position and status; armoured response for incidents; self-testing digital

alarm transmitters equipped with anti-tamper devices; and automatic commercial and domestic alarm systems.

- *Perimeter protection and access system:* This includes integrated and modular control systems; multiple zoned electric fences; automatic vehicular access barriers; acoustic and microphonic cable perimeter detection systems; external and internal building security hardening; and point of sale and cashiers ballistic protection.
- *Facilities management:* This involves security vetted ancillary and temporary personnel; background and security vetting services; ID card services and personnel database systems; buildings and grounds maintenance; programmed preventative maintenance scheduling; environmental control equipment maintenance; and security, safety and fire procedural training.
- *Electronic security systems:* These include automatic intruder alarm systems for commercial and residential applications; cluster alarms with area enunciator for townhouse and flat complexes; fixed and remote panic button systems; anti-hijack and integrated security systems; access control and closed circuit television surveillance systems; structured cabled installations to certified standards; covert surveillance equipment services; retail security systems and point of sale monitoring; banking, bureau de change and financial institution security systems; and digital incident recording cameras with integral data storage.
- *Fire alarm and equipment:* This involves fire surveys and consultancy; fire detection and alarm equipment; fire suppression equipment, including gas fire suppression for computer rooms and switchgear; sprinkle systems for new installations and retrofits; and fire escape, fire door and hand-held appliances.
- *Cash-in-transit and cash services:* These include a fully armoured vehicle fleet with armed crew; cash in transit, patrolling and cash services; overnight vaulting and out of hours collection; and key holding services.
- *Satellite tracking systems:* These include a 24-hour manned control room monitoring installed units; capability to monitor and control vehicle functions in real time; anti-hijack alert, driver ID interface, route monitoring, real-time engine monitoring; logging and reporting of position and operations transgressions in real time basis; geo fencing, no-go-area definition; full fleet management reporting systems; and asset tracking and investigation applications.

- *Manned guarding and dog patrols:* These consist of continuous supervision by radio dispatched mobile patrols; electronic guard alert systems and electronic attendance/incident reporting; remote site security teams; a diplomatic protection unit; and attack and sniffer trained dogs and incident response.

This is in line with the law in Uganda, which states that:

A PSO may on application be authorised to use the following categories of security equipment for which the relevant operators shall first be obtained

- (i) ...
- (ii) approved electronic alarms and surveillance equipment
- (iii) approved defensive tools

The people and leaders in some parts of Uganda consider that the level of crime, especially robberies and burglaries, has increased because of the presence of PSCs. They believe that PSC personnel are involved in armed criminal activities. According to *New Vision*

The crime rate in Kampala is worrying. This is especially so when it involves members of the security meant to protect the public. Worse still, it involves mostly personnel from private security organisations. Private security companies should be properly vetted before being licensed to operate in the country. Many families guarded by some security firms have to top up the guards' pay since the companies pay them peanuts while they rake in windfall. This is dangerous because it is risky to entrust a hungry guard with a gun (Opoloti 2006).

These criminal activities include bank robberies (*New Vision* 2007), murder (a 20-year-old man was allegedly shot dead by a private security guard attached to Detail Security Service) (*New Vision* 2007), and theft. The police are concerned about the rate at which the PSCs purportedly become involved in criminal activities. It was reported in the media that:

The police are to meet officials from private security organisations, during which measures of ensuring the latter are not sources of insecurity will be devised. Inspector General of Police ... said, 'We want to establish a forum in which we can discuss security matters.' This follows an increase in crimes suspected [of being] perpetrated by security guards (*New Vision* 2006).

For example, in one incident:

The Police arrested four private security guards for allegedly breaking into a church store in Kireka, a city suburb, and making away with 39 bales of bed sheets worth shillings 17m. Three of the suspects are attached to Securex Security, while one belongs to Saracen, the Police said (*New Vision* 2006).³⁸

PSCs have allegedly erected illegal roadblocks and extorted money from people. It was reported that:

Two security guards suspected of erecting an illegal roadblock at Busega, a city suburb, have been arrested. George Okot and Robert Katase of Alert Guards were arrested on Tuesday night as they extorted money from passengers, the police assistant spokesman ... said. Meanwhile the police are to streamline the operations of all private security firms (*New Vision* 2006).

The guards were charged and the case is pending judgment. But apart from those isolated instances, the level of crime is believed to be lower in areas where PSCs operate.³⁹

Privatisation of security and human rights

Women's rights are provided for under article 33 of the 1995 constitution and in other pieces of legislation.⁴⁰ This provision states that women must accorded full and equal dignity of the person with men.⁴¹ The state must provide facilities and opportunities to enhance the welfare of women so that they can realise their full potential and advancement.⁴² The state has a duty to protect women and their rights, taking into account their unique status and natural maternal functions in society.⁴³ The constitution also provides that women should have the right to equal treatment with men, and that must include equal opportunities in political, economic and social activities.⁴⁴ Women have the right to affirmative action to redress the imbalances created by history, tradition and custom.⁴⁵ Laws, cultures, customs and traditions that are against the dignity, welfare or interests of women are prohibited.⁴⁶ Uganda's regional and international human rights obligations do not permit discrimination against women in employment, and the country has ratified regional and international human rights obligations that prohibit such discrimination⁴⁷ and various International Labour Organisation (ILO) conventions.⁴⁸

Children's rights are protected under the constitution and the Children's Act, 1996. The constitution provides that, subject to the laws enacted in their best interest, children have the right to know and be cared for by their parents or those entitled by law to bring them up.⁴⁹ A child is entitled to basic education, which is the responsibility of the state and the parents of the child.⁵⁰ No child must be deprived by any person of medical treatment, education or any other social or economic benefit by reason of religious or other beliefs.⁵¹ Children are entitled to be protected from social or economic exploitation and not be employed in or required to perform work that is likely to be hazardous or to interfere with their education or to be harmful to their health or physical, mental, spiritual, moral or social development.⁵² For the purposes of employment a child is defined as a person under the age of sixteen years,⁵³ otherwise a child is a person under the age of eighteen.⁵⁴ A child offender who is kept in lawful custody or detention must be kept separately from adult offenders.⁵⁵ PSCs in Uganda employ women,⁵⁶ but not children, because the law prohibits this.

There are reports in the media that PSCs have been involved in human rights violations, especially the right to life, by killing innocent people or crime suspects, but there are no reports of women's and children's rights violations⁵⁷ in the country or beyond its borders.

All PSOs must ensure strict observance of human rights by their employees.⁵⁸ Even those operating in conflict areas have to train their employees to observe human rights,⁵⁹ although there have been no reports of violations.

The government does not outsource its security/military services,⁶⁰ but it does employ PSOs on a small scale, for example to man entry points.

Advantages and disadvantages of the private security industry

The main advantage of the privatisation of security is that investment has boomed because investors are sure of the safety of their investments, owing to the emergence of cheap security companies.

The second concerns revenue generation for PSC employees and the state. Employees have been able to earn income and transform families that would otherwise have suffered. The state has generated revenue through taxes that the PSCs remit as service providers and those of their employees, levies on the importation of firearms (which are higher than those of other imports) and payments on applications for licences. These fees are stipulated in the first schedule of the regulations.⁶¹

PSCs in Uganda can now export security services. The main player is Askar Security Services, which secured a contract to provide personnel for guarding and escort in Iraq. This is double-edged because the personnel earn good sums of money which greatly improves their livelihood. Service men sent to Iraq earn US\$1 000 per month. As a result, Ugandan citizens are competing to go there, despite the security risks involved.

The absence of security of investment was a major threat to the economy because investors were afraid to expand their ventures because of possible banditry and other associated evils. However, with the emergency of PSOs, where the citizens pay for their own security, their efforts are now concentrated on expanding their investments and acquisitions.

The main disadvantage is that owing to the fast emergence of PSCs, many of the guns in circulation have been used to perpetrate crime or have been lent to criminals.

Second, despite there being a screening mechanism, ex-servicemen have found their way into PSCs as employees and administrators. They know the security set-up of the country or area where they operated in the security forces, and the response time. They have used this information to engineer robberies.

Third, military and police forces have abdicated responsibility for security of the state and its citizens in favour of profit when their employer utilises private companies. The forces have simply sat back and relaxed waiting for complaints from wealthy people who can afford to 'facilitate' them. There is also some doubt as to the effectiveness of private companies in providing long-term stability in the wake of internal conflict.

Regulatory framework

Effective regulation of PMCs and PSCs requires an interlocking framework of national, regional and international control mechanisms. There is consensus that existing laws at international level are insufficient, and national laws are lacking in many countries, creating a legal grey zone (Bryden 2006). PSCs are regulated under the Police Act, 1994, and the Control of Private Security Organisations Regulations, 1997. Under section 73(1)(a) and section 74(1)(p) the Police Act empowers the minister for internal affairs to make regulations for the control of PSOs. The regulations control the establishment and operations of PSCs, but apply only to PSCs registered in Uganda.⁶² The

Act and the regulations are implemented by the police who have designated a commissioner of police as overseer. Police activities are overseen by the minister for internal affairs.

The Ministry of Internal Affairs is reviewing the framework to address gaps and inconsistencies. A National Registration and Licensing Committee has been proposed to handle the registration, licensing, supervision and control of PSOs. The regulation of PSOs is largely effective, because the laws set the minimum criteria for operating a PSO, establish mechanisms for controlling the sector, and provide for review and cancellation of licences for PSCs that do not meet the legal requirements.

Police involvement in the drafting and implementation of laws regulating PSCs is pivotal to the operation of PSCs in Uganda, because of their long experience in providing security services.

Mercenaries

A mercenary is a person who takes part in an armed conflict and

is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a Party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that Party.⁶³

In article 1, the Mercenary Convention defines a ‘mercenary’ as anyone who, not being a national of the state against which his actions are directed, is employed, enrolls or links himself willingly to a person, group or organization whose aim is:

- a. to overthrow by force of arms or by any other means the government of that member state of the Organization of African Unity
- b. to undermine the independence, territorial integrity or normal working of the institutions of the said state
- c. to block by any means the activities of any liberation movement recognized by the Organization of African Unity

In light of these definitions there has not been any mercenary activity in Uganda in recent times.⁶⁴ Nor are there mercenary activities by Ugandans outside its borders. Uganda signed the convention,⁶⁵ but has not ratified it.

Nevertheless, under the 1969 Vienna Convention on the Law of Treaties, it may not carry out activities that contradict the purpose and spirit of the treaty. Uganda does not have any specific legislation on mercenaries.

Use of firearms and uniforms by PSCs

Schedule III of the regulations allow PSCs to use authorised firearms,⁶⁶ mainly automatic and single shot guns. (See appendix A.)

Under regulation 16, the provisions in the regulations apply in conformity with those of the Firearms Act,⁶⁷ which require that whoever desires to possess a firearm must have a certificate.⁶⁸ The IGP may recommend a private security company to the minister⁶⁹ for the authority to import specified quantities and types of arms and ammunitions by the IGP.⁷⁰ However, the US has imposed control on arms importation in the Great Lakes Region. Wiring money to procure arms has become more complex since it has to go through New York, which then halts the process, pending investigation by the CIA.

An employee of a PSO may use authorised firearms in certain circumstances:⁷¹

- In self-defence against an armed attack or in defence of any other person who may be under the pecuniary protection of the employee from the threat of death or grave injury arising from such an armed attack
- When attempting to arrest a person who to his or her knowledge is fleeing from lawful custody after committing or being suspected to have committed a serious offence⁷² and the fleeing person does not stop voluntarily or by any other lawful means
- To stop any serious threat to life or property if police assistance cannot be called in time to avert the threat through other means.

The regulations do not require PSOs to conceal their weapons. But firearms registers must be maintained by every armed PSO, and all movements of firearms should be recorded and accounted for.⁷³ Every PSO must submit monthly returns and brief accounts of the arms and ammunitions in its possession to the IGP.⁷⁴

An application to purchase the scheduled arms and ammunition in and outside Uganda is subject to the existence of an approved operator's licence issued by the IGP.⁷⁵ Employees of PSCs are not allowed to carry firearms off

duty.⁷⁶ They store them at their employer's premises, which must be well secured. According to the licence application,⁷⁷ individuals who wish to operate a PSC in Uganda must declare that they will construct an appropriate storage for firearms or any explosive materials, subject to approval by the IGP. If such an individual is not willing to do so, he or she must give reasons. The Firearms Act also requires anybody who is authorised to own a gun to have adequate and safe storage for it.⁷⁸ This implicitly imposes an obligation on PSCs to have safe storage for arms that are not being used. The IGP can inspect the armoury, arms and ammunitions in possession of a PSO quarterly. He or she is also mandated to ensure that all arms being used are licensed in conformity with the Firearms Act.⁷⁹

The regulations require arms and ammunitions to be kept in proper custody.⁸⁰ Employees who are detailed to use arms cannot resort to the use of the firearms in order to negotiate for any welfare affecting their terms and conditions of service⁸¹ and must follow the proper channels for settling industrial disputes.⁸²

Guard and escort service employees must wear uniform while on duty.⁸³ These uniforms must be adequately described and notified to the public through the official *Gazette* and in at least one daily newspaper.⁸⁴ No uniform, dress or parts belonging to a PSC may be the same in style, colour and texture of the government security forces or another PSC.⁸⁵ Distinct colours of uniforms ensure that personnel are easily identifiable. This requirement is also viewed as a way of preventing errant individuals from claiming that they belong to a given PSO.

Governance, professionalism and training of PSC employees

The regulations do not require PSCs to have management structures, but in practice they must have 'a workable structure for management and supervision'.⁸⁶ Copies of their governing structure have to be submitted to the IGP. This structure will depend on the functions the PSC has registered to carry out.⁸⁷

It is difficult to determine whether the operations of PSCs in Uganda are transparent. Some offices were not willing to give information about their operations, but referred the researcher to the Office of the IGP at Police Headquarters (Kibuli, Kampala). However, some PSC officials answered readily. Many preferred to remain anonymous. Getting information about PSC operations and activities from the Office of the IGP is a lengthy process

which requires an introductory letter explaining why the research is being carried out.

Every PSC must submit monthly returns and brief accounts of the arms and ammunitions in its possession to the IGP,⁸⁸ as well as quarterly returns of personnel⁸⁹ and reports of operations.⁹⁰

The minimum requirements for employees are not provided for in the law, but in practice they must have ordinary level education, should not be under the age of 18, and must be healthy and fit to carry out the tasks assigned to them.⁹¹ It is within the discretion of a PSC to determine whether particular employees should have a certain level of education.⁹²

It appears that the government cannot allow employees of PSCs to receive military training before or during their employment. In fact, PSCs in Uganda have been warned against employing former military or police officers without the approval of the police:

Police chief ... has directed private security organisations to stop recruiting ex-servicemen without Police approval on their service record. 'Selection and proper training are vital aspects for any security organisation. We have noted that most ex-servicemen, especially those with bad criminal records, end up in these organisations.' ... Police would compile a list of all ex-servicemen in the force ... the list would bear their criminal records ... [and] it would be available to private security organisations. [He added that] the Police Force would provide security organisations with a training syllabus, adding that the syllabus would require security guards to undertake Police training. 'Before a guard is allowed to use a firearm, he or she must be certified by the Police.' ... security organisations who fail to comply with the new standards would be closed ... [T]he organisations were only allowed to purchase arms from the Police ... [and] those that possessed illegally purchased firearms must declare them to the police (*New Vision* 2003).

The government controls the training of employees of the PSCs. The IGP sets standards of performance to ensure that PSOs perform their duties properly and that there is proper and regular training of all personnel.⁹³ Moreover, PSCs that are licensed to use firearms must ensure that all personnel who are eligible to use them are properly and regularly trained in their use.⁹⁴ The IGP is again responsible for the standardisation of these training procedures.⁹⁵ In addition, from time to time the IGP may issue standard instructions regarding firearms

and any other necessary training,⁹⁶ although no standardised procedures have yet been issued by the IGP.

PSCs train their employees to apply minimum force, unless the circumstances demand otherwise.⁹⁷ Some PSCs, such as Security Group, train their employees in first aid, but only employees on company vehicles take first aid kits on duty.⁹⁸ The PSCs are aware of the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force by the Law Enforcement Officials, and their training manuals contain principles from both instruments.⁹⁹

To ensure that the requirements for governance, professionalism and training are adhered to, PSCs must file reports to the IGP detailing their operations, their personnel, and the arms and ammunitions in their possession. Full particulars and fingerprints of the operational personnel of every PSC must be submitted to the IGP within two weeks of recruitment or appointment to avoid employing people with criminal records.¹⁰⁰

Operational control is another way in which government ensures that these requirements are adhered to. The IGP must set standards of performance and ensure:

- Proper and regular training of all personnel
- Proper custody, use, and disposal of firearms and ammunitions
- Minimal risks to employees
- Employment of vetted persons with no criminal record
- Adherence to government policies on security¹⁰¹

The IGP issues annual performance certificates which are categorised as Exemplary; Very good; Good; Satisfactory; and Poor.¹⁰²

A PSC may be deregistered by the Registrar of Companies if the IGP believes that the organisation is operating below acceptable standards, is a security risk to the state, or the regulations have been violated or not complied with.¹⁰³ The director of operations of Uganda Police Force, Francis Rwego, has acknowledged that he has received complaints: 'We get many complaints about thefts carried out by some guards working with private security firms. If we identify any firm that breaches their contract, we shall revoke their licences' (Candia 2004). The regulations, without prejudice to the operator's right to reapply, mandate the IGP to cancel an operator's (PSC) licence at any time, if the regulations and laws have not been complied with.¹⁰⁴ The licences of PSCs have been cancelled and the organisations ordered to close shop:

The Police have closed five private security organisations (PSOs) over failure to adhere to stipulated standards. Commissioner of Police in charge of private security ... said that the firms included Chi Guards, Arere Security and Elephant Guards in Mbale. Others are Tororo Kalin Guards and Simba Cobra and Tough, both in Tororo ... 'Some have been doing a commendable job, whereas others have fallen by the wayside' ... Meanwhile, the Police at the weekend met with 68 managers of PSOs to streamline their activities. 'We wanted to review their weakness to find a way to support them into the future,' He said that the recruitment process in most of the firms was lacking (*New Vision* 2005).

In addition, the police closed six PSCs for failure to adhere to operational standards:

The police have stopped six private security firms from operating. This follows their failure to meet the required operation standards. The directive was issued by the Inspector General of Police ... The firms include Hima Cement (1994), an in-house security organisation, Kampala Bureau of Investigations, Private Investigation Bureau, Excel Security Uganda Ltd, Popular guards and Security Services Ltd, and Universal Security Services Ltd. The firms' demise was cemented with letters to their managers after a meeting held last month. The assistant commissioner of police in charge private security and firearms control ... said, 'They should not purport to be security organisations. This is to make sure that firms do not hoodwink the public.' Most of them either lacked the necessary equipment or logistics in addition to the financial base, which are some of the basic requirements that all private security firms must meet.¹⁰⁵

Organisations must renew their operation licences annually:

An operator's licence shall be renewed annually on application, subject to proven satisfactory performance by the applicant for the previous year, and proof of payment of appropriate fees for the category of security services for which a renewal of licence is sought.¹⁰⁶

This requirement is probably the government's lynchpin in the use of PSCs in its own political battles. The impartiality of the PSCs is threatened because fear of not being able to renew their licences affects their bargaining power against government. The government has ensured that this provision is adhered to by the PSOs:

The Police have arrested 17 security guards working with Rhino security Group for operating without legal consent. A source said the 17 were arrested on the orders of the Inspector General of Police ... The Police said the city firm, which was sold to another group of directors, was supposed to reregister with the commissioner in charge of private security (*New Vision* 2006).

