

ROLE AND ACCOUNTABILITY OF PRIVATE SECURITY IN COUNTERING VIOLENT EXTREMISM IN KENYA

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Acknowledgement

Rahma Ramadhan is Junior Research Fellow; Lynda Ouma is a Communication and Knowledge Management Officer; Dr Patrick Mutahi is a Research Fellow and Dr Mutuma Ruteere is Director. All affiliated with the Centre for Human Rights and Policy Studies. Copy editing was done by Pamela Omengo and Lynda Ouma.

Research and publication of this report was supported by the Open Society Foundation (OSF). We express our appreciation to private security actors in the counties of Nairobi; Kilifi; Mombasa; Kwale and Nakuru who participated in the key informant interviews, training and policy workshops. We are also grateful to our Countering Violent Extremism (CVE) Research hub partners for their contribution to the policy workshops.

1.1 Introduction

Terrorism continues to be a challenge in Kenya, Tanzania, and Uganda as the Al Shabaab extremist group continues with its operations in the region. Specifically, Kenya continues to face security threats and attacks from the Somalia-based Al Shabaab terrorist group. While going on with its counterterrorism operations, the country at the same time promotes a preventive approach spelt out in the National Strategy to Counter Violent Extremism which recognizes the need for better engagement between communities, the police, as well as the need to promote alternative messages and find means of diverting young people away from violent extremism.

Police conduct in counterterrorism and specifically, the many reports of violations of human rights in the form of arbitrary arrests, illegal detentions, and extrajudicial executions remains an ongoing challenge for governance in Kenya. Civil society organisations continue to document serious violations and advocate for better respect for human rights by the police.

The counterterrorism landscape and the need for accountability have been further complicated by the involvement of other actors other than the police and in particular private security guards. In Kenya, private security guards are now regarded as part of the network of actors in the state's counterterrorism work. This is based on the recognition that they are in charge of security in many places including urban areas. Following the attack on the DusitD2 complex in January 2019, the Director General of Private Security Authority, Fazul Mahamed announced that the government would now arm private security guards to "safeguard key installations" where there is "a lot of human traffic".¹

The Kenya National Private Security Workers Union (KNPSWU) echoed these sentiments and noted that guards are often the first line of defense in most office and home buildings.² As was the case in the Westgate Mall and DusitD2 complex terrorist attacks in Nairobi, private security officers at the entrance were the first point of contact with the terrorist, firing at them before they infiltrated the establishments.³

These sentiments underscore the role private security plays in complementing aspects to the national security architecture. There is more recognition by state agencies due to complementary roles that the guards play, especially in preventing and countering terrorist attacks. Private security companies provide the police with information from surveillance, and searches they conduct on people and cars entering buildings. Some of the companies hire police officers to accompany guards while conducting patrols and surveillance.

Many private security companies have consequently incorporated short training programs for their security guards to prepare them to anticipate terrorism risks, to better provide security for the installations to identify suspect individuals. Some private security companies have also partnered with the National Counter Terrorism Centre (NCTC) to undertake training for some of their personnel on countering violent extremism. The NCTC also has a seat in the Kenya Private Security Alliance (KEPSA) security sector board, which holds monthly meetings to exchange information on security related concerns.

Consequently, over the years, there has been an increase in the demand for private security services. At the same time, there have been concerns about accountability within the sector. A more streamlined registration process for private security firms is being undertaken by the Private Sector Regulatory Authority (PSRA). However, discussions on human rights accountability for the private guards are muted despite reports of human rights violations during searches and religious/ethnic profiling of some people.

¹"Kenya to arm private security guards after al-Shabaab attack". Al Jazeera <https://www.aljazeera.com/news/2019/1/19/kenya-to-arm-private-security-guards-after-al-shabab-attack>

²"Why arming private security guards is jumping the gun" Nairobi Business Monthly. 13 March, 2019: <https://www.nairobibusinessmonthly.com/why-arming-private-security-guards-is-jumping-the-gun/>

³Howden, D. (2013) "Terror in Nairobi: the full story behind al-Shabaab's mall attack", The Guardian, 4 October, available online: <https://www.theguardian.com/world/2013/oct/04/westgate-mall-attacks-kenya>

The measures to engage the private security industry in countering and preventing terrorism raise important policy questions that have immediate and long term implications for public security as well as justice and rights. The private security sector remains poorly studied, poorly regulated, and often ignored in designing accountability mechanisms in Kenya. Yet their numbers are such that they are now responsible for public security in more places than the police often control.

