Status Report on Anglophone Africa

Comprehensive Study and Analysis of National Legislation

(Ghana, Mauritius, Sierra Leone, and The Gambia

Nigeria, Uganda, Kenya)

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INTRODUCTION

This status report is a comprehensive study and analysis of national regulatory frameworks relevant to private military and security companies (PMSCs) in Anglophone Africa. For purposes of this study, the Anglophone African countries comprises of Ghana, The Gambia, Mauritius and Sierra Leone, Uganda, Kenya and Nigeria. For our purposes, a PMSC may be defined as "a corporate entity which provides on a compensatory basis military and/or security services by physical persons and/or legal entities."[1] The definitions of a "PSC", which is referred to in the legislation discussed in this report vary from one country to the other. Flowing from the definition of a PMSCs, for our purposes, a PSC will refer to a "corporate an entity which provides on a compensatory basis … security services by physical persons and/or entities."[2]

While security is generally known to be a matter located in the public domain and is indeed always perceived to be the monopoly of the state, private security implies 'the ceding of the State's sovereignty on matters of maintaining law and order and averting conflicts.'[3] This study shows how the various African Anglophone countries have in essence generally ceded their sovereignty on matters dealing with maintaining law and order and indeed averting conflicts and providing security to sections of their populations. Ceding such sovereignty powers vary from one country to another and is largely informed by the general insecurities of each country.

In theory, privatizing security means 'privatizing aspects of core State responsibilities arising out of the social contract, under which the State undertakes to provide protection to individuals, communities and properties.'[4] As shall be shown in this report, in terms of the legal frameworks, the response to privatization of security varies from one state to the other. It has been argued that any approach to the challenges brought about by PSCs/PMCs must be informed by an understanding of the industry's growth and of the environment within which it operates.[5] Some of the underlying challenges can be ascertained from the legislative frameworks, particularly the manner in which it seeks to address these security (or insecurity) challenges.

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[1] See the website on National legislation survey undertaken by the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the rights of peoples to self-determination, *http://www.ohchr.org/EN/Issues/Mercenaries/WGMercenaries/Pages/NationalLegislationSurvey aspx* (Accessed 7 May 2013).

[2] As above.

[3] F Wairagu, J Kamenju and M Singo, *Private Security in Kenya Security,* Research and Information Centre (2004) 7.

[4] Wairagu *et al* (n 3 above) 7 quoting SB Tindifa, *Privatization of Security: Legal Issues*. Proceedings of the International Resource Group Regional Conference on Good Governance and the Rule of Law in the Horn of Africa. 11-13, September 2002, Mombasa, Kenya.

[5] S Gumedze, 'To embrace or not to embrace: Addressing the private security phenomenon in Africa' in S Gumedze (ed.) *Private Security in Africa: Manifestation, Challenges and Regulation*, ISS Monograph 139, Institute for Security Studies (2007) 1.

This study, therefore, seeks to firstly, identify the national regulatory frameworks relevant to PMSCs in these countries and secondly, to provide an analysis of these frameworks. In order to provide a particular perspective for each country's legal framework, in as far as possible, the context within which these legislative frameworks function is generally provided. It is envisaged that this study will provide a basis of research for a variety of stakeholders, and will also inform the report of the Working Group to the 25th session of the Human Rights Council in 2013 A study of this nature requires constant updating, as the private security industry remains dynamic.

The study will firstly identify the legislation on PMSCs and secondly provide an analysis of the laws in Ghana, Mauritius, Sierra Leone, The Gambia, Uganda, Kenya and Nigeria. The study will reveal that while Kenya does not have a specific legislation on private security, the industry players are on the increase. Despite the absence of a specific regulatory framework, the study will nevertheless provide an analysis of its draft Bill, which will arguably shape the future regulation of the Kenyan private security sector. It must be noted from the onset that the legislation obtained from these countries only deals with private security companies (PSCs) and not necessarily with Private Military Companies (PMCs). Having analyzed the laws, the report shall provide elements of comparison on these countries' legislative frameworks.

From the onset, it is important to note that study is desktop-based, which results in a number of shortcomings, including the reflection of updated information, particularly, on the application of the legal instruments discussed herein. The main challenge that the study encountered was also to obtain the correct figures of the private security companies and private security officers found in the countries subject to the study. There has been heavy reliance on second hand information and anecdotal evidence, which is, most often than not, outdated. The manner in which these countries have also approached the issue of how to best regulate the private security sector differs. The study shall analyze the countries legislative frameworks in no particular order of the countries subject to the study, starting with Ghana and ending with Nigeria.

Ghana

According to the Association of Private Security Organization of Ghana (APSOG),[6] it has around 40 registered private security companies operating in Ghana.[7] In 2008, Hutchful stated that the private security organisations in Ghana were numbering some 47 licensed organisations as well as a variety of neighbourhood security organs yet to be enumerated.[8] Although, the current statistics are not

[6] The APSOG was formed in 1998 with a total number of 25 registered companies. In 2005, its numbers rose to 57 and currently the organisation embraces more than 350 companies operating within Ghana.

[7] See the Commonwealth Network. Available at http://www.commonwealthofnations.org/sectors-ghana/business/security/ (Accessed 23 March 2013).

[8] E Hutchful "Ghana" in A Bryden, B N'Diaye & F Olonisakin (Eds.) *Challenges of Security in West Africa,* Geneva Centre for the Democratic Control of Armed Forces (DCAF) 112.

readily available, it is not doubt, however, that this figure has increased over the years. The APSOG states that in Ghana, there are there are more than 350 private security companies in operation, including those without licenses or premises.[9]

Some of the private security organisations in Ghana are listed in the Commonwealth website.[10] According to the information obtained from this website, some of the prominent companies include Magnum Force Security Company Ltd. Ghana which works in collaboration with government departments, financial institutions, attorneys, accounting firms, hotels, industries and private individuals.[11] As a result of the newly discovered oil in Ghana, the number of companies providing security in Ghana, and to the mining companies n particular, is likely to increase.

Hutchful argues that the most fignificant development in Ghana's security sector in recent years is the expansion of private and informal security organisations, which is partly as a result of the "response to the shredding of formal security institutions in general and the police in particular, and partly due to the deteriorating crime situation."[12] The significant market of the private security industry is mainly in the urban areas where the end users include the business sector, the elite and middle classes.[13]

Unlike in most of African countries, Ghana has no law dealing specifically with the private security industry. The private security industry in Ghana was governed by the Police Act No 350 of 1970 (the Police Act), which according to Hutchful was superseded by the Police Service (Private Security Organisations) Regulations 1992 Legislative Instrument 1571, as amended by Legislative Instrument 1579.[14] The Police Act, as will be discussed briefly herein below, lacks a lot of detail in so far as the management of the private security sector is concerned. Despite the existence of the regulations, the need to find a more comprehensive and adequate legislative instrument to consolidate the security of Ghana cannot be over emphasized.[15]

The Police Act provides that the Minister to whom responsibility of for the Police Service is assigned by the Prime Minister (the Minister) may make regulations by legislation for the purposes of the following: - one, controlling the establishment and operations of any private security organization;[16] two, requiring the

[9] As above.
[10] As above.
[11] As above.
[12] Hutchful (n 8 above) 112.
[13] As above.
[14] As above 116.
[15] See Report of the Workshop on The State of the Private Security Service Providers in Ghana, 23 July, 2008 Mensvic Hotel East Legon – Accra. Available at http://www.africansecuritynetwork.org/site/components/com_medialibrary/emedia/Workshop%20Report%20-%20The%20state%20of%20Private%20Security%20Service%20providers%20in%20Ghana.pdf. Accessed 23 March 2013.
[16] S 38(a) of the Police Act.

registration of all private security organisations;[17] three, regulating the conditions under which a private security organization may employ any person;[18] four, regulating the use of uniforms by any private security organization;[19] and five, prescribing fees and forms for any of the above purposes.[20]

As already stated above, currently, the regulatory framework under which the private security organisations operate in Ghana is the Police Service (Private Security Organisations) Regulations, 1992 (LI 1571) and Police Services (Private Security Organization) (Amendment Regulations, 1994 (LI 1579).[21] Private security companies are therefore licensed by the Interior Ministry under these regulatory frameworks. There is no doubt that Ghana is lagging behind in terms of putting in place an effective regulatory framework for the private security sector.

The Police Act is silent on the extraterritorial jurisdiction of the Act with regards to private security. It is also silent on what a private security service or private security provider is. The only definition given by the Police Act is that of a "private security organisation", which includes any organization which undertakes private investigations as to facts or the character of any person, or which performs services of watching, guarding, patrolling or carriage for the purpose of providing protection against crime, but does not include the Police Service, the Prisons service or the armed Forces of Ghana."[22] In the event of any doubt regarding whether or not an organization fits this definition, the Police Act provided that the Minister has the sole mandate to make a determination.[23]

It has been argued that the Ghanaian Ministry of Interior and the Police Service are incapable of regulating the proliferation of the private security industry in Ghana.[24] One of the concerns was the halting of licenses for the operation of private security organisations by the Ministry of Interior in 2008. It is further reported that in response to the incapacity challenges, the Ministry of Interior collaborated with the National Security to draw up a comprehensive list of registered private security organisations.[25] It is also reported that since 2012, the Ministry of Interior has since embarked in the monitoring exercise on the existing organisations in order to ensure that their licenses are renewed and they continue to operate in Ghana.[26]

What follows is an analysis of the law on the private security sector in Mauritius.

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[17] S 38(b) of the Police Act.
[18] S 38(c) of the Police Act.
[19] S 38(d) of the Police Act.
[20] S 38(e) of the Police Act.
[21] These documents have not yet been secured for analysis purposes.
[22] S 38(2) of the Police Act.
[23] S 38(3) of the Police Act.
[24] Commonwealth Network. Available at http://www.commonwealthofnations.org/sectors-ghana/business/security/. Accessed 23 March 2013.
[25] As above.
[26] As above.

