

The Impact of the Private Security Industry Regulation Act and other Legislative Frameworks on Private Securities Operating in Drinking Establishments in South Africa

Nkosingiphile Modeccai Mbhele^{1,*}, Mandlenkosi Richard Mphatheni², Ntsika Edward Mlamla² and Shanta Balgobind Singh²

¹University of KwaZulu Natal, Pietermaritzburg campus, South Africa

²University of KwaZulu Natal, Howard College campus, South Africa

Abstract: This paper seeks to explore the legislation and regulatory frameworks that guides the functionality and operation of private securities placed in drinking establishments in South Africa. Prior research has indicated lack of clarity regarding private security personnel regulation in drinking establishments, otherwise known as bouncers. For instance, the Private Security Industry Regulatory Authority (PSIRA) is the current regulatory structure which is mandated to monitor and regulate all the private security industries in South Africa. Private security players in South Africa are obligated to comply with the PSIR Act and related laws in general. For this reason, the duty of PSIRA to oversee and monitor private securities and to ensure that they comply with the law is paramount. However, a major concern is whether nightclub security is regulated in adherence to this Act or not. Research evidence has shown that security legislation and guidelines are either not in place or not enforced at nightclubs. The purpose of this article is to examine critical legislations that South African nightclub securities must comply with to ensure legitimacy. Furthermore, it assesses the regulatory body, PSIRA, in relation to South African nightclub securities. It further explores the training requirements needed to qualify as a nightclub security. Arguably, a limited number of studies address the skills and legal requirements nightclub securities need to meet to fully qualify to work as a nightclub security in South Africa. Thus this paper will add to the body of knowledge in the field of nightclub security regulation. Strengthening the regulatory framework and increasing the authority's enforcement capacity to regulate the industry more effectively have become inevitable obligations, especially in light of the continued growth in the private security industry. The article finds that nightclub security is not adequately regulated, leading to non-compliance of the regulatory framework from the private security industry. This paper is an extensive review of literature focusing on South African legislative frameworks that regulate private security operations in drinking establishments.

Keywords: Private security industry, bouncers, drinking establishments, compliance, regulations.

INTRODUCTION

South Africa has seen a massive growth of the operationalisation of private securities (Kole 2009) as a consequence of the seeming unrestrained increase in crime. More than a decade ago, the number of private securities was about three times the number of state police and nearly three times as many armed response vehicles than state police patrol vehicles were in use (Goodenough 2007). As far back as 2007, Gumedze (2007) stated that Africa's private security sector was growing considerably and that its personnel was likely to outnumber their counterparts in the public sector. Similarly, countries such as the United States of America (USA) and the United Kingdom (UK) saw an exponential growth in private policing whose staff complement was three times that of public police (Gumedze 2007). However, Braithwaite (2002) argues that South African private security companies' services have become more popular and are in greater demand than in the USA and Europe.

Historically, the South African Police Service (SAPS) (or the South African Police [SAP] as it was referred to) was solely responsible for fighting crime. However, the demand for assistance escalated when numerous criminal battles put pressure on the SAPS (Schneider & Minnaar 2015), and thus the private security industry began to operate in several jurisdictions to assist the SAPS. A study in the Netherlands by Van Liempt and Van Aalst (2016) concentrated on public-private collaboration in governing and policing urban night spaces. One of the key findings was that plural policing did not automatically imply greater responsibility of private actors towards public (particularly nightlife) areas. Currently in South Africa, numerous citizens rely heavily on private securities to protect their property assets and their physical safety. According to Braithwaite (2002), drinking establishments in South Africa and around the world have resorted to employing private securities, also known as bouncers (This paper will use these two terms interchangeably.) Bouncers are obligated to maintain the safety and security in and around drinking establishments.

*Address correspondence to this author at the University of KwaZulu Natal, Pietermaritzburg, Golf Road, Office Number 13, Psychology Building, 3209, South Africa; Tel: 033 260 6166; E-mail: mbhelen6@ukzn.ac.za

The escalation in the number of drinking establishments has been the result of the popularity they have gained in society. Many young individuals spend their spare time in these establishments where they consume alcoholic beverages, listen to music, and dance. During weekend evenings, and deep into the night, the music volume goes up and cities are congested with young, energetic and vibrant individuals who are looking for a good time. However, violence often erupts in these spaces which has necessitated the presence of effective security personnel.