While Kenya's multisectoral approach to violent extremism is a positive development, it is important to examine whether each of these sectors is well regulated, skilled, and accountable as per the expectations of Kenya's constitutions and human rights norms. Specific to the private security sector, several concerns call for policy and technical evaluation.

This report discusses issues of accountability of private security companies in the context of countering violent extremism in Kenya. The data is drawn from a review of literature, interviews with key informants, and insights from five workshops that CHRIPS held in five counties: Nairobi; Kilifi; Mombasa; Kwale, and Nakuru. The workshops were held between July and August 2021 and involved a total of 127 representatives and stakeholders across the five counties which included 107 male and 20 female participants.

CHRIPS also held two policy workshops in two counties: Nairobi and Mombasa in September 2021. The one-day policy workshops involved a total of 58 representatives of stakeholders across the five counties which included 38 male and 20 female participants. The workshop in Nairobi comprised representatives from Nakuru and Nairobi counties while the workshop in Mombasa was composed of representatives from Mombasa, Kilifi, and Kwale counties.

The purpose of the County Policy Workshops was to address emerging issues and gaps in private security, preventing and countering violent extremism (P/CVE), terrorism, and accountability that came out in the Centre's preliminary findings and discussions from the County Capacity Building Workshops. The participants critically analysed accountability within the private security sector generically and particularly within the context of countering violent extremism (CVE) and private security sector legal and policy framework vis-a-vis the effective contribution of the private security sector in P/CVE; the place of privacy and data management laws in the use of technology and digital surveillance tools by private security actors to P/CVE; cooperation between police and private security and shared possible avenues for networking and collaboration with private security actors and relevant stakeholders to promote accountability and adherence to human rights laws in P/CVE. They also explored possible new areas of research and engagement.

Participants included representatives of private security companies; private security workers associations and unions; civil society organisations; office of the County Commissioner; Anti-Terror Police Unit (ATPU); National Counter Terrorism Centre (NCTC); National Police Service; the Kenya Private Sector Alliance; the CVE county engagement forums (CEF); academics, civil society, and community based organisations.

All the data has been derived from anonymous sources to protect the participants' identities.

1.2 Counter-Terrorism challenge in Kenya

The problem of terrorism has a long history in Kenya most prominently going back to 1998 when Al Qaeda militants bombed the United States embassy in Nairobi. In 2002, Kenya was yet again the theatre of international terrorism with Al Qaeda members carrying out a bombing of an Israeli-owned hotel at the Kenyan Coast. In the late 2000s, the problem of terrorism gained a new regional and domestic dimension with the emergence of the Somalia-based Al Shabaab group in 2006. By the end of the 2000s, Al Shabaab had also extended its recruitment and operations into Kenya and had become as much of a domestic problem as it was a regional and international issue.

Grenade attacks targeting the public in streets, at bus stops, in traffic, and markets became a regular problem in the capital city of Nairobi as well as the coastal city of Mombasa. The northern Kenyan region and the coast emerged as key recruitment areas for Al Shabaab as well as active theatres of attacks and kidnappings by Al Shabaab militants.

Kenya's counterterrorism approach from the mid-2000s had taken the form of aggressive policing, secret arrests, and renditions of suspects to other countries as part of cooperation with countries such as the United States, United

Kingdom, Israel, and Somalia.⁴ In 2012 Kenya also enacted the Prevention of Terrorism Act that provided the legal framework for addressing the growing problem in the country.

As Al Shabaab grew into a domestic problem, Kenya's counterterrorism most visibly led by the Anti-Terrorism Police Unit (ATPU) took the form of repressive policing with Muslim communities in the coastal and northern regions suffering the brunt of its operations.⁵ Human rights groups and independent groups regularly documented cases of police arbitrarily breaking into houses at night in search of suspects and dragging out terrified women and children. There have been many recorded cases of arbitrary arrests, detentions, and suspected executions that human rights groups attribute to the security agencies.

Over the years, Kenya has changed some of the tactics that initially drew the most criticism from human rights groups as well as Muslim community leaders. The adoption of the National Strategy to Counter Violent Extremism in 2016 was an important policy shift that recognized the need for better community engagements and even the place of human rights in preventing and countering violent extremism.

Nevertheless, complaints from the communities most affected by terrorism continue and human rights groups continue to document incidents of disappearances and executions of suspected terrorists.⁶ The fact that the problem has become more of a homegrown challenge has also presented new challenges to Kenya's counterterrorism measures. It means that Kenyan security services are now dealing with what is essentially a policing problem and not a military problem across the borders. The domestic nature of the problem has also increased the vulnerability of potential terrorist targets with public places such as hotels and malls seen as most vulnerable. This evolution of the threat has led to calls by policy actors for an extension of the network of actors involved in counterterrorism to involve the private security industry. It will be remembered that in attacks on the Westgate Mall in 2013 and on the Dusit D2 Hotel in 2019, it was the security guards who first fought off the attackers.

