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From Private Security to Public Good: Regulating the Private Security Industry in Haiti

Geoff Burt



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Series Editor: Mark Sedra

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SUMMARY

Haiti, like many countries, relies heavily on private security companies to protect people and property. However, while the private security industry has a vital role to play in stabilizing the country, it has long functioned without effective government oversight. Haiti's security sector reform (SSR) process has begun to address this shortcoming. The paper analyzes the current state of the private security industry in Haiti and the legal framework under which it operates, and makes recommendations for how a reformed legal and regulatory regime can guide the next phase of its development, based on interviews with owners and agents of private security companies, industry associations, senior Haitian police personnel, United Nations (UN) planners and parliamentary leaders. The paper concludes that genuine consultation and partnership between the government, industry and civil society is required, if SSR programs in Haiti and elsewhere are to successfully marshal private resources towards the public good.

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Cover photo: A Haitian security guard eyes the entrance of a warehouse as workers unload bags containing flour in Port-au-Prince, Haiti, following the earthquake on January 12, 2010. (AP Photo/Francois Mori)

ACRONYMS AND ABBREVIATIONS

APAS	Association Professionnelle des Agences de Sécurité
DCPA	Direction Centrale de la Police Administrative (Central Directorate of Administrative Police)
DDR	disarmament, demobilization and reintegration
FAd'H	Forces Armées d'Haïti (Haitian Armed Forces)
FLACSO	Latin American Faculty of Social Sciences
HNP	Haitian National Police
ICOC	International Code of Conduct for Private Security Providers
MICT	Ministère de l'Intérieur et des Collectivités Territoriales (Ministry of Interior and Collective Territories)
MINUSTAH	UN Stabilization Mission in Haiti
OAS	Organization of American States
OECD DAC	Organisation for Economic Co-operation and Development's Development Assistance Committee
OPC	Office de la Protection du Citoyen (Office of Citizen Protection)
PSCs	private security companies
PSRA	Private Security Regulation Authority (Jamaica)
SSR	security sector reform
UN	United Nations
UNDP	United Nations Development Programme
UNICEF	United Nations Children's Fund
UNSG	UN Secretary-General

INTRODUCTION

Heavy reliance on private security companies (PSCs) to protect people and property is a global phenomenon, reshaping security provision in societies around the world. In many developed countries, such as the United States, the United Kingdom and Israel, the budgets of PSCs and the number of personnel they employ exceed those of public law enforcement agencies (Richards and Smith, 2007), with some major North American cities reaching a ratio of private security to police greater than seven to one (Lalonde, 2010). In states undergoing SSR it is common for the size of the private security industry to exceed that of the public police force, sometimes by a wide margin. A recent study estimated that more people are employed globally as civilian private security agents than as police officers (Van Dijk, 2008: 215). In Latin America and the Caribbean, the ratio of private security to police ranges from less than 1:1 in Ecuador to 4.9:1 in Honduras (Small Arms Survey, 2011). Unsurprisingly, PSCs are often among the largest groups of armed actors in a country. The SSR model emphasizes democratic civilian control over all forms of armed force — both public and private — rendering the legal structure, licensing and regulation of the private security industry an important consideration for reform.

In well-functioning systems, proper regulation helps to ensure that, in the course of serving their particular private interests, PSCs and their agents contribute to public safety and security by providing a deterrent to property crime and securing public spaces. They are also important partners in community policing strategies, reporting suspicious behaviour and relaying security concerns to the police. In the absence of effective public regulation, PSCs “will naturally prioritise the needs of owners and shareholders over those of the public at large” (Richards and Smith, 2007: 11). In the process, they may be co-opted by political groups and become involved

in criminal activity and in so doing, represent a source of intimidation and insecurity for the public. The value of a regulatory regime is largely based on its ability to provide oversight and accountability, and deter abuses. This requires, at a minimum, a set of laws stipulating the roles that PSCs are allowed to assume; strict guidelines governing the licensing and storage of firearms; a clear procedure to issue and revoke operating licences; and mechanisms allowing the state to oversee the industry, establish benchmarks for training, perform background checks on agents and sanction companies that fail to meet standards. In many developed countries, the relationship between the state and private security extends far beyond the notion of control, to include public-private partnerships and community policing strategies intended to maximize the industry's contribution to public security.

In Haiti, the private security industry has long functioned without effective state regulation. The industry currently operates under a series of presidential decrees. The first two, passed in 1988 and 1989, provide general guidelines on the role of PSCs, the requirements they must meet to be authorized and the kinds of weapons they may use. A third decree, passed in 1994, gives the Haitian National Police (HNP) the legal authority to enforce regulations governing the industry.¹ These three decrees provide a basic breakdown of roles and responsibilities, but they are insufficiently detailed and should have been followed by a set of laws to address legal voids that provide a clear, more complete system of oversight and regulation. Political strife, natural disasters and ongoing instability, however, directed the attention of Haitian authorities elsewhere. As the Haitian government struggled to confront other pressing priorities, a more detailed set of laws was never passed.

1 This authority had previously been vested with the armed forces. When President Jean-Bertrande Aristide disbanded the armed forces in an attempt to halt a cycle of military coups, their responsibilities were passed to the HNP by decree.

Haiti's current government and its international partners in the UN Stabilization Mission in Haiti (MINUSTAH) are aware of these shortcomings in regulation and oversight, and are taking concrete steps to address them. A process led by the Ministry of Justice and Public Security is underway to draft new legislation to replace the presidential decrees as the legal framework governing the industry. The ministry must decide whether the legislation will merely close gaps in the existing structure or create an entirely new regulatory regime. Any new regulatory framework must be accompanied by a renewed commitment to actively enforce its requirements. An encouraging early sign is that, unlike the previous HNP Reform Plan for 2006–2011, the HNP development plan for 2012–2016 includes provisions to create and staff a specialized unit in the Direction Centrale de la Police Administrative (DCPA) tasked with oversight of the industry.² Taken together, these two initiatives are a strong signal that the Haitian government has decided to confront this issue. Even considering the current regulatory weakness, in the past, the Haitian government has shown little resolve to use the powers at its disposal to regulate the industry.

As a new legal framework is established and the police force dedicates the necessary resources to build up its oversight capacity, a clear picture of the state of the industry and the challenges it faces in complementing public SSR initiatives is needed. The first section of this paper examines the growing significance of private security in SSR theory and practice. Next, the paper describes the current state of the private security industry in Haiti and the shortcomings of the legal framework under which it presently operates. The paper then makes recommendations for how a reformed legal and regulatory regime can guide the next phase of its

2 The HNP Reform Plan was the strategic document that guided MINUSTAH's assistance to Haiti's police from 2006 to 2011. A new plan, which will guide the next phase of cooperation from 2011 to 2016, is currently being finalized. Interview with senior MINUSTAH personnel, Port-au-Prince, October 2011.

ABOUT THE AUTHOR

Geoff Burt is vice president of the Security Governance Group, a private research and consulting firm focused on the security dimensions of state building, peace building and post-conflict reconstruction, based in Waterloo, Canada. Prior to joining the Security Governance Group, he was a research officer at The Centre for International Governance Innovation (CIGI).

development, based on interviews with owners of PSCs in Haiti, private security agents, industry associations, senior HNP personnel, MINUSTAH planners and parliamentary leaders. Haiti's experience with private security demonstrates that genuine consultation and partnership between the government, industry and civil society is required if SSR programs are to successfully marshal private resources towards the public good.

PRIVATE SECURITY AND SSR

SSR seeks to guarantee the effective, accountable and rights-respecting provision of security and justice in countries recovering from conflict or transitioning from authoritarianism. A chief innovation of the SSR concept is the belief that both too much and too little security can threaten individual security. Reflecting the understanding that overbearing and predatory security regimes are often the principal threat facing a society, SSR's emphasis on democratic oversight and control is a key feature distinguishing it from earlier forms of security assistance that were narrowly focused on improving the effectiveness of security forces. The SSR model is based on a paradigm shift in security thinking, from state-

centred to people-centred approaches, represented by the term "human security." One of SSR's core concerns is to control the effect of violence — both organized (political violence, organized crime) and disorganized (individual opportunistic crime and predation) — on the population.