When the IGP finds that a particular PSC has failed to live up to the expected standard, he has the power to stop it until it is in position to do so.¹⁰⁷

Exporting security and military assistance

The principal pieces of legislation regulating the exportation of security and military assistance are the constitution and the Uganda People's Defence Force (UPDF) Act.¹⁰⁸ Article 210(d) of the constitution mandates parliament to make laws regulating the UPDF, and in particular, to provide for the deployment of troops outside Uganda.

According to the Act, if troops are deployed outside Uganda under a multilateral or bilateral arrangement with other countries, the minister must enter into a statute of forces agreement with the country seeking military assistance or the umbrella organisation under which assistance is being sent,¹⁰⁹ for example the Intergovernmental Authority on Development (IGAD), the Economic Community of West African States (ECOWAS), or the AU. The agreement must stipulate the terms and conditions, operations and withdrawal strategy, among others. The Act differentiates between peace keeping and peace enforcement.¹¹⁰ Under peace keeping, the government has to seek parliamentary approval before any deployment is made.¹¹¹ Because of this, there is an implied requirement to abide by article 53 of the UN Charter before troops are sent abroad, which states that the Security Council, where appropriate, will utilise such regional arrangements or agencies for enforcement action under its authority.

Before any regional arrangement or agency invokes enforcement action, it must have the mandate/permission of the Security Council unless it is reacting to an enemy state. The most recent development in Uganda has been the deployment to Somalia under the African Union Mission in Somalia (Amisom) to help the transitional federal government to restore peace and stability.

For Uganda, however, the intention is to neutralise the supply of illegal arms from the Horn to the Karamajong (who occupy the north-eastern part of

Uganda) that terrorise the north-eastern and eastern parts of the country through cattle rustling. The UPDF stresses that their major area of operation is Mogadishu. A total of 155 MPs voted¹¹² to support the mission, which is the first external deployment to be approved by the parliament (*Daily Monitor* 2007). This vote excluded members of the opposition who walked out in protest over the continued deterioration of the rule of the law. Uganda commands the mission, to which Ghana, Malawi and Burundi have pledged troops, and Algeria and Egypt have offered transportation to deliver the troops to Somalia.

Past deployment of Ugandan troops outside Uganda has been in the Democratic Republic of Congo, Sudan and Liberia (1994–1996). These were widely criticised as being illegal since the correct procedure was not followed. The DRC then filed a complaint against Uganda with the International Court of Justice for disregarding its territorial sovereignty.

So far, no Ugandan has been arrested for crimes committed on foreign soil. In this event, the UPDF Act¹¹³ states that the deployed troops will not be subject to the law of the host nation or the jurisdiction of any court or tribunal, but should be repatriated for trial in Uganda.¹¹⁴ Should the circumstances require the person to be tried and punished at the scene of the crime – with the approval of the appropriate authority – this will take place under the laws of Uganda.¹¹⁵

Uganda does not have legislation to regulate the export of private security by PSCs. The main players in this market are Connect Financial Services, Askar Security Services and Dreshak International, a Dubai-based firm, which have exported private individuals mainly to provide security in Iraq. But the Ministry of Labour imposed a ban on further job placements there, after an internal investigation into allegations that local companies deploying Ugandans in Iraq were fleecing their clients of billions of shillings. In the most glaring example, a former Askar employee who was shot while on duty in Iraq was defrauded by the company of US\$40 000 in compensation. In addition, individuals sign contracts in Uganda, but when they reach Iraq for example, they are forced to sign new contracts with unfavourable terms. Connect Financial Services and Dreshak International are being investigated on charges of exporting guards under unclear circumstances. Several hundred Ugandan guards are stranded in Iraq because the two companies have not clarified their business relationships. More than 300 guards were flown to Iraq under the licence of Connect Financial Services, but sources within the company say they are not responsible for the men, which has caused government concern (Izama 2007).

The rush for Ugandan guards was also driven by the fact that US authorities in Iraq have confidence in Ugandan labour because of their English-speaking ability and military backgrounds. The recruitment drive for guards is widened to both employees of PSCs and former servicemen. Sources in the trade say a window period opened in the first quarter of 2007 when up to 3 000 additional Ugandan guards were demanded. These prospects, however, are threatened by unfair competition and 'cutting corners'. An investigation is to establish how US\$580 was deducted for uniforms for 1 500 guards who were sent to Iraq by a local consortium. This illegal deduction alone raised close to a million dollars for Connect Financial Services (US\$870 000).

Gaps, inconsistencies and areas of improvement

The regulations do not cater for PSCs that are registered outside Uganda. The problems that resulted in the ban on exporting private security services arose because there is no comprehensive law to guide the recruiters and the recruited. A law must be put in place to regulate this export, in which proper guidelines are laid down regarding recruitment, welfare, tax remission and liability in case of breach.

PSCs do not necessarily carry out the objectives listed in their registration memorandums. Some, such as Connect Financial Services, appear to transit cash, but they perform the business of money lending.¹¹⁶ Askar Security Services holds a PSC licence, but it is not registered to provide security services. Before the IGP issues a licence, he must demand to see the certified memorandums and articles of association in order to properly scrutinise the purpose for which the company was registered.

The law empowers the IGP to issue training manuals and circulars, but since it came into being in 1997, the Office of the IGP has not issued these manuals. PSOs such as Tight Security are forced to use the South African training manual, which they tailor to Ugandan standards. Its links with the South African Private Security Board have helped it greatly, but the question remains as to how PSOs conduct their training. Lack of uniform training manuals accounts for the indifferent performance standards among PSOs. The IGP must use his or her authority to issue training manuals and circulars, as provided for by the regulations, if uniform quality services are to be realised.

The requirement for annual renewal should be scrapped in favour of random checks by the IGP or a delegated officer. This would guarantee independence

in carrying out their duties. The power to revoke a licence should remain, but a set procedure must be followed beforehand.

PSCs complement the police force, but there is ambiguity over their powers and rights. This lacuna must be addressed by stipulating the rights and powers of PSCs and their employees.

PSCs currently operate only in urban areas – where the market is – but they should seek to expand to rural areas. The poor rural resident is still exposed to the threats that accounted for the ‘de-monopolising’ the provision of security services.

The importation of arms and ammunition also needs scrutiny. PSOs are allowed to hire arms from the police force, but this is not possible owing to insufficient stock. PSOs seek to fill the void by importing under the regulations that require a permit from the minister for internal affairs. However, this process takes four to five months, and has greatly hindered the efficiency of PSOs. The minister and the IGP must loosen the bureaucratic red tape and shorten the period in which a permit can be obtained.

Further, PSOs are permitted to use only automatic and single shot guns, which are no longer adequate in combating crime. Most criminals use sophisticated guns that leave PSOs no chance in an exchange of fire. The classes of guns that PSOs are allowed to use should be broadened to allow them to upgrade to weapons that can match the sophistication of the criminals.

To address the problem of criminals infiltrating the private security industry, it is recommended that the police create a databank for criminals, which would help in scrutinising prospective employees.

In conclusion, the advent of the PSCs has been very beneficial to Ugandans. It has boosted investment in urban areas and erased the sense of fear among mostly the wealthy. There is need however, for improved legislation in order to properly control the quality of the service and exert proper regulatory control.

Notes

- 1 According to figures released by the Uganda Population Secretariat.
- 2 See article 22.
- 3 See article 23.

4 See article 24.

5 Article 189 and the Sixth Schedule to the Constitution of the Republic of Uganda.

6 Established under article 211 of the Constitution of the Republic of Uganda, 1995.

7 Article 212 of the Constitution.

8 These include:

- The Geneva Convention, 1949 (Uganda acceded on 18 May 1964)
- The Convention on the Prohibition of Development, Production and Stock Piling of Bacteriological (Biological) and Toxic Weapons and on their Destruction, 1972 (acceded on 12 May 1992)
- The Convention on the Prohibition of Military or Any Hostile Use of Environmental Modification Techniques, 1976 (signed on 18 May 1977)
- The 1977 Geneva Protocols I and II, additional to the Geneva Conventions of 12 August 1949 (acceded on 13 March 1991)
- The 1980 UN Convention on Prohibitions or Restrictions of Certain Conventional Weapons Which May Be Deemed to be Excessively Injurious or To Have Indiscriminate Effects (acceded on 14 November 1995)
- The 1980 Protocol I on Non Detectable Fragments and Protocol II on Prohibitions or Restrictions on the Use of Mines, Booby Traps and Other Devices (both acceded to on 14 November 1995)
- The 1993 Convention on the Prohibition of the Development, Production, Stock Piling and Use of Chemical Weapons and on Their Destruction (CWC) (signed on 14 January 1993 and ratified on 30 November 2001)
- The 1997 Ottawa Convention on the Prohibition of the Use, Stock Piling, Production and Transfer of Anti-Personal Mines and on their Destruction (Uganda signed in July 2003)
- The 1998 Rome Statute of the International Criminal Court (signed on 17 March 1999 and ratified on 14 June 2002).

Uganda has ratified the Constitutive Act of the African Union (AU), and the Protocol on the Establishment of the Peace and Security Council of the African Union. Uganda has also ratified various international human rights instruments.

These include:

- The International Covenant on Economic, Social and Cultural Rights (ratified on 27 April 1987)
- International Covenant on Civil and Political Rights (ratified on 21 September 1995)
- The Optional Protocol to the International Covenant on Civil and Political rights (ratified on 14 February 1996)
- The International Covenant on the Elimination of all Forms of Racial Discrimination (ratified on 21 December 1980)
- The Covenant on Elimination of All Forms of Discrimination Against Women (ratified by 21 August 1985)
- The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (ratified on 26 June 1987)

- The Convention on the Rights of the Child (ratified on 16 September 1990)
 - The Optional Protocol to the Convention on Rights of the Child on the Involvement of Children in Armed Conflict (ratified on 6 June 2003)
 - The Optional Protocol to the Convention on The Rights of The Child on the Sale of Children, Child Prostitution and Pornography (ratified on 18 January 2002).
- 9 Interview at his office on 15 February 2007.
 - 10 Uganda National Focal Point Report on Small Arms and Light Weapons (NFP) 2006:4.
 - 11 Ibid :5.
 - 12 The NFP was established by the Government of Uganda in 2001 to coordinate activities to prevent, combat and eradicate the problem of proliferation of illicit small arms and light weapons (SALW). The NFP is an interagency body consisting of government ministries and agencies as well organized civil society that may have a role in addressing the small arms issue.
 - 13 Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa, which was signed in April 2004 and came into force in May 2006. Uganda ratified this protocol in February 2005.
 - 14 On 21April 2005.
 - 15 Nairobi Declaration on the Problem of Proliferation of Illicit Small Arms and Light Weapons in the Great Lakes Region and Horn of Africa.
 - 16 United Nations Program of Action to Prevent, Combat and Eradicate Illicit Trade in Small Arms and Light Weapons in all its Aspects.
 - 17 Bamako Declaration on an African Position on the Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons.
 - 18 These are the Congolese border areas which include the districts of Kasese, Bundibugyo, Kabarole, Kibale, Kyenjojo, Mubende, parts of Rukungiri and Kanungu.
 - 19 According to the list provided from the Police Headquarters at Kibuli, which is attached as an appendix.
 - 20 Interview with James Wagoda, manager investigations, Tight Security.
 - 21 Interview with James Wagoda, on 15 February 2007.
 - 22 The Police Act, Chapter 110, Laws of Uganda and the Regulations made thereunder.
 - 23 Ibid: 122.
 - 24 Available at <http://web.Inter.nl.net/users/Paul.Treaur/neoliberalism.html> (2006)

- 25 See S.73(2) of the Police Statute and Regulation 2 of the Control of Private Security Organizations Regulations, 1997.
- 26 See S.2 and Regulation 11(1).
- 27 S.2 of the Police Act defines the minister as the minister for internal affairs.
- 28 http://forum.europa.eu.int/Public/irc/empl/esdo_accords_europeens/library?!=/doc/private_security/codesofconductdoc/_EN_1.0_&a=d [accessed on 3 January 2007].
- 29 See regulation 36.
- 30 See regulation 2 of the Control of Private Security Organisations Regulations, 1997.
- 31 See regulation 11 of the Control of Private Security Organisations Regulations, 1997.
- 32 Interview with senior superintendent of police in charge of private security organisations Boniface Ebiu, Kibuli Headquarters, 9 February 2007.
- 33 Regulation 15.
- 34 Especially in Mukono district, 20 kilometres east of Kampala
- 35 Interview with Richard Mwesiga, marketing manager, Security Group, Uganda, Kampala, 8 February 2007. Interviews with operational personnel of various security companies the researcher found on duty showed that the contracts that are most sought after are those that relate to guarding private property, especially businesses and homes. An interview with the senior superintendent of police in charge of private security, 9 February 2007, confirmed this conclusion.
- 36 Interview with the senior superintendent of police in charge of private security, Uganda Police Headquarters, Kibuli, 9 February 2007.
- 37 All vehicles that carry cash in transit are labelled: 'This vehicle is under satellite surveillance.'
- 38 *New Vision*, 28 July 2006 (Police arrest).
- 39 Interview with senior superintendent officer in charge of private security organizations, 9 February 2007. The researcher could not access statistics from the police or the office in charge of private security companies.
- 40 These include the Land Act of 1998, which guarantees the right of women to own land (see section 27), and the Local Government Act, which states that every local council committee must include a woman representative (see section 10, among other laws).
- 41 See article 33(1)
- 42 See article 33(2)
- 43 See article 33(3)

- 44 See article 33(4)
- 45 See article 33(5)
- 46 See article 32(2)
- 47 The African Charter on Human and Peoples Rights (10 May 1986); The International Covenant on Civil and Political Rights (21 June 1995); and The International Covenant on Economic, Social and Cultural Rights (22 July 1985)
- 48 Such as the ILO Discrimination (Employment and Occupation) Convention, 1958 which Uganda ratified on 02 June 2001.
- 49 See article 34(1)
- 50 See article 34(2)
- 51 See article 34(3)
- 52 See article 34(4)
- 53 See article 34(5)
- 54 See article 257(1)(c)
- 55 See article 34(6)
- 56 Security Group for example. Over 2% of its employees are women. Interview with general manager on 8 February 2007.
- 57 The researcher reviewed all the issues of *New Vision* (an English daily) from 1 January 2002 to 3 February 2007. No women's or children's rights violations were reported that involved PSCs.
- 58 See regulation 36.
- 59 At an interview, the general manager of Security Group said that their personnel in Gulu and Lira (conflict areas) who provide security for British American Tobacco and other staff were trained to respect human rights. 08 February 2007.
- 60 Interview with senior superintendent of police in charge of private security organizations, 9 February 2007.
- 61 Fees payable for class A, guard and escort: US\$ 200 000 (US\$114), class B, investigations: US\$150 000 (US\$86), class C, guard, escort, electronic alarms and surveillance: US\$ 300 000 (US\$172), class D, consultancy: US\$150 000 (US\$86).
- 62 See regulation 3.
- 63 Wikipedia, <http://en.wikipedia.org/wiki/Mercenaries> (accessed 28 March 2007).
- 64 Interview with a senior military officer who preferred to remain anonymous, Kampala, 8 February 2007.
- 65 On 2 July 2004.
- 66 See regulation 2.

- 67 Chapter 310.
- 68 Section 3.
- 69 Minister responsible for police; see regulation 2.
- 70 See regulation 22 and S.4 of the Firearms Act, chapter 310.
- 71 See regulation 17.
- 72 A serious offence is defined in regulation 2 to mean one that is punishable by imprisonment for two years or more. According to the Penal Code Act, offences that attract two or more years of imprisonment include manslaughter
- 73 See regulation 20.
- 74 See regulation 26.
- 75 See regulation 25.
- 76 An interview with
- 77 See schedule II of the regulations.
- 78 Section 30.
- 79 See regulation 24 and 16.
- 80 See regulation 13(1)(ii) and S.30 of the Firearms Act, chapter 310.
- 81 Regulation 29(1)
- 82 Regulation 29(2)
- 83 Regulation 15(1)
- 84 Regulation 15(2)
- 85 Regulation 15(3)
- 86 Interview with the senior superintendent of police in charge of private security organizations, Boniface Ebiu, 9 February 2007.
- 87 Ibid.
- 88 Regulation 26.
- 89 Regulation 27.
- 90 Regulation 13(2).
- 91 Interview with Boniface Ebiu, 9 February 2006.
- 92 Ibid.
- 93 Regulation 13(1)(i).
- 94 Regulation 10.
- 95 Regulation 30.

- 96 Regulation 19.
- 97 He could not provide these documents because they are not available to people who were not involved in private security work. He advised the researcher to contact PSCs for the training manuals. Every PSC that was contacted for the manuals declined to provide them and referred the researcher back to the police headquarters!
- 98 Interview with Richard Mwesiga, marketing manager, Security Group, 8 February 2007.
- 99 Interview on 9 February 2007. But he could not make those manuals available to the researcher.
- 100 Regulation 28.
- 101 Regulation 13(1).
- 102 Regulation 13(3).
- 103 Regulation 14.
- 104 Regulation 32.
- 105 Steven Candia, 2004. Six security firms closed, *New Vision*, 6 February 2003.
- 106 Regulation 33.
- 107 See regulation 32.
- 108 Act 7 of 2005.
- 109 S. 40 of the UPDF Act.
- 110 S.39 (a) and (b) of the UPDF Act.
- 111 S. 39 (2) of the UPDF Act
- 112 On 13 February 2007.
- 113 S. 41 (1).
- 114 S41(2).
- 115 S41(3).
- 116 Discovered through examination of their memorandum and articles of association.

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CHAPTER 2

PRIVATE AND PUBLIC SECURITY IN POST-WAR DEMOCRATIC REPUBLIC OF CONGO

Meike de Goede

Introduction

In the past decades the private security industry has come to play an increasingly significant role in the security sector on the African continent. The private security sector includes a wide variety of services and activities. Without getting into a discussion of definitions, a categorisation can be made, based on these activities and services: combat and operational support, military advice and training, arms procurement, intelligence gathering, security and crime prevention services and logistical support (FCO 2002:10). This article focuses on the part of the private security industry that is operating legally. The arms trade, armed private military companies (PMCs) and private security companies (PSCs), training and military support to non-state actors, and mercenarism have not been included. This does not mean that companies involved in combat and operational support, training and advice, and even mercenaries are not active in the Congo (DRC). The arms trade and arms procurement continue even in the post-war period, but on the verge of illegality, especially with regards to the UN arms embargo. Arms procurement should therefore be regarded as illegal trade and smuggling, rather than part of the private security industry.

In the post-war period, the security sector in the Congo has been subject to numerous multilateral and bilateral assistance programmes, ranging from peacekeeping and peace enforcement by the United Nations Mission in the Democratic Republic of Congo (Monuc) to security sector reform assistance and bilateral training programmes of the national security forces. The use of PMCs for the externalisation of peacekeeping and peace enforcement missions is an issue of discussion after the disastrous peacekeeping experiences in the 1990s (Bosnia, Rwanda, Somalia) and the apparent success of Executive Outcomes in Angola and Sierra Leone (Ghebali 2006:223). The presence of these multilateral and bilateral programmes has prevented a/n (official) market for the private sector involved in combat and operational support or military advice and training. Monuc, as well as the EU Security Sector Reform Mission (Eusec), and the EU Police Mission (Eupol) and the bilateral programmes, has not contracted private companies for the execution of its

This study thus focuses on private security companies that are engaged in the provision of security and crime prevention, guarding and response, security advice and risk assessment. Because the private and public security sectors cooperate with one another, are interwoven, and their roles are ill defined, the analysis of the private sector is made in the context of the functioning of the state security forces. Special reference is made to private security in the mining industry as the most important industrial sector in the country.