Beyond Kenya, there has been recognition that private security actors play an important role in the provision of security and as the first line of protection for vulnerable targets. Writing in 2004, in the *Journal of Criminal Law and Criminology*, Elizabeth Joh notes that "increasingly, the private police are considered the first line of defense in the post-September 11th world."⁷

1.3 Growing Influence of Private Security

It is worth remembering that for several years, criminologists and policing experts have been writing on the growing prominence of private security. Writing as far back as 1980 two leading theorists on policing, Clifford Shearing and Philip Stenning had observed that "a quiet revolution" was taking place in the West with private police/private security playing a central role in the transformation of policing.⁸ Others noted that the traditional vision of police as the sole providers of security was fragmenting, giving way to a multiplicity of providers and even authorizers of policing functions. The private sector was leading in this transformation of policing, taking over roles that had traditionally been reserved for the police.

Security and policing of public spaces as well as the traditional policing tasks of "watching" and even keeping public order are increasingly now shared between private security actors and national police. In many countries, governments find it more convenient, and less expensive to share the security roles with private actors. The relationship is mutually

⁴ See for instance, Human Rights Watch, "Why Am I Still Here?" The 2007 Horn of Africa Renditions and the Fate of Those Still Missing (Human Rights Watch, 2008).

⁵ See reports by Haki Africa; Muslims for Human Rights (MUHURI); Amnesty International and Human Rights Watch, among others.

⁶ See reports by Haki Africa; Muslims for Human Rights (MUHURI).

⁷ Elizabeth E. Joh, *The Paradox of Private Policing*, 95 *J. Crim. L. & Criminology* 49 (2004-2005), p.49.

⁸ Stenning, P., Shearing, C. (1980), *The quiet revolution: The nature, development and general legal implications of private security in Canada*. *Criminal Law Quarterly*, 22, 220-248.

beneficial. The police and security services benefit from the resources offered by private security (such as patrol vehicles and data from surveillance) while the private security actors benefit from quick access to police authority and firepower when necessary.

Indeed as, Rita Abrahmsen and Michael Williams note, “private security has become a pervasive part of everyday life, and in many countries, private security personnel now outnumber their public counterparts by a considerable margin.”⁹ In many of the conflicts and wars today, private security contractors have become as ubiquitous as the traditional soldier, undertaking a diversity of functions from guarding civilian and military facilities, guarding VIPS to actual combat.

Outside of conflicts, however, private security is now as present as an integral part of everyday security as the police. Private security actors now come in all forms of complexity and organisation. In one extreme are the one-person outfits, providing guarding duty for individual households, or businesses and on the other extreme, multinational outfits such as G4S that are involved in a wide range of services and are even listed in the London Stock Exchange. The private security industry also includes security analysts and private intelligence experts who collect data and analyze it for various businesses. Most of the surveillance business, in the form of products but also a collection of actual data, is in the hands of the private security actors who set up and operate CCTVs in malls and other private-public spaces.

1.4 Ethical and Rights Implications

The growing role of the private security industry however presents some difficulties on how we theoretically and practically think and organize security within the state. In the imagination of what a state is and what role governments play, security is the first order and service that is expected. The contract with the state is that individuals will surrender the role of self-protection to the government and the state in extension, in exchange for security. The burdens of security are to be borne by the state. The rise of private security thus seems to suggest a return to a pre-state regulation order with all its uncertainties with security only guaranteed by the size and strength of one’s arsenal.¹⁰

In addition, private security means that the rich and powerful are advantaged, they can buy their security to the exclusion of the poor. When the rich retreat, from public security, it is bound to get worse leaving the poor to bear the brunt of insecurity. The rise of gated communities with private security patrols and quick response alarms portends that troubling possibility where the rich live in enclaves of security amidst the widespread insecurity that the poor have to suffer.

Perversely, also, private security tends to take away from public security resources further disadvantaging the poor. In many affluent neighbourhoods of cities such as Nairobi, private security companies enlist the police to patrol with them as they protect these neighbourhoods. The private security companies and the wealthy community associations provide extra incentives to the police, in the form of patrol cars and modern police stations, which potentially skew the preferences of the police to their advantage.