Mauritius

The size of the private security sector in Mauritius has not been ascertained owning to the dearth of information regarding the same. The private security industry in Mauritius is governed by the Private Security Act No. 5 of 2004 (Principal Act), which was amended by the Private Security Service (Amendment Act of 2008). For purposes of this report, the Principal Act together with the Amendment Act will be referred to as the Act. The Act applies within Mauritius and there is no provision for its application extraterritorially. The Act does not also address the issue of mercenarism. Mauritius is not a party to the 1977 OAU Convention for the Elimination of Mercenaries in Africa.[27]

The Act defines a "private security service" as "the business of providing, for remuneration or reward, a security service, the services of a security guard, and the secure transportation and delivery of property."[28] As already stated, the definition only confines the private security service to three distinct but related services. The first service is a "security service" which includes the provisions of security through electronic means or any other device.[29] The second service is the services of security guard, who is obliged to make an application for a certificate of registration as such to the Commissioner of Police in terms of the Act.[30] The third service the secure transportation and delivery of property. In defining a "security guard", the Act provides that a security guard "means a person employed by a private security service who guards, patrols or provides any other security service for the purpose of protecting a person or property."[31]

A "security guard" also included "a person who is employed permanently or on a casual or contractual basis, by the licensee, owner or operator of a nightclub, discotheque, private club, restaurant, café, pub or bar, or by any licence under the Gambling Regulatory Authority Act, for guarding, patrolling or providing any other security service for the purpose of protecting a person or property."[32] The Act requires every security guard to wear a badge conapleuously

In terms of that application of the Act is concerned, the Act excludes the following people, namely: - one, a person who is employed by another person for the purpose of protecting that other person or his property; and two, a person who is not employed by a private security service.[33]

The Act provides that for any person whishing to operate a private security service is obliged to make an application for a licence to the Commissioner of Police (the Commissioner).[34] In order for the Commissioner to consider the application, certain information must be furnished. The Commissioner may also

[27] See generally Rule of Law in armed Conflicts Projects RULAC. http://www.geneva-academy.ch/RULAC/non-state_armed_groups.php?id_state=142 (accessed 25 March 2013).
[28] S 2 of the Act.
[29] S 2 of the Act.
[30] S 7 of the Act.
[31] S 2(a) of the Act.
[32] S 2(b) of the Act.
[33] S 3 of the Act.
[34] S 4(1) of the Act.

decide to conduct investigations or examination relating to the applicant's character, financial position and competence.[35] Upon receipt of the application, the Act obliges the Commissioner to cause notice to be published in the Gazette for 3 consecutive days, in not less than 2 daily newspapers.[36] Furthermore, the Commissioner is obliged, through the said notice, to invite al interested persons who so wish to lodge with the Commissioner any objection against the application for a licence to operate a private security service.[37]

The criteria used by the Commission to determine whether to grant an application for a licence includes a consideration of whether there is a valid objection lodged against the application or whether or not the applicant is disqualified in terms of the Act.[38] The Act provides that the Commissioner may turn down an application where one or all of the following exist:[39] - one, if the Commissioner reasonably believes that the applicant is not a fit and proper person to be granted the licence; two, if the applicant is a company, a partnership or an association and the Commissioner reasonably believes that, in view of the past and present conduct of its members, officers or directors, it is not a fit and proper entity to be granted a licence; three, if the applicant, or the person who will manage the private security service, does not have the experience and training, that in the opinion of the Commissioner, are necessary to operate such a service; four, if the facilities proposed for the operation of the provide security service are inadequate; five, if the applicant or where the applicant is a company, a partnership or an association, a member officer or director, thereof, has been convicted in Mauritius or elsewhere of an offence involving fraud and dishonesty; six, if the applicant is medically unfit to operate a private security service; or seven, if the applicant is under the age of 18.

In the event that the Commissioner grants the application for a licence, he/she is obliged to issue a licence in the prescribed form upon payment of a prescribed fee and the applicant furnishing the guarantee required in terms of the Act.[40] The Commissioner may attach conditions to in granting the licence, which include the training of the security guards, the taking out of a requisite firearm licence under the Firearms Act; and the type of uniform to be worn by the security guards.[41]

Once the licence is granted, the licensee, must comply with the provisions of the Act. These licence holder must display a copy of the licence in a conspicuous place in the office of the licenced promises. In the event that the licensee has one more offices, he/she is obliged to display a copy of the licence in his/her main office and in every sub-office.[42] Other requirements include the display of a signboard in a conspicuous place outside each of his /her office which reads 'LICENCES UNDER THE PRIVATE SECURITY ACT'.[43]

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[35] S 4(4) of the Act.
[36] S 4(2)(a) of the Act.
[37] S 4(2)(b) of the Act.
[38] S 4(5) of the Act.
[39] S 4(6) of the Act.
[40] S 7 of the Act.
[41] S 7(a)-(c) of the Act.
[42] S 5 (a) of the Act.
[43] S 5 (c) of the Act.

The Act further obliges the licence holder to notify the Commissioner in writing within seven days of any change in address of his/her office, or sub-office, as the case may be; any change in its offices, directors, or members, where the licensee is a company, partnership or an association. The licence holder is required to give notification regarding the recruitment or termination of employment by him/her of a security guard.[44] This provision is also buttressed by section 9A of the Act, which provides that where the licensee, owner or operator of a nightclub, discotheque, private club, restaurant, café, pub or bar, or a licensee under the Gambling Regulatory Authority Act, recruits or terminates the employment of a security guard, he shall notify the Commissioner within 7 days of the recruitment or the termination of employment.

The Commissioner may specify the type of uniform to be worn by the security guard under the holder of a licence.[45] In terms of the Act, every licence holder must keep such books documents or records, as may reasonably be required by the Commissioner and ensure that such books, documents or records are readily accessible.[46]

The licence granted by the Commissioner is only valid for a period of one year.[47] During this period, the Commissioner has a right to cancel or suspend the licence or certificate in terms of section 13 of the Act. The reasons for canceling or suspending the licence or certificate include the disqualification of a licensee or certificate holder, a partner withdrawing from a partnership, a licence obtained by fraud or representation, and failure to comply with the requirements of the Act.[48]

Following the cancellation or suspension as stated above, the Commissioner is required to notify the licensee or certificate holder in writing, requesting him/her to surrender the licence or certificate and badge, as the case may be, within a period of five days of receipt of the notice.[49] The Commissioner is further obliged to cause a notice thereof to be published in the Gazette and for three consecutive days, in not less than 2 daily newspapers.[50]

The licence holder has a right to renew the licence after the period of one year. In terms of the Act, the licence holder must apply to the Commissioner for renewal, in such a form as may be approved by the latter, within 21 days before the expiry of the licence or certificate.[51] The Act further requires that the application for the renewal must be accompanied by a return showing the following: - one, that the name and address of every security guard who was employed by him/her during the preceding year; two, that the address of the office, or main office or sub-

[44] S 5 (d) of the Act.
[45] S 9B of the Act.
[46] S 5 (c) of the Act.
[47] S 8(1) of the Act.
[48] See generally S 13 (1) & (2) of the Act.
[49] S 13(3)(a) of the Act.
[50] S 13(3)(b) of the Act.
[51] S 8(2) of the Act.

office, as the case may be, where he/she proposes to continue to operate his private security service; three, that the services offered during the preceding year; and four, that such other information as the Commissioner may require.[52] Having considered that the licence or certificate holder is still qualified to hold a licence or certificate and that payment of the prescribed fee has been made, the Commission may renew the licence or certificate.[53]

There is a possibility that the renewal may be made after the expiry of the period of one year. If the application for renewal is made within 15 days after the expiry date, the Commissioner may renew the licence or certificate or certificate provided the licence or certificate holder pays a surcharge of 50% in addition to the prescribed renewal fee.[54] Failure to submit an application for renewal within 15 days after the expiry of the licence or certificate, lapses the licence or certificate.[55]

The Act also provides for a possibility of the cessation of business by the licensees. In the event that a licensee does not intend to renew his/her licence, he/she must notify the Commissioner of such intention at leat 3 months before the expiry date of the licence, and also surrender his/her licence to the Commissioner within 15 days of the expiry of the licence or certificate.[56] Should the licensee cease to provide a private security service as authorised by the licence, he /she is obliged to notify the Commissioner and return the licence to him within a period of five days for cancellation.[57] As soon as the notification is received, the Commissioner is required to cause a notice thereof to be published in the *Gazette* and for 3 consecutive days, in not less than 2 daily newspapers.[58]

The Act also provides for offences in the event of its provisions being violated. In the event that the abovementioned provisions are not adhered to, that is, in the case where a person operates a security business in contravention of the Act, the person is deemed to be committing an offence under section 18(6) of the Act. Such a person shall on conviction be liable to a fine not exceeding (+/-US$ 772) 25,000 rupees and to imprisonment for term not exceeding 5 years.[59]

The Commissioner is required by the law to keep under review the provision of private security services or of private security guards.[60] He/she is further obliged to monitor the activities and effectiveness of persons carrying on the business of providing private security services or of private security guards.[61] This is mainly undertaken in order to protect the public. The Commissioner is further also obliged to carry such inspections of the activities of private security

[52] S 8(3) of the Act.
[53] S 8(6) of the Act.
[54] S 8(4) of the Act.
[55] S 8(5) of the Act.
[56] S 9(1) of the Act.
[57] S 9(2) of the Act.
[58] S 9(3) of the Act.
[59] S 18(6) of the Act.
[60] S 1(a) of Act.
[61] S 17(b) of the Act.

services or of private security guards, as he/she considers necessary.[62] Over and above the aforementioned, the Commissioner is required to establish and maintain a register of persons licenced or granted a certificate and badge under the Act.[63]

The Act allows any person to conduct training courses for licensees and security guards.[64] This responsibility is subject to any other enactment and to the approval of the Commissioner.[65] The guidelines or specifics on the training aspect, is however not stated in the Act.

In terms of the Act, the Minister (to whom the responsibility for the subject of home affairs is assigned) is entrusted with the responsibility of making regulations as he/she thinks fit for the purposes of the Act.[66] The regulations made by the Minister provide for the payment of fees and levying of charges; the criteria for the setting up and management of, and recruitment of personnel by private security services; the standard to be maintained by private security services; and the codes of conduct and guidelines for private security services and security guards.[67]

The Act provides for an Appeals Board, which is appointed on an *ad hoc* basis by the Minister responsible for home affairs[68] and consists of a Chairperson, who shall be a barrister of not less than 10 years' standing and two public officers not below the rank of Principal Assistant Secretary.[69] The role of the Appeals Board is to consider appeals from people aggrieved by the refusal of the Commissioner to grant a licence or a certificate, or the suspension or cancellation of a licence or certificate, or the refusal by the Commissioner to restore the licence or certificate.[70]

The process to be followed after a decision has been made by the Commissioner requires that the appellant must within 21 days of the notification to him/her, submit to the Minister and serve on the Commissioner a written notice of appeal stating the grounds for such an appeal.[71] It is therefore incumbent upon the Minister to appoint the Appeal Board, as referred to above. Having considered the appeal, the Appeal Board may confirm, set aside or vary the Commissioner's decision, setting down in writing the reasons thereof.[72] The decision of the Appeals Board must be communicated to the appellant and the Commissioner within 7 days thereof.[73]

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[62] S 17(c) of the Act.
[63] S 10 of the Act.
[64] S 16 of the Act.
[65] S 16 of the Act.
[66] S 19(1) of the Act.
[67] S 19(2) of the Act.
[68] S 15 (3) of the Act.
[69] S 15(4) of the Act.
[70] S 15 (1) of the Act.
[71] S 15 (2) of the Act.
[72] S 15(5) of the Act.
[73] S 15(6) of the Act.

The analysis of the law on the private security sector in Sierra Leone follows herein below.

Sierra Leone

The increase of the private security sector in Sierra Leone is often linked to the eleven-year violent conflict that engulfed Sierra Leone from 1991 to 2001. It was during this time that Sierra Leone witnesses the intervention and expansion of the roles of the private security industry in order to address the issues of insecurity. Conscious of its right to self-defence,[74] the government of Sierra Leone, employed Executive Outcomes, the South African mercenary outfit, to assist in displacing the Revolutionary United Front by engaging in serious combat operations.

It can be argued that the use of Executive Outcome in addressing insecurity challenges in Sierra Leone was more or less a last resort by the government of Sierra Leone, having being abandoned by Europe and America to fend for itself.[75] In fact, even ECOWAS failed to send troops due to logistical and manpower challenges to undertake a successful intervention in Sierra Leone. During the conflict, Sierra Leone also contracted Pacific A&E in order to provide logistical support for the United Nations in Sierra Leone.[76] Life Guard and Sandline International were also involved in Sierra Leone training local militia groups for protecting the mines field of Branch Energy as well as the Kamajor, warrior hunters of the Mende tribe.[77]

In 1995, Executive Outcomes was in charge of air raids, shelling and displacing rebels from their strongholds, and assisting the Sierra Leone Army (SLA) and civil militias to regain control of Freetown and diamond rich areas. On the other hand, Sandline International was given a contract in 1997 to assist in the effort to reinstate Tejjan Kabbah to power, having being displaced in a coup d'état.[78] Patterson[79], described Executive Outcomes as the most effective private military company of recent times for displaying three indispensable attributes, which Fitzsimmons[80] saw as the key to its success in Sierra Leone.