The mainstream SSR model views a public monopoly over security and justice provision, operating under the oversight and control of democratic leadership, as the bedrock of a stable domestic political order. This is why a key element of post-conflict SSR is to disassemble non-state armed groups, either by integrating them into state structures or back into the civilian economy. Unsurprisingly, proponents of the SSR model have characteristically reacted with suspicion towards the growth of the global private security industry, reflexively branding it as a negative and disruptive force. Mainstream theory and practice has tended to view private security provision as external to the SSR process, despite the fact that the state's regulatory role — and attendant interest in ensuring that the pursuit of private interests serves, rather than undermines, the public good — is a critical dimension of SSR. This orientation means that SSR focuses almost exclusively on public security forces, "neglecting the extent to which people in the developing world have come to rely on private providers for their day-to-day security needs" (Abrahamsen and Williams, 2006; see also Baker, 2010). As donors have struggled to tailor SSR programs to increasingly challenging contexts, an emerging criticism is that the model largely excludes the actors who actually provide security in developing countries, and is consequently poorly adapted to societies where multiple actors apart from the state — including PSCs — provide state-like security and justice functions to citizens. The history of many liberal societies involves the state consolidating a single public peace out of a multiplicity of relatively autonomous private peaces, as it asserts an exclusive right to determine who can legitimately wield force. This trend should not be

understood as universal to all societies and as Shearing and Stenning (1987) note, it should not be assumed that “the move from private to public responsibility for maintaining public order is linear and irreversible” (1987: 12).

The concept of policing has evolved to reflect this new understanding of the state as just one of several actors in the security realm. Policing is best defined in terms of its objectives, which include safety, the security of people and property, and predictable public order. Law enforcement is merely one aspect of policing, though it is so closely associated with the public police force that the two terms are often used interchangeably. In fact, the public police employ a wide range of other policing strategies, including surveillance (patrol), intelligence gathering, investigation and environmental design.³ The model of policing has changed from a public police force concerned primarily with enforcing and upholding the laws of the state, to a more plural model that defines both PSCs and other non-state actors who uphold public order as legitimate providers of “policing”; as two prominent scholars noted more than 15 years ago, “the police and policing have become increasingly distinct” (Bayley and Shearing, 1996).

As the concept of “policing” expands from a narrow mandate of enforcing the law and apprehending offenders to a broader goal of public order and security, civilian private security personnel can be increasingly regarded as providing aspects of a police service, while remaining separate from the public police (Lalonde, 2010: 8). The plural policing model furnishes the state with a dual role as an important provider of policing, but also the regulator of the policing industry. As one researcher put it: “This has given rise to the notions of ‘rowing’ and

³ These non-law enforcement tasks are shared by the private sector. PSCs concerned with protecting persons and property, minimizing risk and identifying perpetrators often use some or all of these strategies.

‘steering’ with regard to security, or the ability of central governments to steer or determine overall frameworks and standards while entrusting the rowing — the actual security provision activities — to other actors such as corporate entities supplied by the market” (Caparini, 2006). Regulation, oversight and the enforcement of basic laws protecting citizens, and specific laws governing the industry are the means by which the state authority can maintain a harmonious relationship between private security interests and the broader public peace.

Though both public police and private security agents may provide “policing” services, some fundamental distinctions remain. The public police are, by necessity, more reactive to crime, largely because they are called in to respond when a crime has occurred. The private security industry, on the other hand, is more preventive, future-oriented and focused on risk mitigation. The public police are funded by the state and should, at least in theory, be distributed equitably among citizens. Private security is expressly distributed in terms of a client’s ability and desire to pay. This does not mean, however, that private security cannot benefit the public at large. In societies undergoing SSR, private security can buttress weak or ineffective public security institutions.⁴ In fact, “a well-regulated private security sector can in cooperation with the police act as a ‘force multiplier,’ increasing the overall sense of security” (Abrahamsen and Williams, 2006). Private security agents may “provide an added level of both formal and informal surveillance of private and public spaces, enabling personnel to alert public police and other emergency responders to events that negatively impact public safety and security” (Lalonde, 2010). Moreover, PSCs can contribute to community policing

⁴ The private security industry can similarly make contributions to states undergoing processes of disarmament, demobilization and reintegration (DDR). The private security industry often provides employment for former combatants or decommissioned public security personnel, as was the case in Haiti, where many personnel from the decommissioned Haitian armed forces found employment in the private security sector.

strategies by providing visibility and interacting with the civilian population. Studies have indicated that private security personnel are naturally predisposed to work with police (Nalla and Hummer, 1999).

In order for these benefits to accrue and to ensure the population is protected from abuses of power, states must maintain a reasonable degree of control over the industry. Though domestic governments are the most significant actors in the regulation of the private security industry, oversight can be exercised by several other groups,

including the donor community, international legal actors, the private security industry itself and civil society (see Table 1). It is important to note that not all of these mechanisms of control — government oversight, market forces, contract law, self-regulation, citizen reporting and international law — are subject to democratic or even civilian control. These categories can be further divided into: preventive measures that endeavour to create an environment where abuses are less likely to occur; and punitive measures that sanction PSCs and their agents when abuse has taken place.

Table 1: The Oversight of Private Security

Actor	Mechanism of Oversight	Preventive	Punitive
Government	Government oversight	<ul style="list-style-type: none"> regulation; clear legal framework governing industry; regular reporting from PSCs; resources to investigate abuses; mandatory training / education for private security agents; and licensing for PSCs and agents. 	<ul style="list-style-type: none"> enforcement of basic laws; enforcement of specific laws governing the industry; imposing fines/penalties on non-compliant companies; and criminal sanction of offending agents.
Donor Community	Market	<ul style="list-style-type: none"> conditionality of aid/assistance in which PSCs have a role; and encourage PSCs to adopt voluntary code of conduct. 	<ul style="list-style-type: none"> boycotts of non-compliant PSCs.
	Contract law	<ul style="list-style-type: none"> establish standards for training, salary and conduct in the contracts. 	<ul style="list-style-type: none"> enforcement of contract stipulations.
Private Security Industry	Self-regulation	<ul style="list-style-type: none"> voluntary codes of conduct and standards for training. 	<ul style="list-style-type: none"> expulsion from the industry association for non-compliant PSCs.
Civil Society	Citizen reporting	<ul style="list-style-type: none"> raise citizens’ awareness of their rights with respect to private security agents. 	<ul style="list-style-type: none"> ombudsmen fielding complaints of abuse by PSC agents and referring to government regulator or police.
International Legal Actors	International law [*]	<ul style="list-style-type: none"> clarifying of legal responsibilities of transnational PSCs. 	<ul style="list-style-type: none"> legal sanctions against companies and agents violating international law.

* International humanitarian law places constraints on private military and security companies operating in zones of conflict and does not always apply to civilian private security, in particular companies that are domestically owned and operated.

Source: Author.

SSR programming can usefully target any of these actors, though the bulk of funding and attention will be invariably focused at the government level. A more rigid and restrictive set of regulations is not necessarily the best way to achieve the ultimate SSR goal of contributing to the human security of citizens. The test for SSR programs is to foster productive partnerships, while simultaneously

limiting the scope for private-sector abuses that imperil public security. Regulatory regimes must have a dual mandate: to be a competent and responsible state authority capable of investigating PSCs’ abuses of power and authorized to sanction offenders; while at the same time, not being exclusively oriented towards state control. It is important to note that state actions “may or

may not be motivated by the public good; state actors are not necessarily or by definition serving some politically neutral notion of the public good, although this is often assumed to be the case” (Caparini, 2006: 269). To achieve the greatest public benefit, reforms must reinforce partnership and cooperation between private security actors and public law enforcement agencies; maintain some form of accountability to the donor community (often significant clients); and maintain accountability to the communities in which PSCs operate, in particular.

CASE STUDY: HAITI

HAITI’S PRIVATE SECURITY INDUSTRY

According to the most recent information provided by Haiti’s interior ministry (Ministère de l’Intérieur et des Collectivités Territoriales [MICT]), there are 41 PSCs licensed to operate in the country. The size of these firms varies from approximately 2,000 agents to less than 50.⁵ The number of agents working for licensed PSCs in the country is approximately 12,000,⁶ slightly larger than the current HNP force of 10,000 officers. It is also larger than the figure of 6,000 cited in a 2005 report and recently quoted by MINUSTAH officials.⁷ This figure should represent nearly all private security personnel in the country, as none of the directors, agents or government officials interviewed were aware of any unlicensed security agencies operating in Haiti, and Haitian law bars international citizens or firms from owning or operating

PSCs within Haiti’s territory. The demand for private security has been growing, in particular since the January 2010 earthquake and subsequent spike in international engagement, and PSCs report that they are training more agents⁸ and increasing the size of their rosters to keep up with this demand.⁹ Haiti’s market for private security is likely to grow at least as rapidly as the global rate of seven to eight percent annually (Small Arms Survey, 2011: 103).