Besides guarding and protective roles, a lot of what private security bring to policing and counter terrorism is risk governance approach. This approach is based on what has been called the actuarial logic of governance. It anticipates risks and then seeks to mitigate them. One of the ways, the private security sector does this is by use of big data to create risk models and profiles of the most probable suspects. These categories of individuals then become the subject of surveillance, prohibition, and exclusion from particular spaces. Individuals more likely to be seen as risky can then be excluded. The individuals could also be subjected to sanctions by public police and even arrest and prosecution.

⁹Rita Abrahmsen and Michael C Williams, *Security Beyond the State: Private Security in International Politics* (Cambridge: Cambridge University Press: 2011) p.1 .

¹⁰Ibid.P.4

This preventive approach has become important to counter terrorism where both police and private security actors are often engaged in anticipating risks and creating profiles of possible terrorists. In its crudest form, this profiling has seen some individuals subjected to increased scrutiny at entry to public places such as malls or when seeking access to buildings.

On these troubling aspects of private security Abrahmsen and Williams note:

“Private security inescapably generates strong feelings, and there is little doubt that the effects and implications of the privatization of force need sustained political analysis. The possible abuses that follow from the ability of private actors to wield force, to influence political agendas, to accumulate knowledge and transfer competences away from public domain and to move decision making outside democratically accountable forums to private offices are key challenges of our times.”¹¹

1.5 Private Security Industry in Kenya

Kenya has a vibrant private security industry that is a mix of large multinational actors, medium firms with about a hundred employees and small outfits of less than a dozen. The private security industry is not new and has been part of Kenya’s post-independence expansion of private sector. The first private security firms were established in 1960s by British ex-police and army officials to secure the property of white settlers after the country gained independence and control of security passed into African hands. Predictably, the white settler community had little trust in the African security services to protect settler properties particularly in light of the violent decolonization process from the 1950s.

Some of the earliest security companies established include Securicor, now part of G4s, was started in 1969 through acquisition of Night Security Organisation which was based in Thika. Guarding Services Company, K9 Guarding Company, and Security Guard Services which was established in 1970. Wells Fargo and Ultimate Security were established in the late 1970s, and are now among the leading PSCs in Kenya. Over time, the private security industry diversified and many indigenous Kenyans entered the business. Former military and police officers established new players such as Cobra Security (1995), Lavington Security (1996) and Radar Security (1998) among others.¹²

However, a significant share of the market of private security in Kenya is controlled by a few big sized multinational companies that offer competitively higher standards of services than the smaller firms.¹³ As noted by the task force on police reforms, private security is a significant player in Kenya’s security sector. Additionally, the private security sector was most recently identified as one of the fastest growing service industries in Kenya as per a 2019 baseline study on the private security industry in the country.^{14 15} [The Usalama Reforms Forum. (2019) Baseline Study on the Private Security Industry in Kenya: Challenges and implementation of the new regulatory framework, African Private Security Governance Observatory, P 19] The proliferation of private security actors in the county within the recent years has been due to the inability of the state to adequately provide law and order. Kenya has a high rate of criminal violence in particular the capital city Nairobi. This is illustrated by the annual crime report which shows that the rate of crime in the country has increased over recent years.¹⁶

PSCs in Kenya which have over 1,000 operating entities provide a range of services including provision of security and patrol of private institutional, residential and commercial buildings for example, shopping malls, banks, schools,

¹¹Ibid. P.5

¹²Dobson. N, (2019) Private Security in Nairobi, Kenya: Securitized Landscapes, Crosscurrent, and New Forms of Sociality, African Studies Review, Volume 62, Number 2, p 30-48 (P 33-34)

¹³Mutuku, K. & Sabala, R. (2007). Private Security Companies in Kenya and Dilemmas for Security, Journal of Contemporary African Studies, 25(3), pp 391-416

¹⁴National Task Force on Police Reforms. (2009) Report of the National Task Force on Police Reforms

¹⁵The Usalama Reforms Forum. (2019) Baseline Study on the Private Security Industry in Kenya: Challenges and implementation of the new regulatory framework, African Private Security Governance Observatory, P 19

¹⁶NPS. (2018) Annual Crime Report, Office of the Inspector General National Police Service. P 34

and hospitals which compliment state efforts in policing and maintaining of national peace and security.¹⁷ The private security market in Kenya has been described as highly differential and competitive. Packages offered by PSCs can be categorized into three. Leading PSCs offer a package of advanced, integrated security services. The vast majority of companies offer only low-skilled manned guarding services. The sector can generally be described as a three-tier structured with a few large companies offering integrated security solutions at a high cost, a large medium tier with companies providing predominantly guarding services with some use of technology and a bottom tier of small firms often consisting of unregistered companies offering only manned guarding at very low prices. As guarding predominantly remains the bread and butter of most PSCs, companies from all three tiers can bid for contracts thus resulting in intense competition.¹⁸