Owing to the vastness of the country and its varied regional dynamics, limited availability resources and a short time span, it was decided to focus this research on Kinshasa and Lubumbashi. Kinshasa is the capital city, where the private security industry in the form of PSCs is most developed. Lubumbashi is the commercial heart of the country and home to its mining industry. When the author refers to the Congo and the Congolese, these statements are based on research in Kinshasa and the Lubumbashi area only.

Political and security context: post-conflict transition and state failure

Conflict and post-conflict transition

The DRC is a vast country¹ in the centre of Africa in the problematic and conflict-ridden Great Lakes Region. The population² is mainly rural. Kinshasa counts roughly 7.8 million inhabitants and Lubumbashi, the second largest city of the country, 1.4 million (EIU 2006:3). The Congo is known for its richness in diamonds, gold, coltan, copper, timber and other natural resources, but decades of mismanagement under Mobutu, followed by civil war and further mismanagement under the war and post-war governments, have made a number of people very rich, while the population remains poverty-stricken. With a gross domestic product (GDP) per head of US\$123, Congo is one of the poorest countries in the region (EIU 2006:23). Early in 2007, the DRC ranked number 167 (of 177) on the human development index.³

Many of the Congo's nine neighbouring states are unstable and suffer from internal conflict or are in post-conflict transition. Stability in the Congo is often seen as the key to stability in the Great Lakes Region. But its recent history has been one of ongoing instability and crisis, regime changes and civil war. The first Congolese war (1996–1997) had its origins in the failure of the Zairean state,⁴ the genocide in neighbouring Rwanda, followed by a security crisis in Zaïre, and the inability of the Mobutu regime to respond adequately to the spill-over of the Rwandan crisis to Zaïre. Zaïre had failed completely under the decade-long Mobutu regime: the state was practically

bankrupt, politically an empty shell, and unable to provide security for its population. While potentially one of the richest countries in the world, none of this wealth reached the Zairean population. Under these conditions of state weakness, the challenges posed by the crisis in Rwanda easily spilled over to Zaïre to become a new Zairean crisis. With support from Rwanda and Uganda, an alliance of four rebellious or opposition movements, known as AFDL (*Alliance des Forces Armées pour la Libération du Congo*) under the leadership of Laurent-Désiré Kabila, launched a war against the Mobutu regime in September 1996, accessing power on 17 May 1997.

It was not long before Kabila's coalition fell apart, both within the Congo and among its external supporters. By August 1998 the Congo was again in a state of war in which many neighbouring countries and Congolese armed movements were involved. Within a short period, the war had become a complex patchwork of armed rebellions and foreign armies roaming the Congo to pursue their own personal and/or national interests, while the country was sinking into an ever-increasing regional and humanitarian crisis. The country was de facto divided into five parts, each controlled by one of the belligerents, the government, RCD-Goma, MLC, RCD-N and RCD-K/ML. The war was never characterised by heavy combat between the belligerents. The tragedy of the second Congolese war was the plunder its wealth by Congolese factions and their godfathers (Rwanda, Uganda, Zimbabwe, etc); the extreme brutality towards the civil population (extortion, rape, massacres); and the rise and manipulation of local ethnic conflicts in the context of civil war with ever-increasing poverty and a deteriorating humanitarian situation.

After the Lusaka ceasefire agreement in 1999, which was the first step towards the Sun City peace agreement, Monuc was launched. In the following years it steadily grew in mandate and size, receiving a chapter VII mandate for peace enforcement in the Ituri region, in the far north-east of the country.⁵ Monuc became the largest UN peacekeeping mission, with nearly 17 000 military contingents. In the Ituri region Monuc troops supported *Forces Armées de la République Démocratique du Congo* (FARDC) in offensives against armed rebel movements.

But it was only after the assassination of Laurent-Désiré Kabila in January 2001 and the accession to power of his son Joseph Kabila that the process towards a peace agreement began to move. In December 2002, after a long period of negotiations, the *Accord Global et Inclusif* (AGI) was signed. The agreement arranged for a transition period, leading to democratic elections. During this time, power would be shared by the signatories of the accord: former belligerents, the political opposition, and civil society. The transition

period finally ended after the 2006 presidential and parliamentary elections. Joseph Kabila was installed as president in December 2006, and a new government was installed in February 2007.

Much was achieved in the years of political transition. The peace accord held, and a relapse into large-scale conflict appears unlikely in the short term. A new constitution was drafted and adopted after a popular referendum was held, which resulted in overwhelming support for the new constitution.⁶ It was a great achievement that elections were held in a peaceful and, according to national and international observers, free and fair manner. The elections were declared a 'logistical miracle' in a country the size of Europe, but without infrastructure. Nevertheless, a great deal of work lies ahead. The country is far from stable or freed from its crisis.

State failure and insecurity

Although the peace accord held, the country has been in a state of low intensity conflict, or 'violent peace' (Aust & Jaspers 2006). The issue of security should be understood in the much broader context of state failure. A deteriorating security situation is the first signal of state failure, and improving security is a *sine qua non* for state reconstruction after failure. Security as a political good to be delivered by the state includes protection against cross-border invasions, internal conflict, crime and terrorism. Human security and the protection of human rights are also important security issues. Security is a basic and first need for any functioning state, and is the foundation for development, state building and post-war reconstruction. Congo is a failed state. It experienced crises at various levels:

- Enduring conflict
- Inter-communal enmity
- No state control over the whole territory
- Increase of criminal violence
- Flawed and ineffective institutions
- Deteriorating infrastructure
- Economic crisis (although rising economic opportunities for the elite)
- Corruption and predation on a destructive scale
- Declining GDP, food shortages
- Loss and even disappearance of state legitimacy

The Congo is struggling to transform from a failed to a functioning state. Key to this process is the delivery of security by the state. Security sector

reform has therefore been one of the major points on the transition and post-transition agenda. This process focused initially on the integration of former rebel armies into one national army, while downsizing the armed forces. Second, the functions and role of the armed forces had to be redefined. Evidently, such processes are long term (according to experts they require at least 15 years) and are therefore still ongoing. At the end of the war, the total number of armed forces (government and rebel movements) was estimated to be somewhere between 130 000 and 200 000. The targeted size of the FARDC is 120 000. The current size of the police force is estimated at 104 000 (GMRRR 2005:23). The targeted size of the national police after reform is about 70 000 (Monuc 2006).

Insecurity in the Congo takes various forms. In the eastern provinces the lack of state presence and weak capacity of the armed forces enable armed militias, and even dissidents from the national army, to continue to exist and threaten the population. There is general lack of human security, mainly as a result of poverty from the deficiency of food security and access to medical care. Occasionally politically related violent clashes between former belligerents occur in Kinshasa. In some areas there is inter-communal enmity, and small armed groups and rebel groups from neighbouring countries maintain a presence. Impunity and the lack of capacity of the public security forces to protect the population mean that the people are generally in a very unprotected and insecure position.

An important security problem stems from the Congolese armed forces themselves. Being underpaid (or not paid at all), ill equipped and ill fed, the army and police have low morale and, seeking to survive, prey on the population. This ranges from the traffic police demanding money from road users at random, to extortion of artisanal diggers by the mining police, to violent predation by the army, who extort money and food from the population. There appears to be a lack of will at political level as well as among the military elite to improve conditions within the armed forces in order to transform them from security threats to security providers. Consequently, the population has little or no confidence in its army and police, perceiving them as threats rather than a protection force. The state of the security forces, reflected in their behaviour as predators, leaves a vacuum of security delivery into which the private sector is eager to step.

Insecurity in the Congo is thus not primarily the result of crime; there is little criminality in the sense of armed robberies, car-jacking, theft and the like. Crime statistics do not exist, but the general assessment is that Kinshasa has a high level of insecurity outside the city centre, caused

mainly by the behaviour of police and armed forces. However, the affluent parts of the city, where expatriates and wealthy Congolese live, are not subject to the same predatory behaviour, and criminality is very low. Kinshasa has occasionally experienced pillage and plunder as a side-effect of armed clashes in the city (1997, 2006, 2007) and as the result of large-scale popular unrest (1991, 1993).

Politicised, privatised and commercialised security

Security provision is a key political good to be delivered by the state. Security is negatively affected by the current condition of the state and governance. Governance is weak and ineffective. There is a lack of division between the public and the private domain, and predation and corruption are so systemic that the state can be described as criminalised (Bayart et al 1999). In public security, a number of dynamics occur. First, security is politicised. The peace agreement was a political accord between the new national security forces and former belligerents, in which a number of armed groups joined together in the transitional institutions. As a result of a high level of mutual distrust and lack of confidence in the peace accord, the former belligerents continued to rely on loyalty within the now official national security forces.

The army reintegration process was occasionally manipulated by former belligerents in order to maintain loyalty ties. The Republican Guard (GR) is in effect President Kabila's guard, a small army of about 15 000, loyal not to the president as an institution, but to Kabila as an individual. Similarly, the former vice-presidents and rebel movement leaders Jean-Pierre Bemba and Azarias Ruberwa maintained small armed forces as bodyguards. These armed forces clashed in Kinshasa in August and November 2006, and again in March 2007. A legacy of the war that has not been overcome is that political power depends on support from the armed forces.

The second dynamic is the privatisation of security. The public security forces are widely engaged to protect private interests. Partly as a result of the appalling conditions of the army and police, and partly owing to corruption and mismanagement, state security forces do not fulfil the role of public security provider. Seeking extra income and filling their pockets, the police and army engage in a series of privatised uses of state assets. This involves the protection of the commercial interests of the (political) elite and the involvement of police, army and customs officials in trafficking, but also the use of police as guards at residences and shops, or directly at companies.

In the current situation, in which the public security forces operate as privatised forces rather than public ones, predate on the population, and lack capacity, people cannot rely on them, so they turn to the private security sector. In the context of the failed state and the lack of service delivery, security has become a commodity. As a commodity, it is therefore available only to those who can afford it, whereas those who cannot are often victims of predation by the public security forces. It is in this context that the private security industry is situated in the Congo.

The private security industry in the Congo

The rise of the private security industry in the Congo

The first PSCs were founded in the late 1980s, although the sector initially remained small. Its expansion came in two phases, which were activated by growing insecurity in the late Mobutu period and the war. The industry was triggered by the two pillages in 1991 and 1993, in which Kinshasa was massively plundered. The second period of growth was after the two wars (1996–1997 and 1998–2003), particularly the first war and the arrival of Kabila's AFDL (*Alliance des Forces Armées pour la Libération du Congo*) troops in Kinshasa (which caused a third pillage).

In the late 1980s and early 1990s the sector counted no more than a handful of companies. Currently between 35 and 45 PSCs are registered, together providing employment to roughly 25 000 people. (There is no official data on the number of registered companies or the size of the sector in terms of employees.) Compared with the police (targeted size 70 000) and FARDC (targeted size 120 000), the private sector is still relatively small for a country the size of the Congo. But the private security sector is mainly urban based in a country in which the population is predominantly rural.

The development of the sector in the Congo can be explained by a number of factors. First, the failure of the state created a security gap. For years, state forces were unable to provide a minimal level of security. Affluent citizens and companies sought security from the private sector in response to weak public security and the general instability of the country. Interestingly enough, there appears to be a perceived insecurity rather than an effective insecurity. Although crime rates and statistics do not exist, the general assessment by security companies is that crime is relatively low, consisting primarily of pick-pocketing and robberies. The real criminality problem is organised and systemic corruption and predation at governance level. The vacuum left by

ineffective police creates a market for PSCs. This includes crime prevention, guarding and alarm and response, and other police activities such as patrolling, assistance after vehicle breakdowns and accidents, first aid, and the provision of transport to hospitals and first-aid clinics.

The second reason for the boom in the private security industry is the rapid growth of internationals working for international non-governmental organisations (INGOs), and the multilateral organisations and companies that arrived in the country for the post-conflict transition and reconstruction programmes. If the country remains relatively stable in the post-electoral period, new investments are expected, which will create an expanding market for the industry. Most PSCs expect significant growth in 2007. Some recognise that the improving stability and low crime levels may reduce clients' perceived insecurity. This will have a negative effect on the market, but as long as the police force remains ineffective – which is unlikely to change significantly in the short to medium term – there will be a demand for PSCs.

PSCs, their clients and services

The majority of the 35–45 registered companies are not operational. They have the registration, but lack the clients and/or the operational capacity.⁷ Within the sector itself it is widely believed that the most of these ineffective companies are not in the least interested in private security as a business, but use their licences to gain access to state security forces (see below) and as a cover for other semi-legal business. Currently, the market for residential and commercial clients in Kinshasa is dominated by a few security companies. (See table 1, which does not include all operational PSCs. Operative PSCs, which are not included in the table include Mamba Security, Likonzi, Infinitive, Safetech and Protec.)

Late in 2006, G4S bought DSA, thereby establishing a market-dominating firm. The merger will come into effect in 2007. G4S and DSA are international PSCs, whereas most other companies are Congolese. It is striking to note the extent to which the ownership of these Congolese companies is in the hands of expatriates. This is in line with other commercial sectors in the DRC, most of which are dominated by expatriates from Lebanon, Israel, Belgium and South Africa. It appears that clients prefer to work with internationals rather than Congolese PSCs and it is difficult for Congolese PSCs to acquire a firm footing on the market. The spokesperson of one Congolese-owned PSC declared that recently an expatriate executive director had been installed

Table 1 Overview of PSCs in Kinshasa

PSC	Origin and ownership	Operational in DRC since	Services provided	Operational scale	Employees
Group 4 Securicor	International company listed on the London and Copenhagen stock exchanges	2001	Guarding, gatekeeping and access control, alarm and response, cash-in- transit	Nationwide	2 500 5 expatriates (management)
Defence Systems Africa	Until December 2006 , when DSA was bought by G4S, it was a subsidiary of De Moerfoose Group (Belgian)	1984	Guarding, gatekeeping and access control, alarm and response, trained dogs	Nationwide	2 600 3 expatriates (management)
Delta Protection	Congolese Ownership Lebanese	2000	Guarding, gatekeeping and access control, alarm and response, GPRS tracking	Nationwide	4 000 25 expatriates (management)
ASCO	Congolese. Ownership Belgian	2000	Guarding, gate keeping and access control, alarm and response, cash-in-transit, diamond transport	Kinshasa	550 Management by expatriates
Magenya Protection	Congolese; Ownership 1/5 Congolese and 4/5 Israeli	1993	Guarding, gatekeeping and access control, alarm and response	Kinshasa, Kisangani, Lubumbashi	1 500 5 expatriates (management)
Escokin	Congolese Ownership Congolese	1987	Guarding, gatekeeping and access control, alarm and response, gardening, drivers, petrol station management, cleaners	Kinshasa	1,700 No expatriates

because clients 'want to deal with an ex-pat, not with Congolese'.⁸ Since then the company has been growing steadily. OSS, a PSC specialising in security in the mining industry, stated that Miba, the state's diamond mining company, does not want Congolese security guards, but only expatriates.⁹ Another Congolese-owned PSC, Escokin, is sizable, with 1 700 employees, but security and guarding are only part of its business, and the majority of the employers work as cleaners, drivers, gardeners, car-washers and service station attendants. The security department of Escokin remains rather small. The private security industry is thus dominated by internationals.

A number of the smaller or invisible companies are owned, or partly owned, by government officials. For example, Likonzi Security, a small PSC opened recently in Kinshasa, is owned by the ex-governor of Kinshasa and a former admiral of the Congolese Navy, Baudouin Liwanga. Neither the Ministry of the Interior nor the Committee of PSCs at the Federation of Congolese Employers seem perturbed by a potential conflict of interests. They argue that government officials have the right to conduct private business. The reasoning is that if a government official has commercial interests in a PSC, this does not harm the interests of the client. They do not consider whether commercial interests in the security sector might influence the independence and functioning of public governance.¹⁰

Only a few companies operate nationwide and have field offices: G4S, DSA, Magenya Protection, Delta Protection, and Mamba Security. Outside Kinshasa their main hubs of activity are the mining regions – the main centres of commercial activity. Some contracts demand national coverage of security provision (eg Vodacom, Celtel), but such contracts are scarce, and most companies lack the capacity to deliver. Other clients (eg Monuc) arrange local contracts and work with different PSCs in different regions.

Services provided by the PSCs are general and basic: guarding, access control, alarm and response, cash-in-transit, general packet radio service (GPRS) tracking, VIP escort and transport of mining assets. Responding to the gap left by the weak operational capacity of state services, PSCs provide their clients with a number of secondary services such as assistance after traffic accidents and car breakdown. In the mining industry a number of international companies provide risk analysis and security consultancy, such as Erins and Armor Group.

The majority of clients are residents with alarm and panic button systems and companies and embassies with security guards. Clients come from a small economic elite of Congolese and expatriates. The majority of the

population cannot afford their services. One of the biggest clients is Monuc, which employs PSCs in Kinshasa and the rest of the country for gatekeeping and access control of its offices. The government and government officials also contract PSCs for gatekeeping and access control of residences and ministerial offices. Occasionally the Ministry of the Interior asks for the assistance of PSCs in crowd control and the provision of security for public ceremonies. Being unarmed and with a better reputation than the public security forces, PSCs are considered more effective for dealing for example with street children and the homeless and handicapped.¹¹ Some PSCs declared, however, that they were cancelling contracts with the government because the government often does not fulfil its financial obligations.

Private security guards and response units are unarmed, equipped only with a club and often (not always) with a radio. Response units use radios and cellphones for communication with the control room. DSA is the only PSC that uses trained dogs on request. The main task of security guards is access control and gatekeeping and clients generally feel that in an emergency (eg armed robbery, armed pillage and plunder) the security guard is unable to do anything. However, all PSCs have a number of rapid response vehicles that permanently patrol the city. These response units have one or more police officers in their team, who provide armed response when needed.

Recruitment, training and professionalism

The private security industry in the Congo is mainly a man's business. The small number of women employed by PSCs work in the administrative departments and generally not as guards or in response units. Children are not employed. Although the management of most companies is in the hands of expatriates – except for the few companies that have Congolese ownership – the staff (guards, response units, etc) are all Congolese. National employees are recruited locally within the cities of employment. Trade unions are weak in the Congo, and there is no special union for the private security industry. DSA is the only private security company that has an active workers' association, which functions as a channel of communication between management and personnel, and advocates on issues such as labour law, working conditions and salaries.¹²

The regulation for PSCs demands that their personnel should be of good character and have no criminal record.¹³ But because of the lack of administrative effectiveness and the dearth of data, it is impossible for PSCs to obtain conclusive information and complete files on their recruits. In some companies, state intelligence officers are part of the recruitment team who

vet and screen potential new employees. The National Intelligence Agency (ANR) has planted antennas at every PSC, often with the consent of the PSC management. The Ministry of the Interior also stipulates that employees must report on activities and developments that might pose a threat to national security. The ministry is concerned that PSCs might be potential threats to the regime and public security, and sees them as potential coup instigators, mercenaries and recruitment agencies for rebel movements.¹⁴ Within the private security sector itself, these accusations are considered paranoiac. Having nothing to hide, they are not concerned about the intelligence antennas in their premises.

Fear of PSCs as a potential threat to national security is one of the reasons that the law does not allow active or former public security employees to be recruited by a PSC.¹⁵ The argument is that people with a military or police background are trained for combat and in the use of weapons, and in the current post-conflict environment these skills are not wanted in the unarmed private security sector. Another, and probably more realistic, reason is that without this restriction public security employees could massively seek employment in the private sector where salaries are four to seven times higher (\$20–\$40 compared with \$90–\$150). Preventing the recruitment of former or active public security employees is the most important issue in the vetting and screening process. According to PSCs spokespersons, this is one of the few issues on which the ministry is very strict.

