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The Dynamics of private security provisioning in homeland security in Kenya.

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The Dynamics of Private Security Provisioning in Homeland Security in Kenya

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Declaration

I declare that this work has not been previously submitted and approved for the award of a degree by this or any other University. To the best of my knowledge and belief, the thesis contains no material previously published or written by another person except where due reference is made in the thesis itself.

Jared Nyakambi Mauti

Signature……

Date ……..…….....

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Dedication

I dedicate this research dissertation to my family; my ever-loving wife Lucy and daughter Velmah, to who I feel indebted through their moral support and prayers. I also dedicate the same to my brother, John, from whom I have always received plenty of support in my academic life.

Acknowledgement

For this Dissertation to be what it is now, I am most grateful to God for the grace He has shown me through the demanding time of writing this report, and more so for bringing me this far in my academic life. Glory and Honour to you Lord!

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Abstract

Using Robert Dahl's Pluralism theory, this study responds to three questions; how does proliferation of private security entities and consequent relational dynamics affect homeland security provisioning in Kenya? What are the legal implications inherent in this proliferation? How should the regulatory design and framework of private security provisioning fit into the realm of homeland security architecture? It sets out three objectives; examine and analyze the impact of proliferation of private security entities on security provisioning in Kenya, examine and analyze existing policy and legal frameworks and its implications in private security provisioning, and proffer research-based regulatory framework for private security entities in homeland security architecture. The study uses a qualitative approach to data collection and analysis. Using a combination of both primary data, through questionnaires and interview schedules, and secondary data involving content analysis of various publications, the study contends that the crisis of security provisioning is a function of uncoordinated proliferation of private security providers exacerbated by unresolved gaps and weaknesses underpinning the regulatory framework. The study therefore recommends for the development of a written National Security Policy to coordinate and anchor security provisioning Policies and resultant legal frameworks to operationalize private security provisioning in Kenya.

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List of Abbreviations

ATPU – Anti-Terrorism Police Unit

Cap – Chapter

DCI – Directorate of Criminal Investigations

DHS – Department of Homeland Security

DoD – Department of Defence

IMF – International Monetary Fund

KDF – Kenya Defence Forces

KSIA – Kenya Security Industry Alliance

NIS – National Intelligence Service

NPS – National Police Service

pp – Pages

PPPs – Public Private Partnerships

PROSAK – Protective and Safety Association of Kenya

PSC/PSCs – Private Security Company/Private Security Companies

PSIA – Private Security Industry Association

PSRA – Private Security Regulatory Authority

SAPs – Structural Adjustment Programmes

UK – United Kingdom

UN – United Nations

UNDP – United Nations Development Programme

US/USA – United States/United States of America

Chapter One

Introduction

1.1 Introduction

This chapter provides the background to the research and statement of the problem. It presents research questions, objectives as well as justification of the study. It reviews previous literature to identify gaps, provides the theoretical framework to guide the research and the supposed hypotheses. It then provides a description of how the research was conducted in terms of collecting, analysing and presenting data. Further, it details the Chapter outline of the entire study.

1.2 Background

Towards the end of the twentieth century, private security provisioning grew from informal arrangements of protecting land and families[1] and mercenary activities to formalized undertaking with a clear corporate structure.[2] In Europe, governments started contracting uniformed private security companies. Henceforth, the growth accelerated globally to the extent that the number of people employed by uniformed private security companies significantly outnumber the police.[3]

The publication of the Hallcrest Reports, 1985 and 1990 in the United States confirmed the growth of private security to become a significant player in prevention of crime. Discussions on security sector reforms also emerged. This led to calls for the regulation of private security provisioning. Consequently, globally, States started to negotiate the regulatory regime, which culminated into the 2008 Montreux Document that encouraged States to implement tighter

[1] George, B. and Kimber, S. "The History of Private Security and Its Impact on the Modern Security Sector" in Gill, M. (ed) (2014), *The Handbook of Security*. Palgrave Macmillan, London, 2nd ed, pp. 21-40