According to a study by Nathan Dobson, before becoming PSCs, some companies started off as private investigation companies run by former police and army officials and serviced “private clients and the government itself”.¹⁹ Stephen Githimi notes that a sizable number of locally owned security companies were operating illegally as they were not registered by government authorities and employees of PSC were often young, incompetent, inadequately trained and equipped, and lacked the motivation to deliver quality services.²⁰ The companies vary considerably in size with majority being small to medium-sized owned companies, with less than 100 employees. Majority of the companies in the country operate in only one locality in town while the major companies have operations in several main towns and rural areas with the highest concentration of companies being in Nairobi county. According to a study the largest PSC in Kenya in 2016 was operating in 68 different locations across the country and had 10,000 employees.²¹

Similar to Mutuku & Sabala (2007), Thurania & Munanye (2013) also noted that a significant share of the private security market is controlled by few big sized multinational companies that offer competitively higher standards of service than the smaller forms. Additionally, it has been noted that the private security industry largely remains unregulated by the government. As a result industry players are allowed to lower standards of security services provided to citizens. It is further noted that out of over 2,000 security companies operating in the country, only 21 were members of the Kenya Security Industry Association (KISA) which is an association of private companies whose core business is the supply of security products and services. This thus means that majority of the security companies operating within the country fall outside of the ambit of the industry self-regulation mechanisms.

1.6 Weak regulatory infrastructure

The Private Security Regulation Act was enacted in 2016 to provide for a framework for the regulation of foreign ownership and control of a business operating as a security service provider and to regulate private security services registered in Kenya rendered outside the Republic.²² The Act also provides for a framework for cooperation with National Security Organs.

To oversee the regulation of the private security industry, the Act establishes the Private Security Regulatory Authority,²³ which has power to— (a) establish relations with or enter into co-operation agreements with bodies or offices regulating the private security industry in other countries, or bodies representing such regulators; (b) conduct, or cause to be

¹⁷The Usalama Reforms Forum. (2019) Baseline Study on the Private Security Industry in Kenya: Challenges and implementation of the new regulatory framework, African Private Security Governance Observatory, P 20

¹⁸Githimi, S. K. (2016) “Private Security Services and Crime Control in Karen Location Nairobi County, Kenya,” a Thesis Submitted to the Board of Post-Graduate Studies in Partial Fulfillment for the Award of Master of Arts Degree in Security Management of Egerton University, p 7

¹⁹Dobson, N. (2019) Private Security in Nairobi, Kenya: Securitized Landscapes, Crosscurrent, and New Forms of Sociality, African Studies Review, Volume 62, Number 2, p 30-48 (P 33-34).

²⁰Githimi, S. K. (2016) “Private Security Services and Crime Control in Karen Location Nairobi County, Kenya,” a Thesis Submitted to the Board of Post-Graduate Studies in Partial Fulfillment for the Award of Master of Arts Degree in Security Management of Egerton University, p 7

²¹Githimi, S. K. (2016) “Private Security Services and Crime Control in Karen Location Nairobi County, Kenya,” a Thesis Submitted to the Board of Post-Graduate Studies in Partial Fulfillment for the Award of Master of Arts Degree in Security Management of Egerton University, p 7

²²Section 3.

²⁴Section 7

conducted, hearings, investigations and inquiries with regard to any matter falling within the scope of its functions; and (c) generally perform any act that contributes to the attainment of its objects.²⁴

Under the Act, companies are responsible for conducting criminal record checks on their employees. According to company owners, the checks are not reliable as some could be obtained through corrupt means where “clean records” are reportedly given in exchange for payment. As a result, some companies have opted to put in place additional measures, for instance, utilizing their contacts within the state police to ensure that the checks are reliable. Another measure includes, potential recruits being accompanied by a high-ranking PSC employee when collecting clearance records. Research shows that despite the additional mitigation measures faults in the PSC system persist.²⁵

A common curriculum has been developed under the auspices of the National Industrial Training Authority (NITA) and this is to be used by all private security companies. However, many companies are yet to roll out the training. It is also not clear whether those already employed would need to undergo fresh training as part of their certification and in light of the new curriculum. Overall, training across the various companies remains uneven and standards are yet to be enforced.

So far, the law and the regulatory authority are in place. However, in practice, there are a lot of gaps in terms of operationalisation of the law. The Authority is yet to register all the security providers in the country. It is yet to establish its monitoring and inspection system.