Nonetheless, taking its population into consideration, Haiti has a low proportion of both police and private security agents compared to other countries in the region. Specifically, it has both the lowest ratio of private security to police and the fewest private security agents per capita of all the countries listed in Table 2. Haiti’s critical lack of public police personnel compared to other countries in the region heightens the need for the private security industry to complement the public security forces, rather than act as a source of insecurity.

5 Interviews with PSC directors, Port-au-Prince, October 2011.

6 The Association Professionnelle des Agences de Sécurité (APAS) was established in 2004 and includes 10 of the largest PSCs in the country. According to interviews, the total number of agents in this organization is 9,000; additionally, there are limited cases of agents being hired directly by clients, rather than through a PSC, for instance, at the US embassy, although interview subjects reported that these cases are limited. It is estimated, therefore, that the total number of agents operating in the country is approximately 12,000. Interviews with PSC directors, senior government officials, Port-au-Prince, October 2011.

7 See Muggah (2005). Interview with senior MINUSTAH personnel, Port-au-Prince, October 2011.

8 The training reported by agents and owners varies widely, with some (mostly owners) claiming that 12 weeks of training were provided and others (mostly agents) claiming that agents were routinely deployed with as little as one week of training. There are no codified standards for the training of personnel, but all agents interviewed reported that they received training in firearms use, company procedures, non-lethal combat techniques and their responsibilities under Haitian law.

9 Interviews with PSC directors, Port-au-Prince, October 2011.

Table 2: Private Security and Police: Selected Countries

Country	Population (2011)	Number of Police Officers	Number of Private Security Agents	Ratio of Private Security to Police	Ratio of Police to Population	Ratio of Private Security to Population
Haiti	10,000,000	10,000	12,000	1.2	1 to 1,000	1 to 833
Barbados	343,000	1,005	1,455	1.45	1 to 341	1 to 236
Costa Rica	4,660,000	13,000	19,558	1.50	1 to 358	1 to 238
El Salvador	6,060,000	16,000	21,146	1.32	1 to 379	1 to 287
Guyana	755,000	2,970	5,398	1.82	1 to 254	1 to 140
Honduras	6,900,000	12,300	60,000	4.88	1 to 561	1 to 115
Jamaica	2,700,000	8,441	15,778	1.87	1 to 320	1 to 171
Nicaragua	5,790,000	11,613	19,710	1.70	1 to 499	1 to 293
Trinidad and Tobago	1,340,000	6,415	13,610	2.12	1 to 209	1 to 98

Sources: Hill (2011), Small Arms Survey (2011), Pachico (2011), US Department of State (2012).

PSCs in Haiti mainly provide guard services protecting a defined private property, though several companies provide personal protection services. PSC industry leaders confirm that international organizations are the largest clients of PSCs in Haiti — chief among them MINUSTAH, the UNDP, UNICEF and various government embassies.¹⁰ Several PSC directors indicated that international clients account for approximately 50 percent of their business.¹¹ Other large client groups include banks, non-governmental organizations, schools and private businesses and residences. Approximately 80 percent of business comes from Port-au-Prince.¹²

In some countries, robust growth in the private security industry is seen as a threat to the development of public law enforcement, either by luring qualified candidates or tempting off-duty police officers to moonlight as private security agents. Other countries have experienced problems with off-duty police providing private security services, sometimes using police equipment and weapons. This practice, however, is not permitted in Haiti. Defections to the private sector are also unlikely, as nearly all private security agents are paid at or near

10 Interviews with senior MINUSTAH personnel, PSCs owners, Port-au-Prince, October 2011.

11 Interview with PSC directors, Port-au-Prince, October 2011.

12 Unsurprisingly, the headquarters of all PSCs operating in Haiti are located there. Interview with PSC director, Port-au-Prince, October 2011.

the minimum wage.¹³ Although average wages in the industry were considerably lower before 2009, when Haiti passed a minimum wage law,¹⁴ at approximately US\$150 per month, agents' salaries remain far lower than the starting salary of over \$400 for an HNP officer (Charles, 2008). Moreover, agents report that some of the stipulations of their contracts are routinely ignored by some companies, such as overtime pay for shifts longer than eight hours and the requirement to provide them with meals.¹⁵ Entry-level positions in private security are considered low-skill jobs that require few qualifications beyond basic literacy, physical health and a clean criminal record. Employment in the industry entails long hours, low pay and risk. Nonetheless, owing to Haiti's generally dismal employment prospects, PSCs report a ready supply of willing young men and women — a fact that is likely to keep the average salary near the minimum wage for the foreseeable future.¹⁶

13 Interviews with private security agents, PSC directors, SSR analyst, Port-au-Prince, October 2011.

14 PSCs and their clients reported that the price of security services rose sharply after the minimum wage law was passed, as PSCs passed on some of the costs to their clients — further evidence that most guards had previously been paid less than the new minimum wage.

15 Interviews with private security agents, Port-au-Prince, October 2011.

16 Interviews with PSC directors, Port-au-Prince, October 2011.

HAITI'S CURRENT LEGAL FRAMEWORK

Private security is a relatively recent phenomenon in Haiti, as PSCs were not permitted during the Duvalier dictatorship. The post-Duvalier Constitution of 1987 has no provisions on private security. In fact, Articles 263 and 263.1 of the Constitution specify that the armed forces and the police are the only armed groups allowed to operate in the country (Republic of Haiti, 1987). It was

not until a 1988 decree issued by President Prosper Avril that PSCs were legalized in Haiti.¹⁷ An amended decree in 1989 remains the principal legal framework under which PSCs operate in Haiti. The main articles of the presidential decrees are outlined in Table 3.

17 The provision of private security in Haiti actually began in 1987, when Corvington Courier and Security Service were awarded a contract to guard the US embassy, but its legality was not addressed until the following year.

Table 3: Key Articles in 1988/1989 Presidential Decrees

Article(s)	Effect
1-3	Authorize PSCs to operate, provided they: have been authorized by the MICT are working under a written contract; and use force to protect persons and property within Haiti.
4	Stipulates that PSCs must be exclusively Haitian-owned and operated and cannot have an affiliation with outside countries.
5	Describes the process needed to obtain authorization, which includes submitting founding statutes registered at the Ministry of Commerce and Industry; a copy of internal regulations; a guaranteed deposit of 50,000 Goudes; a list of personnel and their qualifications; <i>Certificats de Bonnes Vies et Moeurs</i> (background checks) and certificates of aptitude in the management of firearms for the directors and for each of the personnel; and information about the uniforms, logos and insignias and communications equipment used by the company.
6a, 6b	Clarify the kinds of weapons permitted to PSC personnel: 0.38, 9 mm and 7.62 mm weapons are permitted, while heavier weapons and explosives are excluded (Muggah, 2005).
6c	Limits firearms licences to half the number of personnel in the company or one firearm for every two agents.
10	Requires PSCs to send quarterly reports to the MICT, outlining their activities for that quarter.
12	States that all violations of the decree will result in an immediate suspension of three to 12 months, along with a temporary confiscation of the company's arms by the Forces Armées d'Haïti (FA d'H) (Haitian Armed Forces).

Source: Author.

As a legal framework regulating an industry with the right to bear arms, detain suspects and even use deadly force, the 1988 and 1989 decrees contain an insufficient level of detail to cover many likely eventualities. For instance, there is clearly confusion about the allowable use of force. Article 3 of the presidential decree entitles PSCs to "Prevent any act likely to cause harm to persons and property under their supervision"; at the same time, Article 8 states that "security agencies must comply with the principles and safety regulations in force in the Republic" and Article 9 that "security agencies should in all [their] activities comply with all civil and criminal legal provisions." It is not clear, however, how much force may be used and under what circumstances. As a further deficiency in detail, the decrees state that apprehended suspects must be immediately turned over to law

enforcement authorities to face legal consequences, but do not define how much force can be used to detain suspects. Can they be restrained? Beaten if they attempt to escape? Shot? Does it depend on the level of the offence committed?