Taverns, bars, nightclubs, and lounges where alcohol is consumed have become spaces of significant concern for the safety of patrons. Violence often erupts in these spaces for various reasons and manifests in different forms of conflict such as patron-on-patron, patron-on-bouncer, or bouncer-on-patron. This violent trend is not only limited to South African drinking establishments. For instance, Hobbs, Hadfield, Lister and Winlow (2003) state that, in Brisbane, Australia, no weekend goes by without the eruption of violence and, on some occasions, it results in death in this 'night-time economy'. Bouncers must therefore be equipped with competence and skills to curb all sorts of violent behaviour in these establishments. Hence this article seeks to examine the necessary skills and training requirements necessary to ensure that bouncers are competent and have adequate skills to function as nightclub security. It further provides the legislation's impact and the regulatory framework established to guide the private security personnel's employment and operation in drinking establishments.

Research and anecdotal evidence suggest that PSIRA is unable to oversee and enforce the legislative obligations that guide the behaviour and functions of bouncers (Schneider and Minnaar 2015). Theletsane (2015) states that problems in the industry arise because there is no formal oversight body within the private security industry, whereas the South African Defense Force is monitored by four oversight bodies. Berg (2008) argues that the current regulatory system is inadequate as it fails to hold the private security industry accountable, whereas the SAPS is held accountable through monitoring and oversight bodies. Hence it is paramount to provide clarity on the regulation and enforcement of the legislation that governs the private security industry, more particularly the bouncing industry in South African drinking establishments, which this article seeks to address.

Background to and the Development of the Private Security Industry

The South African Police Service (SAPS) has faced various challenges at a high level due to changing crime dynamics in the democratic era since 1994 (Minnaar 2005). South Africa experienced intense change during the transition from apartheid to democracy in the mid-1990s. These changing dynamics impacted criminal activities in particular and have compelled new policing policies and directives. Some measures were to borrow policing strategies from other countries and to develop unique policing methods to deal with local policing issues (Minnaar 2005).

Minnaar and Ngoven (2004) argue that, before establishing a modern police force in 1829 in London, private security operations as a form of social control and policing were prevalent. It was during the early 1960s that a public police structure took sole command of policing. However, since the late 1970s, the private security industry started reemerging and rapidly boomed for the following 20 years. The rapid rise of private policing (or security operations) expanded at double the rate of public policing in South Africa (Gumedze 2007). The growth and expansion of the private security industry in South Africa have continued to this day (Minnaar & Ngoven 2004; Gumedze 2007; Theletsane 2015), which is a phenomenon that is associated with three main reasons. Early in the 1990s, the public police withdrew from performing some functions they had been responsible for in the past. This left a gap that was identified by private security entrepreneurs who quickly stepped in to address citizens' unrequited security requirements. The withdrawal of the public police from some functions resulted in inadequate guardianship which, according to the routine activities theory, exposed the public (suitable targets) to criminals (motivated offenders). Private security enterprises then stepped in to provide much-needed and capable guardianship (Minnaar and Ngoven 2004).

The second reason for the rapid growth of the public security industry is the massive growth in private property ownership. In the absence of sufficient public police presence, people need visible private security for protection (Minnaar and Ngoven 2004). The growing number of shopping malls, entertainment spaces, residential areas and industrial expansions means that these privately owned spaces have become increasingly vulnerable. Moreover, their safety and

security requirements need to be ensured by owners, and not by the SAPS.

The massive growth in private property ownership also resulted in a high concentration of wealth in some South African societies (Kole 2009; Kandala 2018). Thus some people are perceived to be the privileged upper class while others are less privileged and regarded as the lower class (Kandala 2018). The lower class is characterised by poverty, unemployment, no formal control of guardianship, and households that are headed by females. This inequality in society results in tension, frustration, and pressure from the lower class who desires what the upper class possesses (Kandala 2018).

The less privileged people in a society are more likely to get involved in criminal activities for economic reasons (Hipp 2007). Inequality within and among communities thus results in a divided society, which in turn results in the boom of illegal activities (Kendal 2018). Massive private property growth has attracted increased criminal activities and thus the private security industry is seen as a panacea for safeguarding properties and lives. The concomitant escalation in entertainment establishments such as bars and nightclubs has also necessitated the increased presence of private securities to assist in controlling and managing rowdy, intoxicated patrons. They are also required to curb the use and possession of illegal drugs inside and around these spaces.