Executive Outcomes was paid approximately $35 million for a contract that lasted for twenty-one months. Payment was later altered to mining concessions

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[74] F Olonisakin, *Peacekeeping in Sierra Leone: The Story of UNAMSIL*, Colorado: Lynne Rienner Publishers (2008) 15.
[75] G Campbell, *Blood Diamonds*, Cambridge: Basic Books (2004) 75.
[76] VY Ghebali, The United Nations and the Dilemma of Outsourcing Peaekeeping Operations, in A Bryden & M Caparini (eds), *Private Actors and Security Governance*, Berlin: LIT Verlag, 2006, 224.
[77] R Abrahamsen & CM Williams, *The Globalisation of Private Security – Country Report: Sierra Leone,* Available at www.users.aber.ac.uk/.../privatesecurity/country%20report-sierra%20leone.pdf,(Accessed 31 March 2013).
[78] Olonisakin (n 74 above) 15-23.
[79] HM Patterson, *Privatizing Peace: A Corporate Adjunct to United Nations Peacekeeping and Humanitarian Operations*, New York: Palgrave Macmillan, 2009: 122.
[80] S Fitzsimmons, Dogs of Peace: A Potential for Private Military Companies in Peace Implementation, *Journal of Military and Strategic Studies* 8(1), 2005, 1.

as a result of the government's inability to meet its financial obligations.[81] This, in a sense, created an inevitable war economy, an economy in which national resources were exchanged for hired military and security services as it relates to regime survival, and into which external actors became direct beneficiaries of conflicts.

The involvement of foreign private security/military companies can be argued to be the reason why Sierra Leone decided to address the issue within a legal instrument dealing with national security and central intelligence. Abrahamsen and Williams argue that growth of the private security sector coincided with the end of the civil war.[82] This basically meant that even after the civil war, challenges relating to insecurity remained. With both foreign and local actors in the field of security, Sierra Leone had to respond through the enactment of a legal instrument. This legal instrument, that is, the National Security and Central Intelligence Act No. 10 of 2002 (the Act), therefore, provides for the basis for regulation of the private security industry in Sierra Leone.[83] As the title suggests, the reason why the private security sector had to be addressed within a "National Security and Central Intelligence Act" is not hard to find. In the main the Act was to provide for the internal and external security of Sierra Leone.[84] Abrahamsen and Williams state that after the civil war, many former combatants, particularly young men from the Revolutionary United Front (RUF), found employment in security companies and many former police officers and soldiers became private security guards.[85]

The working conditions for private security employees in Sierra Leone are generally sub-standard. It is reported that the private security companies in Sierra Leone have a low reputation as clients frequently complain about the lack of quality service, of guards falling asleep on duty, and of guards stealing from the premises.[86] It is also a fact that a considerable number of security guards are involved in organized crime and other forms of misconduct as a result of the poor pay and working conditions.[87] What complicates the matter is the absence of any requirements that security companies report employees dismissed due to misconduct to the police, or any central register of previously employed guards.[88]

Among other things, the Act establishes the National Security Council. In terms of the Act, the Council consists of the following: - a) the President, as Chairman; b) the Vice-President, as Deputy Chairman; c) the Minister of Finance; d) the Minister of Foreign Affairs; e) the Minister of Internal Affairs; f) the Minister of Information and Broadcasting; e) the Deputy Minister of Defence; h) the Minister of State for Presidential Affairs; i) the Inspector-General of Police; j) the Chief of

[81] J.A Bellamy & D.P Williams, *Understanding Peacekeeping*, Cambridge: Polity Press (2010) 331.
[82] Abrahamsen & Williams (note 76 above) 12.
[83] Signed on 27 March 2002.
[84] See short title of the Act.
[85] Abrahamsen & Williams (note 76 above) 12.
[86] As above 13.
[87] As above.
[88] As above 12.

Defence Staff; and k) the National Security Co-ordinator, who shall also be Secretary.[89] The composition of the National Security Council speaks volumes. Security matters in Sierra Leone had to be taken very seriously because, as already stated above, the private security actors could easily become a force unto themselves.

The object of the National Security Council is "to provide the highest forum for the consideration and determination of matters relating to the security of Sierra Leone."[90] The Act further provides that one of the National Security Council's responsibilities is "to consider and take appropriate measures to safeguard the internal and external security of Sierra Leone."[91] This includes the provision of private security in Sierra Leone. It has been argued that owing to the severely limited employment opportunities, the private security sector provides an important source of employment in Sierra Leone.[92] For instance, there were many child soldiers in the RUF who were recruited using horrific methods and ordered to commit barbaric and horrendous war crimes. These RUF members infiltrated the private security sectors.

According to this Act "no person shall operate a private security company unless such person holds a licence issues by the ONS [Office of National Security]." The Act provides that any person wishing to operate a private security company must submit an application to the ONS.[93] A private security company in this case means "a company providing security services, including armed escort services, to persons, homes, businesses or institutions, whether public or private."[94]

The Act provides for the requirements for an application for a licence. The ONS may prescribe a form to be used for the application, which must be accompanied by the following: - one, a certificate or other evidence that the applicant has registered a company for the purposes of the application;[95] two, the financial resources and other equipment, including any arms and ammunition whether or not licensed under the arms and Ammunition Act, 1955, intended to be used for the business or operations of the company;[96] three, the particulars of the applicant and other promoters, directors, and other officers of the company; and four, such other information as the ONS may require.[97]

The ONS is required to decide whether or not to grant a licence within sixty days of the receipt of the application.[98] The Act provides for guidelines for the ONS in determining the application. These are as follows: - first, the adequacy of the resources and the validity of the mode of acquisition of the equipment, including any arms and ammunition to be used in the business or the operations of the

[89] S 2(2) of the Act
[90] S 4(1) of the Act.
[91] S 4(2)(a) of the Act.
[92] R Abrahamsen & Williams (note 76 above) 12.
[93] S 19(2) of the Act.
[94] S 19(9) of the Act.
[95] S 19(3)(a) of the Act.
[96] S 19(3)(b) of the Act.
[97] S 19(3)(c) of the Act.
[98] S 19(4) of the Act.

company; second, the character and fitness of the applicant and other promoters, directors or officers of the company to operate the licence; and third, public interest.[99] The ONS has a right to attach terms and conditions to a licence granted in terms of the Act. In the event that these terms and conditions are breached, the ONS is entitled to revoke the licence.[100]

In the event that an application for a licence to operate a private security company is refused by the ONS, it is obliged to issue a statement stating the reasons for its decision to the applicant. The decision of the ONS may be appealed to the National Security Council, whose decision becomes final.[101] The Act also accommodates those persons who were operating immediately before the commencement of the act by allowing them to apply for a licence to operate their companies within three months of such commencement, failing which they are obliged to cease operations.[102]

In terms of regulations, the Act provides that the National Security Council may, by statutory instrument, make such regulations, as it considers necessary for the effective implementation of the Act.[103] These regulations arguably include those of the private security sector.

On the issue of the use of firearms, Abrahamsen and Williams argue that the sector is currently largely unarmed, in accordance with the UN arms embargo of 1998, which prevents the sale of weapons to non-state actors.[104] As the Act allows PSCs to bear arms, there remain pressures in favour of allowing arms in the private security sector, which is after all sanctioned in terms of the law.[105] This is said in view of the inadequacy of the effective provision of security by the private security sector in Sierra Leone. As many private security guards participated in the civil war, allowing the use of arms within the sector may be counter-productive. Firearms may be misused for other purposes other than the provision of security services. They may also be used to commit crime as a means of survival particularly in view of the poor pay received by the security guards.

Despite the fact that in practice the private security sector is generally unarmed, Abrahamsen and Williams state that the Sierra Rutile currently possesses only armed private security force in the country because of the specific legislation sanctioning this. The Sierra Rutile Act of 1989 (2002)[106] provides that "[i]n order to achieve an effective security regime, the Company may create and maintain a security force to provide a deterrent, defence and reaction capability to incidents." The Sierra Rutile Act further also provides that "[t]he Company may

[99] S 19(5) of the Act.
[100] S 19(6) of the Act.
[101] S 19(7) of the Act.
[102] S 19(8) of the Act.
[103] S 39 of the Act.
[104] Abrahamsen & Williams (note 76 above) 14.
[105] As above.
[106] The Agreement was ratifi ed by the present Sierra Leone Government by the Sierra Rutile Agreement (Ratification) Act, 2002. Supplement to the Sierra Leone Gazette, Vol.CXXXIII, No.5, 31 January, 2002.

import such arms and ammunition that are appropriate to such a security force subject only to the prior approval of the Government and the security force may carry and use such arms and ammunition for the purpose of carrying out its functions."[107]

According to Abrahamsen and Williams, while all companies that provide security service in Sierra Leone claim that they require potential employees to certify that they have no criminal record, the reliability of the criminal records data is seriously in doubt due to the fact that many records were destroyed during the civil war and that administrative capacity was limited.[108] The conclusion that persons who committed heinous crimes infiltrated the private security sector in Sierra Leone could not be far from the truth. In fact, Abrahamsen and Williams state that a considerable number of companies in Sierra Leone reported their suspicion that applicants were able to secure a clean record of criminal records through bribery.[109]

A discussion on the most recently promulgated law dealing with private security in the Gambia follows.

The Gambia

The private security industry in The Gambia is governed by the Private Security Guard Companies Act No. 5 of 2011 (the Act).[110] When the Act (then Bill) was tabled in Parliament, the Minister of Interior stated that "the crime rate [in the Gambia] had increased, and the police alone cannot provide security at every point at people and their assets, hence the need for such regulation."[111] From a political point of view, therefore, "the provision of a regulatory framework to coordinate and guide the actions of private security companies is therefore in the best interest of our national development."[112]

Despite the coming into effect of this Act, some of the private security companies in The Gambia were reportedly operating without obtaining a licence from the Private Security Guard Companies Authority within the Ministry of Interior.[113] In a media release from Ministry of Interior, the deadline for complying with the provisions of the Act was set at 29 June 2012, failing which the companies'

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[107] Sierra Rutile Agreement (Ratification) Act, 2002, Clause 11, § Q(2) and (3).
[108] Abrahamsen & Williams (note 76 above) 12.
[109] As above.
[110] Assented to by the President of the Gambia on 12 May 2011.
[111] See *Daily Observer, Gambia: Private Security Firms, 8 April 2011*. Available at http://allafrica.com/stories/201104080805.html (Accessed 20 March 2013).
[112] Reference to a Statement by the Minister of Interior, Ousman Sonko, when tabling the Private Security Guard Companies Act, 2011 (then Bill) in Parliament. As above. See also Lamin B. Darboe, New Bill seeks to regulate Private Security Guard Companies, The Point, Thursday, April 7, 2011. Available at http://thepoint.gm/africa/gambia/article/new-bill-seeks-to-regulate-private-security-guard-companies (Accessed 21 March 2013).
[113] Daily Observer, Private Security Guard Companies urged to regularise status, Wednesday June 13, 2012. Available at http://observer.gm/africa/gambia/article/private-security-guard-companies-urged-to-regularise-status (Accessed 21 March 2013).

operations were to be stopped and the full force of the law imposed upon them.[114]