The 1989 decree does contain certain provisions that, if enforced, would facilitate some measure of oversight. Article 10 stipulates regular reporting from the PSCs to the MICT, although exactly what these reports should include is not clearly stated. Article 12 lays out a limited range of potential punishments, but it includes no detail about which sanctions apply to which violations. The decree does not go into detail about the process for modifying or dissolving operating licences, except for the possibility of suspension. Article 69 of the 1994 decree states that the HNP is responsible for the enforcement

of laws issued by the Ministry of Justice and Public Security concerning the creation, regulation, training and operation of private security agencies.¹⁸ Of course, these laws were never passed in Parliament.

In addition to the legal framework’s lack of clarity, a major gap in governance was created in 1995, when the FAd’H was disbanded by President Aristide. The armed forces’ role in regulating the industry passed to the HNP, again by presidential decree. The Ministry of Interior and National Defence became the MICT, but retained its role in licensing and oversight of PSCs. Article 8 of the 1994 decree gives the police the responsibility to “control all activities of private security companies.”¹⁹ The control and registration of firearms is regulated by the DCPA (Muggah, 2005) under Article 28.5, which gives that

18 Republic of Haiti (1994). 1994 HNP Act.

19 Ibid.

department “the responsibility to maintain a national register of firearms permits.”²⁰ According to a senior MINUSTAH official, the current Martelly government’s plan to reinstate the FAd’H creates some legal uncertainty. Do the armed forces retain their authority over the industry as stipulated in the 1988 and 1999 decrees, or are those superseded by the 1994 decree that gave the HNP legal authority?²¹ It is an issue that must be addressed.

The problem with the current regulatory regime is not that mechanisms to oversee and regulate the industry do not exist at all, but that the regulations lack specificity. As a further complication, responsibility for oversight is divided among several institutions, each of which has other pressing priorities (Table 4).

20 Ibid.

21 Interview with senior MINUSTAH official, Port-au-Prince, October 2011.

Table 4: A Fragmented Oversight Regime

Area of Responsibility	MICT	HNP/DCPA	Neither/unclear
Authorizing PSCs to operate	X		
Receiving information on directors and agents, including background checks	X		
Receiving certificates of aptitude in the management of firearms for agents at the time the company is registered	X		
Granting firearms licences (annually)	X		
Receiving quarterly reporting on PSCs’ activities	X		
Overseeing the purchase of weapons and maintaining firearms registry		X	
Carrying out process to suspend PSCs or dissolve operating licences	X		
Confiscating arms in the event of a violation of 1989 decree		X	
Inspection of PSCs’ firearms depots		X	
Regular background checks of agents			X
Licensing individual agents			X
Enforcing training standards			X
Implementing standards for stockpile management, inspection and record-keeping			X
Mechanism for receiving complaints about industry			X
Reviewing operating licences on a regular basis, according to set criteria			X

* According to a report by the Small Arms Survey, “National legislation rarely provides details on how PSCs should secure firearm stockpiles from theft...In practice, the specifics of managing and securing PSCs stockpiles are usually left to the companies themselves” (2011: 121).

Source: Author.

With responsibility divided among several institutions, none with a clear priority, the challenge remains not only how to resolve outstanding legal issues, but how to convince institutions to dedicate the resources necessary to improve the sporadic and inconsistent oversight they currently provide. The authorities have, up to this point, lacked the willingness or ability to coordinate responsibilities, enforce rules and provide consistent oversight.

THE NEED FOR ACCOUNTABILITY AND REGULATION

Given the persistent state of crisis that the country has faced in recent years, it is understandable that the regulation of private security was not immediately addressed by the Haitian government or its international partners. Other urgent SSR priorities, such as re-establishing the HNP, engaged the majority of government and donor attention. In all SSR contexts, the “regulation of private sector actors must be realistically prioritized alongside other reform needs” (Bryden, 2006). This is especially true in Haiti, where the need for regulation must be balanced among other needs and must reflect available fiscal and institutional resources. Even with this caveat, however, there are critical shortcomings in the present regulatory and oversight regime that can — and should — be addressed.

Lack of Oversight

As the institution responsible for issuing licences to PSCs and considering applications for firearms permits, the MICT should have detailed information about each company, its directors and agents, and ready access to the agents’ background checks. In May 2007, however, Haitian newspaper *Le Matin* reported that, when reached for comment, the MICT was unaware of the number of registered PSCs, and could not confirm whether there

were any unregistered PSCs operating in the country (*Le Matin*, 2007a).

In 2008, the MICT required all operating PSCs to provide detailed accounting for all of their firearms as well as information and background checks for each of their agents.²² The PSCs reported that there was no follow-up to their submissions, and further, that the MICT has not requested this information since this first request in 2008. According to officials at some of the PSCs, historically, any requests for updated information have tended to correspond with changes in government, rather than a regular schedule.²³ This lack of basic information gathering was evident in the list of accredited security agencies supplied to the author by the ministry: of the 41 companies included, more than three-quarters contained incorrect or out-of-date phone numbers and/or office addresses. It is indicative of the ministry’s poor oversight that it would find itself unable to contact many of these companies if it needed to. The HNP’s DCPA, the other institution with oversight responsibilities, has fared no better. Until this point the HNP has not assigned any officers to this file.²⁴ The combined effect is an industry operating with little effective state oversight.

The Illusion of Public Order

Rates of homicide and violent crime have greatly diminished in Haiti since 2004 (Daniel, 2011), and Haiti’s crime rates compare favourably with its more developed neighbour, the Dominican Republic, and with other countries in the region. Nonetheless, factors such as Haiti’s extreme economic inequality and fears of kidnapping for ransom have left wealthy Haitians anxious to protect their property and their homes. The presence of armed security personnel in the streets —

22 Based on submission from PSCs obtained by author.

23 Interviews with PSC officials, Port-au-Prince, October 2011.

24 Interview with senior MINUSTAH personnel, Port-au-Prince, October 2011.

whether public or private — may give some citizens a greater sense of security and order. At the same time, the most vulnerable populations — those living in refugee camps — do not benefit equally from private security provision. One of SSR's core assumptions is that poorly trained, corrupt and unaccountable security personnel — from the public and private sector — can become sources of insecurity for citizens.

While the deployment of private security may deter property crimes, it can also add to the volatility of challenging public order situations. Haiti's stability is tested more by moments of acute crisis, such as humanitarian disasters and political disorder, than by unusually high rates of daily crime. After the January 2010 earthquake, for example, several security incidents involving private security agents contributed to public insecurity. On January 28, in an attempt to protect his clients' property, a Professional Security Services private security agent killed one looter and was about to shoot another when US soldiers intervened (Espinosa, 2010). On February 4, another private security agent accidentally shot an agent during a bank looting. According to a statement by the Organization of American States' (OAS) Inter-American Commission on Human Rights: "In light of information received concerning the conduct of private security forces, the Inter-American Commission calls for the Haitian government and the international community to enhance efforts to control the conduct of these forces and ensure that human rights are respected at all times" (Inter-American Commission on Human Rights, 2010). As several private security agents attested to in interviews, the less training an agent receives, the more likely he is to use his firearm.²⁵

²⁵ Interviews with private security agents, Port-au-Prince, October 2011.

Small Arms and Light Weapons

One of MINUSTAH's overarching concerns about PSCs is controlling the number of weapons held by companies in the industry.²⁶ The existing legal and regulatory framework should theoretically provide some control over access to arms, but in practice, this is not always the case. According to the 1989 presidential decree, PSCs are limited to obtaining firearms licences for 50 percent of their personnel — in other words, the ratio of licensed firearms to personnel is not greater than one gun for every two agents (Republic of Haiti, 1989). This ratio is in line with reported ratios in other countries in the region, which range from 0.34 in Nicaragua to 0.45 in Costa Rica to 0.86 in El Salvador (Small Arms Survey, 2011: 113). All firearms licence applications in Haiti must be made in writing to the MICT, and are assigned to the agencies themselves, not the individual agents.²⁷ The HNP is then responsible for delivering and accounting for all firearms via the DCPA-controlled registry. In practice, however, Haiti's system of firearms registration does not function properly. According to one study, PSCs in Haiti held over 9,300 firearms as of October 2009 (Commission Episcopale Nationale Justice et Paix, 2010), while, based on the estimated size of the industry, they should hold approximately 6,000 firearms.