Another reason for the rapid growth of the private security industry in South Africa is attributed to the perception that the public police is unable to ensure the safety of private citizens (Minnaar and Ngoven 2004), as various criminal activities are reportedly inadequately policed by the public authority (i.e., the SAPS). The growing demand for personal and public security and citizens' lack of confidence in the criminal justice system have thus resulted in the demand for private security services to fill this gap (Minnaar and Ngoven 2004).

The rise of private security enterprises has been stimulated by the availability of former military and police personnel who either resigned or were retrenched on the eve of the transition from apartheid to a democratic government. The private security industry offered a safe home for these former state security staff (Minnaar and Ngoven 2004) and this also contributed to a booming private security industry in South Africa. Part of the legislative framework that has contributed to the rapid rise of the private security

industry is the National Keypoints Act of 1980 (South Africa 1980) as it has enabled the use of specific strategies to safeguard national key points.

METHOD

The authors' used a method of extensive review of literature from already existing studies. The authors further reviewed and analysed government legislations that regulate private securities. This method included three main steps taken by authors: planning, conducting the review, and deliberation of the information found during the review. The authors analysed conceptual concepts found about private security industry regulation. The study only focused on the concepts applicable to the private security industry operating in the drinking establishments in South Africa.

Planning

The planning included a concession for the review. The authors focused on the current status of private security regulation in drinking establishments in SA. Relevant questions and objectives to be answered by the review formulated. Planning further followed the development of review protocols. This included taking note of information that must be included or excluded in the review' followed by data extraction form preparation. The last process of planning was journal selection for the review data collection.

Conducting Review

Conducting review followed five steps, namely; Identification of research, primary study selection, assessment of study quality, monitoring and data extraction, monitoring, and data synthesis.

Reporting

The information gathered from the review search is presented and discussed in the paper. The information gathered from the review search is presented and discussed in the paper. The paper has presented the abstract, introduction, and discussion and findings from literature.

DISCUSSION AND FINDINGS FROM THE LITERATURE

The private security industries are relegated in terms of legal requirements and regulations even though they have obtained jurisdiction over large tracts of urban space (Shearing 2006). Theletsane (2015)

argues that a lack of best practices and set standards for the regulation of private security companies' activities are matters of debate, as security personnel operations are often similar to those of the police. Thus, Shearing (2006) argues that private security companies should conduct their business only under the auspices of governmental provisions and in relation to relevant legal frameworks. He thus maintains that private institutions should be legally governed by terms that are entrenched in the Constitution as they are providers of governance on behalf of state agencies. However, Hadfield (2008) maintains that private security companies' daily operations focus primarily on the defense of the social, economic and security interests of privileged groups and individuals and that, in this regard, their functions deviate from those of state-regulated security forces. This section aims to discuss the findings of the extensive review of the literature conducted, concerning amongst other topics, the regulatory framework that nightclubs securities are subjected to and further explores the training requirements needed to qualify as nightclub security.

The National Key Point Act of 1980 as a Driver of the Private Security Industry in South Africa

In the apartheid era there was a demand in South Africa for additional security staff to deal with political unrest and strategic attacks by the African National Congress (ANC). ANC cadres launched attacks on key installations such as fuel plants and electrical substations and state forces could not be utilised adequately to secure these spaces (Diphoorn 2013). Tasks that had previously been the responsibility of the South African Police (SAP) were increasingly handed over to the private sector as mandated by various legislative amendments. The establishment of the National Key Point Act (NKPA) No. 102 of 1980 was critical as a driver of this change. This Act highlighted that the responsibility for security provision at strategic sites, which were regarded as very important for national security, should be transferred to these sites' management or owner (Diphoorn 2013). However, the state retained authority and control over these sites even though private enterprises were mandated to secure them against attacks. This Act was thus unique as it was instrumental in transferring some of the state's responsibilities to the private sector (Diphoorn 2013).