However, there is little clarity about what defines an ex-public security employee and the law is not conclusive. Does it concern ex-military people that chose to leave the armed forces many years ago? Or does it merely refer to deserters and those unofficially demobilised? Some PSCs understand the law to mean that they cannot recruit current public security employees or people that had been in the army or police. In many post-conflict countries the demobilisation of former combatants provides a pool for recruitment for PSCs. This is clearly not the case in the Congo. The commission (Commission Nationale de Désarmement, Démobilisation et Réinsertion (Conader)) that conducted the demobilisation and reintegration programmes during the transition period has no statistics of ex-combatants entering the private industry, and evidently there were no programmes to insert ex-combatants into the private security sector either.¹⁶ However, one PSC declared that it had employed a small number of ex-combatants who had been through the DDR programme, based on a special arrangement with the Ministry of Interior and Conader.

Most PSCs do not demand a school diploma for recruitment. When one considers the low level of educational standards, a school diploma says

little about the education level or capacities of the individual. Therefore, all PSCs have tests for the recruitment process. These are generally IQ, literacy and health tests. Knowledge of the French language is also a requirement. G4S is the only PSC that demands a working knowledge of English from its entire staff, including the administration, as well as the guards and response units. There are many highly educated security guards (tertiary education), although evidently the work does not demand academic qualifications. Job availability is very low in the Congo. The private security sector is currently one of the few growing industries, and can select highly educated personnel from a large pool of unemployed. A significant number of medical doctors, engineers, lawyers, etc, work as security guards for a PSC.

After being recruited, new employees undergo a training programme of one to three weeks. It focuses on the basics of guarding and security; the role and function of a private security guard, first aid (although they seldom carry kits), unarmed (self-) defence and unarmed combat. Most companies provide basic training or awareness-raising on human rights. In some cases the training programme includes the Voluntary Principles on Human Rights,¹⁷ the UN code of conduct for law enforcement officials (1979) and the UN basic principles on the use of force and firearms by law enforcement officials. However, in practice, the knowledge of private security guards on these issues is very basic and generally not an issue of concern for PSCs. The law does not require any training at all for private security guards, and training is given on the PSC's own initiative. The level of training therefore varies widely.

The level of professionalism of PSCs is much higher than that of the public security forces. There is also a clear distinction between the level of professionalism of the international companies and the locally based. Companies such as G4S, DSA, and OSS (Overseas Security Services) meet their own international standards. These include the skills and training of the guards, the availability and quality of vehicles and equipment, tidiness of uniforms. The salaries of the international PSCs are also higher than those of Congolese companies.

As for the guards, no skills are required. But after five to fifteen days of training they can hardly be called professional security guards. OSS wants to be known for more professional services and therefore sends its employees abroad for training. It offers specialised security services for the mining industry, and provides training for its employees on technical aspects of the mining process and transport, so that they can understand their working environment, analyse security needs and develop tailor-made services. For example, security guards who are to be deployed in the Miba diamond industry receive instruction at

a diamond training school in South Africa in order to understand the specific technical aspects of the process. The provision of a more professional service by OSS includes high-tech equipment, such as body scanners.¹⁸ No other PSC currently offers similar professional and specialised security services.

Public and private security

The police force in the DRC does not provide even the minimum of public security. The Mixed Reflection Group on Reform and Reorganisation (GMRRR) states that the police cannot claim to be a pillar of the constitutional state as it is under-qualified and non-professional (GMRRR 2005:8). Under Mobutu and both Kabilas the police were marginalised in every aspect. For decades they were deprived of their tasks, which were taken over by special forces, presidential guards or the army in general (ICG 2006:5). They were also paid irregularly, underpaid and ill equipped, resulting in low morale, lack of capacity and low effectiveness. In search of survival, the police (and the army) prey on the population. Although it is recognised at the top political level that inadequate payment turns the police into predators rather than protectors, this is not a recent problem and there has not been sufficient political will to increase salaries and improve general conditions.

In a failed state, where the division of the public and private is blurred and the public sphere is often privatised, the police as an institution experience similar confusion as to their role. The police have become predatory, but their role as providers of public security has also been redefined. Instead of carrying out drastic reform to enhance capacity and effectiveness, the police have sought to enter the commercial security market through cooperation with private industry and the development of a commercial branch of the national police.

Integrated security provision of police and private security companies

The first activity of the national police in the field of commercial security has been cooperation with the private sector as subcontractors to the PSCs. This cooperation was formally arranged in 2003 in an agreement between the PNC (National Congolese Police) and PSCs.¹⁹ The official aim of the agreement was to join hands in the fight against crime to increase effectiveness, but the cooperation between police and PSCs has meant that armed assistance is incorporated into PSC operations. This means posting

policemen at PSCs for hybrid patrols, joint guarding and joint response to alarms. Public security measures are thus extracted from the public domain and deployed in the private one.

According to the authorities (the Ministry of Interior and the PNC), the police provide the necessary armed response that by law PSCs are unable to deliver. They therefore assist PSCs in being more effective and delivering the security they are selling. At the same time they are increasing the effectiveness of crime fighting and prevention.²⁰

However, the private sector interprets this current cooperation as enabling the police to do their job. It is true that the ill-equipped and incapable police are very much assisted by the logistics (vehicles, petrol, radio) of the private companies. In simple terms, without the PSCs, in most cases the police would not be able to respond and intervene.

That does not imply that PSCs regard their role in assisting the police as a burden. It has a number of advantages for them. Before they had policemen in their response units, private companies that called for police (armed) assistance in emergencies often found that the police arrived very late or not at all. Since the integration of police into their response system, PSCs are no longer dependent on an ineffective police service and have increased their efficacy in providing security for their clients. Second, in the event of casualties or injuries because of armed intervention, the PSC is not liable because the policeman uses the weapon, not the PSC guards. Although cooperation with a corrupt organisation such as the Congolese police remains an exhausting and frustrating affair, most private companies appreciate the advantages and do not wish to acquire the right to use arms themselves and subsequently end current modalities with the police.

Although it may be to the advantage of them, the formalisation of police back-up support to PSCs should primarily be understood as a response to police incapacity. If the PNC had rapid response capability, creative measures such as the current cooperation would not be necessary. Other sub-Saharan countries have similar experiences of cooperation between the private and public security services to increase effectiveness, for example Kenya. Being deprived of the use of firearms themselves, PSCs in Kenya rely on the police for emergency response. In an emergency, the private security company needs to pick up policemen who often lack transport and communications. This delays the response and reduces the effectiveness of the private company. In a pilot project, two police officers were assigned to the private companies. This increased general security in the residential

areas where these teams were operating. However, the pilot project was terminated, and cooperation between public and private security in Kenya is currently on an ad hoc and informal basis (Abrahamsen & Williams 2005:14–15).

In the Congo, all the parties are pleased with the current formal arrangement: the PSCs have armed back-up without legal responsibility; the police gain extra income; and the client is assured of rapid armed response. It therefore seems to be unlikely, at least in the short term, that this formal arrangement will be terminated.

The policemen positioned with the PSCs come from various police departments: the IPr KIN (Kinshasa Provincial Inspection), PIR (Rapid Intervention Police) and the *Brigade de Garde* (Guarding Brigade). There are no statistics on the number of police involved in the private security sector, but in Kinshasa in particular they form a substantial part of the total police force. While the director of the responsible department at the Ministry of Interior and the commander of the *Brigade de Garde* assure the public that the police are merely doing their job, and therefore police assistance to PSCs is a 'free police service', they are aware that private companies pay a little bonus to 'their' policemen to enhance morale and motivation.²¹

The PSCs, however, state that the payment of police positioned with their companies is much more formalised. A contract is drawn up between the private security company and the police department it works with. This contract is renewed or extended every month after a request is made by the PSC. A payment is generally involved, which may be as much as \$70 per policeman per month. It is unlikely that these informal incomes contribute to the general police budget. Rather the money is most likely to disappear into the private pockets of the commanders of the police departments with whom the contracts are signed.

Often the monthly payment of 'bonuses' to the policemen is more like a monthly salary which is administered similarly. This payment is normally somewhere between \$25 and \$50 per month: considerable extra income for a policeman with a monthly salary of \$20–\$40. Some companies even pay 'their' policemen a similar salary to their own employees, which ranges from \$100 to \$150. The private companies subsequently regard – and treat – these policemen as their employees, rather than state elements on loan. They are selected by the PSC and can be fired and replaced at the company's request. Some companies even train their policemen similarly to their own new recruits.

The Brigade de Garde as a commercial security company

The Congolese police have also entered the domain of PSCs through the *Brigade de Garde*, founded in 2001. Although originally designed for special situations, VIPs and government officials, the services of the *Brigade de Garde* are available to everybody who is willing to pay. Its size in Kinshasa is about 6 000, and in other provincial capitals there is a *Bataillon de Garde* of about 1 000.

Part of the *Brigade de Garde* is deployed at the PSCs, while the remainder is available directly for private property protection. This department is 'self-financing'. Whereas the deployment of police at PSCs is officially free of charge, their deployment as security guards has an official tariff of \$75–\$150 per month.²² Like the renting out of policemen to the PSCs, clients probably make additional unofficial payments to the policemen and their commander.

To have a security guard from the Congolese police, a request needs to be made to the minister of interior and the inspector-general of police. The request is generally granted, without assessing the need to spend national resources on the protection of individuals. The *Brigade de Garde* is therefore effectively a totally commercial branch of the PNC, although the policemen are on the police payroll and paid for from national resources like other public security servants.

For clients, the difference between a policeman as security guard and a guard from a private company is first that the policeman is much cheaper (\$75–\$150 for a policeman compared with \$900–\$1 100 for a private security guard). However, the difference in price is reflected in the disparity in quality and professionalism. Unlike the private companies, guarding policemen do not have communication systems that can be used to call for support. The most significant difference is that private companies are not allowed to be armed, and guarding policemen are always armed.

Although not all PSCs feel their commercial interests are threatened by the presence of the police in their domain, the Committee of Security Companies²³ believes that the activities of the *Brigade de Garde* are wrong in principle because the state should not provide private security. Therefore the committee advocates with the Ministry of Interior for the disbandment of the *Brigade de Garde*.²⁴

The need for reform

The intermixing of and cooperation between public and private security actors reflects the fading division between these domains. The consequences are

significant. The use of public security forces in the marketplace, whether through PSCs or direct deployment by paying clients, is a form of commercialisation of security that devalues public security. The population in Kinshasa can be ensured of police response when required by contracting a PSC that works with hybrid patrol and response. In other cases, the police generally do not respond. In the Congo therefore, private security has become a commodity, and public security as well. While the affluent have access not only to private security, but also public security, the poor have access to none.

The GMRRR, in which members of the PNC, donors and experts participate, stated that there is ‘employment of police officers, sometimes astonishing, at non-official missions’, such as paid guarding. It mentions only briefly as a recommendation that certain structures of a private nature need to be reformed (GMRRR 2005:10, 29). Colonel Monga Sata, president of the GMRRR and commander of the *Brigade de Garde*, and Minister of Interior Kalume stated that the formalised cooperation between the private security sector and the police, as well as the operations of the *Brigade de Garde*, are considered temporary solutions to immediate needs. The separation of public and private security is a priority within the plans for the reform of the police.²⁵ According to members of the GMRRR from the international community, however, the high-ranking officers lack the political will to end these profitable activities. A more professional division between public and private security therefore seems unlikely in the short to mid term.

The commercialisation of the PNC is a very profitable business for a few in the higher police ranks, and provides the badly needed extra income for the fortunate police officers that work with the *Brigade de Garde* or are deployed at a private security company. However, it harms the police and state legitimacy. It creates wide income diversities within police departments, generating an internal dynamic in which people seek more profitable jobs at departments that work with the private sector. It depreciates the functioning of the police as public protector, which damages the already weak legitimacy of the state. The focus of the police seems to be completely diffused from providing public security to activities on the private sphere.

Through the hybrid patrol and response teams, the police are virtually dependent on the private sector, being unable to provide the logistics for such teams. The private sector responds to emergencies and alarms and helps clients in need with traffic accidents and first aid.

First, the commercial use of public security obviously must end. Through defining the roles and spheres of public and private security, the PNC should

end its commercial activities and refocus on providing public security. The private industry is there to provide additional services to clients. This does not mean that cooperation between public and private security providers should end. What is important is that the roles and responsibilities should be well defined, and cooperation with the private sector does not weaken or debilitate the public sector. Any transformation of the cooperation between the PSCs and the police is dependent on a considerable capacity enhancement of the police. The key needs for reforming the current role of public security in the private industry are therefore strategic reform and capacity building of the national police. The police must redefine their role as a public security force – which includes a paradigm shift – and increase their operational capacity.

The second key issue concerns finance and corruption. Public security forces operating on the private market constitute a business fraught with corruption and bribes. Unofficial monthly payments are made to the high-ranking officers involved and the deployed policemen. Although it will not be the conclusive answer to this system of 'back-handers', an increase in salaries for policemen is an important first step. It will make them employees of the state again, rather than of the private sector, and thereby public rather than private.

Also, the police need to be granted a budget they can work with and become part of a democratic system of public oversight, transparency and accountability. At present, there is no transparency or public oversight of expenditure (and additional income), and the management of the police forces is left to the individual commanders.²⁶ A number of these individuals profit immensely from the private business of the police. Because of these financial interests, any attempts to reform, to put an end to the commercialism, and to increase public oversight and transparency are likely to be seriously constrained from within the system itself.

Legislation and regulation: arbitrary implementation and informal oversight

Minimal legislation and regulation

PSCs fall under the responsibility of the Department for Civil Protection of the Ministry of Interior. Illustrative of the effectiveness and capability of the Ministry of Interior, the office of this department has the appearance of a squat, with piles of garbage in the garden. Inside there is no electricity, many windows are broken, and the building is almost empty. The director of the department has an office with piles of papers on his desk, while his deputy has no more than a

desk and a chair: not a single piece of paper can be found in his office. This is not an uncommon situation for ministries in the Congo.

The private security sector overall is ill regulated and poorly legislated. Much depends on personal relations and one-on-one arrangements. There is no legislation on the private security sector; only a minimal regulation against the exploitation of guarding companies.²⁷ All guarding companies need to register at the Ministry of Interior under this regulation. In essence PSCs are not allowed to be armed or use arms (article 6), and are not allowed to recruit active or former elements of the armed forces or police (article 3 and 7). Other issues concern the right to open and operate a guarding company, for which a permit from the Minister of Interior is needed (article 3). According to the tariff list of the Ministry, to open a guarding company costs US\$10 000 and the annual extension of the permit costs US\$5 000.²⁸

The Ministry of Interior does not prescribe the form of the governing structure of PSCs or annual reporting. There is no regulation or legislation on important issues such as Congolese PSCs operating abroad, or the export of security and military assistance. There are no requirements for 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.

Occasionally other rules are made, but in an informal and arbitrary way. For example, the current regulatory framework does not refer to uniforms: companies are not obliged to use them (although every company does). The Congolese Police, however, reminded the SCG in Kinshasa that guarding companies are prohibited from wearing uniforms that are similar to those of the police or army. Special reference is made to black uniforms, 'which are exclusively reserved for the Republican Guard'.²⁹ This reminder is not based on formal legislation or regulation, and naturally the police should not be in a position to regulate PSCs. The application, however, is very arbitrary. While some companies say that they were told by the police or the ministry to change their uniforms, DSA, one of the largest companies, still uses a dark blue uniform that is very similar to the uniforms of the PNC. According to a police statement, Likonzi Security uses the prohibited black uniforms.

Oversight through an ad-hoc commission and one-on-one meetings

Control and oversight of the private security sector 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. The ad hoc commission is presided over by the director of the department and consists of representatives from the ANR and the national police. The committee follows the activities of the PSCs and investigates suspected malpractices. ANR antennas positioned at PSCs send reports regularly to this committee in case suspicious events should occur. This committee advises the minister on permits and their yearly extension for guarding companies.³⁰

The second tool also consists of informal and irregular one-on-one meetings between the director of the department and the directors of PSCs. Some companies have a monthly meeting, others less often and less regularly. For the PSC, the purpose of these meetings seems to be to maintain a good relationship with the Ministry of Interior. Reputedly, at these meetings directions may cover any topic. This practice explains why the PSCs that were interviewed all mentioned rules and regulations with which they must comply. Some said they were given instructions on types of shoes and uniforms; others that they were not allowed to recruit female guards, or have female guards on night shifts. Cross-checking with other companies showed that they were not aware of these regulations.

Arbitrary implementation and informal governance

Regulation and control that are based on such meetings and ad hoc committees are obviously arbitrary. State bureaucracy is not independent or properly institutionalised (Chabal & Daloz 1999:3–16). In such a state, the legal framework and regulation are weak and minimally developed. Governance and state bureaucracy depend on personal relations and informal arrangements that are arbitrary and sensitive to corruption. For example, the annual extension of a PSC permit is dependent on positive advice from the ad hoc committee, which is not overseen and lacks transparency and accountability.

The implementation of the little formal regulation that exists is likely to through personal agreements between the committee and/or the director of the ministerial department and PSC in question. For example, expatriate employees of PSCs must be resident in the DRC for at least five years.³¹ The management of most companies is not Congolese, and some company managers have not lived in the Congo for five years. Another example is the PSC that, through a special arrangement with the Ministry of Interior and Conader, has employed a number of ex-combatants.

These issues reveal that the little regulation that exists is flexibly adhered to, in a country that is known to be deeply corrupt.

Private security and the Lubumbashi mining industry

The main commercial business in the Congo is mining: the country is extremely rich in natural resources. The province of Katanga is one of the areas that is richest in minerals: mainly cobalt and copper, but tin, zinc and gold are also exploited. Because of this wealth of minerals, Lubumbashi is the commercial heart not only of Katanga, but of the whole country. After the opening of the mining industry to private investment in the late 1990s, numerous international mining and trading companies began to operate in Katanga. Now that the end of the transition and the successful elections have provided a sense of stability, more and more companies are coming to Lubumbashi. The mining industry is dominated by international companies, mainly Chinese, South African, Indian, European and Lebanese.

Security threats

The Lubumbashi area was not a region of fierce combat during the war. Although armed groups and foreign armies were active in the north-eastern part of Katanga province, the south and west remained under the control of government forces. The mining industry in the area therefore was never subject to ongoing attacks and take-overs by rebel movements or foreign armies, unlike the eastern part of the province, North and South Kivu, Equateur and Maniema.

The security concerns of the mining industry in the region are generally twofold. First, petty theft of materials, mining assets, fuel, etc, is common. For most mining companies this is their prime security problem and the main reason that PSCs are contracted. Petty theft is committed by employees and non-employees. In the process of transporting mining assets from the Congo to Zambia, and the main ports of Dar es Salaam and Durban, theft is more organised, although only a minor percentage of the total minerals transported are stolen.³²

Second, conflict with artisanal miners occasionally escalates locally. Artisanal mining is done manually by local people who are not employed by a mining company. They sell their assets directly to the mining companies, middlemen or the factories for further processing. In the late Mobutu days and during the war, artisanal mining was actively encouraged by the government. Currently 100 000 artisanal miners are operative in Katanga province.