During the period of heightened insecurity from 2004 to 2006, PSCs in Haiti are thought to have held thousands of unregistered weapons, including illegal automatic weapons (PSCs are only permitted to carry pistols and shotguns).²⁸ In August 2007, in an attempt to reassert control over the industry, the MICT reportedly told all PSCs to ensure that they met licensing rules for

²⁶ MINUSTAH has pursued DDR and community violence reduction strategies in Haiti since 2004.

²⁷ Interviews with private security agents and PSC owners, Port-au-Prince, October 2011.

²⁸ In a 2004 report on Haiti, the UN Secretary-General (UNSG) noted that "unregulated private security companies further contributed to an unprecedented nation-wide proliferation and trafficking of small arms" (2004).

firearms and personnel, or they would be shut down (*Le Matin*, 2007b). A number of smaller firms closed down permanently, perhaps to avoid scrutiny.²⁹ The MICT appears to be making some progress with weapons control, whether directly or indirectly. When asked about unlicensed firearms in 2011, those PSC directors who were interviewed declared that violating the rules by having too many firearms was not only not worth the risk but unnecessary, since companies only needed one firearm for each post, not for each agent. The agents universally reported sharing firearms with other agents assigned to a post — either three agents per weapon in the case of eight-hour shifts, or two agents per weapon with companies using 12-hour shifts. Moreover, many of the companies surveyed appear to have sound internal procedures for keeping track of firearms. Agents are not permitted to take firearms home with them at the end of a shift, instead, they give them to the agent relieving them, or store the weapon in a central depot.³⁰ Most agents interviewed reported signing a log sheet for the firearm at the beginning of each shift, though this was done more to satisfy internal corporate regulations than to comply with national standards. Assuming that PSCs currently operate according to these guidelines, however, it is not clear what happened to the unregistered weapons.³¹ Several PSCs reported occasional visits from the HNP to audit their weapons depots, but these visits were irregular and had not taken place at all for several years.

Political Affiliations

A clear issue for Haiti's private security industry is the ownership and management of PSCs by current and former members of the government and security forces, including former FAD'H personnel, current HNP trainers

29 Interview with a PSC director, Port-au-Prince, October 2011.

30 Interviews with PSC agents, Port-au-Prince, October 2011.

31 In an interview, one director said he suspected other PSCs of having stores of unregistered firearms and exceeding the allowed ratio of one firearm per two agents.

and Youri Latortue, the head of the Senate Committee on Justice and Public Safety.³² In an ideal situation, persons with close current affiliations to government would not be allowed to own and operate PSCs, but the current legal framework does not include such provisions. It is easy to imagine the dilemma a police officer assigned to oversee the industry would face in reporting a violation by a PSC owned by a senior government or even police official. Moreover, a PSC that had committed an offence could use its connections within the force to derail investigations of abuse. Though the problem is acknowledged by senior MINUSTAH officials, it is generally agreed that it cannot be addressed at this stage because these current and former officials have not violated any law or regulation. It would be neither practical nor feasible to implement such provisions now, given the extent of "insider" ownership that already exists. Nevertheless, the extensive connections between current HNP officials and the private security industry raise questions about the HNP's central role in overseeing the industry. The fact that part of the root of the problem — political affiliations and conflicts of interest — cannot easily be addressed makes the general oversight and regulation of the industry even more important.

HAITI'S REFORM PRIORITIES

The Haitian government and its international partners have committed to a series of legal and administrative reforms to improve the regulation of the industry. According to several interviews, the shooting of off-duty HNP officer Yacinthe Hudson in September 2011 by a

32 This situation is not unusual in the region. In Guatemala, for instance, 75 percent of PSCs are either directed or managed by former military personnel; the remaining 25 percent are managed by former police personnel (Dammert, 2008: 24). Some countries have included provisions in their private security legislation to limit these kinds of associations. El Salvador's Private Security Services Law of 2001 precludes active members of the national police, senior ministry officials and their close relatives from being owners, shareholders or contractors of PSCs while they hold the post and for a period of three years after (Dammert, 2008: 19).

private security agent following an altercation outside of a bank (Defend Haiti, 2011) — and the PSC's subsequent inability to assist in the investigation — served as a catalyst for the government and the international donor community to prioritize better mechanisms of control. The next section examines how SSR programming can help the Haitian government and civil society, the international donor community and the private security industry itself to strengthen oversight of the industry.

Government Oversight

Provide Legal Clarity through New Legislation

The Ministry of Justice and Public Security is currently considering proposals for a new law on private security to fill the legal vacuum in which the industry currently operates. Senator Youri Latortue, chair of the senate committee on justice and public security, sent a proposal to the Ministry of Justice for consideration, as did APAS representatives. The ministry is now working to reconcile these two proposals and come up with a single law for Parliament to consider. This legislation should attempt to accomplish four primary goals:

- Effective legislation must establish a regulatory regime with clear roles and responsibilities for the actors overseeing the industry. The reinstatement of the armed forces, however, creates some legal uncertainty here, and whether the reconstituted armed forces retain their original powers of oversight over the PSC industry, or if these powers are overridden by the 1994 decree granting that authority to the HNP, must be determined. The HNP has a better understanding of, and experience with, public safety and internal security, and legislation should confirm that they are granted the legal authority to oversee the industry.
- The laws must provide more clarity on the operational side of the industry, defining what agents are permitted and not permitted to do under certain circumstances. This will help to clarify legal issues surrounding private security and the use of force and detention, and define the scope of criminal liability for abuses of power by private security agents. The new legislation should more explicitly lay out principles on the use of force, based on international standards of conduct like the International Code of Conduct for Private Security Providers (ICOC).³³ Agents should be required to use the minimum amount of force necessary in all situations, always issuing a challenge before opening fire. There needs to be a consensus on the level of threat required to use the firearm, as well as whether PSCs can use deadly force to protect property under their supervision or only to protect persons at risk of injury. International standards mandate that deadly force should be authorized only if an intruder is committing or about to commit an act likely to endanger the agent's life or that of another person.³⁴
- The legislation should establish the process by which citizens can lodge complaints against private security agents. The Office de la Protection du Citoyen (OPC) (Office of Citizen Protection) is the appropriate institution to field such complaints and should be directed to refer cases of abuse to the relevant police and ministerial authorities to investigate and sanction companies. This process should be clearly laid out in the legislation.
- The new legislation should anticipate future developments in the industry by considering the

33 See the ICOC, released in 2010. The full text is available at: www.europarl.europa.eu/meetdocs/2009_2014/documents/sede/dv/sede150311audcodeofconduct_/sede150311audcodeofconduct_en.pdf.

34 See, for instance, ICOC (2010).

use of private security in areas where they are commonly deployed in other countries, including prison surveillance, immigration control and airport security.

In interviews, private security agents reported confusion over the exact stipulations of the current law, a problem owing at least partly to the lack of clear guidelines provided to the industry. As a result of this uncertainty, some agents are reluctant to involve the police in security problems, and several PSC agents reported that taking the blame for a security incident was a constant fear on the job. This lack of clarity perhaps also explains the unanimous, unwritten policy among PSCs that agents first call the company when an incident occurs, to allow the PSC to decide whether, or how, to report the incident to the police.³⁵ Under such circumstances, the decision to inform the police of an incident is likely to be motivated more by the private interests of the company, its agents and its clients than by the needs of public safety. This lack of legal clarity and associated uncertainty limits what could potentially be a significant contribution to public safety — the ability of PSC agents to report any suspicious or criminal behaviour that they witness; under ideal circumstances, private security agents would consider it a responsibility to report all such behaviour to the police.

Explore Different Models of Regulation

The current regulatory regime divides responsibility for the oversight of the industry between the MICT and the HNP. Senior MINUSTAH officials expressed concern that, under the current model, PSCs are not clearly controlled by the MICT — which is only responsible for registering the companies and does not actively oversee or enforce regulations. To register a PSC under the 1989 Presidential Decree, directors must submit

³⁵ One PSC director stated that the standard protocol was for the agent to call the company and the company to report the incident to the police “if it is more than they can handle.” Interviews with private security agents and PSCs directors, Port-au-Prince, October 2011.

documentation as described in Table 3; once a company has been registered, the primary ongoing reporting responsibility is to renew firearms licences annually and pay the associated fees. The responsibility for enforcement rests with the HNP, although given that the DCPA has devoted no staff to the task, it is hardly surprising that oversight of the industry has been minimal. According to MINUSTAH officials, the regulation of PSCs has not been a priority in the past.