The Security Officers Act No. 92 of 1987

The promulgation of the Security Officers Act (SOA) No. 92 of 1987 (South Africa 1987) strengthened the

collaborative relationship between the private security industry and the apartheid state. This Act was an extension framework of a state-corporate partnership policing network in civil society (Diphoorn 2013). There was a growing need for the formal regulation of private security enterprises during the 1980s when the industry started to grow exponentially. This formal regulation initiative mainly intended to monitor and control security officers at the time, who were mostly black males. Due to political upheaval and the fear that some security officers might spy for the ANC, company owners used their contacts within the South Africa Police (SAP) to initiate an informal screening system through which potential employees were assessed to prove their viability for employment by private security companies (Diphoorn 2013).

The informal screening system was later formalised by the then Minister of Law and Order through the SOA (Diphoorn 2013). The Act emphasised registration with the Board of SOA and established rules about disqualification and withdrawal of such registration when necessary. Currently, the regulation of the private security industry is implemented and enforced by PSIRA. However, the SOA was the first step towards state regulation of the private security industry. In this period, the sector was regulated by means of collaboration between the public and the private sectors, which was a unified effort to reach the goal of security provision (Diphoorn 2013).

Contemporary Regulation of the Private Security Industry in South Africa

Schneider (2013) proposes the utilisation of a regulatory classification model of the public security industry for application to sub-sectors in the private security sector. Each sector could be regulated by identifying two key components an industry should possess using this approach, namely a regulatory training structure and a regulatory/licensing authority. A regulatory training structure sets standards and ensures that private security employees receive appropriate theoretical and practical training, while the regulatory/licensing authority should make sure that private security firms and their officers comply with best practices and the relevant legal framework (Schneider 2013).

According to Schneider (2013), regulatory options are divided into three categories that are defined by specific criteria. First, the 'regulated' private security industry is underpinned by minimum competency

standards that are endorsed, supervised, and regulated by an oversight body. The sector must thus reregister and retrain its security staff to demonstrate competency with the regulatory body's requirements within a given period, for example once every three years. The second regulatory option is 'partially regulated' industries that are not endorsed or monitored by licensing or regulatory bodies. Thirdly, a 'non-regulated' private security industry means that agents in this industry have no formal training and that standards are not observed by this industry's players. In the latter category, licensing and regulatory bodies are virtually absent. In South Africa, private securities that provide services to drinking establishments fall under the 'partially regulated' and 'non-regulated' categories. This is due to a lack of enforcement and monitoring. Moreover, even the training of personnel and adherence to industry-specific standards are not observed by the industry's main player, which is PSIRA (Schneider 2013).

Enforcing the PSIR Act and PSIRA as the Regulators of Drinking Establishments

According to Geldenhuys (2018), enforcing regulations that formalise the private security industry is vital because it functions independently of state security bodies and is entrusted with a lot of power and information. All private security service providers are mandated to ensure that all related legislations are upheld and respected. Drinking establishments are not excluded from this mandate as they employ bouncers to protect their properties and patrons. However, Theletsane (2015) raises the concern that, although bouncers are private securities, their functioning emulates policing activities – yet they are not subjected to the same oversight control as the SAPS. The fact that inadequate efforts seem to be exerted to oversee private securities has raised questions about the proper control of this industry in South Africa. Quoting the words of former Deputy Minister of Police, Makhotso Soty in 2016, it may be argued that PSIRA "does not bite hard enough" to ensure that private security companies and bouncers in drinking establishments comply with the law.

It is important to note that, when referring to regulating and enforcing the private security industry's codes of conduct, bouncers are not excluded. Just like any private security officers, bouncers are regulated by critical pieces of legislation, namely the Constitution of the Republic of South Africa Act No. 108 of 1996 and PSIR Act (No. 56 of 2001). In a widely known setting

that is dominated by the gruesome behavior of intoxicated patrons, it is paramount that the regulatory body (PSIRA) enforces and monitors best practices consistently and without impunity (Theletsane 2015).

The function of PSIRA is to regulate the functions and behaviour of bouncers and exercise effective control over the practices of this sub-industry. As documented in the PSIRA document, this body is mandated to promote a professional, efficient, and accountable private security sector. This implies that licensing and training of bouncers should be authorised and validated as required for any accredited private security service and training provider to ensure that the standards set by PSIRA are met. PSIR (Act No. 56 of 2001) was promulgated to support the Constitution and its main function is to promote a legitimate private security industry that acts in compliance with the Constitution. However, a legitimate body is required to oversee bouncers' competency and activities in drinking establishments, as it has been demonstrated that the provisions in the Act are not effective (Theletsane, 2015).