Instead of strengthening the regulatory mechanisms as envisaged under the Act, most of the policy energy has been expended on the question as to whether private security guards should be allowed to carry firearms. This debate was kicked off in early 2018 by the Minister for Interior Fred Matiang’i when he announced that the government would issue guns to some select private security companies and in particular, those involved in cash in transit activities.²⁶

1.7 The Question of Firearms

Under the current Private Security Act Section 53, private security guards are prohibited from carrying firearms. In 2019, the Ministry of Interior developed regulations that sought to provide for the arming of guards through the companies.²⁷ The discussion was picked up by political leaders as well as the media.²⁸ The regulations sought to provide a framework for arming of selected guards to use firearms in the provision of security services. However, a majority of members of the National Assembly have been opposed to arming private guards citing lack of training and experience and some further suggesting that an entity like the National Youth Service (NYS) would be better placed to handle firearms.

Due to the rise in insecurity, a few security companies have previously opted to arm a small portion of their guards through individual firearms licenses, a practice that is not illegal but also not officially recognized. Some PSC representatives in favor of this move proposed selective arming as a future model where a small highly trained component of some companies are permitted to operate a restricted armed response capability.²⁹ However, they do recognize that effective regulation and oversight would be essential. On the contrary, most private security company owners are against arming their guards, some even willing to seize operations if the law was to be reversed. With poor

²⁴Section 10

²⁵Diphhoorn, T. (2016) “Surveillance of the Surveilled”- Regulation of the Private Security Industry in South Africa and Kenya, ASR Forum on Surveillance in Africa, Africa Studies Association, 161-182

²⁶“Matiang’i: Private security guards to be issued with guns from July” The Standard, May 11 2018 at: <https://www.standardmedia.co.ke/nairobi/article/2001279986/matiang-i-private-security-guards-to-be-issued-with-guns-from-july>

²⁷“Guards to carry guns and make arrests in new rules” The Standard July 15th 2019 at: <https://www.standardmedia.co.ke/counties/article/2001333876/new-rules-allow-guards-to-carry-guns-make-arrests>

²⁸Star Editor. (2019) “Private security guards should be safely armed” The Star, 30 October, <https://www.the-star.co.ke/opinion/leader/2019-10-30-private-security-guards-should-be-safely-armed/>; Star Editor. (2019) “Private security guards should be safely armed” The Star, 30 October, <https://www.the-star.co.ke/opinion/leader/2019-10-30-private-security-guards-should-be-safely-armed/>

²⁹Githimi, S. K. (2016) “Private Security Services and Crime Control in Karen Location Nairobi County, Kenya,” a Thesis Submitted to the Board of Post-Graduate Studies in Partial Fulfillment for the Award of Master of Arts Degree in Security Management of Egerton University, p 14

working conditions and poor welfare of personnel working in the industry, firearms would create an extra layer of stress on PSCs employees, with the risks leading to incidents of misuse and abuse. Owners are however advocating for the arming of guards working in particular sectors, like cash-in-transit and alarm responses, emphasizing the high level of risk faced by the officers necessitating the need for additional protection. They point out that the deaths recorded during the Westgate and Garissa University terrorist attacks are examples of lives that could have been saved if security guards were armed.³⁰ On the other hand, the Private Security Regulatory Authority (PSRA), which is the regulatory body, noted that state security agencies often rely on private guards for provision of additional manpower for instance, in crowd control and evacuation, provision of high-end security scanners and metal detectors, and therefore arming private security guards will enable security officials to focus on serving members of the public as this will free up the police from performing duties such as guarding cash-in-transit vehicles, protecting important people and banks.³¹ Some of the regulations proposed by legislatures backing the move to arm private guards include: stringent controls permitting only qualified security companies to have armouries; guards to be trained and licensed, prohibited from roaming with firearms and to surrender their weapons to the armoury after shifts; and a requirement that guards should only be issued with short guns because they are deadly at short range but feeble at long range, therefore not overpowering the police who mostly use military combat rifles or AK-47s.³²

The potential risks in the proposed arming of security guards appear to outweigh any gains. The industry is woefully underregulated, the working conditions for many of the guards are deplorable and their training lacking. The sobering example of the frequent misuse of guns by the police in Kenya further makes the case against any arming of private security at the moment.

1.8 Training of personnel

As noted, the training of private security guards remains largely uneven across various companies and the quality is poor in many cases. Despite the implementation of strict requirements regarding level of education, the regulations are not implemented and often one does not need to produce evidence to prove that they have acquired the minimum level of education required for the job.³³ The PSRA has worked with NITA to establish a training curriculum that is standard for all private companies as part of the standardization and improvement in standards. So far, however, this has not been rolled out to the various companies. In any event, given the structure and nature of most of the security companies in Kenya, it is unlikely that most of them will have the budgets and capacity to undertake comprehensive training for their guards.