The HNP development plan for 2012–2016 will attempt to address this issue. The plan proposes creating a special unit within the DCPA that will have primary responsibility for the ongoing enforcement of regulations.³⁶ Ensuring that the HNP devotes resources and personnel to the regulation of private security is necessary if Haiti’s current model is to succeed in asserting control over the industry. The HNP development plan should, therefore, be seen as a meaningful and credible step in the right direction.

This course of reform is best described as an attempt to improve the functioning of the current system. It would see the MICT retain its role in licensing PSCs, receiving regular reports and granting firearms licences, while the specialized unit in the DCPA would continue to oversee the firearms registry, inspect firearms stores and investigate abuses of power. It may be possible to operate within the current general model of regulation by clarifying roles and responsibilities, and improving the enforcement of regulations. This presupposes, however, retaining a model of regulation that is really only one among several options available to Haiti, and one that has considerable downsides. The HNP, for example, is attempting to meet its commitments under the current system, but there appears to have been little system-wide consultation about how the regulatory regime could

³⁶ Interview with senior MINUSTAH officials, Port-au-Prince, October 2011.

or should work. In interviews, parliamentary leaders involved in drafting the new legislation suggested that current discussions involve making incremental improvements on the existing model, rather than establishing a new one. The legal reform plan, backed by Senator Youri Latortue, envisions the HNP retaining responsibility for oversight and enforcement of the industry.³⁷ The proposed changes under this plan include measures to facilitate the purchase of firearms by PSCs, by allowing private business to sell firearms to them under the supervision of the HNP. Another proposed change would see the government relaxing domestic ownership requirements to allow up to 25 percent foreign ownership/investment in PSCs, presumably to give PSCs a source of capital needed to expand their operations.³⁸

Chile has had success with a model in which the *Carabineros* (the national police force) are the chief supervisory authority, operating a subdirectorate for private security that issues permits for armed and unarmed personnel and performs audits of PSCs, including periodic site visits (Dammert, 2008: 12). In Haiti, one of the primary challenges of retaining this kind of model is that it relies on two institutions, the MICT and the HNP, to commit resources to the oversight of the PSC industry when they have other pressing priorities. It is common across the region that, “in countries where the police are strapped for manpower, the work of regulating and training private personnel is often neglected in order to focus resources on crime prevention and control” (OAS, 2008). Models vesting extensive authority in the police have not proven effective in other Caribbean contexts, largely because they add responsibilities to an already overstretched police force. Under these conditions, the regulation of private security will invariably be a low

37 Interview with Senator Youri Latortue, Port-au-Prince, October 2011.

38 Ibid.

priority. The fact that high-ranking HNP officials own PSCs creates significant scope for conflicts of interest and possible regulatory capture.³⁹ As a study of private security regulation in Bulgaria warns, because the majority of PSCs are either staffed or run by former police officers, “assigning the oversight of PSCs solely to the police leaves significant room for informal relations between PSCs and their regulators” (Gounev, 2006).

Another regulatory model adopted by several Caribbean countries⁴⁰ is establishing boards or committees to oversee the industry, usually comprised of officials from various backgrounds including law enforcement, justice and the private security industry. The obvious drawback of this approach is that, like the police themselves, committee members have other responsibilities that require the majority of their attention.⁴¹ The result has been that the boards are rarely convened and when they are, they have difficulty following through with the decisions that are made.⁴² In St. Lucia, for instance, legislation was passed in 2006 calling for the creation of a board to oversee the private security industry, but almost six years later, that board has still failed to materialize.⁴³ Again, the key consideration is not so much the model itself, but ensuring that officials devote the resources required to oversee the private security industry (Hill, 2011).

39 “Regulatory capture” is defined as “collusion between the regulated and the regulator as a result of shared experiences in the marketplace, shared ideologies, and circulation of members between the industry and the government bodies designated as controllers” (Manning, 1987).

40 The OAS has conducted research in Latin America and the Caribbean exploring different models for the regulation of the private security industry. These models to assert public control over the private security industry range from establishing statutory agencies responsible for the oversight of the industry, to more permissive models that contain little more than a mechanism to grant operations and firearms licenses.

41 Interview with Sheridan Hill, analyst and consultant at the OAS, November 2011.

42 Ibid.

43 Ibid.

In each of the models discussed above, the responsibility for oversight is divided between the police and government ministries. In its SSR handbook, the Organisation for Economic Co-operation and Development's Development Assistance Committee (OECD DAC) identifies the lack of a single regulatory authority or oversight mechanism as a challenge to effective reform (2007: 217), while a 2007 report from the Latin American Faculty of Social Sciences (FLACSO) recommended the creation of independent regulatory bodies to oversee the industry in Latin America and the Caribbean (Dammert, 2007). Thus, a third option for Haiti is to replace the current regime with a separate statutory body housed in the MICT that would assume responsibilities that are currently divided between the MICT and HNP, including the authorization to control

the licensing of companies and agents, ensure regular reporting from the industry, inspect firearms stores and report violations to police authorities. A model for such an option in Haiti is Jamaica, which has one of the best-regulated industries in the region. Jamaica's private security industry has been overseen since 1992 by the Private Security Regulation Authority (PSRA), a statutory body under the Ministry of National Security. This independent body is headed by a nine-member board, with a secretariat of 29 staff members. Critically, the oversight of the industry is the sole responsibility of the PSRA's directors and staff. This structure allows it to assert much more control over the industry than the current Haitian model.⁴⁴

44 As an example of the department's better control over the industry, the Jamaican PSRA regularly publishes and updates a list of PSCs licensed to operate, along with the number of agents and the date of expiry of each company's licence on its website.

Table 5: Regulatory Models in Selected Caribbean Countries

Level	Country	Model
1	Jamaica	Separate statutory body overseeing the industry
<p>In 1992, Jamaica passed the PSRA Act, establishing a statutory body under the Ministry of National Security, whose sole function is to regulate and monitor private security agents and companies. This independent body is headed by a nine-member board with a secretariat of 29 staff members. The PSRA receives funding and staffing from the state and has the authority to: grant, refuse, suspend or cancel licences or registration cards issued to the private security industry; consider and determine applications made under the PSRA Act for registration and licensing and the renewal licences. Jamaica is unique in the region in having an independent oversight body with permanent staff, legal authority and a guaranteed budget. Critically, the oversight of the industry is the sole task and responsibility of agency's directors and staff.</p>		
2	Barbados and St. Lucia	Board/committee oversight
<p>Another model adopted by several Caribbean countries is to establish boards and committees to oversee and perform regulatory functions over the industry that are made up of officials from various backgrounds, including law enforcement, justice and the private security industry. Without permanent staff devoted solely to monitoring the industry, the boards typically do not take advantage of whatever powers of oversight or control are available to them. In St. Lucia, for example, legislation creating a board to oversee the private security industry was passed in 2006, but almost six years later, that board has still not been established.*</p>		
3	Belize	Oversight by individual officials
<p>This model is similar to the level 2 model, except that the responsibility for regulation rests with a single entity or individual, usually the minister of national security or the police commissioner. The oversight of the private security industry is usually a very low priority to these senior officials.</p>		
4	Dominica and Grenada	No specific laws governing industry
<p>Dominica and Grenada are examples of the lowest level of regulation in the region. Neither country has specific laws regarding the private security industry. The only means for oversight are general legislation, which covers the establishment of corporations, and firearms legislation, which covers the steps to obtain a firearms licence.</p>		
<p>* Interview with Sheridan Hill, November 2011.</p>		

Source: Hill (2011)

Haiti should select a model appropriate for its context. Simply increasing the volume of regulation and oversight is not a suitable context-specific strategy.⁴⁵ The new rules and regulations must not be unnecessarily burdensome to either the companies or the state that has to enforce them. One benefit of the separate regulatory body is that it frees up police resources that would otherwise have been consumed performing regulatory functions. In terms of financial resources, the Jamaican model calls for the regulatory body to be partially funded by the dues and fees it collects from the PSCs. This has the dual benefit of reducing the funding burden on the state⁴⁶ and giving the oversight body an incentive to ensure that all companies are licensed and fees collected.⁴⁷ Whatever framework is eventually adopted, it must: establish a process for issuing and revoking operating licences for PSCs and set out the criteria that will be used to evaluate applications; ensure that licences for companies and firearms are temporary and subject to re-evaluation on a regular basis; perform regular and random inspections of PSC arms depots to ensure that weapons and ammunition are stored in secure conditions and adequate accounting mechanisms are in place (South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons [SEESAC], 2006a); and include clear requirements for quarterly or semi-annual reporting to the regulatory authority.