Managers/owners of drinking establishments must be compelled to adhere to the obligations provided in the Act and ensure that the required standards for the behaviour of private security staff are met. For example, Chapter 3 s20(1)(a) of the PSIR Act stipulates that "no person, except a security service provider, contemplated in section 199 of the Constitution (Act No. 108 of 1996), may in any manner render a security service for remuneration, reward, a fee or benefit unless such a person is registered as a security service provider in terms of this Act". Therefore, what qualifies a person to function legitimately as a bouncer is his/her legitimate registration status with PSIRA. It is also mandatory that security companies are registered under the provisions of PSIRA to gain legitimacy for operating in the security industry in South Africa. This means that drinking establishment managers or owners may not employ bouncers independently because they are not registered as a security company. The legal and proper method is to hire a legitimate private security company to fulfil security functions in their establishments.

Owners of drinking establishments have the responsibility to comply with the PSIR Act because they are the ones who determine which private security contractors they employ. This means that owners of nightclubs, shebeens and taverns should take the initiative to familiarising themselves with the Act and

obtain information about the requirements and obligations of private securities before they are employed.

Training for Bouncers

It is imperative that bouncers are well trained and equipped with knowledge of the law before they are employed to prevent or reduce crime in an establishment where alcohol is consumed, often to excess. Lack of equipment and proper training can hinder the goal of crime prevention and reduction in these spaces. Section 23(1)(c) of the PSIR Act requires that security officers are trained for the positions that they hold (Gledenhuys 2018). Training is paramount in protecting a client's property, the safety of customers/patrons, and security officers' lives. The challenge faced by the bouncing industry is highlighted by Theletsane (2015), who states that there is no clarity whether private security officers who are employed by smaller companies are trained adequately and whether they have proper and sufficient resources to perform their duties satisfactorily. Theletsane (2015) further contends that bouncers are highly likely to engage in violence because of inadequate training and limited arrest powers, as they have fewer recourse options.

Training of Security Officers Regulations (1992) and Board Notice 119 of 1998 21A(1) (1998) state that an authority may register a security business if it meets the requirements as set out in sections 21 and 23 under any one or more of the following categories: guarding, event security, close protection, manufacturer, response security, private investigator, assets in transit, security training, electronic security, locksmith, and security advisor. Officers in each of these categories perform different duties and each category requires training to perform those duties efficiently and competently. Qualified individuals may provide services that they are eligible to serve, which presupposes training. Bouncers will generally operate under the 'event security' and 'guarding' categories.

In terms of the Training of Security Officers Regulations (1992) and Board Notice 119 (1998), special events security services must be trained following these special event requirements for such officers:

- Any person who effects a bodily and/or physical search at any entry point to a special events venue;
- Any person who effects close protection duties at an event;

- Any person who performs part of a security reaction team at a special event; and
- Any person who forms part of a field control or crowd control team at a special event.

In terms of the regulations, the relevant grade course must be completed depending on the particular work required by the security officer. A security officer conducting guard duties by means of patrols must complete Grade E. A security officer who performs access control and searches goods or vehicles must complete Grades E and D. All security officers who provide a security service at an event must also meet the requirements for the special event. The code of conduct is legally binding on all security service providers, irrespective of whether they are registered with the authority or not.

Private Security Industry Regulatory Authority

The Private Security Industry Regulatory Authority (PSIRA) is the current regulatory structure mandated to monitor and regulate all the private security industries in South Africa. This regulatory body was established in Section 2 of the Private Security Industry Regulation Act (PSIR Act) No. 51 of 2001 (South Africa, Department of Safety and Security, 2002). The PSIR Act (No. 56 of 2001) came into effect on 14 February 2002. The Act was established to regulate the private security industry in South Africa and to promote and protect all role players' interests – i.e., those of the private security industry as well as those of public and national concerns. A Private Security Industry Regulatory guideline document (2001) was also made available with the primary objective of regulating the private security industry and ensuring effective control of its functioning.

The PSIR Act acknowledges that the private security industry plays a significant role in providing protection and safeguarding people's fundamental rights, such as the rights to life, safety and property. The Act also underpins the social and economic development of all South Africa's citizens and endorses their right to freedom of choice. For instance, they have the right to freely choose and employ a private security service provider of their choice. The private security provider must act within the law and maintain a reliable and legal company under the Constitution and other relevant laws. As such, any private security company is mandated by law to ensure the safety and security of South African citizens (South Africa 2001).