In a nutshell, this Act provides for the licensing, regulation and control of the private security guard companies and persons employed as private security guards and connected matters. The Act defines an "approved person", as a person approved by the Minister of Interior to be employed by a Company as a private security guard.[115] The Act further defines a "Company" to be a Private Security Guard Company incorporated in The Gambia and licensed under the Act to carry out a licensable conduct.[116] There is an outright prohibition of the possession and/or use of any firearms or ammunition by a private security guard in the course of his or her duties.[117]

In so far as the application of the Act is concerned, section 3(1) of the Act categorically states that it does not apply to two classes of persons. One, the Act does not apply to "an inspector, a guard, watchman, or other persons to secure or carry out an inquiry for an employer who is not a Private Security Guard Company."[118] Two, the Act does not apply to a person employed by a Private Security Company to carry out clerical or secretarial duties. The Act gives the Minister of Interior the discretion of excluding a person or class of persons from the operation of the Act. This can only be done through a published Order issued by the Minister. [119]

The Act establishes the Licensing Authority for Private Security Guard Companies, which is an office in the Ministry of Interior or a public officer designated in that behalf by the Minister of Interior.[120] The Minister is responsible for delegating any powers conferred on him or her under the Act to the Licensing Authority, if he/she deems fit.[121] Among other things, the Licencing Authority is obliged by law to establish and maintain a register of licences Companies and approved persons.[122] The register of licences must contain the particulars of the names of the holders of the licence and approved persons; the addresses of the holders of a licence and approved persons; the expiry date of each licence; and the terms and conditions attached to each licence.[123]

In order for any company to carry out a licensable conduct, it must adhere to three requirements, namely, one, it must be incorporated under the Gambia Companies Act; secondly, it must be granted a licence by the Minister of Interior;

[114] As above.
[115] S 2(1) of the Act.
[116] S 2(1) of the Act.
[117] S 25 of the Act.
[118] S 3(1) of the Act.
[119] S 3(1)(a) of the Act.
[120] S 4 (1) of the Act.
[121] S 4(2) of the Act.
[122] S 11 (1) of the Act.
[123] S 11(2) of the Act.

and three, it must have at least 50% of its shareholders and management team made up of Gambian nationals.[124]

Section 6 of the Act governs the application for licence. The application must be made to the Minister of Interior in writing in accordance with "Form A" contained in the Schedule to the Act.[125] Among other things, "Form A" requires the company's information (such as memorandum and articles of association, certificate of registration etc.), personal information of the directors and officers of the company, as well as details of those responsible for the company's operations. The form also requires the persons listed make a declaration on whether or not they have previously been employed in The Gambia Police Force, Prisons Service, Armed Forces, Fire Service, National Drug enforcement agency, Customs and Excise or such similar law enforcement agency or service in the Gambia or elsewhere.[126]

In the process of considering the application for a licence, the Minister may request the following information: - one, "evidence of the good character, competence and integrity of a director or other persons in charge of the operation of the applicant Company"; and two, sufficient evidence that all existing regulations relating to animal health and certification have been complied with where Alsatian or other guard dogs are to be employed in the services of the Company".[127] The Act also empowers the Minister to require any other information that he/she deems fit to consider as part of the application.[128]

Most importantly, the application for a licence must be accompanied by a statement setting out the conditions of service of the employees of the applicant company and the prescribed fee for the application.[129] In granting the licence the Minister of Interior must have satisfied himself/herself that the application is "justified, having regard to national security and the public interest."[130] Once the licence is granted the Act obliges the licence holder company to display the original or copy of the licence "in a conspicuous place" in all the offices it establishes.[131]

In terms of the Act, a company, which has applied to be registered, is obliged to notify the Licencing Authority in writing of the physical addresses of all its offices in The Gambia.[132] In the event that the physical addresses of the offices change, the Act obliges the Company to give notice to the Licencing Authority within fourteen days of the change.[133] Failure to adhere to this provision attracts a criminal offence, which is deemed to have been committed by each of the

[124] S 5 of the Act.
[125] S 6 (1) of the Act.
[126] See Form A in the schedule in terms of s 6 of the Act.
[127] S 6(2) of the Act.
[128] S 6 (2) (c) of the Act.
[129] S 6(3) of the Act.
[130] S 7(1) of the Act.
[131] S 10 of the Act.
[132] S 12(1) of the Act.
[133] S 12(2) of the Act.

Company's Directors, and the fine for committing such an offence is the maximum of +/- US$ 14 (five hundred dalasis). [134]

It is important to note that a licence or approval may be granted to the Licencing Authority, provided the Director of the applicant Company has not been convicted of any criminal offence by a court of tribunal of competent jurisdiction both within the Gambia or elsewhere.[135] The Director should also not have been imprisoned for an offence involving fraud, theft or a breach of trust in the country or elsewhere.[136]

If a Director of an applicant Company has been dismissed or discharged on disciplinary grounds from The Gambia Police Force, Armed Forces, Prison Service, or any law enforcement agency or service in The Gambia or elsewhere, the applicant Company is not legible for a licence or approval. [137]

The Act also makes a provision that in the event that the Minister is satisfied that it is contrary to the public interest or national security for any person to be Director of an applicant company or approved for employment as a private guard, the Licencing Authority shall not grant a licence.[138]

The Act introduces an innovation in the sense that it provides cooperation between the Police and the private security sector in terms of training. It states that a "company shall not employ a person as a private guard unless he or she undergoes a prescribed scheme of training for private guards at the Gambia Police Training."[139] The Act, however, does not state whether or not the training that the private security guards have to undergo at the Gambia Police Training is the same as the training for Police Officers. It is doubtful that the intention of the Act was to allow private security guards to receive the same training as the police.

The Act prohibits a company from acting as or performing the duties of a police officer or any other public law enforcement.[140] This could be arguably interpreted to mean that the training of a police officer and a private security guard cannot be the same as their duties are different despite the fact that they are both engaged in a security field. Furthermore, the Act prohibits a person engaged in a business or employed in a private security guard company from using the expression "private detective" in connection with such business or hold himself or herself out in any manner as a private detective.[141]

In order to curb the practice of private security companies acting as debt collectors, the Act prohibits a company from acting as a debt collector or from

[134] S 12 (3) of the Act.
[135] S 20 (a) of the Act.
[136] S 20 (b) of the Act.
[137] S 20 (c) of the Act.
[138] S 20 (d) of the Act.
[139] S 24(d) of the Act.
[140] S 27 of the Act.
[141] S 28 of the Act.

holding itself out as undertaking to collect debts for another person with or without remuneration.[142]

In terms of section 40 of the Act, the Minister is empowered to make regulations that are necessary to give effect to the provisions of the Act.

This report shall now consider the law dealing with the private security in Uganda.

Uganda

The private security in Uganda is governed by the Police (Control of Private Security Organisations) Regulations of 2004.[143] The Regulations replaced the Control of Private Security Organisation Regulations, 1997.[144] In terms of the Regulations, a "private security organisation" (PSO) means an organization which undertakes private investigations as to facts or as to the character of a person, an organization which undertakes training services in security matters and firearms range services or one which performs services of watching, guarding, escorting or patrolling for the purpose of providing protection against crime."[145] The Regulations define a "private security officer" as "a person employed by a private security organization."[146]

What is of importance is that the Regulations state that are only applicable to all PSOs registered in Uganda.[147] The Regulations prohibit any organisation from performing or offering to perform security services in Uganda unless they are registered as a private security organization.[148] The application to operate a PSO must be submitted in a prescribed form and addressed to the Inspector General of Police. The responsibility of the Inspector General is to supervise and regulate the activities of private security organisations in Uganda and to ensure that PSOs operate within the laws of Uganda and in compliance with the Regulations.[149] He/she is also responsible for the provision of technical advice to a PSO on any security matter for which the PSO must comply with if directed.[150] The Regulations provide for the effective delegation of the powers of Inspector General of Police to a senior police officer.[151] In playing its pivotal role in the private security industry, the Inspector General of Police may in writing, issue guidelines, in conformity with the Regulations, for the better control, supervision and regulation of PSOs.[152]

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[142] S 26 of the Act.
[143] The regulations were made on 22 March 2004.
[144] Reg. 39. The PSOs that were registered under the 1997 Regulations were deemed to have been registered in accordance with the 2004 Regulations.
[145] Reg. 2.
[146] Reg. 2.
[147] Reg. 3(1).
[148] Reg. 3(2).
[149] Reg. 4.
[150] Reg. 35.
[151] Reg. 37.
[152] Reg. 38.

While the application is addressed to the Inspector General of Police, it is submitted to the Chairperson of the District Security Committee (Chairperson) and Area Commander for the appropriate remarks and onward transmission to the Inspector of Police.[153] The Chairperson is required to attach is also required by the law to attach the relevant decision as contained in the minutes of the minutes of the District Security Committee in respect of each application.[154] The Act also accommodates foreign investors in the Ugandan private security industry. It provides that for any foreign investor intending to operate a PSO in Uganda, they are required to fulfill all the formalities with the Uganda Investment Authority before submitting an application to the Inspector General of Police.[155] Having considered an application and satisfied himself /herself that it meets the requirements, the Inspector General of Police makes a recommendation for registration of a limited liability company with the Registrar of Companies.[156]

The Act also provides for the issuance of a licence to operate a PSO. The power to issue a licence to operate a specific type of security business lies with the Inspector General of Police.[157] The operator's licence must be in the form set out in Schedule II to the Regulations.[158] The applicant must, however, produce a certified copy of Articles and Memorandum of Association of the PSO.[159] Once an operating licence has been issued in accordance with the Regulations, the Inspector General of Police is obliged to notify the Minister responsible for the Uganda Police Force.[160]

The PSOs that are allowed to operate in Uganda are categorized as per the categories prescribed in Schedule III of the Regulations by the Inspector General of Police.[161] These categories are: - Guard and escort; Investigations; Guard, escort; and electronic surveillance; Consultancy; Guard, Escort and Investigation; and Training schools.[162] What is important is that for each category of security business to be carried out by a PSO, there must be a separate licence.[163]

Once a licence has been granted, the Regulations require the PSO to submit to the Inspector General of Police quarterly reports concerning its operations.[164] In turn the Inspector General of Police is obliged to issue annual performance certificates to PSO, specified in the form scheduled in schedule V to the Regulations, which are granted as either exemplary, very good, good, satisfactory or poor.[165] It must be noted that the Inspector General of Police also assumes a

[153] Reg. 5(2).
[154] Reg. 5(3).
[155] Reg. 5(4).
[156] Reg. 6.
[157] Reg. 7(1).
[158] Reg. 7(2).
[159] Reg. 7(1).
[160] Reg. 7(3).
[161] Reg. 8(1).
[162] See Schedule III.
[163] Reg. 8(2).
[164] Reg. 16.
[165] Reg. 17.

supervisory role in the sense that he/she sets the standards of performance and ensures that the following is fulfilled: - first, that proper and regular training of all personnel of a PSO; second, that proper custody, use and disposal of firearms and ammunition; third, minimal risks to the employees of PSO; fourth, employment by PSOs of vetted persons with no criminal record; and fifth, adherence to government policies on security.[166]

Once an operator's licence has been granted, it may, at any time, be suspended or cancelled by the Inspector General of Police as a result of the operator's failure to comply with the Regulations or any other law.[167] The operator whose licence has been suspended or cancelled has the right to reapply for a licence, despite the suspension or cancellation.[168] The Regulations empowers the Registrar of Companies to cancel the registration of PSO where under three circumstances: - one, where the Inspector General of Police is satisfied that the PSC is operating below the prescribed standards; two, where the Inspector General of Police is satisfied that the PSO is a security risk of the state; and three, where the Inspector General of police is satisfied that the Regulations have not been complied with.[169] Once an operator's licence is cancelled, the PSO is obliged to surrender all security equipment and all uniforms in its possession to the Inspector General of Police.[170]