45 It should be noted that full regulation “is a recent phenomenon in many developed countries (for example, the UK legislation was only formulated in 2001 and regulations and licensing only implemented in 2004 with the deadline for registration of guards only on 20 March 2006)” (Minnaar, 2007).

46 The Jamaican PSRA was described as a “self-sustaining operation” by one expert. Interviews with the former chief of police and current owner of PSC in Jamaica conducted by Sheridan Hill, obtained by author.

47 None of the models developed in the region have been without problems. One complaint about the Jamaican model is that it resulted in an increase in bureaucracy faced by company directors. Interviews with former chief of police and current owner of PSC in Jamaica conducted by Sheridan Hill, obtained by author.

Commit the Necessary Resources

An OAS report on private security in the Caribbean found that, although most countries have passed legislation on private security, “there is a lack of effective follow-up mechanisms to ensure compliance with the provisions of the legislation” (OAS, 2008). For instance, several models require that a supervisory council or board be designated to monitor activities in the security industry, but in most cases, this has not happened (OAS, 2008: 42-43). Reflecting these shortcomings, an OAS report on private security in Latin America has “identified as a constant the lack of mechanisms to carry out the tasks and apply the instruments provided by law” (Dammert, 2008).

The implementation of new legislation in Haiti must be matched by a commitment to actively implement and enforce its provisions. Whatever model is adopted in Haiti, the will to establish firm systems of oversight is the most important prerequisite for success. The HNP development plan for 2012–2016, which includes creating and staffing a special unit within the DCPA responsible for oversight, is an encouraging first step. As long as the current model remains in place, the MICT should immediately resume the requirement for PSCs to submit detailed reports of their operations, including background checks for their personnel, accurate accountings of their firearms and associated licences.⁴⁸

If the government plans to collect this kind of detailed information, it should first determine what information it needs, how it will be collected, how it will be stored and how it can be accessed if needed. Industry leaders raised the concern that, in 2008, the ministry demanded detailed information from PSCs but did not seem to

48 The government should gather the information in a standardized way, but more technology is not necessarily the best answer. Although a database would provide some clear benefits, the ministry would be able to improve its data management structure simply by issuing a standardized form requesting specific information from each company about its security agents and firearms licences. This would make it much easier for regulators to find information about each company.

use or even review the information.⁴⁹ One area where information gathering should be improved is with respect to individual agents. While the current regulatory system requires each company to periodically submit background checks for its security agents, in practice it is enforced infrequently and irregularly. Infractions involving personnel usually only come to light after an incident involving the police.

Market Forces and Self-regulation

The state is not the only actor with the power to improve accountability; opportunities exist for successful public-private partnerships. An achievable first step in this direction would be to encourage industry leaders to establish a voluntary code of conduct, based on the developing international standards laid out in documents such as the *Sarajevo Code of Conduct for Private Security Companies* and the *International Code of Conduct for Private Security*.⁵⁰ The founding statutes of APAS do not include a code of conduct, but they do require members to have solid internal legal structures and to be legally constituted and recognized by the MICT.⁵¹ The MICT, the HNP and industry leaders should agree on the basic parameters of the code, including a baseline requirement of personnel training, standards of conduct for interacting with the population and mechanisms for interfacing with the police.

To be successful, industry associations must provide membership benefits that exceed its perceived costs. The principal benefit that member PSCs derive from private security industry associations is reputational, that is, the perceived standards of conduct and professionalism vested in the association give the PSC's clientele confidence in their professionalism. As De Nevers notes, "adhering to standards can be costly, and monitoring

costs associated with self-regulation are generally covered by industry members. Companies are only likely to pay these costs if there is a significant market payoff" (2010: 224). At present, joining APAS only costs PSCs the registration dues associated with membership. Whatever standards the Haitian government and APAS agree upon, the main sanction for non-compliance will likely be expulsion from the association, which will only be costly to PSCs as long as the reputational benefit of the association is high.

This is an area where the international community, as the industry's largest set of clients, has a responsibility to improve the governance of the private security industry by making use of the tools at their disposal. By providing market incentives, the international donor community may be able to tip the balance in favour of greater PSC self-regulation. Interviews with PSC officials indicated that certain countries are already doing this on an isolated, ad hoc basis. Canada, for instance, negotiates clauses stipulating the agents' rate of pay and the amount of training they are required to have into the contracts awarded to PSCs that are hired protect the Canadian embassy in Haiti. These arrangements would have a greater overall impact if they could be generalized into a donor code of conduct for hiring PSCs. An example of such a donor code is the *Sarajevo Client Guidelines for the Procurement of Private Security Companies*, developed in tandem with the *Sarajevo Code of Conduct for Private Security Companies* mentioned previously. The Sarajevo client guidelines seek to improve the procurement practices of public sector institutions, many of which had previously awarded contracts on an informal basis on the grounds of cost alone (SEESAC, 2006b). In Haiti,

49 Interview with APAS official, Port-au-Prince, October 2011.

50 For more information, see: SEESAC (2006a) and ICOC (2010).

51 The APAS founding statutes obtained by author.

the push-pull of client demands and industry association commitments would go a long way in establishing baseline standards of training, accountability and professionalism.

An ancillary benefit of self-regulation is that, over time, it will help to move Haiti from a sanctions-based regime where authorities impose penalties after an event has occurred, to a compliance-based regime that pre-empts abuses by fostering a more closely controlled culture in the industry. There is a tendency under the current Haitian model to involve the police with the industry only when something goes wrong.⁵² A compliance model, however, seeks to impose “conformity with a condition or state specified in rules...with the aim of preventing harm” (Manning, 1987). A successful compliance regime can reduce the state’s burden of oversight if it brings about change in the way the industry regulates itself, for instance by ensuring that reports are submitted on time and without being prompted, actively investigating complaints and more thoroughly vetting employees.

Civil Society

In addition to partnering with the private security industry, the Haitian government and international community should engage with community groups to assess the public’s experience with private security. Of particular importance is the OPC, which should be prepared to field complaints about the industry and refer them to the police to investigate.

Along with concerns over the relationship between the industry and elements of society, the devolution of public security responsibilities to private actors brings up fundamental questions of fairness and justice. While the same criticism may be levelled at public security

forces, private policing explicitly favours the wealthy.⁵³ Consequently, “if public safety is considered a general responsibility of government, perhaps even a human right, then increased reliance on commercial private policing represents a growing injustice” (Bayley and Shearing, 1996: 593). The commoditization of security implied by the private security industry arguably results in “the partial privatization of a function that by its nature should be essentially public and distributed according to need. Insecurity is thus an additional factor which reinforces inequality” (OAS, 2008). As Wulf argues, “zones of asymmetric security have emerged, or rather zones of insecurity for the poor and zones of relative security provided for people and their wealth by private companies” (2006: 92).

In most countries, a key objective of SSR programs is to rebuild the social contract between the state and its citizens. The Haitian state’s fractured relationship with its citizens and its perceived illegitimacy have proven to be obstacles to providing effective judicial and police services (Small Arms Survey, 2011: 233). Private security tends to create and enforce zones of exclusion — areas where certain elements of society are permitted to enter and others are not. For decades, researchers have noted the blurring of distinctions between public and private space, introducing the concept of “mass private property” to describe public spaces that are privately owned (Shearing and Stenning, 1987; Bayley and Shearing, 1996). Many perceive Haiti’s instability as part of a broader class conflict that has spanned generations and continues to fester. If the expansion of private security encourages the progressive restriction of privately owned space to some members of the public, PSCs may come to be regarded as parties to economic and class conflicts, charged with

⁵³ Private security’s deterrent effect may be unequally shared as well. Empirical work indicates that the relationship between private security and crime prevention is not straightforward. While private security can deter crime by increasing perceived risks, it can also simply divert criminals towards other victims. See, for instance, Koo and Png (1994).