According to the Constitution (Act No. 108 of 1996), the PSIR Act (No. 56 of 2001) is subject to the following provisions, among others:

promote a legitimate private security industry which acts in terms of the principles contained in the constitution and other applicable laws;

- a. ensure that all security service providers act in the public and national interest in the rendering of security services;
- b. promote a private security industry which is characterised by professionalism, transparency, accountability, equity and accessibility;
- c. promote stability of the private security industry;
- d. promote and encourage trustworthiness of security service providers.

However, the effectiveness of the PSIR Act has been disputed. For instance, based on the findings conducted by Kole (2010), it was revealed that most security companies were aware of the existence of PSIRA, but they asserted that they had never seen any representative from PSIRA as overseers in their occupational settings. Mbhele (2017) concurs, and urges that it is vital that private security companies are monitored to determine if they comply with regulations as stipulated by the PSIR Act.

The reported inadequate services rendered by PSIRA puts everyone at risk, including the private security industry, its employees, and its clients. Moreover, inadequate regulating and monitoring services in the private security industry create a fertile environment for abuse within this industry while it also allows the industry to provide poor services to its clients.

A poorly regulated and monitored private security industry also puts the country at high risk. The private security industry plays a significant role in crime prevention and private policing operations in various contexts in the country, but if private security personnel are not monitored and some nefarious activities are not curbed, they might abuse the law with impunity. The private security industry will remain unaccountable if PSIRA exists only in name and fails to closely monitor and regulate South Africa's growing private security industry (Kole 2009).

Section 4 of the PSIR Act (South Africa 2001) broadly stipulates the duties of

PSIRA as follows: "...continuously conduct inspections to identify all irregularities in the security industry by all stakeholders, receive and process applications for all security service providers, set standards to be followed by all security service providers, ensure that a background check is conducted for anybody applying to become a security service provider, ensure that suitable security training is adhered to by all stakeholders in the industry."

It has been argued that the main reason for the ineffective manner in which the PSIRA has performed its duties of monitoring and regulating the private security industry is that the PSIR Act has been in existence for a long time without any amendments (Kole, 2009). However, the amendment of the Private Security Industry Regulation Bill (B27-2012) is presently underway. The National Council of Provinces passed the Bill and sent it to the President for endorsement (Parliamentary Monitoring Group, n.d.). It is of course still work in progress as the process has not yet been finalised and the Bill has not been signed by the President.

Other factors that have impeded the successful functioning of PRISA are insufficient funds from the treasury and high levies. Moreover, a limited PSIRA staff complement has not been able to perform their work effectively. Political interference in staff deployment to key positions has also resulted in morale degeneration, meagre leadership, and a lack of professionalism in the industry. Kole (2009) also argues that another reason for the poor oversight by PSIRA is related to the perception that big private security companies are dictating the industry's decision-making. Poorly trained and uneducated employees have also been cited as reasons for the inadequate functioning of the industry (Kole 2009).

Impact of the Criminal Procedure Act and the Constitution of South Africa on Private Securities in Drinking Establishments

The Criminal Procedure Act No. 51 of 1977 (South Africa, 1997) stipulates that crime should be dealt with in a manner that is lawful. This Act also considers the rights of those subjected to the legal and the criminal justice systems. In a country that is riddled with high crime statistics, this piece of legislation is paramount and is also crucial in the context of safety and security

in drinking establishments. According to Section 42(1) of this Act, private security officers, as a private person, are mandated to carry out an arrest when a crime has been committed (Feaucher 2008). Bouncers may thus arrest a person if they suspect that an offense has been committed such as shoplifting (or bag snatching in the context of a nightclub), damaging property, and the commission of gross bodily harm (GBH), provided that the offense was committed or attempted in the presence of the security guard or bouncer who may then execute the arrest on the scene. Section 42(1) of the CPA affords a security guard permission to arrest when deemed reasonable. Section 42 of the Act permits an arrest without a warrant if it is deemed reasonable.