According to the Regulations, the operator's licence is renewable annually, provided an application is submitted the licence holder. As part of the application, the applicant must prove satisfactory performance in the previous year. The application must be coupled with payment of a prescribed fee for the category of security service for which the renewal of the licence is sought.[171] In terms of the Regulations, every operator's licence is renewable on every 1st day of January in a given year.[172]

The Regulations covers security equipment that can be used by PSOs. Accordingly, a PSO is required to make an application to the Inspector General of police for authorization to use certain categories of security equipment.[173] This is after having obtained a relevant operator's licence as per the caterories of the private business.[174] The application may either be for the use of firearms and ammunition,[175] or approved electronic alarms and surveillance equipment, or approved defensive tools.[176] The Regulations specify that any electronic equipment that is used to interfere with the lawful privacy of an individual cannot be used by the PSO.[177] The Inspector General of Police may from time to

[166] Reg 15.
[167] Reg. 9.
[168] As above.
[169] Reg. 18(1)
[170] Reg 18(2).
[171] Reg. 10(1).
[172] Reg. 10(2).
[173] Reg. 11(1).
[174] See schedule III.
[175] As prescribed in Schedule IV of the Regulations.
[176] Reg. 11(1)(a) – (c).
[177] Reg. 11(2).

time issue circulars, instructions or guidelines relating the use of security equipment.[178]

PSO have certain obligations in terms of the Regulations.[179] First, they have a strict duty to provide quality services to their clients. Secondly, they are obliged to take up appropriate insurance cover for their employees. Thirdly, they are required to ensure that all necessary licences, approvals or authorisations for carrying out their private security businesses are duly obtained. Fourthly, they are obliged to ensure that they promptly pay wages and allowances of their personnel. In addition to the abovementioned obligations, PSOs are obliged to observe and ensure strict observance of human rights of and by their employees.[180]

Other obligations for PSOs relates to the use of uniforms by their personnel. Accordingly, the Regulations provide that the employees of PSOs that undertake guard or escort services shall be dressed in uniform while on duty.[181] The uniform to be used must be adequately described and notified to the public through the Uganda *Gazette* and at least in one daily local newspaper.[182] Most importantly, the Regulations prohibit ant PSO employee from using a uniform or part of a uniform that is in same style, colour and texture of any uniform used by another PSO or by government security forces.[183] The failure to adhere to these regulations may result in the suspension and cancellation of the operator's licence or even cancelation of registration of the PSO.[184]

The Regulations also provide for the cooperation between the PSOs and the Police. Accordingly, the Regulations provide that PSOs shall keep regular contact with police operations services and shall report any incidents of any security nature that might necessitate the use of the specialized services of the Police Force.[185]

The Regulations devotes a whole part to arms and ammunition.[186] The provisions as they relate to firearms must apply in conformity with the Uganda's Firearms Act.[187] As part of his/her responsibilities, the Inspector General of Police is empowered to approve the types of arms, ammunition and magazines to be used by PSOs in conformity with the Firearms Act.[188] The types of arms and ammunition that may be authorized for use by PSOs are listed in Schedule IV of the Regulations and are divided into four types, namely: - one, self housing semi-

[178] Reg. 11(3).
[179] Reg. 12.
[180] Reg 13.
[181] Reg 19(1).
[182] Reg. 19(2).
[183] Reg 19(3).
[184] See Reg 9 and 18, respectively.
[185] Reg 14.
[186] Part IV of the Regulations.
[187] Reg. 20.
[188] Reg. 21.

automatic family or rifles; two, shot gun family; three, revolver family; and four, bolt action/and single shot rifle family.[189]

A PSO seeking to import, acquire or purchase specified quantities and types of firearms and ammunition and any other security equipment may only do so upon the recommendation given by the Inspector General of Police to the Minister responsible for Police for authorization.[190] The application for the purchase of arms and ammunition within or outside Uganda is subject to the existence of an approved operator's licence issued.[191] This means that the PSO must have complied with the requirements for obtaining a licence and must have effectively been granted such a licence to operate in Uganda.

The Regulations also underscores the importance of training in the use of arms. Accordingly, it is a requirement that all employees of a PSO who are detailed to use arms must be adequately trained for the purpose.[192] Any PSO employee using a firearm must possess a certificate of competence in firearms management as set out in Schedule VI of the Regulations.[193] The Inspector General of Police on recommendation of an accredited instructor or an accredited training school or institution issues the certificate.[194] The Inspector General of Police must accredit training schools and institutions as well as the instructors, for the training of private security officers.[195] The Regulations states that the Inspector General of Police is also responsible for the standardization of the training procedures in the use of firearms,[196] and also for issuing, from time to time, standard instructions to PSOs regarding firearms.[197] It is also incumbent upon the Inspector General of Police to approve instructors training manuals for accredited training schools and institutions.[198]

What is of importance is the fact that the Regulations specify three circumstances under which PSO employees may use firearms. Firstly, employees of PSOs are authorized to use firearms in self-defence against an armed attack or the 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.[199] Secondly, employees of PSO are authorized to use firearms when attempting to arrest a person who, to his or her knowledge, is fleeing from lawful custody after committing or suspected to have committed a serious offence and the fleeing person does not stop voluntarily or by any other lawful

[189] Schedule IV read in conjunction with Regulations 2, 11(1)(a) and 23.
[190] Reg. 22.
[191] Reg. 23.
[192] Reg. 24.
[193] Reg. 25(1).
[194] Reg. 25(1).
[195] Reg. 36(1). The certificate of accredited training school and institutions and accredited instructors must be in the prescribed form in Part A and B respectively of Schedule VIII of the Regulations (Reg. 36(2)).
[196] Reg. 24.
[197] Reg. 31.
[198] Reg 36(3).
[199] Reg. 26(a).

means.[200] Thirdly, employees of PSOs are authorized to use firearms in order to stop any serious threat to life or property if police assistance cannot be called in time to avert the threat.[201] The Regulations prohibit employees of PSOs, who are detailed to use firearms from using firearms in order to negotiate for any welfare affecting their terms and conditions of service.[202] Instead the Regulations require them to follow the proper legal channel for the settlement of industrial disputes.[203]

It must be noted that it is incumbent upon the PSO to record the movement of firearms. For instance, maintaining firearms register, recording and accounting for all movements of firearms remains the responsibility of the PSO. [204] Any person intending to move firearms for deployment must acquire a movement permit.[205] The officials responsible for issuing firearms movement permits are the District Police Commander, or Regional Police Commander or Inspector General of Police, depending on the jurisdiction of the intended movement.[206]

PSOs are also required to submit monthly returns and accounts of the arms and ammunition within their possession to the Inspector General of Police.[207] It is the responsibility of the latter to inspect the armoury, arms and ammunition in possession of a PSO, once in every four months.[208] The Regulations provide guidelines for the destruction of arms and ammunition. Accordingly, the destruction of any damaged firearms or expired ammunition owned by a PSO must only take place once a court order has been obtained for such destruction and after having notified the inspector general of Police of the intended destruction.[209] The Regulations require that such destruction must be witnessed by the area licensing officer.[210]

Part V of the Regulations deals with the personnel of PSOs. The Regulations requires the operational personnel of every PSO to submit their particulars and fingerprints to the Inspector General of Police within a period of two weeks after their recruitment or appointment.[211] In so far as returns of personnel are concerned, PSOs are required to submit quarterly returns of personnel in their employ to the Inspector General of Police.[212] Over and above this, the PSOs are required to submit monthly returns on payment of salaries to their employees to the Inspector General of Police.[213]

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[200] Reg. 26(b).
[201] Reg. 26(c).
[202] Reg. 34(1).
[203] Reg. 34(2).
[204] Reg. 27(1).
[205] Reg. 27(2).
[206] Reg. 27(3). The firearms movement permit must be in the form specified in Schedule VII to the Regulations.
[207] Reg. 28.
[208] Reg. 29.
[209] Reg. 30(1).
[210] Reg. 30(2).
[211] Reg. 32.
[212] Reg. 33(1)
[213] Reg. 33(2).

The analysis of the Bill that seeks to address the issue of the private security sector in Kenya follows herein below.

Kenya

Private security is viewed as one of the fastest growing service industries on Kenya.[214] This is a result of the insecurity that prevails, particularly in the urban areas. According to Abrahamsen and Williams, "[f]ear and insecurity have become defining features of life in Kenya".[215] This has lead to the increase of private security companies in Kenya as the *populis* seek to overcome this fear and insecurity. In 2005, the private security companies (PSCs) were reported to be in the region of 2000.[216]

Wairagu *et al* argue that it is very difficult to authenticate this figure due to the fact that most PSCs are registered as ordinary businesses.[217] This figure has no doubt gone up due to the need to the high crime rates, particularly in the urban areas. According to Abrahamsen and Williams, the development of a regulatory framework for licensing and monitoring in order to ensure highest standards and quality of life remains a major challenge facing the Kenyan private security sector.[218] They argue that as the private security guards are unarmed, this is becoming a concern across the PSC sector as this is inadequate in a setting of rising crime and violence.[219]

The main challenge facing the private security industry in Kenya is the absence of regulation or policy framework relating to the legal and procedural operations of PSCs. According to Wairagu et al,

> Anybody can start a security company anytime. Indeed, establishing a security company is no different from setting up a kiosk, a boutique or butchery. There is no vetting authority in Government or anywhere else that vets and ensures that security companies are established and run by people of integrity and commitment to the law.[220]

In order to address the lack of an effective regulatory framework, Kenya developed the Private Security Industry Regulatory Bill, 2010 (the Bill), which is yet to be passed into law. Once the Bill becomes an Act of Parliament, it will, *inter alia*, provide for the regulation of the private security industry in Kenya, establish and provide for the functions of regulatory authority, prescribe conditions for the operation of private security firms in Kenya.[221]

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[214] Wairagu *et al* (n 3 above) 1.
[215] R Abrahamsen & M C Williams, *The Globalisation of Private Security, Country Report Kenya* (January 2005) 3.
[216] As above.
[217] Wairagu *et al* (n 3 above) 1.
[218] Abrahamsen & Williams (note 215 above) 3.
[219] As above.
[220] Wairagu *et al* (n 3 above) 2.
[221] The Act shall come into operation upon publication in the Gazette. See Clause 1 of the Bill).