According to the 2002 mining code, in theory artisanal mining is allowed in specially designated concessions,³³ but so far no such concession has been designated. In addition, since the end of the war the government has

Table 2 Security actors in the mining industry

Security provider	Client	Service and activities
In-house security	Internal department of company, no PSC registration	In-house guarding, gatekeeping, access control, escort vehicles and transport
Private security company	Contracts with mining companies	Guarding residences, mines, factories, machines on site, gatekeeping and access control, theft prevention, escort mining assets transport
National Congolese Police (PNC)	Cooperate with PSC through formal cooperation agreement (contract) or hired directly by the mining company.	Armed back-up for in-house security or PSC
Mining Police (PM)	As per national regulation the PM have access to every mining site in the DRC as sites of national economic and strategic interest. Although the PM are part of public security, they often have a dual role, serving the state and the mining company. In effect the PM are deployed permanently on mining sites	Official role is to oversee mining activities on behalf of state, often included in the security department of the mining company
Judiciary police officers (OPJ)	Deployed directly at mining sites or factories at the request of the mining companies	Can arrest people and transfer them directly to the court of law, thereby bypassing the police
Armed forces (FARDC & GR)	Mining companies have access to national armed forces on requests made to the governor. This is informal and based on good relations between the mining company and those responsible at the state level	Rely on armed forces to protect sites in extreme cases: conflicts with artisanal miners, local population, clearance of mining sites, etc

allocated more and more areas for industrial mining, thereby pushing the artisanal mining further and further away. However, many artisanal miners continue to dig in the private concessions. Although in the strict sense of the law their activities are illegal, the mining companies have little means

of preventing them, and feel that they are not supported by national or provincial government. Occasionally the conflict escalates between the business interests of the mining company and the bread and butter issues of survival and income for the artisanal miners, and results in injuries or casualties. Unless the issue is solved by the government through good definitive regulation and alternatives are provided, the tensions will remain.

Occasionally sabotage occurs, frustrating the mining process and the processing of the mining assets in the factories. Although unconfirmed, the mining companies that are victim of these sabotage activities suspect that the artisanal miners were responsible.

Although these concerns appear to be limited, security is a key issue on the agenda and expenditure of most mining companies. The security industry is therefore extensive and has been booming in conjunction with the mining sector since the end of the transition process. But it is a diverse sector in which many actors operate, public as well as private. Like the general modus operandi of the private security sector, in the mining industry state and commercial actors work in parallel in the same market and cooperate in security provision. The market of security providers in Lubumbashi area is even more diverse than in Kinshasa, because more state actors are involved, and many companies use in-house security departments. Table 2 provides an overview of the actors in the mining industry, their (in-)formal clients and the security services provided.

Mining companies use combinations of these actors, but every company works with private and/or in-house security and the PNC, PM, FARDC and the GR. In some cases a mining company uses only its in-house security department, or only a PSC, together with the unavoidable mining police at the mines. In other cases one may find FARDC, GR, PM, PNC, OPJ, a private security company, and in-house security on the same mining site. Although the PSCs effectively cooperate directly only with the national police, they are part of a multi-actor web. The private security sector cannot be seen separately from the national security services, especially not in a sector that is of national economic and strategic importance such as the mining industry. In other words, private security companies do not operate in a separate sphere, but in constant formal or informal partnership with other security forces.

Private and in-house security

The growth of the private security industry in Lubumbashi area has been a direct consequence of the growth of commercial mining since the late 1990s.

Clients are mostly mining companies, which contract PSCs for guarding at residences, offices, mining sites and factories. The market in Lubumbashi is dominated by the same companies as Kinshasa: G4S, DSA, Mamba Security, Delta Protection. A few Lubumbashi-based companies do not operate in other parts of the Congo. With the explosive growth of companies operating in the mining industry and related sectors, the number of PSCs has also increased explosively since the end of 2006. Within the private security sector and the mining industry itself this development has been observed with suspicion. Because of the lack of regulation there is no control over basic standards, quality and behaviour.³⁴

The services provided by the PSCs that operate in the mining industry are the same as those provided in residential areas: basic access control and gatekeeping. Generally, private guards are positioned at the entrance of the mining site or factory compound. Inside, other actors operate where necessary (in-house security, PM, PNC, FARDC). The guards are not involved in internal security and the protection of miners in a potentially dangerous working environment. They are not given special training, but receive the same basic training package as guards for residential areas. OSS is currently the only PSC that attempts to set itself apart through providing specialised services. It wants to provide security services that are tailor-made to the demands in mining and the processing of minerals. Although it currently operates only in Mbuji Maji, where it is contracted by the state diamond company Miba, OSS will expand its operations to other mining areas, including Lubumbashi, in 2007.

The current PSCs cannot meet specific demands. This is one of the main reasons that a number of mining companies have developed their own in-house security teams. In the words of one director: 'Why would I pay a private guard who only keeps an eye on who is walking in and out, opens the gate, helps people park their cars and hopefully prevents some theft, while I can hire my own people to do that job for half the price?'

Most companies that were operative in the country long before the late 1990s boom have their own in-house security, because they settled in the area when there were no PSCs to contract. For other companies, the main reason for in-house security is that it is much cheaper.

However, many companies recognise the advantages of outsourcing security. Most mining companies do so because of the insurance and because PSCs can rotate the guards quickly – probably the best mechanism to prevent the guards from becoming corrupted and part of theft networks. It saves work

in administration, recruitment and organisation, and the company does not have to deal with the PNC directly (done by the PSC). Other companies, including parastatal Gécamines, use a combination of in-house security and outsourced security, with different tasks and responsibilities.

Private and public security

PSCs are able to meet the demands of the mining companies to a very limited extent. The most important role of private guards is theft prevention. Theft is committed not so much by intruders and burglars, but by the companies' own staff, and the public security forces. The state police and mining police have particularly bad reputations. Being ill paid – or not paid at all – they seek survival by various means. Although petty theft by private guards occurs as well, they have a much better reputation than the police. The PSCs do not have the same impunity as public security forces and, since job availability is low, this seems to have a preventive function. A system of rapid rotation also means less opportunity to steal. Private guards are therefore generally regarded as more professional and trustworthy. The security manager of a large mining company commented, 'I can't do without the armed police, but for every policeman, I have a private security guard to supervise him.'

Private guards cannot prevent artisanal miners from digging in concessions. The concessions are sizable and are not enclosed. When the situation with the artisanal miners gets out of hand, intervention is sought from armed public security forces, the police, GR, or FARDC, not the PSC or in-house security. Public and private interests are blurred in the Congo, not in the least in the Katangese mining industry. Good relations with the political and military elite in the province are therefore the basis for support from public security forces for the mining companies.

Clashes with artisanal miners occasionally escalate, resulting in injuries and casualties. Incidents like these, and the simple reality that no support or solutions are provided by government, have motivated some companies to handle the situation as a social problem, rather than a legal and security one. They look for more pragmatic solutions to preventing clashes (for example buying the mining assets from the artisanal miners, employing them as day workers, and developing social projects for local communities such as schools and clinics). Using this preventive strategy rather than a confrontational one, companies rely more on unarmed private security guards and less on army and police.

The role of public security forces is significant in the mining industry where a number of these forces are operative (see table 2). These bodies have functions that cannot be taken over by the private sector. But although they work in separate spheres, their functions sometimes overlap and in other cases they cooperate or are integrated. However, the only formal and direct cooperation between PSCs and public security services is with the PNC. Any other form of cooperation or assistance from the public security services is arranged with the mining company directly.

The PNC cooperates with the PSCs in a similar way to the arrangements in Kinshasa. For companies that rely solely on in-house security, it is therefore much more difficult to arrange police support, because the formal agreement between PSCs and the PNC does not include in-house security departments.

The role of the mining police (PM) is interesting. The PM constitute a department of the PNC that has official access to all mining sites, but no authority outside these sites. In effect, the PM are permanently deployed at the mines, where they engage in all sorts of illicit activities, such as extorting the artisanal miners and theft (Global Witness 2006:15). Their salaries are possibly worse than those of their colleagues at other PNC departments. According to some mining companies, they are not paid at all. Having no means of removing them from their sites, and wishing to maintain good relations with the authorities, mining companies can do little other than accept their presence. Some have chosen to pay them a salary and include them in the security team, rather than let them roam the site and seek an income through theft and embezzlement. In those instances, they cooperate on site with private guards.

Some mining companies have *Officiers de police judiciaire* (OPJs) deployed on their site. This is a legacy of the era when mining was conducted solely by state mining companies.

They select the OPJs themselves and have them on their payroll. Perpetrators of law infringements can be arrested by the OPJs and sent directly to the office of the public prosecutor and the court of law, completely bypassing the police. In other words, the main role of OPJs is to handle arrests and follow-up procedures.

Although public security provision on mining sites should be carried out by the PM, the FARDC and GR are called upon as a last resort to handle security crises, because the PM are often felt to be inadequate or incapable

of handling the situation effectively. The role of the military in the mining industry is not new in the Congo. Under Mobutu, the control of the mining industry and the country's natural resources became militarised (Global Witness 2004:8). After serious incidents on mining sites in which the FARDC and/or GR was involved, the coordination group of mine security managers and providers worked together on a protocol for the deployment of the military on mining sites. In the absence of governmental control, the sector felt it necessary to design the regulations themselves in order to prevent violent incidents.

There are many reports of human rights abuses on mining sites. They concern primarily the working conditions of the miners and the rights of artisans. The public security forces in general have a bad human rights record. So far no study has been made of human rights abuses by private security guards. PACT, an American NGO, is running a project on the implementation of the Voluntary Principles on Security and Human Rights (2000), the UN Code of Conduct for Law Enforcement Officials (1979) and the UN Basic Principles on the use of Force and Firearms by Law Enforcement Officials (1990) by mining companies and the PSCs involved.

Conclusions

An analysis of the role, activities and context of the private security sector in the Congo provides interesting insights into the dynamics between the private sector and a state which overall has failed, is informal and ineffective. The context of the Congolese state, in which security is politicised, privatised and commercialised, provides a uniquely enabling environment.

The lack of state performance and effectiveness, particularly in public security, leaves a vacuum which provides ready opportunities for the private sector to step in. Affluent people (mainly wealthy Congolese and internationals) turn to the private sector for services that the public security forces do not provide. Criminality and insecurity in the Congo consist largely of pick-pocketing, incidental pillage, extortion by public security forces, and conflict-related insecurity in some parts of the country. The private security industry is powerless against these forms of crime, and the main victims generally cannot afford assistance from a PSC. Robberies and theft occur, but to a limited extent.

The demand for private security therefore is based more on perceived insecurity than actual insecurity. The general sense of political unrest, instability and a potential relapse into conflict is the main emotion behind this perceived

insecurity. It is not unlikely that when the country gradually stabilises, the explosive growth of the demand for private security will come to an end. Because the private security sector is almost completely focused on urban-based affluent residents and companies, the sector's effect on human security in the country is negligible, as the most vulnerable people are poor and rural based, and have no access to private security. Security is thus a commodity in the Congo, accessible only to those who can afford it.

The private security industry cannot be understood in isolation from the public security forces. Public security forces have intervened in the private domain through cooperation with the private industry and via their own commercial branch, the *Brigade de Garde*. An assessment of security in the mining industry shows that the security providers form a multi-actor web: PSCs, PNC, PM, FARDC, GR, OPJ and in-house security work in parallel or in cooperation in the same industry.

Public security services have entered the private domain (and vice versa). The consequences are grave. Not only does this corrupt public security, it weakens state capacity and makes public security a commodity as well. Because of corruption, commercialisation and privatisation of state assets, there is little public security in the Congo.

The division between public and private security is fading, and both have become commercialised. However, the private sector does depend on the public security forces, primarily because it is unarmed. But certain functions of OPJ and police on the mining sites cannot be taken over by the private industry. Both sectors will always need a form of cooperation and coordination. Roles and responsibilities of the public security forces vis-à-vis the private security sector must be clearly defined. The current trespassing of public security on the private domain and vice versa must come to an end. Not only is it highly corrupt, it debilitates the public security forces. The police must focus again on their role as public security provider and from that perspective consider their cooperation with other actors in the private sphere.

However, such a transformation can be made only when the police are empowered, strategically reformed and capacitated. Redefining the roles and responsibilities of the private security sector vis-à-vis the public security sector should be included in police reform strategies. But the private sector has not been included in the GMRRR as a partner, expert or stakeholder; nor has it been consulted. Herein lies an important weakness in improving the regulation, effectiveness and cooperation of public and private security in the Congo.

Because of the state of the country and its governance and bureaucracy, the regulation and legislation of the private security sector are limited and ill defined. There is minimal regulation and it is arbitrarily implemented and adhered to. Regulation and control are ad hoc, not transparent, informal and based on personal relations.

The government has no effective oversight and control mechanisms for the private security industry. Although in principle this is reason for concern and improved legislation and regulation are essential, these needs must be put into perspective and seen in context. There is a general lack of effective governance and properly functioning institutions. Public security services, armed groups and dissident army units often pose a security threat. Against the background of the process of state reconstruction at every level, the regulation of the private security industry is understandably not of high priority on the government's agenda. Nevertheless, good regulation of the private security industry should be part of the process of state rebuilding and should be taken into account in security sector reform strategies.

Notes

- 1 It consists of 2 345 000 km².
- 2 Estimated by the IMF in 2005 at 57.55 million.
- 3 Available at www.undp.org.
- 4 In the period 1971–1997 the country was called Zaire.
- 5 United Nations Security Council Resolution 1493, 28 July 2003.
- 6 Chapter 3, article 52 states that all Congolese have the right to peace and security. Furthermore, article 2 of the foreword of the constitution confirms the human rights and fundamental liberties in the international juridical instruments to which the DRC is a member. The DRC has signed and ratified the following conventions:
 - UN Convention on the Elimination of All Forms of Discrimination against Women
 - UN Convention on the Rights of the Child and the Optional Protocol on the Rights of the Child on the Involvement in Armed Conflict.Furthermore, the DRC is party to
 - UN Convention on the Political Rights of Women
 - UN Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography
 - UN Covenant on Economic, Social and Cultural Rights
 - UN Covenant on Civil and Political Rights.

The DRC has also signed and ratified the African Charter on Human and People's Rights, although it did not sign the African Charter on the Rights and Welfare of the Child.

- 7 Interview with M Kitambala, director of the Civil Protection Department, Ministry of Interior, Kinshasa 31 January 2007.
- 8 Interview with the spokesperson of a Congolese PSC, Lubumbashi, February 2007.
- 9 Interview with Xavier Baudoux, managing director of Overseas Security Services Congo. Kinshasa, 16 March 2007.
- 10 Interview with M Kitambala, 31 January 2007, and with J Kaseya Kazadi, Fédération des Employeurs du Congo et Secrétaire de la Comité des Sociétés de Gardiennage, Kinshasa, 1 February 2007.
- 11 Interview with M Kitambala, 31 January 2007.
- 12 Interview with Bart Bianzeube, deputy director of operations, Defence Systems Africa. Kinshasa 22 January 2007.
- 13 Arrêté Ministeriel no 98/008, 1998, article 4.
- 14 Interview with M Kitambala, 31 January 2007.
- 15 Arrêté Ministeriel No 98/008, 1998, article 4.
- 16 Interview with Dieudonné Faka, Conader, Kinshasa, 8 February 2007.
- 17 The Voluntary Principles are the result of a dialogue between the governments of the US, the UK, the Netherlands and Norway, companies in the extractive and energy sectors, and NGOs. They have developed a set of voluntary principles to guide companies in maintaining the safety and security of their operations within an operating framework that ensures respect for human rights and fundamental freedoms. Available at www.voluntaryprinciples.org.
- 18 Interview with Xavier Baudoux, 16 March 2007.
- 19 Ordre Ops no 1560, 2003 and Directive no 1538, 2003.
- 20 Interviews with representatives of Ministry of Interior and Congolese National Police.
- 21 Interview with M Kitambala, 31 January 2007; interview with Col Monga Sata, president of GMRRR and commander of the Brigade de Garde, Kinshasa, 6 February 2007.
- 22 Arrêté Interministériel no 061, 2006, /CAB/MININTERDESEC/2006 et No 097/ CAB/MIN/FINANCES/2006 du 13 Juin 2006 portant fixation des taux des droits et taxes à percevoir a l'initiative de la police nationale congolaise.
- 23 *Committee des Sociétés de Gardiennage (CSG)* of the Congolese Federation of Employers (FEC)

- 24 Interview with Makwa Gambunji, director of Escokin (PSC) and president of the Committee of Security Companies at the Federation of Congolese Employers. Kinshasa, 7 February 2007.
- 25 Interview with General D Kalume, Minister of Interior, Kinshasa, 5 February 2007; interview with Col Monga Sata, 6 February 2007.
- 26 Interview with A R Custodio, Eupol Head of Mission, Kinshasa, 14 February 2007.
- 27 Arrêté Ministeriel 98/008, 1998.
- 28 Arrêté Interministeriel, no 70, 2004, article 9.
- 29 Comité Professionnel des Sociétés de Gardiennage, 15 November 2005.
- 30 Interview with M Kitambala, 31 January 2007.
- 31 Arrêté Ministeriel 98/008 1998, article 5.
- 32 Interview with K Delepierre, Directeur Afrique, Polytra Transport, Engineering and Consulting, Lubumbashi, 27 February 2007.
- 33 Loi 007/2002, Code Minier Titre IV/I.
- 34 Mine security managers and providers meeting, 27 January 2007.

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CHAPTER 3

PRIVATE AND PUBLIC SECURITY IN SOUTH AFRICA

Raenette Taljaard

Introduction

South Africa has a population of 44 819 778 (Census 2001) and a mid 2006 population estimate of 47.4 million. It occupies the southernmost tip of the African continent, stretching latitudinally from 22° to 35°S and longitudinally from 17° to 35° E. Its surface area is 1 219 090 km². It has common boundaries with Namibia, Botswana, Zimbabwe, Mozambique and Swaziland. Its western, southern and eastern borders are the Atlantic and Indian oceans (SA Yearbook 2006/7, chapter 1, p 1 and 6). South Africa is a liberal constitutional democracy under an elite-pated negotiated constitution. It was ruled by a white-party minority under the National Party Government from 1948 to 1994. In 1990 President F W de Klerk unbanned the ANC and other political formations, and released Nelson Mandela, paving the way for the political negotiation process and peaceful transfer of power that culminated in the first democratic elections on 27 April 1994. A Government of National Unity was formed, a Constitutional Assembly created, and the final Constitution adopted in 1996. South Africa has witnessed 13 years of relatively stable democracy, and free and fair elections were held at national, provincial and local level between 1994 and 2006. The economy has seen positive growth for consecutive quarters. But serious levels of poverty, inequality and joblessness persist. The incidence of violent crime has marred South Africa's otherwise positive achievements, and confronts the state with the serious policy and institutional challenge to protect the fibre of the social fabric, as well as the promises of the 1996 Constitution.