The question of training is of particular importance when it comes to counterterrorism and prevention of violent extremism. According to some of the private sector stakeholders, there is enhanced training due to the evolving security challenges. Private security companies have conducted extensive training sessions with NCTC and some CSOs working on security programmes. They have also conducted joint awareness sessions with the police on CVE.³⁴

In addition to the normal manning of entrances, the private security actors are also providing surveillance services more than before. Guards were usually manning outside of malls or businesses but now have been trained to also patrol inside premises and some even have guards on each floor.³⁵ In addition, metal detectors and language scanners

³⁰ Diphorn, T. (2016) "Surveillance of the Surveillers" - Regulation of the Private Security Industry in South Africa and Kenya, ASR Forum on Surveillance in Africa, Africa Studies Association, 161-182, p 166

³¹Shani, T. (2017) "Security firms, police should work together" Business Daily, 11 June, <https://www.businessdailyafrica.com/analysis/Security-firms-police-should-work-together/539548-3965760-n8nx93z/index.html>; KEPSA. (2019) Review of the Private Security Regulations, Kenya Private Security Authority, Available online <https://kepsa.or.ke/review-of-the-private-security-regulations/>

³² Star Editor. (2019) "Private security guards should be safely armed" The Star, 30 October, <https://www.the-star.co.ke/opinion/leader/2019-10-30-private-security-guards-should-be-safely-armed/>

³³Dobson, N. (2019) Private Security in Nairobi, Kenya: Securitized Landscapes, Crosscurrent, and New Forms of Sociality, African Studies Review, Volume 62, Number 2, p 30-48 (P 37)

³⁴Remarks by participants during CHRIPS workshops in Nairobi and Mombasa in September 2021

³⁵ibid

have also been incorporated and are being used in areas that ordinarily did not have them primarily as a result of increased cases of terrorism.

In addition, most of the private security companies have partnered with the Directorate of Criminal Investigations who have trained their officers on the gadgets or weapons commonly used to conduct crimes, drugs used by suspects to induce guards and safety methods they can use to protect themselves. Further capacity building is being undertaken in partnership with KEPSA and Private Security Training Academy.³⁶

Many companies at the moment, do get a briefing on suspected terrorism sites and potentials but the training is limited. Most of those involved in checking at malls and building entrances, just conduct a routine scan of the vehicles or merely ask visitors to go through a security machine. There is very limited training on what would constitute suspicious behaviour. There is no training on how to avoid racial and ethnic profiling of individuals.

1.9 Weak oversight and accountability mechanism

The PSRA establishes a system of oversight through criminal background checks and inspections by the Authority. However, as already noted, these systems are largely not in operation at the moment. The Authority does not have the capacity in place and mechanisms for ensuring that this works. While it is a fact that private security actors and guards undertake a “policing” function and are in charge of security in most public places, they are still considered private companies and civilians. As a result, they are not under the ambit of public accountability systems such as Independent Policing Oversight Authority (IPOA).

Their practices in the use of force and when they effect arrest are not governed by the standard operating procedures that guide and govern the police. Policing accountability mechanisms are based on the logic of the police rather than private security. Conceptually then, there is a challenge in translating those accountability mechanisms to the private security. Accountability claims against private security companies are therefore limited to civil claims by aggrieved individuals or when the police investigate and bring criminal charges against the private security guards. However, as Julie Berg has noted of the private security industry in South Africa, “it is not clear to what extent litigation may be an effective, practical method of holding the industry accountable.”³⁷

Lack of accountability of the private sector industry has also been mentioned as a hindrance to effective collaboration and partnership between the public and private security sectors. The police have expressed reservations about the private security industry and noted the need for vetting and training.

Effective training should also be considered a form of oversight – a means of preventing abuses and violations. If the guards are not well trained, if they are not clear on the limits of their powers and how they need to work within the law, then it is more likely that they will violate human rights. As Julie Berg notes of the South African private security industry, “Low training and low recruitment standards impact on the professionalism of the security industry, as well as on accountability.”³⁸

1.10 Data protection and privacy

The private security industry collects and keeps a lot of personal data through surveillance via CCTVs, computerized data collection at entry points as well as data collected in the form of identity cards before entry into premises. In many places in Kenya, the practice is that a person entering a premise is required to identify themselves and in some cases have their identification document temporarily retained with the private security guard manning the property.