The Bill contains 30 clauses, with an interpretation clause at the beginning and a provision for regulations at the end. The arrangements of the clauses of the Bill is divided into four parts, namely, part I dealing with preliminary clauses,[222] part II dealing with the establishment and composition of the authority,[223] part III dealing with registration as a private security services provider,[224] and part IV dealing with inquiry into conduct of private security providers.[225]

The Bill defines a "private security provider" to mean a person or body of persons, other than a Government agency, providing private security services to any person.[226] A private security provider is prohibited from doing the following: - one, allowing the use of uniforms similar to any of the uniforms worn by any disciplined service in Kenya; two, branding its vehicles in similar colours with any disciplined service in Kenya; or three, installing communication tools or systems capable of interfering with communication system used by any of the disciplined service in Kenya.[227] The Bill further defines "private security firms" to mean a body corporate, including a partnership, which provides private security services.[228]

The Bill establishes an Authority to be known as the Private Security Regulatory Authority, which shall be a body corporate with perpertual succession and a common seal, and capable of suing and being sued, acquiring, holding and disposing of movable and immovable property, and undertaking or performing all such other things or acts as may lawfully be undertaken by a body corporate.[229] The purpose for the establishment of the Authority is to regulate the private security industry in Kenya and to exercise effective control over the provisions of private security services in the interests of the public.[230]

The various functions of the Authority are provided for under clause 5 of the Bill and include ensuring that security services providers act in the public and national interest in rendering their services;[231] ensuring that compliance with existing legislation by security service providers is promoted and controlled;[232] and promoting the development of security services which are responsive to the needs of the users of such services and of the community.[233] The Authority shall operate under the supervision of the Cabinet Secretary responsible for matters relating to internal security.[234] The latter is also responsible for giving general and specific direction to the Authority as well assuming responsibility for the relevant functions or duty to the extent necessary to maintain standards or

[222] Clauses 1-2 of the Bill.
[223] Clauses 3-15 of the Bill.
[224] Clauses 16-25 of the Bill.
[225] Clauses 26 – 30 of the Bill.
[226] Clause 2 of the Bill.
[227] Clause 29 of the Bill.
[228] Clause 2 of the Bill.
[229] Clause 3 of the Bill.
[230] Clause 4 of the Bill.
[231] Clause 5(a) of the Bill.
[232] Clause 5(j) of the Bill.
[233] Clause 5(l) of the Bill.
[234] Clause 9(1) of the Bill.

prevent the Board from taking any action which is prejudicial to the objects of the Authority.[235] This is in case the Authority fails to maintain an acceptable standard in the fulfillment of its functions.[236]

In terms of the Bill, the Authority shall be governed by a Board consisting of a chairperson appointed by the President and the following members appointed by the Cabinet Secretary[237]: - Four members comprising of representatives from the Office of the Presidency, the Principal Secretary in the State department responsible for finance, the Principal Secretary in the State Department responsible for labour, and the national Police Service; one member representing employers' organization; one member representing the insurance industry; two members representing workers' organizations; two members representing private security associations; and one member nominated by registered residents' associations to represent the interests of residents. The secretary to the Board is the Director of the Authority who is appointed in terms of clause 10 of the Bill and is effectively the chief executive officer of the Board and is responsible to the board for the day to day operations of the Authority.[238]

The functions of the Board include enquiring into and reporting to the Cabinet Secretary on any matter concerning the functions of the Authority;[239] granting or renewing registration certificates to private security providers who comply with the requirements of such registration or renewal of registration;[240] and facilitating the training of security service providers in order to ensure a high quality of training.[241] As part it its functions, the Board is required to keep a register of the names and particulars of every security service provider registered in terms of the Act, which register shall be open for inspection by interested persons during normal working hours.[242] It is also incumbent upon the registered service providers to confirm or update the particulars relating to them as they appear in the register once every year.[243]

Over and above the appointment of the Director of the Authority, the Board may appoint such other staff as may be necessary for the efficient performance of the functions of the Authority.[244] What is important to note is that the Bill prohibits the appointment of any person that has direct or indirect interest in the private security industry.[245]

The powers of the Board are set out in clause 8 of the Bill and include: - suspending or withdrawing the registration of a security service provider;[246]

[235] Clause 9(2) of the Bill.
[236] As above.
[237] Clause 6(1) of the Bill.
[238] Clause 10 (1) & (2) of the Bill.
[239] Clause 7(a) of the Bill.
[240] Clause 7(d) of the Bill.
[241] Clause 7(e) of the Bill.
[242] Clause 21(1) and (2) of the Bill.
[243] Clause 21(3) of the Bill.
[244] Clause 10(3) of the Bill.
[245] Clause 10(4) of the Bill.
[246] Clause 8(a) of the Bill.

taking steps to protect and assist security guards and other employees against or with regard to acts, practices and consequences of exploitation or abuse;[247] receiving, expending and generally administering funds subject to the provisions of the Bill and cooperating with any person or body in the performance of an act which the Authority is by law permitted to perform.[248]

Clause 12 of the Bill provides for a funding model of the Authority. The Authority's shall comprise of the following: - one, such funds as may be provided by Parliament; two, such moneys or assets as may accrue to vest in the authority in the course of the exercise of its powers or the performance of its functions under the Act or of any other written law; and three, all moneys from any other source provided for or donated or lent to the Authority.[249] The Authority is obliged to cause to be kept all proper books and other records of accounts of income, expenditure assets of the Authority.[250] The Authority's financial year is for a period of twelve months ending on the thirtieth of June in each year.[251]

The requirements for registration as a private security services provider is provided under clause 16 of the Bill. The Bill prohibits any person from engaging in the provision of private security services unless they are registered by the Board.[252] Private security services include: - the provision of private security and guarding services; installation of burglar alarms and other protective equipment; private investigations and consultancy; car tracking or surveillance; close-circuit television; provision of guard dog services; security for cash in transit; access control installation; or any other service authorized by the Board through a notice in the *Gazette*.[253]

The Bill provides for the conditions of registration under clause 16. The application for registration must be in the prescribed form and may be made by an individual or by a security firm.[254] In terms of the Bill, an individual applying for registration must meet five conditions.[255] One, he/she must be a citizen of Kenya or a person who is ordinarily resident in Kenya. Two, the person must be over eighteen years of age. Three, they must submit a certificate of good conduct issued by the criminal Investigation Department. Four, where the person previously served in any of the disciplined forces, he/she must produce a certificate of discharge from such force. Five, the person must be of sound mind.

The conditions that must be met by a security firm in order to be legible for registration include possession of a valid certificate of incorporation under the relevant law; having persons performing executive functions in respect of security businesses who are registered as security service providers under the

[247] Clause 8(d) of the Bill.
[248] Clause 8(q) of the Bill.
[249] Clause 12(1) of the Bill. The Authority cannot accept funds, gifts or other donations form persons who are regulated by it.
[250] Clause 15(1) of the Bill.
[251] Clause 13 of the Bill.
[252] Clause 16(1) of the Bill.
[253] Clause 16(2) of the Bill.
[254] Clause 17(1) of the Bill.
[255] Clause 17(2) of the Bill.

Act; and having otherwise satisfied the Board of its suitability for registration.[256] It is a requirement that the application for registration be in writing and accompanied by such fee as may be prescribed.[257] The Board has the right to make an enquiry or request more relevant information from an applicant as it deems fit.[258]

The Bill prohibits certain people from being registered to provide private security services. These include the following: - a person who are in the permanent employment of the Authority, the National Security Intelligence Service, the disciplined forces or the prisons department; a person who is convicted by a competent court of an offence involving violence, theft or fraud; a person that is an undischarged bankrupt; a person who is found to be in association with any organization which is prohibited under any law for the time being in force; or a person who being a Government servant, is dismissed from service on grounds of misconduct or moral turpitude.[259]

Once the application for registration has been successfully considered by the Board, the requirements having been met, the Board is obliged to issue a certificate of registration to a registered security provider, subject to such conditions as it may wish to impose.[260] Over and above this, the Board must also issue a certificate of operation to all persons registered in terms of the Act and upon the issuance of the certificate a registered person may commence operations as a security provider.[261] The certificate is renewable annually upon payment of the prescribed fee.[262] A registered security provider is required by law to keep a register of names and particulars of employment of all persons employed for purposes of providing security.[263]

The Board reserves the right to vary the categories of the certificate of operation for purposes of specifying the services, which a registered service provider may be authorized to undertake.[264] It can also exercise its right to refuse registration, in which case it must notify the applicant accordingly within a period of fifteen days from the date of such decision, specifying the reasons for the refusal.[265] Once the board has notified the applicant of the refusal to approve an application for registration, the aggrieved party may subject to the Arbitration Act, refer the matter to an arbitral tribunal.[266]

The Bill provides for the Private Security Providers Code of Conduct set out in its Second Schedule, for which every registered security provider must subscribe to

[256] Clause 17(3) of the Bill.
[257] Clause 17(4) of the Bill.
[258] Clause 17(5) of the Bill.
[259] Clause 19(1) of the Bill.
[260] Clause 20(1) and (2) of the Bill.
[261] Clause 20(4) of the Bill.
[262] Clause 20(5) of the Bill.
[263] Clause 22 of the Bill.
[264] Clause 20(6) of the Bill.
[265] Clause 23(1) of the Bill.
[266] Clause 23(2) of the Bill.

and observe.[267] Failure to adhere to this Code of Conduct results in the Board subjecting that person (who fails to comply) to disciplinary action.[268] The Bill further provides for offences for private security providers and private security firms that result from the non-compliance to the Act.[269] The Bill further also provides for guidelines relating to undertaking an inquiry into the conduct of private security providers by the Board.[270]

The Bill introduces a Private Security fidelity levy, which may be imposed by the Cabinet Secretary (on the advice of the Board) on all persons licensed under the Act to provide private security services.[271] The levy shall be in such amount as the Cabinet Secretary may prescribe and he/she may impose different amounts of levy to be paid by individuals and private security firms under the Act.[272]

The Bill also establishes a Fund to be known as the Private Security Fidelity fund which shall vest in and be operated by a board of Trustees under the control of the Secretary.[273] This is where the fidelity levy as imposed by the Cabinet Secretary is to be paid into.[274] The purpose of the Fund is two-fold, namely: - one, to provide compensation to persons who incur loss or damage as a result of the misconduct of a private security services provider registered under the Act; and two, generally to coordinate and promote professionalism among the private security providers.[275]

According to the Bill, the Cabinet Secretary may, on recommendation of the Board, make regulations for the better carrying out of the provisions of the Act.[276] The regulations may provide for the following: - the employment of personnel by registered private security firms; the provisions of uniforms and equipment to employees of private security firms; the various forms to be used under the Act; or guidelines for registered private security service providers.[277]

An analysis of Nigeria's law on private security follows herein below.

[267] Clause 24(1) of the Bill.
[268] Clause 24(2) of the Bill.
[269] Clause 25 of the Bill.
[270] Clause 26 of the Bill.
[271] Clause 27(1) of the Bill.
[272] Clause 27(2) of the Bill.
[273] Clause 28(1) of the Bill. The Cabinet Secretary may make regulations regarding the qualifications and appointment of the Board of trustees, the manner of payments of the levy by registered persons, the making of claims against the Fund by persons incurring loss or damage, and any other thing which may be fit to prescribe with regard to the Fund. (see clause 28(4) of the Bill).
[274] Clause 28(2) of the Bill.
[275] Clause 28(3) of the Bill.
[276] Clause 30(1) of the Bill.
[277] Clause 30(2) of the Bill.

Nigeria

It has been argued that "[s]ecurity is now the second largest money-spinner in Nigeria, surpassed only by oil and gas".[278] In 2005, Abrahamsen and Williams reported that, "according to best estimates, there are currently between 1,500 and 2,000 private security companies (PSCs) in Nigeria, employing in excess of 100, 000 people".[279] These figures have no doubt increased as a result of the demand for security services in Nigeria. The oil wealth has played a part in the increase of the industry, particularly in the urban areas.

The private security sector in Nigeria is governed by the Private Guard Companies Act No 23 of 1986 (the Act).[280] The main purpose of the Act is to regulate and provide for the licensing of private guard companies, which must be wholly owned by Nigerians and other matters thereto. The Act defines a "private guard company" to mean any company incorporated in Nigeria and licensed under the provisions of this Act to provide such services as are permitted under section (1) of the Act.[281]

Of importance is that the Act establishes a licencing authority for private guard companies who shall be an officer in the Ministry for which the Minister has responsibility or such other public officer as may be designated in that behalf of the Minister.[282] The Act further provides that the powers conferred on the Minister (including the power to grant a licence to a licence to a private guard company under section 3 of the Act) may, without prejudice to the exercise of any such power by the Minister, be exercisable by the licensing authority.[283]

The Act is divided into four parts: namely, Part I deals with the licencing of private guard companies, Part II deals with control and administration, Part III deals with prohibited activities, offences penalties, and Part IV deals with supplementary provisions. Comprising of 37 sections, the definition clause is found in section 36 of the Act.