Furthermore, subsection 3 of section 42 accords a third person (i.e., a bouncer) the right to make an arrest on behalf of the owner of a drinking establishment. A bouncer at such an establishment has the right to enforce the law and ensure that peace and order are maintained. However, such a bouncer only functions within the law if proper registration procedures have been followed, as provided for in section 42 of the Act. During an arrest, minimum and maximum force requirements may be adhered to, depending on the specific circumstances of the arrest.

Section 49 of the CPA endorses the use of force during an arrest. This section is not specific regarding the nature of the force or by whom and when it may exerted during an arrest. The section thus does not distinguish between a police officer and a private security officer. Subsection 2 provides that force may be utilised when the arrestor attempts an arrest while the suspect resists or attempts to escape. When it is evident that the suspect cannot be arrested without force, the arrestor may affect the use of force to overcome the suspect. However, the force used must be reasonably necessary and proportional to the alleged crime. The arrestor may use deadly force only when *(a) the suspect poses a threat of serious violence to the arrestor or any other person; or (b) the suspect is suspected on reasonable grounds of having committed a crime involving the infliction or threatened infliction of serious bodily harm and there are no other reasonable means of effecting the arrest, whether at that time or later.*

A bouncer may thus use maximum force when deemed necessary, but he/she should have undergone the required training. Both practical and theoretical training should teach bouncers when and how to

execute maximum force, given the provisions above. This is vital information for bouncers as they deal with intoxicated people whose logical reasoning is usually impaired.

The Bill of Rights (Chapter 2 of the Constitution) (South Africa 1996) is the bedrock of democracy in South Africa. It enshrines all people's rights and affirms the democratic values of human dignity, equality, and freedom. The Bill of Rights requires that all persons' right to privacy has to be respected. Section 9, which addresses equality, stipulates that everyone is equal. However, the bouncing industry is still in its infancy as far as transformation and gender equity are concerned. For example Hobbs, Obrien and Westmarland (2007) indicate that a vast majority of male bouncers still discriminate against female bouncers as they do not see the need to employ women for practical policing purposes. Mbhele (2017) corroborates this statement. A major concern among the male participants of the latter study was that violence usually erupts in nightclubs and that female bouncers will not be able to contain such situations. In this context, Section 9 of Chapter 2 of the Bill of Rights is thus a major concern that needs attention, particularly in terms of security provision in drinking establishments.

Section 10 on dignity postulates that everyone has inherent dignity and the right to have their dignity respected and protected. A drinking establishment thus has the responsibility to ensure that its patrons' dignity is protected by ensuring that they employ bouncers that have been trained for the services they render. In Mbhele's (2017) study, patrons in the drinking establishment voiced their dissatisfaction with how they had been treated in some nightclub establishments as they felt disrespected by the bouncers. Ironically, they were scorned by people who should have instilled discipline and respect in the establishment. Even more ironically, these patrons might have behaved disrespectfully themselves while intoxicated. When a bouncer behaves in a disrespectful manner and undermines a patron's dignity, such a situation usually poses a threat to the safety of both and might even be life-threatening. An example is an incident that was reported in the *Mail & Guardian* newspaper (Patrons assaulted in Fourways nightclub 2013) when a bouncer posted a video on *YouTube* of himself punching young boys in the restroom of a nightclub after he had caught them allegedly smoking an illegal substance.

The right to life is a fundamental right of all persons. Patrons might feel that their right to life is threatened by

a bouncer when s/he decides to use maximum force, which is often unnecessary and might even be deadly. Section 11 of the Act provides that everyone has a right to life. In this regard, bouncers should always ensure that they protect the lives of patrons. Unfortunately, the right to life has been compromised in a number of occasions in drinking establishments. For example, *eNews Channel Africa* (eNCA) (2015) reported the death of a young man, Shane Boruchowitz, who had been stabbed to death by a bouncer at TY's nightclub in Pretoria, South Africa.

Section 14 of the Bill addresses the right to privacy. Everyone has the right to privacy, which includes the right not to have:

- a. their person or home searched;
- b. their property searched;
- c. their possessions seized.

However, these rights as stipulated in section 14 are limited. For instance, Mbhele (2017) found that most drinking establishments did not have female bouncers to search female patrons, but 'search before entry' was compulsory and thus female patrons were searched by male bouncers, which compromised both the privacy and dignity of these women.