South Africa still shows the signs of a country in transition. Although it is a relatively peaceful state, it is experiencing two challenges to its security: proximity to an unstable neighbouring state, Zimbabwe, which has resulted in considerable migration flows across South African borders; and persistently high levels of violent crime. The security resources of the state are therefore severely overstretched. In addition, the state is under considerable pressure to ensure that it has the resources in place to provide adequate security during the hosting of the 2010 Football World Cup. State agencies, regional policing bodies and the private security sector plan to coordinate their efforts to ensure a secure event.

person in section 12 of the Act of Rights; and a country basis, in enshrining the principles that govern national security in section 198 of the founding tenets of security services in chapter 11. This chapter creates the foundations for the security services (a single defence force, single police service and intelligence services) as well as the founding principles of civilian oversight of all the wings of the security service.¹ Subsequent national legislation contains specific details of these instruments. These include:

- The SAPS Act 1995 (Act 68 of 1995), as amended by the SAPS Amendment Act 1998 (Act 83 of 1998): legislation that created enabling provisions for the formation of municipal police forces at municipalities that could support such forces in terms of their budgeted resources (Johannesburg Metro, Tshwane Metro, Ekurhuleni Metro, Durban Metro and Cape Town Metro)
- The Defence Act 2002 (Act 42 of 2002)
- The Private Security Industry Regulation 2001 (Act 56 of 2001), which is supported by an extensive set of regulations as well as a code of conduct for the PSC sector in South Africa

Security threats

South Africa is currently confronted with the security threat of a collapsing state on its border as Zimbabwe slowly disintegrates economically and politically. President Thabo Mbeki has formally been charged by the South African Development Community (SADC) with facilitating political mediation in Zimbabwe. South Africa has a vested interest in a peaceful political settlement. South Africa also faces the security threat of violent crime which is organised in nature and threatens the fabric of society. Crime levels engender a general sense of insecurity and add to the proliferation of weapons and random violence. According to the Government Communication and Information System (GCIS), major contact crimes have declined, but crime levels remain high with cash-in-transit-heists increasing by over 70%. Crime trends for 2004/5–2005/6 created the backdrop for a clear objective for the reduction of crime:

The current strategic thrust for policing in South Africa is the reduction of crime levels by between 7% and 10%. The latest crime figures were released in September 2006. All eight contact crimes decreased during the last financial year, with four of the

eight categories showing significant decreases. Common robbery decreased by 18,3%, attempted murder by 16,6%, common assault by 15,6% and serious and violent assault by 9,6%. The decrease by 6,2% of robbery with aggravating circumstances is also encouraging and is an improvement on the previous year's decrease of 5,5%. Two subcategories of robbery with aggravating circumstances have shown an increase and are cause for concern – car hijackings increased by 3,1% from the previous financial year and cash-in transit heists increased by 74,1%. Although murder decreased by 2%, rape by 1% and indecent assault by 3,8%, those contract crimes remain a cause for concern. Over the past 11 years, there has been an overall downward trend in the murder rate. Despite the changes for the better, there are challenges that still remain in other categories of crime prevention and combating programmes. Alcohol and drug abuse continue to be a problem as generators of crime. Drug-related crimes increased by 13,2%, while instances of driving under the influence of alcohol or drugs increased by 9,9% (SA Yearbook 2006/7, chapter 3, p 16).

The South African Police Service (SAPS) is currently 152 000 officers strong.² The total personnel strength of the Department of Defence (DoD) (including all supporting services) on 15 January 2003 was 75 318 (Le Roux & Boshoff 2004). Many South African National Defence Force (SANDF) troops are engaged in peacekeeping and peace-enforcement missions on the continent under UN and/or AU mandates. The SANDF remains ready to assist the SAPS in the execution of its constitutional responsibilities, but because of international and regional commitments, its capacity to do so is limited in practical terms. The ability of the security forces to adequately address criminality is a matter of considerable contention. South Africans have opted to procure the services of PSCs in order to obtain addition protection against violent crime. This has seen a proliferation in the PSC sector in recent years.

Extent of PSCs and PMCs

Accurate statistics for the relative size of the PMC sector are difficult to obtain because of a paucity of public information. In 2006, according to PSIRA, 4 763 active registered security businesses employed 269 901 active registered security officers. This was up from 4 437 active registered security businesses in 1997 that employed 115 331 active registered security officers. Figures for active registered businesses included 4 763 security businesses, 4 041 guarding businesses, 868 cash-in-transit businesses, 881 armed

response businesses, 296 901 security officers, 689 845 inactive registered security officers, and a total of 986 746 registered security officers (active and inactive).³ More recent statistics for 2007 suggest that the number of active registered security officers has increased to over 300 000.⁴

Estimates of the economic size of the sector peg its value at approximately R14 billion. The industry has six large employer organisations and 18 trade unions. Since the country has 152 000 SAPS officers and 300 000 active registered security officers, the ratio is 1:2. Therefore it is probable that more than twice as many guns are licensed to PSCs than to the national police force. The names of PMCs operating in South Africa are difficult to obtain. South African PMCs that are known to have operated outside the country's borders include Executive Outcomes and Meteoric Tactical Solutions. The names of PMCs and PSCs are listed in appendix A and categorised according to the services they provide (Avant 2005).

The top 20 PSC employers in South Africa in terms of size are Fidelity Corporate Services; Securicor (South Africa); ADT Security Guarding; Magnum-Shield Security Services; Group 4 Falck; Coin Security Group; Enforce Guarding; Chubb & Supergroup; Protea Security Services; Gremick (a division of Servest); Security Patrol Experts CC; Stallion Security; Command Security Services; Unitrade 1047 CC; Maxi Strategic Alliance; Bosasa Security; Hlanganani Protection Services; National Force Security CC; Nkululeko Guarding Services ; and Telesafe.

The PSC sector in South Africa is the source of considerable foreign direct investment through the local subsidiaries of foreign PSCs, for example ADT and Group 4 Securicor: a foreign-owned firm expected to play a considerable role in World Cup security for the International Federation for Association Football (FIFA). When South Africa enacted the Private Security Industry Levies Act 2002 (Act 23 of 2002) there was concern that the imposition of levies could lead to withdrawal of foreign direct investment (FDI) in the sector. This did not occur.

Table 1 shows a breakdown of registered active security service providers (SSPs) (individuals per province).

Table 2 shows a breakdown of registered active security service providers (businesses per province).

The PSC sector has its greatest presence in Gauteng, where the prevalence of violent crime is highest. There is also a concentration in the scale and

**Table 1 Active SSPs
(individuals per province)**

Province	Percentage of registered active SSPs/PSCs (individuals)
Gauteng	51%
KwaZulu-Natal	16%
Western Cape	12%
Eastern Cape	6%
Mpumalanga	5%
Limpopo	4%
North West	3%
Free State	2%
Northern Cape	1%

Source: PSIRA March 2006

**Table 2 Active SSPs
(businesses per province)**

Province	Percentage of registered active SSPs/PSCs (businesses)
Gauteng	48%
KwaZulu-Natal	13%
Western Cape	12%
Limpopo	9%
Eastern Cape	6%
Mpumalanga	5%
Free State	3%
North West	3%
Northern Cape	1%

Source: PSIRA March 2006

scope of PSC activity in the country's three most commercially significant provinces: Gauteng, Western Cape and KwaZulu-Natal.

PMCs are licensed to operate in accordance with the export licensing regime that applies to foreign military assistance, currently under the provisions of the Prohibition of Mercenaries Activities and Regulation of Certain Activities in Country of Armed Conflict Act, 2006, whereas PSCs are required to register with PSIRA under the provisions of the Private Security Industry Regulation Act 2001 (Act 56 of 2001). Specific details for PMCs are difficult to obtain. In the case of PSCs, screening policies are required in terms of the code of conduct, as well as the regulations published pursuant to the PSIRA Act. In addition, the PSIRA Act requires that persons applying for registration must submit clearance certificates if they are former members of an official military, security police or intelligence force or service in South Africa or elsewhere (section 23(1)(f)). As PSIRA pointed out in a presentation to Parliament's Safety and Security Committee:

Registration ... is a statutory requirement to render a security service. Persons previously employed in the SAPS, SANDF, etc, are not

prevented from applying for registration in terms of the act. However, for the purposes of registration, such [a person] must submit a clearance certificate from his/her employer if the applicant is a former member of any official military, security police or intelligence force or service in South Africa or elsewhere (see section 23(1)(f) of the act as well as Regulations 2(2)(h) and 4 of the Private Security Industry Regulations).

Details of employee numbers for PMCs are also difficult to obtain. Anecdotal evidence suggests that the industry consists mostly of white managers and owners, and that the bulk of employees are black people. Empowerment partners (including Reserve-Mvelaphanda, Kagiso, Safika and Corvest) own approximately 28% of the sector (De Lange 2006).

Employees of PSCs have a minimal level of unionisation, despite the existence of 15 trade unions. During wage negotiations for the PSC sector in 2006, the unions tried to break a deadlock which saw strike action cripple security at various venues.⁵ This event showed the significant strength of the sector, even vis-à-vis the SAPS, which failed in some instances to contain violent strike action. It resulted in over 71 deaths and damage to property in Durban, Cape Town and Johannesburg. The largest union is Satawu, with approximately 34 370 members, while 14 other unions account for approximately 10 000 members. Since the industry has over 300 000 employees, this is a very low level of union penetration. Because the labour legislation requires a unionisation figure of 50 000 or more, the absence of a bargaining council contributed to the near-stalemate during wage negotiations.

PMCs and PSCs that have operated outside South Africa include Meteoric Tactical Solutions, Executive Outcomes, Erinys International, and Omega Risk Solutions. Operations have taken place in Sierra Leone, DRC, Iraq, Afghanistan, Sudan, Ivory Coast and other recipient destinations. Since the export of security services was not regulated under PSIRA legislation and PSC exports have never explicitly been included under RFMA provisions, information about their operations is anecdotal. Many PMCs opted not to seek authorisation from the National Conventional Arms Control Committee (NCACC) for exported services, so information is dependent on investigative media reports and questions posed in parliament. This is how information surfaced publicly about the activities of Erinys and Meteoric Tactical Solutions in Iraq.

Estimates suggest there are between six and nine PSC employers' organisations (see appendix A). The largest umbrella body is the Security

Industry Alliance (SIA), which is quite active and effective (see appendix A for members). The biggest companies (Securicor, ADT, Elvey Group, Fidelity Group and Chubb) are core members of SIA. SIA has concluded memoranda of understanding (MOU) with government departments and structures, including the Ministry of Safety and Security, the Ministry of Intelligence, PSIRA, the firearms registrar and the Safety and Security Sector Education and Training Authority (Sasseta). The PSC unions are less organised and not so effective in lobbying for the interests of their members, as could be seen in the strike in 2006.

The overall employers' association is the South African National Security Employers Association (SANSEA).

There is considerable transparency in the sector, owing to the regulatory framework under which PSCs function, and the reporting and compliance obligations that this imposes on them. The PMC sector is much more opaque because of the desire not to attract attention, particularly when the licensing approval of the NCACC may not have been sought or obtained for the export of certain services.

Reasons for the development of the private security industry

The evolution of the PSC and PMC sectors in South Africa can be attributed to two causal factors, which were critically important at different times. In the first period, shortly after the transition to democracy, the government embarked on a large-scale demobilisation and reintegration effort to amalgamate the former homeland forces with the SANDF and ensure a manageable-size defence force, commensurate with the country's needs. As a consequence, SANDF soldiers took voluntary retrenchment packages, which proved insufficient as a source of income. These former soldiers played a large part in the formation of the PMC and PSC industry. The second period largely coincides with the escalation of crime, when the industry grew in response to the need for private security in the absence of adequate protection by state organs. This trend continues to fuel growth in the PSC sector.

The private and public sectors of the security services intersect in different ways. The DoD does not have a policy on military outsourcing. In the domestic defence environment, the role of PMCs and/or PSCs in support of military functions is limited. In the field of peacekeeping and peace-enforcement, where South Africa has acted under UN and AU mandates,

the private sector has been involved in support of AU missions in logistics and other areas. Relations between the SAPS and the PSC sector have not been close, and cooperation has been sporadic. There is a degree of tension between the two because the SAPS feels that the PSC sector is not always adequately responsible.⁶ Comments by the president⁷ may herald a new era of public-private cooperation between the SAPS and the PSC sector.

Supply and demand dynamics are fuelling the growth of the PSC sector. Because crime remains a high priority issue, many turn to PSCs for their protection. PSCs currently protect private homes, airports, harbours, banks, transport systems, industries and other critical areas. Given its growing dependence on the sector, South Africa will not be able to survive without it. This is borne out by the current SAPS-PSC ratios. In addition, the PSC strike in 2006 demonstrated how vulnerable sectors of the economy become to criminal activity when that sector ceases to function.

There are several concerns about the size of and dependence on the PSC sector. One, ironically, is security. Given the level of private security provisions for critical infrastructure, how secure would this be from a possible terror threat in 2010? Second, when the state ceases to have a monopoly on the use of force, it becomes weakened and is dependent on the private sector. If the private sector ceases to function, the state is not able to step in, as it has not built the capacity for which it was relying on the private sector. Third, given the size of the industry, and therefore the number of firearms in employee hands, are civilians and vulnerable groups safe from the possibility of gunfights between armed gangs and criminals and the PSC sector? There have already been casualties in cash-in-transit heists and shopping malls when guards and criminals exchanged fire.

Services that PSCs and PMCs provide

- PSCs provide the following services:
- Security guards (industrial and commercial)
- Security guards (cash-in-transit)
- Bodyguards
- Security consultants
- Reaction services / response for businesses
- Venue control / special events
- Manufacture of security equipment
- Private investigators
- Training

- Security equipment installation
- Locksmith/key cutters
- Security control room
- Rendering S/S
- Car watch
- Insurance
- Security and loss control
- Fire prevention and detection
- Consulting engineer
- Alarm installation
- In-house security⁸

PMC services include:

- Military advice and training
- Operational support
- Logistical support
- Site/personal/personnel security
- Crime prevention/intelligence
- More direct mercenary-style operations

Fidelity Corporate Services and Coin Security Group are among the largest cash-in-transit and cash-management service providers in South Africa. Cash-in-transit PSCs face at least two challenges: the strength and security of their vehicles; and the calibre of their weapons versus those used in military-style cash-in-transit (CIT) heists. In December 2006 a strike by CIT companies was narrowly averted when they insisted that the SAPS provide extra protection when cash is transported in large volumes.

PSCs are easily identifiable by their uniforms. It is more difficult to obtain information about PMCs, but some can be recognised from their uniforms and firearms. However, PMCs are not usually employed in South Africa. When they are employed, they are used to guard the mines of large mining houses and business interests of corporates that invest on the continent. (PSCs may also be used for these activities.) South African executives travelling abroad may utilise close-protection services for certain destinations. PSCs are employed to do CIT on behalf of banks and other businesses, including the retail sector, to protect harbours, airports and critical infrastructure. The state contracts PSCs to protect the SAPS, and some parastatals are turning to PSCs for protection of infrastructure. For example, Airports Company South Africa (ACSA) employs PSCs. In addition, thousands of households subscribe to armed response services.

The nature of the client's industry, and therefore the fees he or she is able to pay for security services, has a bearing on the contracts that are sought. PMCs are usually contracted to protect resource extraction sites. Large corporate clients are highly lucrative for PSCs, whether in the public or the private sphere. ADT Security Guarding has the largest percentage of this segment of the market. State use of PSCs is controversial, and the only justifications are cost-efficiency and freeing fully trained SAPS officers from guard duties.

Training for the PSC sector is regulated by a MOU between the PSIRA and Sassetta. The PSC sector pays approximately R111 million in training levies to Sassetta every year. (The SAPS and PSC sector are both trained under its auspices.) Every year the PSC industry receives back R34 million from its overall levy contribution. This means that the PSC sector is subsidising the training of SAPS and Correctional Services. According to Kevin Derrick of Gremick, the PSC sector requires between R125 million and R157 million from now until November 2011 to meet its training needs and thus discharge its duties professionally.

Training is required in terms of the regulations published pursuant to the PSIRA Act. Regulation 3(6) stipulates: 'The Authority performs its functions in terms of this regulation after such consultation with the South African Qualifications Authority, the Policing, Security, Legal and Correctional Services Sector Education and Training Authority, or with any other statutory body, as the Authority may deem necessary.' The PSC sector is technologically intensive, and the private sector often has more sophisticated equipment than the public sector. The release of crime statistics by the SAPS has been sporadic in recent years, so it is difficult to track the effectiveness of the PSC sector and gauge its effect in reducing crime levels in specific areas.

Privatisation of security and human rights

The Bill of Rights expressly protects the rights of women and children. This is supported by constitutional protection for children in section 28 of the Constitution. In addition, state entities that support constitutional democracy (for example the South African Human Rights Commission and the Commission on Gender Equality) have institutionalised roles to protect the rights of women and children. Various national laws have been enacted, for example the Domestic Violence Act 1998 (Act 116 of 1998), that expressly seek to protect vulnerable groups, and specialised structures in parliament (for example the Committee on the Improvement in

the Quality of Life and Status of Women) are tasked with oversight of key vulnerable groups.

PSCs impact positively and negatively on women and children. The negative impact manifests in the extent to which women and children fall victim to the misuse of firearms or the use of force by private security agents in cash-in-transit heists and armed robberies. The positive impact manifests in at least two ways. First, given the penetration of PSCs into domestic security provision, these companies play an important role in keeping vulnerable groups safe and secure. Second, the PSC sector has become a key employer of women. Women have started PSCs. In addition, the Union of Refugee Women litigated successfully before the Constitutional Court in 2006 for the right of refugees to be legitimately employed by the PSC sector. PSCs employ women, but not children. Information for PMCs again is more difficult to obtain.

Allegations surfaced in 2006/7 of a 'trophy video' of a South African employee of the British PMSC Aegis in Iraq. Footage showed him shooting randomly at Iraqi civilians. This matter was brought to the attention of the South African DoD and National Prosecuting Authority (NPA), but no prosecution followed. Aegis did not penalise the employee.

Advantages and disadvantages of the private security industry

Advantages of the PSC sector include the following:

- It is an additional and crucial resource in the fight against crime
- It is possibly more efficient than the SAPS
- It has access to superior equipment
- It is a source of foreign direct investment
- It is an employer and therefore indirectly alleviates poverty

Disadvantages of the PSC sector include:

- Dependence on the PSC sector breeds state complacency
- It can withdraw at any moment if profit margins do not favour its remaining in business, which could leave a security vacuum
- PSCs contribute to the indiscriminate use of force and the availability of firearms in a society

- Criminal networks can penetrate the PSC sector far more easily than the state sector, which has government intelligence vetting procedures

Advantages of employees of PSCs and PMCs operating beyond South African borders include:

- The flow of skills transfer and skills upgrading and expertise can be transferred to the local market
- Remittances from foreign earnings contribute to savings
- They can indirectly be a source of intelligence gathering

Disadvantages include:

- South Africans can find themselves deployed in areas where there is no rule of law, and civilian populations are vulnerable to any use of force
- The reputation of the country may be at risk from their activities
- They could 'open fire' on one another in theatres where they are deployed on contract with other forces and/or other PSCs or PMCs
- Involvement in certain operations may contravene the formal South Africa foreign policy positions
- There may be complete disregard for South African law and legal provisions in seeking to deploy in certain contexts

(The relative value of PMCs in the following aspects is difficult to assess and will be highly context-determined):

- PSCs have enhanced public security services, especially where close working relationships, formal or informal, have been established
- PSCs have possibly assisted in stabilising, if not reducing, crime levels, though empirical data is difficult to find
- PSCs have enhanced a sense of public safety. Paradoxically, however, their recent strike action in 2006 contributed to the lack of a sense of

public safety and concerns at the motives that underpin the deployment of the PSC sector (that is, profit instead of public safety)

- PSCs have created another sector of the economy that makes a taxable turnover of close to R14 bn per annum, which is a source of FDI and of employment generation
- PSCs, as providers of employment, may well have helped to lower unemployment

The government has benefited from the presence of the PSC sector, in that the sector has generated a sense of security, though it has not acknowledged it. South Africans have generally welcomed its presence in the economy. However, this has a demographic dimension. Those who can afford to pay for PSC services have a much more positive view of the contribution the industry has made to a societal sense of safety and security. By virtue of the sector's links with the past – former soldiers and policemen having been catalysts for the formation of the industry – the industry still witnesses a racially polarised public discourse about its value and merits and demerits. But a number of strong BEE partners have entered the sector, changing its dynamics and building different relationships with government.

Policy frameworks for PSCs and PMCs

Some sections of government outsource their security/military services to PMCs and PSCs. This has been limited, apart from missions under direct UN or AU mandates. In contrast, the SAPS and some key infrastructure parastatals outsource security work to the PSC sector. According to the minister of safety and security, the SAPS spent close to R100 m on PSCs in 2005 and 2006 (Da Costa 2006). An internal SAPS investigation into the outsourcing of security services found it was more cost effective for this type of service to be performed by the private sector. In addition, PSCs are contracted to assist the SAPS at major events. Some PSCs guard government buildings.