The Act prohibits any organization from performing the service of watching, guarding, patrolling or carrying of money for the purpose of providing protection against crime unless it is firstly, registered as a company under or pursuant to the Companies and Allied Matters Act, and secondly, applied for and has been granted a licence by Minister in accordance with the provisions of the Act, and thirdly, it is wholly owned by Nigerians in accordance with the Schedule to the Nigerian Enterprises Promotion Act.[284]

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[278] R Abrahamsen & MC Williams, *Globalisation of Private Security, Country Report: Nigeria* (January, 2005) 3.
[279] As above.
[280] Chapter 367. Date of commencement: 15 December 1986. The short title of the Act is the Private Guard Companies Act.
[281] S 36 of the Act.
[282] S 19(1) of the Act.
[283] S 19(2) of the Act. The condition is that the licensing authority must be authorized either generally or specially in that behalf by the minister and the expression "licensing authority" wherever used in the Act shall be construed accordingly.
[284] S 1(1) of the Act.

The Act requires that an application for licences must be made in writing through a licencing authority to the Minister of Internal Affairs (the Minister)[285] in the manner and giving particulars as specified in form A in the Schedule to the Act.[286] The information may be require by the Minister as part of the processes of considering an applications include: - one, further evidence concerning the good character, competence and integrity of any good character, competence and integrity of any director or other person responsible for or in charge of the specific operation of the company; and two, in the case where Alsatian or other guard dogs are to be employed in the services of the company, sufficient evidence that all existing regulations relating to animal health and certification have been complied with. Applications for a licence include a prescribed fee,[287] and a statement setting out the conditions of service (including salaries) of the employees or prospective employees of the company making the application.[288]

In considering the application, the Minister is required by law to satisfy himself or herself that the granting of a licence is justified and in line with national and public interest.[289] The duration of the granted licence must be for a period of two years from the date of issue and must specify the number of offices, branches or other places of business, which the company is permitted to maintain.[290] In the event that Minister is convinced that the company holding a licence is not suitable to continue to hold a licence, he /she has the power to either suspend the licence or revoke it, as the case may be.[291] Other circumstances in which the Minister may suspend or revoke a licence is where he or she is of the opinion that the ownership or control of, or any controlling interest, in the company t which the licence relates has passed to any other company or organization which is generally unsuitable to be considered for the grant of such licence.[292]

The Act requires every company licenced under the Act to notify the licencing authority in writing of the addressed of all its branches in Nigeria on the day that it is registered.[293] These addresses must be physical addressed. In the event that the address of any branch of the company changes, the company must give notice of change of the registered address within a period of 14 days. Upon receipt of the notice of change, the authority is required to adjust the same in its records.[294] Failure to comply with this provision attracts a fine of 500 Nigerian Naira, which is equivalent to +/- US$3.13.[295]

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[285] S 36(1) of the Act.
[286] S 2(1) of the Act.
[287] S 2(3) of the Act.
[288] S 3(4) of the Act.
[289] S 3 of the Act.
[290] S 4(1) and (2) of the Act.
[291] S 4(3) of the Act.
[292] S 4(4) of the Act.
[293] S 5(1) of the Act. This subsection provides that a postal box address or a private mail bag address shall not by itself satisfy the obligations imposed on the company under subsection.
[294] S 5(2) of the Act.
[295] S 5(3) of the Act.

It is a requirement of the law that upon receipt of a licence, the company must cause it to be displayed in a conspicuous place in its office.[296] For this purpose duplicate licences may be issued where the company carries on business in more than one place.[297]

Once a company is licenced to operate in terms of the Act, it is required by law to employ persons approved to be employed in such a company.[298] The approval of the must be granted as specified in Form C in the Schedule to the Act.[299] The Application for an approval must be made through the licencing authority to the Minister in writing accompanied by such fee as may be prescribed and by the particulars specified in form D in the Schedule to the Act.[300] The factors that the Minister considers in an application include evidence, as he or she may specify, concerning the good character, competence and integrity of the applicant as well as any other that he or she may specify.[301]

The Act also provides for the nature and effect of the employee's approval.[302] First, the approval authorizes the applicant to be employed by the company in such approval.[303] Second, it specifies the kind of work which the applicant is authorized to perform.[304] The Minister has the right to withdraw the approval should the person concerned be unsuitable to continue to be employed.[305] Such a withdrawal means that every identification card issues to that employee ceases to be valid and the law requires that it be surrendered to the Minister.[306]

It is also important to note that upon approval of a licence for employees, the Minister is required to authorize the company to issue or cause to be issued an identity card to the employee containing the photograph and personal description and details of the employee in such form as may be determined by the Minister.[307] The law requires that the employees must carry the identity cards at all times when on duty on behalf of the company by which they are employed.[308] The law further requires the employee to produce the identity card for inspection at any time upon request being made by any police officer or to any person with whom he has dealings when carrying out his duties.[309]

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[296] S 6 of the Act.
[297] As above.
[298] S 7 of the Act. The Act defines an employee to mean a person employed by a private guard company under the provisions of section 7 of the Act.
[299] As Above.
[300] S 8 (1) of the Act.
[301] S 9 of the Act.
[302] The word "approved" means a person approved by the minister of Internal Affairs under section 7 of the act to be employed by a private guard company.
[303] S 9(1) of the Act.
[304] S 9(2) of the Act.
[305] S 9(3) of the Act.
[306] S 9(4) of the Act.
[307] S 10(1) of the Act.
[308] S 10(2) of the Act.
[309] S 10(3) of the Act.

The renewal of licences by a licence holder is allowed by the Act provided it is not more than three months before the expiry of the licence.[310] In the event that a licence holder fails to renew a licence within the specified period (of three months before the expiry date), the licence stands revoked upon its expiry. The consequence of this revocation is that the licence holder must cease to operate as a private guard company.[311] The Act also covers the replacement of lost licences.[312]

In addressing the restriction on grant of licence or approval, the Act provides that the licensing authority shall not grant any licence or approval under the provisions of the Act if the director of the company or the person applying for approval has: - one, been found guilty of a criminal offence under the Penal Code, the Criminal Code, the Firearms Act (Special Provisions) Act, by a court or tribunal of competent jurisdiction in Nigeria or of an offence of a similar nature elsewhere;[313] two, has been sentences to any period of imprisonment for an offence involving fraud, theft or a breach of trust whether in Nigeria or elsewhere;[314] three, has ben dismissed, discharged or otherwise removed on disciplinary grounds from the Nigeria Police Force, the Armed Forces of the Federation, the Nigerian Prisons Service, the Special Constabulary, the Fire Services or customs Preventive Service or any such similar law enforcement agency or service whether in Nigeria or elsewhere;[315] four, is a person in respect of whom the Minister is satisfied that it is contrary to public interest or the interest of national security that he/she should be a director or be approved for employment under the provisions of the Act;[316] and five, is not a citizen of Nigeria.[317] In the event that a person approved under the provisions of the Act is convicted of any offence referred to above or is sentenced to a period of imprisonment, the Act imposes a duty upon the registrar of the court concerned to notify the licencing authority, who in turn is obliged to withdraw the approval granted to the person.[318]

The Act provides for records and annual returns under Part II of the Act dealing with Control and Administration. Every company that is operating under the Act must keep complete records of all persons employed from time to time in carrying on of the business of the company and of each other work undertaken.[319] They are also obligated to file with the licensing authority a return not later than the last day during the month of January in each year.[320] It is a law requirement that every company operating a licence in terms of the Act,

[310] S 11(1) of the Act.
[311] S 11(2) of the Act.
[312] S 12 of the Act.
[313] S 13(1)(a) of the Act.
[314] S 13(1)(b) of the Act.
[315] S 13(1)(c) of the Act.
[316] S 13(1)(d) of the Act.
[317] S 13(1)(e) of the Act.
[318] S 13(2) of the Act.
[319] S 14((1)(a) of the Act
[320] S 14(1)(b) of the Act.

must make all records required to be kept available to the licensing authority for inspection when requested to do so by the latter.[321]

It is against the law for any company without a relevant licence under the Act to sue for or recover or retain any commission, fee, gain or reward for any service performed by the company.[322]

The Act also addresses the issue of approved uniforms for the employees of companies. Accordingly, it prohibits any employee of a company holding a licence from wearing, carrying or bearing any uniform cap, badge, accouterment or other identification mark unless such uniform, cap, badge, accouterment or other identification mark has been approved for use by the Minister in writing.[323] Where an article that is part of the uniform bears resemblance to a similar article used by the Nigeria Police Force, the Prison Service, the Armed Forces of the Federation, Customs Preventive Service or any other uniformed service in Nigeria, the Minister is obliged not to approve that article.[324]

Regarding the use of firearms and ammunition, the Act prohibits any person approved under its provisions from bearing or possessing any firearm or ammunition in the course of their duties.[325] The importance the Ministers role in so far as the training syllabus is underscored by the Act, in the sense that only once the minister has approved the training syllabus and instructions, can a company licenced be able to train or order persons to be trained.[326]

The Act expressly prohibits certain activities and provide for the penalties for them. Firstly, the Act prohibits any licenced company from acting as a collector of debts or advertise itself or hold itself out as undertaking to collect debts for any other person, either with or without remuneration.[327] Secondly, the Act prohibits companies from acting as members of the Nigerian Police Force or performing the duties of a constable or other police officer or any other law enforcement agents.[328] Thirdly, the Act prohibits any person from using the expression "private detective" in connection with such business or employment or holding himself or herself out in any manner as a private detective.[329] Fourth, the Act prohibits a company or employee of the company from divulging to anyone except as legally authorized or required, any information acquired in the course of his duties under the Act.[330]

The Act further identifies the offences which result from violations of its provisions and which attract a guilt verdict if successfully prosecuted in court.[331]

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[321] S 14(2) of the Act.
[322] S 15 of the Act.
[323] S 16(1) of the Act.
[324] S 16(2) of the Act.
[325] S 17 of the Act.
[326] S 18 of the Act
[327] S 20 of the Act.
[328] S 21 of the Act.
[329] S 22 of the Act.
[330] S 23 of the Act.
[331] S 24 - 32 of the Act.

Where an offence is committed under the Act, by a body corporate or firm or other association of individuals, the following are considered to be severally guilty of the offence and liable to be prosecuted and punished in like manner as it they had themselves committed the offence in their individual capacity[332]: - every director, manager, secretary or other similar officer of the body corporate; every partner or officer of the firm; every person concerned in the management of the affairs of the association; or every person purporting to act in any such capacity as aforesaid.[333]

The Act empowers the Minister to revoke the licence of any company of any approval given in respect of an employee of as company under the provisions of this Act where such company or person contravenes any provisions of the Act.

It is now convenient to discuss some of the salient elements of comparison of the various laws discussed in this report.

Elements of Comparison

In the absence of any field research, the extent of the private security sector in these countries cannot be fully appreciated. Despite this shortcoming, the laws that have been discussed above can be compared in order to determine the extent to which the various countries have addressed and/or regulated the private security sector within their jurisdictions. This part seeks to discuss some of the salient features of the various laws that can be a subject of comparison.