The Role of Private securities in Drinking Establishments

Within the context of "policing beyond government" (Loader 2000), bouncers are permitted broad discretion in their task of imposing commercially rather than legally or morally justifiable behavioral codes. Within this ambiguous environment, it has been found that bouncers forge influential occupational subcultures and develop their own expedient informal and situational practices (Hobbs, Hadfield, Lister, and Winlow 2002). According to Alvarez (2006), security in the context of the work bouncers do means exercising power – they are thus given the space to accumulate enough power to be in a dominating position. Buzan (1991) defines the power associated with the security industry as "the pursuit of threat," while Alvarez (2006) asserts that discourses about the industry identify threats and insecurities which, if successfully recognised, provide the power of security.

Drinking establishments typically serve alcohol to the public. In spaces where alcohol is served, there will likely be some people who will become overly

intoxicated. Generally, those who have had too much to drink often become a cause of concern because of how they behave. Such behavior requires a skilled and competent person who can swiftly deal with the situation. Thus, it is of paramount importance that drinking establishments employ registered private security personnel from licensed and certified security companies (Nightclub Security: The Role of Private Security 2014). Bouncers can use force to remove inebriated patrons from nightclubs, control crowds, and settle arguments. However, there are limits and constraints. The physicality that bouncers bring to their career is referred to by Monaghan (2002) as "crude bodily capital." Bouncers contribute this capital to nightclubs as they provide physically strong bodies, which are perceived as marketable assets, to perform their duty. Male bouncers generally have the physical ability to exercise their responsibilities with force due to their bodies' physicality and masculinity, speech, body language, facial expressions, and demeanor, which all connote danger and threat.

Private security personnel function in drinking establishments to maintain a safe and secure environment, while they are also generally tasked to prevent underaged youths from drinking on the premises. According to Van Maanen (1978), a bouncer's tasks involve the vetting of potential customers at the venue's door. This is one of the most critical tasks "...as only those synonymous with commercially defined imperatives are judged suitable for access" (288).

Private security personnel should be trained to be vigilant of harmful customer behavior or the potential for such action. By continually making such judgments, bouncers become experts at reading signs of trouble. They always keep in mind their safety and the business's interests. They are willing to make decisions "that can banish certain individuals to forever wander the night-time streets as part of the legion of the banned" (Van Maanen 1978: 22). This license for discretion "is a crucial aspect of door staff occupational culture and reveals the twin nexus of their authority" (ibid).

RECOMMENDATIONS

Although the prevalence of bouncers seems vital in drinking establishments, management should employ private security companies who should deploy trained and reputable bouncers to these establishments, as only in such instances will accountability and a high

standard of security work be secured. Bouncers should have all the essential characteristics and meet all legal requirements, such as being well and appropriately trained and being registered with PSIRA. Moreover, PSIRA must strictly enforce compliance with the law in drinking establishments by, for instance, random and regular visits to ensure that the establishments comply with laws, policies, and regulations. Sanctions should also be strictly enforced should compliance be inadequate or absent. Upon hiring them, bouncers should produce evidence of attending workshops and training sessions. Training should involve both theoretical and practical work on dealing with intoxicated people and respecting the rights of all patrons while maintaining their own dignity and professionalism. Moreover, ongoing training should be conducted by management to ensure that bouncers sustain and enhance the skills they acquired. Patrons should also be informed of the channels through which they could report alleged assault by bouncers to PSIRA and/or the SAPS. They should also acquaint themselves with the correct procedure of reporting such cases.

CONCLUSION

Drinking establishments have been utilizing the services of private securities to safeguard and protect their properties, and also keep customers safe. It cannot be denied that the role of private securities in drinking establishments is paramount in numerous ways, such as preventing illegal substances from entering the venues, controlling rowdy and misbehaving patrons, ensuring the cars of patrons are safe from theft etc. The crux of the matter with regards to the operationalisation of private securities in drinking establishments is the legitimacy and compliance with the law. Legislations such as the PSIR Act (No. 56 of 2001) provide obligations to ensure professionalism and compliance in the security industry. If the security industry fails to adhere to the legislation, it's creates a space for disorganisation and chaos. The Constitution (Act No. 108 of 1996) as the supreme law of South Africa should not be neglected in any situation, by any citizen of the country, including patrons and bouncers to avoid violence and deaths. It is important for stakeholders such as PSIRA, and the drinking establishments to work together to enforce the law in these vulnerable space.

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