In February 2007, the PSC sector developed a proposal for a working partnership with the SAPS. Meetings were held with the deputy police commissioner, Andre Pruis, and the deputy minister for safety and security, Susan Shabangu. As well as a more general partnership, pilot projects could include sharing communication and information about crime. There is no standardised government policy on outsourcing security services to PSCs and PMCs, and no explanations or justifications are offered, apart from possible

cost-effective service provision by the private sector – the normal justification for outsourcing public services.

Numerous corporate entities in South Africa have outsourced all aspects of their security to PSCs, but not many retain the services of PMCs. Few establishments have a policy framework on outsourcing security and/or military services, other than the cost of the contract being the guiding principle of decision making. There are a number of public-private partnerships (PPPs), for example in the construction of prisons and the provision of security services to the Department of Correctional Services. The limited number at this stage may flow from President Mbeki's call for a general review of the PSC sector, its regulation and its relationship with state security structures.

Extent of mercenary activities

The best-known case of mercenary activities by South Africans outside South Africa is that of Executive Outcomes in Sierra Leone in the early 1990s. Other examples include activities in the Ivory Coast, as well as the alleged coup attempt in Equatorial Guinea.⁹ Allegations have also been made that South Africans were involved in destabilising efforts in the DRC, especially in resource-extraction areas that are still fairly unstable, despite the political transition.

South Africa is a party to both the UN Convention against the Recruitment, Use, Financing and Training of Mercenaries, 1989, and the OAU Convention on the Elimination of Mercenarism in Africa, 1977, which has been renewed by the AU. These instruments place obligations on the state to curb mercenarism through legislation. Accordingly, South Africa passed the RFMA, which has had limited effectiveness in implementation as a tool to curtail mercenarism, despite a few convictions via plea-bargain agreements with the state for contraventions of the act. The RFMA provisions are largely replicated in the Prohibition of Mercenaries Activities and Regulation of Certain Activities in Country of Armed Conflict Act, 2006. Mercenarism is not explicitly defined. Instead, the ban contained in section 2 of the act draws largely on definitions in international and regional protocols (see appendix B).

Some South Africans have been convicted via plea-bargain agreements of contravening the RFMA, but the law has never been fully tested in court, owing to the plea-bargain route opted for by the prosecution in most cases. Large-scale frustration over the apparent lack of efficacy has led to the legislation being redrafted by the Ministry of Defence and subsequently the

Portfolio Committee on Defence. The new proposed legislation will include the provision of PSC services within its definitional and regulatory ambit.

Regulatory framework for PSCs and PMCs operating in South Africa

In South Africa the private security industry is subject to an extensive system of sectoral regulation with an independent regulatory body (PSIRA) that was set up in accordance with the Private Security Industry Regulation Act 2001 (Act 56 of 2001)¹⁰ and the Private Security Industry Levies Act 2002 (Act 23 of 2002).¹¹ This overarching legislative framework of primary law is supported by an extensive set of secondary law and regulations including:

- Regulations made under the Private Security Industry Regulation Act 2001 (Act 56 of 2001)
- Regulations relating to Appeals and Applications for Exemptions, 2003
- Amendments to regulations made under the Security Officers Act 1987 (Act 92 of 1987)
- Code of Conduct for Security Service Providers, 2003
- Improper Conduct Enquiries Regulations, 2003
- Training regulations
- Documentation to be kept in terms of Regulation 10(7)
- Basic Conditions of Employment Act (Act 75 of 1997)
- Other documentation and requirements determined by the sectoral regulator from time to time

Aspects such as training and the use of firearms are covered by separate provisions. These are the broad roles of the PSIRA under the act and regulations, as well as the code of conduct for training, and a new memorandum of understanding (MOU) between the sectoral regulator, Sassetta and the firearms registrar, established under the Firearms Control Act 2000 (Act 60 of 2000). The primary objectives of the PSIRA are to regulate the private security industry and to exercise effective control over the practice of security service providers in the public and national interest and in the interest of the industry itself.¹²

There are disparities between the legislative frameworks that regulate PSCs and PMCs in South Africa and outside the country. PMCs are not usually licensed to operate in South Africa, and the state does not have an elaborate system of military outsourcing within its borders or abroad. The core of the distinction concerns the export of the services of PMCs and/or PSCs. The export of foreign military assistance – the type of work that PMCs would usually be associated with – falls under the auspices of the Prohibition of Mercenaries Activities and Regulation of Certain Activities in Country of Armed Conflict Act, 2006.

Until the war in Iraq, and the private security and military sector boom associated with the largely outsourced nature of the US and ‘Coalition of the Willing’¹³ operation there, the South African government did not seek to extensively regulate the operation of private security services abroad. Although some of these types of service would have been caught in the net of the now repealed RFMA, government moved to secure a tighter regulatory net over the export of private security services by tabling the Prohibition of Mercenary Activities and Regulation and Prohibition of the Rendering of Certain Assistance and Services in Areas of Armed Conflict Bill in Parliament in September 2005,¹⁴. After extensive consultations, the Bill was redrafted as the Prohibition of Mercenary Activities and Regulation of Certain Activities in Country of Armed Conflict Bill,¹⁵ which later became the Prohibition of Mercenaries Activities and Regulation of Certain Activities in Country of Armed Conflict Act, 2006. This legislation contains extensive new provisions to regulate the export of security services.

A harmonisation of procedures may be required or a coordinating mechanism between the NCACC (the body tasked with the oversight and licensing of the export of PSC and PMC services in accordance with the new act) and the PSIRA, because many companies that are registered in terms of the PSIRA processes may offer their services for export as well. A more streamlined administrative process may therefore be required over time. The PSIRA recently raised this matter in a presentation to the Portfolio Committee on Safety and Security. This was the response to a question about how the authority regulates South African registered companies which operate outside South Africa:

The Act and/or regulations do not prevent a registered security business to perform a security service outside the Republic. However, in terms of Section 39 of the Act, any act constituting an offence or improper conduct in terms of the Act or Regulations which is committed outside the Republic by a security service provider is deemed to have been committed in the Republic. As there is no

statutory requirement of any security business to disclose whether it is performing a security service outside the Republic, it is obviously difficult to identify these businesses and to regulate their activities outside the Republic. On receipt of any complaints, the Authority will investigate the allegation. To address this problem, a requirement by way of a regulation will be introduced to force companies to declare their foreign activities.

To avoid regulatory clashes between the PSIRA and the NCACC, a route will need to be developed to ensure a harmonised administrative licensing process for PSCs in particular that may be registered and/or incorporated in South Africa, yet wish to conduct security work outside the country's borders. Although the PSIRA is tasked with oversight of PSCs in the domestic market, and the NCACC has traditionally had the oversight role of PMCs that export military assistance, the NCACC's mandate over PSCs has been expanded extensively by the Prohibition of Mercenaries Activities and Regulation of Certain Activities in Country of Armed Conflict Act, 2006.

Irrespective of the extensive nature of these regimes and their expanding roles, they have had varying levels of effectiveness in overseeing and regulating the sector. In pursuing its mandate for oversight of the domestic PSC sector, the PSIRA has had considerable success. Its biggest challenge stems from the size and scope of the sector and its ongoing growth. Industry compliance and the desire to seek licences and/or exemptions formally, where desired, have been high. Its weakness concerning PSCs conducting operations outside South Africa has already been alluded to. Litigation before the courts has also enhanced industry compliance with the regulator. Cases have ranged from contestation of exemptions, to attempts to subvert the regulatory power of the PSIRA through independent contracting, to the ability of refugees to work legitimately in the private security sector.¹⁶ Weaknesses have also emerged in the oversight of the PMC and PSC sectors when they export their services and require licensing by the NCACC.

The legislation establishing the PSIRA and domestic regulation of the PSC sector has largely been effective. However, the large-scale security sector strike in 2006 revealed vulnerabilities that pointed to the need for tighter regulation, and possibly for public and private security providers to cooperate more closely. This will have regulatory framework implications and the regulator may see an increase in its powers in the coming years.

President Thabo Mbeki pointed to this possible closer cooperation and the need for a more robust regulatory framework:

The increase in the incidence of particular crimes during the security workers' strike should have brought home to all of us the fact that the security industry cannot be handled simply as a private affair of the private sector. Quite clearly the regulatory system that we have in place is inadequate. This applies to such issues as wage levels, personnel vetting systems, enforcement of guidelines on cash-delivery vehicles, and so on. This is a matter that we shall review during the course of the year, so that, in addition to improving the work of the police, we can together with the private security industry create an environment in which the security expectations of the public, in which huge resources are expended, are actually met.¹⁷

He indicated the areas of regulatory reform in the domestic PSC sector. A broader regulatory review is possible, which would address the question of harmonising the PSIRA approach to PSCs working outside South Africa and the new NCACC-driven regime for PSC service exports.

When domestic regulation is focused on firms operating domestically, the possibility for a successful regulation is higher. Because the PSIRA principally oversees the domestic PSC sector, it has had measured successes in licensing, oversight and investigations and training. But law alone cannot effectively regulate an industry this size. PSIRA's annual reports demonstrate growing strain because of the volume of licensing applications and the escalation in numbers of investigations that this would imply. The state has lost its monopoly on the use of force to protect its citizens, and is increasingly reliant on the private security sector. While the renewed emphasis on regulation is a step in the right direction, growth in this sector is probably caused by the lack of effective protection through the state's own agencies.

Regulatory framework for PSCs and PMCs operating outside South Africa

The regulatory framework for PSCs and PMCs operating outside South Africa is in flux. In the early days of democratic government, the RFMA was passed as an indication of the country's peaceful intentions in the region and abroad. In addition, government wanted a degree of control over the PSCs and PMCs that were being set up. Under the provisions of the act, all exports of foreign military assistance (which was very broadly defined) were to be in accordance with the licensing procedure created under the auspices of NCACC, which would oversee the exports of conventional weapons and military services in an open and transparent manner through regular reports to parliament.

The NCACC therefore became the custodian of the objectives of the act. In terms of the regulations published pursuant to the enactment of RFMA and of the NCACC, procedures were developed for the detailed processing of a licensing application to render foreign military assistance. A referral system was created for criminal prosecution of those that failed to obtain NCACC authorisation. The NCACC hands such case-files directly to the National Prosecuting Authority (NPA). Commentators have pointed out that few formal applications have been received, despite a flood of South African firms, of South Africans working for foreign firms, and of foreign-registered firms. The extensive use of plea-bargains to effect the few successful prosecutions that have taken place highlights the limited efficacy of the law.

The RFMA has revealed several weaknesses and general lack of effectiveness. On the domestic front, the legislation has always been viewed as targeting former SANDF soldiers, and has not enjoyed the popular legitimacy that would have made it more effective. That so few individuals and firms bothered to obtain authorisation meant that they were suspicious of its motives. This is clear from their disregard for the law and its provisions when seeking lucrative opportunities abroad. The NCACC cited Iraq as a conflict area to ensure that the act would apply unambiguously to that country as a theatre of war. There have been few prosecutions, the highest profile being Sir Mark Thatcher. However, even in the case of Thatcher, the Scorpions had to opt for a plea-bargain to ensure a conviction for RFMA transgressions.

The regulatory regime is national in focus and jurisdiction, whereas PSC and PMC services are not limited to incorporation in a single state. PMCs and PSCs easily evade national regulatory regimes. This is in no small part responsible for the travails of the RFMA. For example, Erinys International and Dyncorp employ numerous South Africans, but the nature of the companies places them almost beyond the reach of the NCACC and the RFMA.

It was mainly owing to frustration over the apparent ineffective nature of the RFMA and the multinational corporation nature of the industry that government passed the mercenary bill in 2006. It includes PSCs and PMCs in the new regulatory remit and creates wide-ranging extra-territorial application.

In addition, the new legislation makes provision for considerable executive discretion in determining designations of armed conflict, exemptions, and types of service that may be exempt in certain areas. The ease with which these provisions have been sidelined has shown its limitations. The prosecution authorities have encountered key obstacles in the legal regulatory route. They have confronted near-insurmountable burdens of evidence that

have made it problematic to consider pursuing cases against South Africans currently in Iraq unlawfully under the RFMA and the future dispensation. In addition, securing extraditions, even if the burden of evidence is surmounted, may be nearly impossible.

The use of firearms and uniforms by PSCs and PMCs

The regulatory system for firearms resides with the PSIRA and the firearms registrar. One of the conditions of granting licences is that providers of security services must be lawfully registered with the authority. The PSIRA provides information to the registrar about the good standing of applicant businesses. This information includes its registration status. The industry has also tried to take a more proactive stance on firearms. The largest employers' organisation in the PSC sector – the SIA – formed a joint task team with the Firearms Registry in April 2005. In addition, the SIA aimed to be part of the Firearms Implementation Forum under the minister of safety and security.¹⁸ As part of broader reform, the PSC industry established an interim board for the sector on 4 October 2005 which has established MOUs with various ministries, ranging from safety and security to intelligence.

Neither the PSIRA Act nor the Firearms Control Act requires the concealment of weapons by PSCs. Security service providers must obtain formal firearm licences in accordance with the provisions of the Firearms Control Act and must ensure that all weapons issued are registered. In a presentation to parliament, the PSIRA identified firearm control as a key area of regulation that required attention and highlighted three areas of reform to ensure sound control and prevent the exploitation of firearms:

- Create a database of firearms issued to monitor possession and retention of firearms
- Monitor the database against actions such as the de-registration of service providers
- Establish a programme to ensure education of PSIRA regarding firearm inspections

Practices for the storage of weapons vary across the industry, as does the security of company weapons caches, despite key provisions in the regulations. Firearm control practices also vary considerably. The formal obligations of the Firearms Control Act are supplemented by the code of

conduct in section 28 of the Private Security Industry Regulation Act 2001. If a business registration is suspended or withdrawn, the registrar can lawfully exercise his or her powers in terms of this section, which prescribes the manner in which he or she deals with individuals or businesses that no longer qualify to hold licences. This includes a notice to dispose of the firearms within 60 days or forfeit them to the state.

The involvement of PSC and PMC employees in criminal activity is not merely anecdotal; there are cases of cash-in-transit heists, breaches of airport cargo security and house-breakings that involved employees of PSCs. The regulatory issues raised by President Mbeki attest to concerns within government about the possible involvement in criminal activity of individuals tied to the PSC sector. In addition, statistics produced by the PSIRA show involvement of members of the PSC sector in criminal acts and activities. According to a PSIRA presentation to parliament, 186 criminal cases were opened, of which 66 were proceeded with, 17 successfully prosecuted, and 49 unsuccessfully prosecuted. A total of 494 criminal cases were pending. (See Annual Report

Types of weapons used by PSCs vary greatly and include semi-automatic weapons for cash-in-transit security companies. This weaponry may not be suited to the high calibre weapon increasingly being utilised by criminals. In some cases, gun battles between security guards and criminals ensue, often exposing the civilian population to grave danger.

The regulations deal with requirements for uniforms and minimum norms and standards across the industry. Uniforms vary greatly. Some resemble the uniforms worn by the SAPS and SANDF. This can cause confusion for civilians. (See appendix B for excerpt of regulations on uniforms and firearms.)

Despite these provisions, PSCs vary considerably in compliance.

Governance, professionalism and training of PSCs and PMCs employees

The PSIRA does not prescribe the governing structure of PSCs or PMCs. The code of conduct sets some generic standards. But there is considerable variation in the PSC sector regarding transparency in types of service and size. Depending on the sensitive nature of their operations, some security companies are more forthcoming than others. The relative size of the company also appears to have a bearing, in that some larger companies publish extensive annual reports, whereas smaller companies do not disclose to the same extent. The PMC sector is opaque, and it is difficult to obtain reliable information.

Although the PSIRA Act does not require an annual report to be produced, the regulations contain provisions for the compulsory keeping of documents and lists the types of information that suppliers are required to furnish to the authority. In addition, the authority has extensive powers to conduct investigations. These investigations are increasing in number, according to PSIRA annual reports. In terms of requirements, this occurs at two levels. The PSIRA Act lays down minimum requirements for those applying to register as security service providers. The industry strives for professionalism, and training is formalised as part of the country's overall sector seta skills programme. In addition, the code of conduct places a generic requirement on service providers to provide annual training and skills upgrades.

In 2005 an agreement was reached between Sassetta and the PSIRA that Sassetta would act as the quality assessor for all education and training in the industry. PSIRA, on the other hand, would register security training providers and security officers. The Sassetta team guide providers to acquire accreditation and align their learning programmes with the National Qualifications Framework (NQF). Training in the use of force varies across the industry, as does training in first aid. The availability of first aid kits is dependent on the financial strength and business plans of the entities. PSC providers are not usually aware of these instruments. This could be a further arena for regulatory review and possible PPP, under the broader auspices of the Sassetta, in terms of training as well as NQF curricula. Training in human rights and humanitarian law is limited, but is touched upon in the Sassetta process.

Exporting security and military assistance

Until the promulgation of the Prohibition of Mercenaries Activities and Regulation of Certain Activities in Country of Armed Conflict Act, 2006, the RFMA regulated the export of foreign military assistance services, which included the PMC sector and to a lesser extent the PSC sector. The legislation created an export-licensing regime, presided over by the NCACC, and a reinforcing set of regulations that stipulated the circumstances under which certain types of services could be exported. Strictly speaking, security services and the work of PSCs were not explicitly included in the act. In practice this has meant that PSCs could claim that the types of services that they offered were not included in the definitions of foreign military assistance contemplated in the act. Therefore they were not in violation of its provisions if they did not seek NCACC approval or licences for their operations abroad.

The RFMA proved to be ineffective and this prompted the government to propose the new mercenary act. The intention is thus to explicitly include PSCs in the export control regulatory regime and to widen the regulatory net for PSCs and PMCs operating abroad. The legislation is even more ambitious in creating an extensive web of extraterritorial jurisdiction for South African courts and prosecutors.

The Prohibition of Mercenaries Activities and Regulation of Certain Activities in Country of Armed Conflict Act, 2006 defines 'assistance or service' and 'security services' quite broadly (see appendix B). Any services that fall into the remit of the definitions require the export licensing approval of the NCACC in accordance with sections 3, 4 and 7. Section 11 of the Prohibition of Mercenaries Activities and Regulation of Certain Activities in Country of Armed Conflict Act, 2006 creates extraterritorial jurisdiction for any offences committed outside South Africa. (See appendix B.)

Countries that have been the recipients of South African PSC and PMC exports include Sierra Leone, Ivory Coast, DRC, Iraq, and Afghanistan. In the last few years the largest contingent comprised South African citizens on contract to British and US PSCs and PMCs in Iraq. For example, South Africans worked for Dyncorp, Erinys International, Hart Security, and others in Iraq. Tasks ranged from close-protection services for high-profile figures such as Paul Bremer¹⁹ and Hamad Karzai²⁰ to the protection of oil pipelines in Iraq. Other companies, such as Omega Risk Solutions, provided services in the DRC, including protection. The history of South African PSCs and PMCs therefore ranges from those that offered old-style mercenary services, to Executive Outcomes in Sierra Leone, to companies such as Meteoric Tactical Solutions that protected British Department for International Development (DFID) officers and the Swiss Embassy in Iraq. In addition, there is a growing business in providing security services to South African businesses that expand their operations into Africa, particularly in extractive industries.

The RFMA has not been effective in curtailing problematic exports of PSC and PMC services. It has revealed a host of loopholes that have been exploited by service providers, hurdles in securing convictions and in gathering evidence for prosecution of offences committed on foreign soil, and a general absence of compliance. Arrests have been made in line with the RFMA and prosecutions launched. However, the bulk of these have been predicated on plea-bargains and have proven highly unpopular.