As already shown above, the various laws define security services and address the rendering of these services differently. The law governing the private security sector in Ghana is the Police Service (Private Security Organisations) Regulations 1992 Legislative Instrument 1571, as amended by Legislative Instrument 1579; the law governing the private security sector in Mauritius is the Private Security Act No. 5 of 2004 as amended by the Private security Service (Amendment) Act of 2008; the law governing the private security sector in Sierra Leone is the National Security and Central Intelligence Act No. 10 of 2002; the law governing the private security sector in The Gambia is the Private Security Guard Companies Act No. 5 of 2011; and the law governing the private security sector in Nigeria is the Private Guard Companies Act No. 23 of 1986. As already stated there is no law that specifically deals with the private security in Kenya.

The study has also revealed that reference to private security companies/organizations differs from one country to another. For instance, the Ghanaian and Ugandan legislations refer PSC to a "private security organisation"; the Gambian and Nigerian legislations refer a PSC to "private security guard company"; and the Kenyan Bill refers a PSC to a "private security provider". Other laws, such as the Mauritius legislation, only makes reference to "the private security service" as opposed to the company or organization that provides such services.

[332] Unless they prove that the act or omission took place without their knowledge, consent or connivance.
[333] S 33 of the Act.

The definitions "private security service" also differ from one country to the other. While the Ghanaian, Sierra Leonean, The Gambian, Ugandan, and Nigerian legislations do not provide for specific definitions of a "private security service", the Mauritius legislation defines as "the business of providing, for remuneration a reward, security service, the services of a security guard, and the secure transportation and delivery of property." The Kenyan Bill is more elaborate on what entails a "private security service" in the sense it lists the services as follows: - provision of private security guard services; installation of burglar alarms and other protective equipment; private investigations and consultancy; car tracking or surveillance; close-circuit television; provision of dog services; security for cash in transit; security for cash in transit; access control installation; or other authorized services.[334]

The only definition given by the Sierra Leonean legislation is that of a "security service", which means such services connected with the State as the National Security Council may determine."[335] It could be argued that flowing from this definition, a private security service may be defined as such services connected with private individuals or entities as the National Council may determine. This suggested definition is, however, not comprehensive enough to cover what a "private security service" entails.

The Gambian legislation implies that a "private security service" is only confined to the guarding sector as it defines a "private guard" as "a person employed by a Company as a private security guard."[336] Flowing from the definition of "private security organization" in the Ugandan legislation, the definition of a "private security service" could be impliedly deduced to include training services in security matters and firearms range services, watching, guarding, escorting or patrolling for the purpose of providing protection against crime.[337] In the Nigerian legislation, the definition of a "private security service" is impliedly provided under the Nigerian legislation to include "the service of watching, guarding, patrolling or carrying of money for the purpose of providing protection against crime."[338]

The government departments or portfolios or officials responsible for the private security sector differ from one country to the other. For instance, in Ghana, the Ministry of Interior and Ghanaian Police Service are responsible for regulating the private security sector. In the case of Mauritius, the Ministry responsible for home affairs and the Office of the Commissioner of Police are responsible for regulating the private security sector. In Sierra Leone, the National Security Council (comprising of a political heads for various ministries) in general and the Office of the National Security in particular are responsible for regulating the private security industry. In the case of The Gambia, the Licensing Authority for Private Security Guard Companies within the Ministry of Interior is

[334] Clause 16(2) of the Private Security Industry Regulation Bill, 2010.
[335] S 1 of the National Security and Central Intelligence Act, 2002.
[336] S 2(1) of the Private Security Guard Companies Act No. 5 of 2011.
[337] S 2 of the Police (Control of Private Security Organisation) Regulations, 2004.
[338] S 1(1) of the Nigeria Private Guard Companies Act, 1986.

responsible for regulating private security sector. In the case of Nigeria, the responsible official for private security is an officer within the Ministry of Internal Affairs, who is essentially the licencing authority for private guard companies established by the Nigerian law. In Uganda, the Inspector General of Police, the Chairperson of the District Committee and Area Commander falling under the Uganda Police Force play a critical role in regulating the private security sector. In so far as Kenya is concerned the Private Security Regulatory Authority will be responsible for regulating the private security sector, once the Bill becomes law.

In so far as the issue of mercenarism is concerned, save for Mauritius, Sierra Leone, Uganda, and Kenya, only Ghana,[339] The Gambia,[340] and Nigeria,[341] are Member State of the 1977 OAU Convention for the Elimination of Mercenarism in Africa. The legislation framework obtained from the Party States to the Mercenary Convention only deal with the private security sector and not mercenarism. The countries that have ratified the Mercenary Convention do not seem to have any laws that effectively implement it within their domestic jurisdiction.

Of the countries subject to this study, a country that has been notorious for the use of PMCs is Sierra Leone. Despite this, there is no law dealing with PMCs (or at the best prohibiting the use of mercenaries). Sierra Leone also presents a specific perspective due to its protracted civil war that had an effect on the growth of the private security sector. The private security sector in Sierra Leone is also seen as the most "polluted" industry due to the fact that a considerable number of combatants who participated in the deadly civil war found their way into the private security sector.

It must further be noted that the laws in these countries are applicable at the domestic level. This, therefore, presupposes that the exportation of security and military skills beyond these countries is not subject to any specific laws. While Mauritius, The Gambia, Uganda and Nigeria have specific laws dealing with the private security industry, Ghana, and Sierra Leone has laws that are not necessarily specific to private security but which contains provisions that addresses the issue of privatization of security. Sierra Leone addresses the issue of private security sector within a legislation dealing with national security and central intelligence. The countries with specific legislation of private security provide for the development of regulations aimed at giving effect to the legislative provisions.

Ghana addresses the issue of the private security sector through regulations that have since superseded a police legislation provision that dealt with private security organisations (PSOs). While Kenya does not have a specific legislation dealing with private security, it is in the process of developing a law that will specifically apply to the domestic private security industry. This Bill is not yet in

[339] Ghana acceded to the Convention on 21 July 1978.
[340] The Gambia acceded to the Convention on 9 July 2009.
[341] Nigeria acceded to the Convention on 24 June 1986.

force. The importance of the Bill transformed into an Act of Parliament cannot be overemphasized as the private security sector is on the increase.

In so far as the use of firearms is concerned, the Ghanaian legislation on private security is silent on the use of firearms by private security actors. The Ugandan legislation allows the use of firearms by the private security providers subject to certain conditions. The Mauritius legislation does not prohibit the use of firearms. Instead, it requires the use of firearms by security officers to be in accordance to the country's Firearms Act. While the Sierra Leonean legislation provides for the use of firearms by the private security providers, this is generally not allowed in practice due to the UN arms embargo. The Sierra Rutile, however, does possess armed private security, which is sanctioned by the Sierra Rutile Act 1989 (2002).

In so far as The Gambia is concerned, the possession and/or the use of firearms or ammunition by a private security provider are prohibited. Just like in the case of The Gambia, the Nigerian legislation prohibits the use of firearms and ammunition during the course of their duties. The private security sector in Kenya remains unarmed. The Bill is silent on whether or not private security providers would be allowed to use firearms. This issue may be addressed within the regulations that will be developed in order to implement the Kenyan law on private security.

Both the Gambian and Nigerian legislations on private security expressly prohibit licenses private security companies from advertising and acting as debt collectors for any person with ore without remuneration. These pieces of legislation are aimed at curbing the misconduct of licence holders from undertaking work that is beyond the purview of providing private security.

Conclusion

While security is generally considered a core public good provided by the state, it is quite clear that the state's monopoly of force has been gradually eroded as a result of the increase in the private security sector. As the private security actors increase, the response of states has not been effective in regulating the industry. This study has shown the variances between states in responding to the emergence of private security companies. While some states have been proactive in responding to the privatization of security phenomenon, others have adopted a lukewarm approach. The fact remains, however, that in general the private security industry's rapid growth has outpaced government efforts to control their activities.

In order to understand the disparities on how states within the African context, have responded to the privatization of security phenomenon, this report has attempted to identify the various legislative frameworks dealing with the private security sector in Ghana, Mauritius, Sierra Leone, The Gambia, Uganda, Kenya and Nigeria. In providing an analysis of the legislation, it was clear that the legislation frameworks only deal with private security companies and private security officers operating within their own jurisdiction. The regulatory

frameworks discussed in this report do not provide for extra-territorial jurisdiction. It is obvious that the drafters of the legislation never envisaged the fact that their citizens would be exporting security skills beyond their borders. This, however, is happening as the demand for security expertise from third countries continues to take place as a result of the conflicts in various parts of the world.

The most recent legislation analyzed in report is The Gambian legislation, the Private Security Guard Companies Act, 2011, which has some provisions that mirror the Nigerian legislation, that is, the Private Guard Companies Act, 1986. The Mauritius' Private Security Act, 2004 follows the Gambian legislation. The Mauritius' Private Security Act, 2004 has since been amended by the Private Security Services (Amendment) Act, 2008. Following this legislation is the Ghanaian Police Service (Private Security Organisations) Regulations, 1994 and the Police Service (Private Security) (Amendment) Regulations, 1994. As this study has shown, the Ghanaian legislation is not comprehensive enough to address the exponential growth of the private security sector in Ghana. The need for this legislation to be reviewed cannot be gainsaid.

The most glaring challenge in undertaking a study of this nature, which is desktop-based, is the inability to obtain the figures of private security companies and private security officers registered to operate in these countries. While the figures can been traced in some reports it is anecdotal and obviously outdated. The fact remains, however, that the figures are always on the increase due to various reasons including the high insecurity challenges that many African countries face. At the least, the database on the private security sector remains poor and sometimes non-existent at the worst. This presents challenges, particularly when considering the ratio of the public police to the private security officers. Such ratios assist in better understanding the dynamism within the private security industry including its impact on crime prevention in any given country. Credible databases also shed light on the size of the industry in terms of its contribution to development in the country.

Of the legal frameworks discussed in this part, Nigeria has the oldest legal framework that specifically regulates the private security industry. The newest legal framework is the Gambian legislation. The Bill that Kenya is currently working towards transforming into an Act of Parliament bears some resemblance to the South African Private Security Industry Regulatory Act, 2001, particularly in some of the wordings of its provision. There are a considerable number of provisions that literally "mirror" this South African Act. What is of importance with developing legal frameworks for the private security is that it must be context-based. The uniqueness of the dynamics within the private security sector basically informs the development of an equally unique piece of legislation aimed at addressing the specific challenges, which the private security sector poses in any given country. Nevertheless, it is yet to be seen how effective the Bill will be once it is passed as the law of Kenya.

As already discussed above, the legal frameworks discussed under this part are applicable within the domestic settings of the countries subject to this study.

They mainly address private security companies and private security providers in rendering service at the domestic level as opposed to external level. The provisions found in the legal frameworks do not, as a matter of fact, address the issue of mercenarism and well as the issue of private military companies. Their focus, however, is on the private security sector. These legal frameworks illustrate the point that firstly, the "military" aspect within the private security sector is prohibited outright, and that secondly, the "mercenary" aspect is equally proscribed. On the latter, the use of mercenaries remains illegal even though some states, as this study has shown, have not ratified the 1977 OAU Convention for the Elimination of Mercenaries in Africa.

In conclusion, the study has shown that the private security sector in Africa continues to grow and the legal responses to this growth have become inevitable. The private security industry remains a force to be reckoned with. While some states are slow is putting in place a regulatory framework to address the growth, others are quick and innovative. Guidance in developing legal frameworks is required, particularly from supranational bodies, such as the United Nations in order for states to develop legislation that meet international standards. The development of legal frameworks should be informed by the specific contexts within which private security actors operate. The databases on the size and extent of the industry also remain critical in this regard.