⁵² Interview with PSC directors, Port-au-Prince, October 2011.

enforcing a social order that is based on the exclusion of the poor. These factors risk undermining social cohesion and jeopardizing SSR goals. To adequately resolve these longer-term issues, partnerships and dialogue between what Bailes (2006) has called the “triangle” of security governance — governments, business and civil society — must be strengthened and expanded. State regulators and PSCs should organize a community forum on private security to hear from the public about their experiences with the industry, both positive and negative. This would help to identify the areas where reform is most needed and to frame the priorities of reform projects.

From Control to Partnership

The basis of a successful partnership between public and private security forces is the understanding that private security agents should not only operate within the bounds of the law, but should also actively support the public police force’s efforts to contain crime. In the developed world, PSCs are important actors in community policing strategies. Community policing is a philosophy that promotes the systematic use of partnerships to proactively address issues of public safety, such as crime, social disorder and fear. The collaborative partnerships envisioned by a community policing approach include other government agencies, community members and groups, non-profit organizations and private actors such as the PSCs. Community policing has been promoted throughout the world as the most efficient form of policing, and typically plays a central role in donor-led police reform processes. It is included as a priority in the HNP Reform Plan, and is rightly regarded as one of the keys to broader peace building and community violence-reduction strategies. Nonetheless, the lack of effective collaboration between the HNP and PSCs in Haiti, described earlier in this report, suggests that, at least

with respect to private actors, it has not been successfully implemented.

Beyond collaborative partnerships, community policing stresses a problem-solving approach to crime, where police proactively and systematically evaluate crime problems, with a focus on the immediate conditions that led to the crime (victim/offender/location). PSCs are particularly valuable partners in community policing strategies because they can share useful information about the areas they patrol. The HNP and international donor community should facilitate this process by developing standard operating procedures for cooperation between private security agents and the public police force; a clear set of protocols outlining collaborative approaches, such as what kinds of incidents private security agents must report to the police; the kinds of suspicious behaviour that should be noted and reported; and how incident reports should be written so they are most useful to the police. APAS holds regular meetings where PSC directors share information about agents’ service records and warn one another about agents who have performed poorly or abusively in the past. An effective first step would be for the HNP to ask APAS if an HNP officer could attend all or some of the next meetings.

Another area where the industry should be encouraged to take the lead is in the field of agent training and examination. The quality of the training provided varies widely from one company to the next, with some agents reporting that their companies hire new agents and put them on the job within a matter of a few weeks.⁵⁴ The amount of training reported by PSC directors and private security agents interviewed ranged from a low of one week to a high of three months; the average is clearly somewhere in the middle. The *OECD DAC Security Sector*

⁵⁴ Interview with private security agent, Port-au-Prince, October 2011.

Reform Handbook suggests that “regulatory authorities should establish and oversee training for private security staff,” though they may not themselves be responsible for delivering training (OECD DAC, 2007: 217). It would be unrealistic to expect the Haitian government to set up and oversee a system of training and examination to license private security personnel, but there is a need for more uniform and consistent baseline requirements for professionalism and knowledge.

Haiti’s largest security industry organization, APAS, whose 10 members include all of the largest PSCs in the country, does not have training or examination requirements for its members.⁵⁵ However, the companies and agents interviewed shared common basic training elements, including firearms training, non-violent techniques, negotiation, physical fitness training and professionalism with clients. Each company reported training their agents about when guards were allowed to intervene, when they could use violence and what to do when an incident occurred.⁵⁶ With the assistance of international partners and the private sector, the Haitian government could build upon these shared standards and issue a set of guidelines for PSCs to follow.⁵⁷ Having APAS lead a process whereby PSCs voluntarily committed to ensuring a minimum amount of in-class and field training for their agents would help establish a baseline commitment to training that could facilitate future efforts include training in a state regulatory model. Working cooperatively with the industry would allow the Haitian government to set minimum training standards that were reasonable and achievable, but also stringent enough to ensure a baseline level of competence.

55 Interview with APAS official, Port-au-Prince, October 2011.

56 Interviews with PSCs directors, Port-au-Prince, October 2011.

57 The Jamaican PSRA issues a standardized set of guidelines for 80 hours of basic training, which specifies the amount of time to be devoted to each of the core skills required. The PSRA training manual is available at: www.p سرا.gov.jm/Downloads/HEART_Trust_NTA_Training_Manual.pdf.

The *OECD DAC Security Sector Reform Handbook* identifies industry buy-in and support for reform as key design issues. In Haiti, senior MINUSTAH officials agreed that getting the support of the PSCs themselves was key to the success of the reform process. When the Haitian government passes new laws and regulations on the industry, it should make a concerted effort to communicate the changes to the country’s PSCs. The international community should assist the Haitian government to produce a booklet that explains the changes and clarifies roles and expectations, for instance, clarifying legal provisions relating to the use of force, detention, when to call police and how to make incident reports. This booklet should be made available to all security companies, in French and Creole, with enough copies to distribute to the agents and to use in training. This will reduce confusion and uncertainty in the minds of the agents.

CONCLUSION

As the global private security industry expands, the state’s status as the sole supplier of security and justice services continues to erode. What is taking place is more complex than a simple retreat of the state or erosion state sovereignty. As Abrahamsen and Williams note, “far from existing in the illicit shadows of authority, PSCs...are often deeply interlaced with contemporary structures of authority and legitimacy, both public and private” (2011: 28). The SSR model is beginning to adapt to this more complex and multi-layered reality, where the state is but one of several actors in the security realm, and must play a dual role as both a provider of security and a regulator of the security industry.⁵⁸ One of the state’s chief responsibilities as a regulator is to mitigate and punish abuses by the industry and to provide the oversight that ensures conformity to state law. SSR programming, to

58 One could even add a third role, as a consumer of PSC services.

the extent that it relates to the regulation of the private security industry at all, typically focuses its efforts at this level. All PSCs are, in some sense, accountable to the market; international clients of private security in Haiti can improve the governance of the industry by pressuring companies to adopt voluntary codes of conduct,⁵⁹ but even when this power is exercised in a coordinated way, it remains insufficient means to guarantee compliance. As Shearing and Bayley put it, “the accountability provided by markets accrues to buyers of private security and not to all the people who might be affected by it. Private security inevitably serves employers better than workers, owners better than patrons, and institutions better than individuals” (1996: 596). In Haiti, ensuring a baseline level of transparency and accountability is crucial if the government is to achieve other SSR and community violence reduction objectives.

Individual experiences of security depend not only on the effectiveness of state control over the industry, but also how widely the benefits of private security are spread amongst the population. In a system where the public police force and private security industry do not operate in a coordinated, cooperative way, the industry’s contribution is likely to remain limited to its private clients. An equally important consideration of private security regulation is to maximize the public security benefits of the private security industry. SSR programming can improve control over the industry in any of the five dimensions discussed in Table 1. The bulk of resources and attention should be devoted to assisting the Haitian government to establish a feasible and sustainable regulatory regime, and to devote sufficient resources that ensure continued oversight of the industry. At the same time, donors should not ignore the other dimensions — market regulation, self-regulation, civil

society engagement and international law — as each of them could yield positive results.

Reformers should understand that limiting abuses is necessary, but insufficient to achieve the broader goal of improving public security outcomes. To ensure that the largest possible benefit accrues to Haitian society, active partnership through dialogue between the Haitian government, the private security industry and civil society is required. At the moment, the level of public-private partnership in Haiti is mixed. On one hand, the Ministry of Justice is working with APAS on a new set of legislation to govern the industry. On the other hand, even as the HNP and MINUSTAH are finalizing a development plan that includes key provisions on private security, none of the PSC directors or APAS staff reported being consulted about the plan. The Haitian government bodies responsible for crafting specific regulations on oversight and transparency would benefit from the extensive experience available from the companies themselves. The Haitian government should acknowledge the private security industry’s significant contributions to public safety and security, and consider working more effectively with the PSCs and their agents to close legal loopholes and establish tighter regulation of the industry. Working together will give the Haitian government and the private security industry the greatest chance to turn private security into public good.

⁵⁹ Recognizing the important role of clients of private security, the *Sarajevo Code of Conduct for Private Security Companies* included a complementary initiative to establish a code of conduct for clients of PSCs.

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