Arrests, fines, plea-bargain agreements and convictions litter the path of the past 10 years of RFMA implementation. The first man to be convicted was

Francois Richard Rouget for activities in the Ivory Coast. He received a fine of R100 000. Another South African pilot, Carl Alberts, was similarly fined R20 000 for activities in the Ivory Coast. In 2004 South Africa's reputation for mercenarism grabbed international headlines when a group of alleged mercenaries were arrested in Zimbabwe and Equatorial Guinea for an alleged plot to overthrow the government in Equatorial Guinea. The men arrested in Zimbabwe claimed to have been en route to the DRC to provide security to a mine. After serving sentences for aviation, immigration and weapon acquisition law offences in Zimbabwe, some were charged with RFMA contraventions immediately on their return to South Africa.

Two of the men, Louwrens Horn and Hermanus Carelse, who were also involved in Meteoric Tactical Solutions' work in Iraq, were fined R75 000 each, subject to a plea-bargain agreement with the prosecuting authority. Sir Mark Thatcher was subsequently charged and convicted for RFMA contraventions and his involvement in the Equatorial Guinea operation. Subject to a plea-bargain, he too received an admission of guilt fine of R3 million. Although South African citizens were working on contract to foreign-registered companies in Iraq and some South African companies were present in Iraq, in contravention of the RFMA's provisions, no formal prosecutions or proceedings have yet been instituted. Some, perhaps cynically, would argue that the hurdles of evidence-gathering and extradition are formidable if such a case were to be pursued, highlighting the complications inherent in any regulatory regime for this growing industry. In 2006 a number of South Africans working for Omega Security Solutions (an offshoot of South African-registered PSC Omega Risk Solutions) were arrested in the DRC, where they claimed to have been engaged in upgrading port security. They were not charged with RFMA contraventions on their return to South Africa.

In *S v Archer and Payne*, the Scorpions charged the two aircrew of the plane that was seized in Zimbabwe with RFMA contravention. Each man was sentenced to a fine of R20 000 or one year imprisonment, plus a further one year, suspended for three years on appropriate conditions. More recently, the state suffered a prosecutorial defeat in *S v Dracula & 7 others* in the Pretoria High Court and has not indicated whether it will appeal. These people were passengers onboard the same aircraft and have been charged with RFMA contraventions (NPA Annual Report 2005–2006:48). On 23 February 2007 the Pretoria Regional Court found the eight men not guilty of RFMA contraventions.²¹

The authorities have had considerable difficulties in responding to the situation of South African PSCs and PMCs in Iraq and of South African citizens serving in Iraq on contract:

A sensitive matter relating to Iraq was fully investigated by SAPS and the Priority Crimes Litigation Unit (PCLU). After consultations with various agencies, a decision was taken not to prosecute.²² The PCLU continued to conduct legal research into the applicability of the Regulation of Foreign Military Assistance Act (Act 15 of 1998) to the case of security companies operating in Iraq and again came to the conclusion that an amendment to the Act was necessary before this situation could be properly dealt with. The PCLU in this regard liaised with other relevant stakeholders and the head of the unit attended the relevant parliamentary hearings relating to the issue (NPA Annual Report 2005–2006:49).

By creating considerable executive discretion in the provisions of the new mercenary act, policy makers seem to hope that the vagueness of the law in certain aspects and the catch-all nature of the executive discretion inherent in the operations of the law in designating countries of armed conflict and exemptions will create a more flexible tool that can be used to achieve foreign policy objectives as well as secure convictions where desired.

The new act has a variety of constitutional flaws. First, it aims to restrict the right to freely choose a trade, occupation or profession, which is enshrined in section 22 of the Bill of Rights.²³ This right is not absolute and can be limited in section 36, which deals with the limitation of rights. Some commentators have argued that section 198(b) of the Constitution, which resolves that South Africa will live in peace and harmony, precludes any South African citizen from participating in armed conflict, nationally or internationally, except as provided for in the Constitution or national legislation. The new legislation also creates wide-ranging extraterritorial jurisdiction in section 11 that may contravene the Constitution. Given past rulings by the Constitutional Court, notably in the *Home Affairs* case, the discretion that is allowed the executive in designating 'regulated countries' (section 6) and exemptions (section 13) may also be frowned upon by the Constitutional Court.

Gaps, inconsistencies and areas of improvement

The regulatory framework for PSCs requires tightening in a number of areas. Aspects such as screening of security personnel, improvement in training curricula, and tighter provisions on firearms are key aspects. In addition, thought needs to be given to improving the functioning of the regulator, and ensuring it has adequate resources for the task. The PSIRA already regulates a sizeable PSC sector in South Africa that keeps increasing. A tighter regulatory framework will require additional powers and obligations that will, in turn,

require more funds and more staff. This will necessitate thoughtful regulatory institutional construction.

A priority must be to ensure a smooth regulatory path for PSCs that have both domestic operations that fall under the PSIRA regulatory regime and export services that fall under the NCACC regime that will be in place under the new mercenary act. The definition of 'security services' in the Private Security Industry Regulation Act overlaps with, but also differs widely from the definition in the new act. This may create confusion, as it did in the case of Omega Risk Solutions in the DRC. Omega was fully registered according to PSIRA requirements, but not for its foreign operations in the DRC, because the new legislation was not yet in place. Even if it had been, the necessary regulatory coordinating routes did not exist. Given the size of the PSC sector, and its possible role in supporting the crime-fighting efforts of the SAPS, PSCs could explore creative PPP paths to strengthen crime-fighting efforts and influence policy in a constructive and positive fashion.

The PSIRA has been in place for a number of years and has garnered a considerable level of experience. The time has come for a thorough review of the industry and its regulator to ascertain effectiveness, close gaps in the powers and mandate of the PSIRA (for example the need for closer coordination with the firearms registrar), and release more institutional resources so that it can adequately discharge its oversight and supervisory duties. Curricula could be realigned in the context of the PSIRA–Saseta MOU to create adequate bridges of communication between SAPS curricula and industry curricula in the NQF context to help construct a more consistent and considered long-term PPP in the fight against crime. Although the authority has powers of supervision and investigation, strong penalties (beyond suspension and withdrawal of registration) for serious breaches of registration or cases of improper conduct have not been created in the act. Such provisions exist in the code of conduct (section 28(5)) and various penalties have been created for different classes of PSCs, but a review of cases of breach of code of conduct would help to ascertain whether the regulatory powers are adequate with reference to penalties as a tool for influencing industry behaviour.

The PSIRA has identified certain needs that have been presented by the growth of the PSC industry:

- To increase monitoring capacity to execute the core regulatory mandate
- To review the regulatory legislative framework based on the lessons learned from implementation to date

- To cooperate more closely with other state law enforcement agencies
- To encourage 'self-regulation' of the industry
- To encourage research, development, and international best practices

Conclusion

This study has looked at the private security industry in South Africa as regulated at the domestic and international level. At the domestic level the study looked at the extent of the private security sector as informed by the South African security threats. Both the PSCs and the PMCs represent this sector. The study identified the regulatory framework for the PSCs operating in South Africa and PMCs intending to operate outside South Africa. For the former, the applicable legislation is the Private Security Industry Regulation Act, 2001 and for the latter is the Prohibition of Mercenaries Activities and Regulation of Certain Activities in Country of Armed Conflict Act, 2006. Thus far, the South Africa regulatory framework represents the best mechanism for addressing the private security sector in Africa. While effectively regulating the operations of the private security industry within its borders, it also imposes a very strict regulatory framework for the exportation of security and military services by South African citizens and permanent residents. The study also considered the extent to which the South African law addresses the issue of mercenary activities in South Africa and those mercenary activities committed by South Africans outside the country. Within the South African borders the study also gave an understanding of the advantages and disadvantages presented by the private security industry in South Africa. It considered the issues around governance, professionalism and training within the industry itself. The study concluded by discussing the gaps, inconsistencies and areas of improvement for the industry as it relates to South Africa.

Notes

- 1 The National Defence Force (SANDF) is created in sections 200–204; the South African Police Service in sections 205–208; and the Intelligence Services in sections 209–210.
- 2 State of the Nation Address by the president of South Africa, Thabo Mbeki, Joint Sitting of Parliament, 9 February 2007.
- 3 PSIRA, Presentation of the authority's annual report to the Portfolio Committee on Safety and Security. Parliament, Cape Town, 3 November 2006.
- 4 *Business Day*, 16 April 2007.

- 5 Over 90 000 workers in the sector took part in the strike action in 2006.
- 6 A fear again in evidence during the security sector strike action in 2006.
- 7 State of the Nation Address, 9 February 2007.
- 8 See the PSIRA Annual Report.
- 9 It involved former 32 Battalion soldiers and high-profile British businessmen, including Sir Mark Thatcher and Simon Mann.
- 10 Private Security Industry Regulation Act 2001 (Act no 56 of 2001), assented to 15 January 2002, Government Gazette 439 no 23051, 25 January 2002.
- 11 Private Security Industry Levies Act 2002 (Act no 23 of 2002), assented to 24 July 2002, Government Gazette 445 no 23677, 30 July 2002.
- 12 <http://www.sira-sa.co.za> (accessed on 29 March 2007)
- 13 The term 'coalition of the willing' is a post 1990 political phrase used to describe military or military/humanitarian interventions for which the United Nations Security Council cannot agree to mount a full UN peacekeeping operation.
- 14 B42-2005. Available at <http://www.pmg.org.za/minutes/20060529-summary-issues-relating-prohibition-mercenary-activities-bill-b42-2005>, accessed February 2008.
- 15 B42B-2005. Available at <http://www.pmg.org.za/minutes/20060529-summary-issues-relating-prohibition-mercenary-activities-bill-b42-2005>, accessed February 2008.
- 16 *Private Security Industry Regulatory Authority v Anglo Platinum Management Services Ltd and others*, [2006] SCA 129 (RSA), and *PSIRA v Association of Independent Contractors*, [2005] SCA 127 (RSA), *Union of Refugee Women v Director CCT* 39/06.
- 17 State of the Nation Address, 9 February 2007. Available at <http://www.info.gov.za/speeches/2007/07020911001001.htm>, accessed on 9 February 2007.
- 18 Available at <http://www.securityalliance.co.za/report2004.htm>, accessed on 30 March 2007.
- 19 Former head of the Coalitional Provisional Authority in Iraq.
- 20 President of Afghanistan.
- 21 <http://www.allheadlinenews.com/articles/7006554946> , accessed on 07 March 2007.
- 22 This matter appears to refer to a controversial 'trophy video' recorded by an Aegis employee in Iraq showing an alleged South African employee of Aegis shooting randomly at Iraqi civilians.
- 23 The Constitution of the Republic of South Africa (Act no 108 of 1996).

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APPENDIX A
LIST OF SOUTH AFRICAN PMCS AND PSCS
(categorised according to the services they provide)

Military advice and training

- Erinys
- Executive Outcomes
- Frederick, Nicholas and Duncan (FND)
- Lanseria
- Meteoric Tactical Solutions
- Ronin Protective Services
- Saracen International

Operational support

- Executive Outcomes
- FND
- Ibis Air
- Lanseria
- Omega Support Ltd
- SA Bias Group
- Southern Cross Security

Logistics support

- Erinys
- Falconeer
- FND
- Ibis Air
- Meteoric Tactical Solutions
- Omega Support Ltd
- SA Bias Group
- Strategic Resources Corporation (SRC)

Site/personnel security

- Omega Risk
- Parasec Corporate Dynamics
- Ronin Protective Services
- Shield Security
- Stabilico

- Safenet
- Saracen International
- Shibata Security
- Shield Security
- Southern Cross Security
- Stabilico
- Coin Security
- Empower Loss
- Erinys
- Executive Outcomes
- Gray Security
- KWZ
- Lanseria
- Lifeguard Security
- Meteoric Tactical Solutions

Crime prevention/intelligence

- Parasec Corporate Dynamics
- Ronin Protective Services
- Safenet
- Saracen International
- Shibata Security
- Shield Security
- Southern Cross Security
- Stabilico

Employers' associations

Employers' associations include:

- South African Black Security Employers Association (SABSEA)
- Security Industry Association of South Africa (SIASA)
- Northern Province Security Association (NOPSA)
- South African National Employers Association (SANSEA)
- Security Services Employers Association (SSEO)
- Electronic Security Distributors Association (ESDA)
- Chamber of Mines (COM)
- South African Intruder Detection Services Association (SAIDSA)
- Locksmiths' Association of South Africa (LASA)

Associations that belong to the SIA

These include:

- Association of Security Engineers of SA (ASESA)
- Electronic Security Distributors Association (ESDA)

- Locksmiths' Association of SA (LASA)
- South African Council of Investigators (SACI)
- Security Industry Association of SA (SIASA)
- Service Dog Operators Association (SDOA)
- ASIS International
- Exhibition Association of SA
- Northern Province Security Association (NOPSA)
- South African Institute of Security (SAIS)
- Security Association of SA (SASA)
- VIP Protection Association of SA (VIPPASA)
- Chamber of Mines
- Professional Security Council (PSC)
- South African Intruder Detection Services Associations (SAIDSA)
- South African National Employers Association (SANSEA)
- Consumer Goods Council (ECR)
- Security Services Employers Organisation (SSEO)

The SIA Board

The SIA board is responsible for all strategic decisions on the part of the alliance.

The SIA Council

The SIA Council is responsible for all operational aspects of the alliance. It consists of representatives of all the affiliated associations. The chair of the council is Steve Conradie, and the vice-chair is Jenny Reid (president of the Security Association of South Africa).

Employer body representatives

- South African Black Security Employers' Association (SABSEA): Steve Dube
- Security Industry Association of South Africa (SIASA): Shadrack Dladla
- Northern Province Security Association (NOPSA): David Masekela
- South African National Employers' Association (SANSEA): Steve Friswell
- Security Services Employers' Association (SSEO): Kevin Derrick
- Electronic Security Distributors Association (ESDA): Anthony Rosenbaum
- Chamber of Mines (COM): Steve Conradie
- South African Intruder Detection Services Association (SAIDSA): Mike Hodgson
- Locksmith's Association of South Africa (LASA): Johan du Preez

Major players

- Securicor: Douglas Brake
- ADT: Danna Strydom
- Elvey Group: Jack Edery

- Fidelity Group: Wahl Bartman
- Chubb: Clive van Ryneveld

Other

- Business Against Crime: Kenny Filha
- Chair of the board: Steve Conradie

APPENDIX B

MERCENARISM

Prohibition of mercenary activity

Excerpts from the Prohibition of Mercenaries Activities and Regulation of Certain Activities in Country of Armed Conflict Act, 2006, section 2

- (1) No person may within the republic or elsewhere:
 - (a) Participate as a combatant for private gain in an armed conflict
 - (b) Directly or indirectly recruit, use, train, support or finance a combatant for private gain in an armed conflict
 - (c) Directly or indirectly participate in any manner in the initiation, causing or furthering of:
 - (i) An armed conflict
 - (ii) A coup d'état, uprising or rebellion against any government
 - (d) Directly or indirectly perform any act aimed at overthrowing a government or undermining the constitutional order, sovereignty or territorial integrity of a state
- (2) Any person who contravenes subsection (1) is guilty of an offence

The Act defines 'assistance or service' and 'security services' quite broadly:

'Assistance or service' includes

- (a) Any form of military-related assistance, service or activity
- (b) Any form of assistance or service to a party to an armed conflict by means of:
 - (i) Advice or training
 - (ii) Personnel, financial, logistical, intelligence or operational support
 - (iii) Personnel recruitment
 - (iv) Medical or para-medical services
 - (v) Procurement of equipment
- (c) Security services

'Security services' means one or more of the following services or activities:

- (a) Protection or safeguarding of and individual, personnel or property in any manner

- (b) Giving advice on the protection or safeguarding of individuals or property
- (c) Giving advice on the use of security equipment
- (d) Providing a reactive or response service in connection with the safeguarding of persons or property in any manner
- (e) Providing security training or instruction to a security service provider or prospective security service provider
- (f) Installing, servicing or repairing security equipment
- (g) Monitoring signals or transmissions from security equipment
- (h) Making a person or service of a person available, directly or indirectly, for the rendering of any service referred to in paragraphs (a)–(g)
- (i) Managing, controlling or supervising the rendering of any of the services referred to in paragraphs (a)-(h)

Section 7 deals with the application for authorization:

- (1) Any person who applies for an authorization referred to in section 3(1) (a)-(e) or section 4(1) must submit to the Committee and application for authorization in the prescribed form and manner
- (2) The Committee must consider any application for authorization submitted in terms of subsection (1) and, subject to section 9, may:
 - (a) Refuse the application
 - (b) Grant the application subject to such conditions as it may determine
 - (c) At any time withdraw or amend an authorization so granted
- (3) No authorization granted in terms of this section is transferable
- (4) The prescribed fees in respect of an application for authorization must be paid before the Committee makes its decision known
- (5) Any person who feels aggrieved by a decision taken in terms of this section, may apply for written reasons in the manner contemplated in section 5 of the Promotion of Administrative Justice Act (Act 3 of 2000)
- (6) Nothing in this Act must be construed as preventing a person from instituting proceedings in a competent court for judicial review

Uniforms, insignia, badges and firearms

Excerpts from the Regulation 13 of the made under the Private Security Industry Regulation Act, 2001:

13. (1) Every security business must, subject to this regulation, provide every security officer in its employ with sufficient, distinctive articles of clothing constituting a standard uniform of that security business if the security officer is required to render a security service as contemplated in paragraphs (a), (c) or (d) of the definition of security service contained in section 1(1) of the Act, unless the security officer only renders a service consisting of the protection or safeguarding of a specific natural person
 - (2) Every security officer contemplated in sub-regulation (1) must wear the uniform provided to him or her when rendering such a security service
 - (3) The uniform contemplated in sub-regulation (1)
 - (a) must be suitable for use by the security officer in view of the nature of the security service rendered, the circumstances under which the security service is rendered and any other relevant circumstance
 - (b) must have at least 2 badges, prominently attached to the uniform, with the name of the security business employing the security officer clearly legible on them, as well as a badge, attached to the front top part of the uniform, with the name and registration number of the security officer clearly legible on it
 - (4) The director may, if there is a sound reason for such a step, direct a security business in writing to change any aspect regarding the uniform issued to its security officers to the extent and within such a reasonable time as may be indicated by the director
 - (5) A security business which renders a security service requiring the possession or use of a firearm, must lawfully provide a suitable firearm for that purpose and may not require or permit a security officer employed by the security business to obtain or provide a firearm for that purpose
 - (6) A security officer may, for the purpose of rendering a security service in the course of his or her employment, only possess a firearm lawfully provided by his or her employer
 - (7) Any security service provider who
 - (a) contravenes or fails to comply with sub-regulation (1), (2) or (3), or fails or refuses to comply with a directive contemplated in sub-regulation (4)

- (b) without legal justification wears a uniform, badge or insignia identical to, or so closely resembling a uniform, badge or insignia of the South African Police Service, the South African National Defence Force, the Department of Correctional Services or of any other law enforcement agency or service established in terms of law, as to be calculated to deceive
 - (c) without legal justification provides another person with a uniform, badge or insignia contemplated in paragraph (b)
 - (d) requires or permits a security officer employed or made available to that security service provider, to obtain or provide a firearm for the purpose of rendering a security service in the course of his or her employment
 - (e) requires a security officer employed or made available by that security service provider, or an applicant for a post as a security officer, to have a firearm licence
 - (f) is a security officer and who, for the purpose of rendering a security service in the course of his or her employment, is in possession of a firearm not lawfully provided by his or her employer
- is guilty of an offence and on conviction liable to a fine or to imprisonment for a period not exceeding 24 months
- (8) This regulation comes into operation 120 days after promulgation of these regulations (Section 13).