³⁶ ibid

³⁷

³⁸ibid

This is provided for under the law in 2016 by the PSRA Act. The Data Protection Act enacted in 2019 primarily regulates the procession and use of personal data and also expressly provides for data collected to be processed in accordance with the right to privacy of the data subject. At the moment, there are no regulations on the duration which personal data can be retained once collected although data controllers and processors are required to apply a reasonableness test in assessing retention durations.

Balancing security needs and the right to privacy and data is an uphill task. The private security companies conduct a global range of activities with the intent of gathering intelligence with audiovisual or intercepting electric communication for collecting, processing, storing or transporting data to third parties. Technology is constantly evolving and while surveillance is not something very new the digitalization aspects has changed it. There is little in the way of guidance on who can access the data that is collected by the private security industry at the moment and there is a real risk that some of this data can be used to profile individuals particularly as part of the state counterterrorism measures.

Further, it is not clear what are the capabilities of the security companies to monitor the internet and social media platforms such as Instagram, Telegram, FaceBook to establish how they are used for propaganda, recruitment, incitement, training, planning of terrorist activities. The risk of cyber-attacks is real and the private security companies have built partnerships with Internet Society of Kenya and Communications Authority of Kenya to respond to cybercrimes.³⁹ There are online terrorist magazines that are freely available and encrypted platforms where discussions take place but access to them is limited to those who know and can get through them. As one of the participants in the CHRIPS workshop pointed out, it is important to keep abreast of the changing online terminology for example there is little use of strong names like Jihad today and the recruiters have developed code-names for easier and discreet communication.⁴⁰

1.11 Working conditions and rights of security guards

Improving the rights and working conditions of security guards is also another way of ensuring that they are accountable, follow the rule of law and protect human rights. Julie Berg puts this in perspective:

The rights and treatment of security officers are directly linked to the levels of accountability that can be expected from the industry as a whole. Ill-treated employees may have divided loyalties and engage in criminal activities for personal gain.⁴¹

Other than for a few companies, guarding is notoriously low paying and often the guards work very long hours. Even with the introduction of regulations providing that guards be paid a minimum wage of Ksh 9,469, a majority of the private security employers still flout the regulation with many paying their officers below the minimum wage. The formation of the Protective Service Industry Association (PSIA), breaking off from KISA, is said to have been prompted by the rejection of the minimum wage regulation.⁴² This is also an area that the Private Security Authority is supposed to provide oversight on.

³⁹Remarks by a participant in CHRIPS workshop, July 2021

⁴⁰Remarks by a participants in CHRIPS workshop, August 2021

⁴¹Julie Berg, *The Accountability of South Africa's Private Security Industry: Mechanisms of Control and Challenges to Effective Oversight* (Open Society Foundation for South Africa, 2007)

⁴²Abrahamsemn, R. & Willimas, M. (2005), *The Politics of Private Security in Kenya*, 32 *Review of African Political Economy*, June – September, pp 425- 431

1.12 Conclusion

From the CHRIPS discussions with the private security actors, three dimensions emerged. One, the engagement and partnership between public and private security players has increased over time mostly through information sharing. Secondly, the level of empowerment through training and acquisition of technology has gone up and its continuing with new technologies emerging in the market each day. Thirdly, there is an increase in intelligence gathering through the private security players.

However, there is limited understanding of the role, place and influence of the private security sector in CVE, which hinders improving their accountability and respect of rights. Their role is vast and goes beyond the guarding duties to include aspects such as surveillance. Private security guards are the more immediate and visible part of the industry and their interaction with ethnic and religious minorities has been of most concern and therefore in need of urgent attention. Generation and sharing of knowledge on private security and CVE are, therefore important as one of the steps in promoting public and policy discussion.

To promote accountability of the private security sector, it is therefore important to build partnerships between CSOs that work on issues of CVE to effectively engage the private security sector. The CSOs can monitor the implementation of the laws to ensure that human rights violations are addressed. They also can provide more awareness forums on the need for accountability and respect of human rights by the guards.

The PSRA and Government should provide funding to promote training in the sector since there is a huge number of guards who are not properly trained or not trained at all. The PSRA also can develop an accountability mechanism to address issues of human rights violations to improve the sector.

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The Centre for Human Rights and Policy Studies (CHRIPS) is an international institution, working principally in Africa, and committed to the generation and dissemination of policy-relevant knowledge and products, which promote effective governance and social justice. CHRIPS is engaged in knowledge generation through research; in knowledge dissemination through different media and fora; in public policy analysis and evaluation; in development of platforms for South-South learning; and in the provision of opportunities to scholars and policy innovators to develop their ideas, test them and promote them to relevant audiences.

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