[2] Holmqvst, C. (2005), *Private Security Companies: the Case for Regulation*. Policy Paper No. 9: 124-156. Stockholm International Peace Research Institute (SIPRI). Stockholm: SIPRI , p.2

[3] De Waard, J. (1999), *The Private Security Industry in International Perspective*. European Journal on Criminal Policy and Research, vol. 7(2), pp. 143-174

regulation in training and monitoring of private military and security companies in armed conflict zones.[4]

In Africa, the accelerated growth has been attributed to erosion of State capacities in the late 1980s and early 1990s due to declining economic prosperity as a consequence of implementation of structural adjustment programs (SAPs)[5] and collapse of the Soviet Union which saw increased influx of illegal firearms.[6] The threat of global terrorism further exacerbated the growth of private security entities especially after the 9/11 terror attacks.[7]

In Kenya, private security providers have been in existence since independence, albeit informally and on a small scale to provide protection services to those who could afford. The rise of private security provisioning formally began in the mid-1980s when there was a wave of violent crime, which continued to intensify with time, especially around Nairobi's diplomatic zone.[8] The situation was further exacerbated by criminalization of politics as the clamor for multipartism set in. Further, proliferation of private security companies was witnessed in the aftermath of terrorist attacks in Kenya which increased the demand for uniformed private security services.[9]

[4] The Montreux Document on Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies during Armed Conflict, 2008 (The 2008 Montreux Document) is an intergovernmental agreement that promotes the adherence to international humanitarian law and human rights law for private security companies.

[5] Abrahamsen, R. and Williams, M. C. (2005), *The Globalisation of Private Security: Kenya Country Report.* Aberystwyth: Department of International Politics, University of Wales at Aberystwyth, p.4

[6] Africa Peace Forum Working Group Report, 2014

[7] Wairagu, F., Kamenju, J. A. and Singo, M. (2004), *Private Security in Kenya*. Security, Research and Information Centre (SRIC), Nairobi. Also Prenzler, T., Earle, K. and Sarre, R.(2009), *Private Security in Australia: Trends and Key Characteristics.* Trends and Issues in Crime and Criminal Justice, no. 374. Canberra: Australian Institute of Criminology.

[8] Gimode, E. A. (2001), *An Anatomy of Violent Crime and Insecurity in Kenya: The Case of Nairobi, 1985-1999*. Africa Development, vol. 26(1/2), pp. 295-335. Also Abrahamsen, R. and Williams, M. C. (2005), *The Globalisation of Private Security: Kenya Country Report.* Aberystwyth: Department of International Politics, University of Wales at Aberystwyth

[9] Supra, n. 5, p.5

For all this time, the private security sector in Kenya operated without any regulatory framework.[10] Private security companies were registered under the Companies Act Cap. 486 Laws of Kenya and as such were only accountable to the shareholders. However, meaningful security sector reforms started in 2003 when the government launched the Governance, Justice, Law and Order Sector (GJLOS) Reform Programme. Because of the threat of terrorism, there were calls to arm private security providers while at the same time discussions emerged around formal regulation and establishment of cooperation and collaboration with public security agencies.

The discussions culminated in the enactment of the Private Security Regulation Act, No. 13 of 2016 by the National Assembly. Also, in July 2019, the Cabinet Secretary for Interior and Coordination of National Government gazetted the Private Security (General) Regulations, 2019 to operationalize the Act.[11] However, the gazettement was later annulled by Parliamentary Committee on Delegated Legislation in December 2019 because it lacked public participation.

Further, security sector reforms re-emerged in the aftermath of 2007/8 Post Election Violence. The Commission of Inquiry on Post-Election Violence (The Waki Commission) was set up, whose report *inter alia* proposed security sector reforms. There was also formation of the National Task Force on Police Reforms (The Philip Ransley Task Force) whose findings noted that private security is a significant player in Kenya's security sector. It is debatable whether these security sector reforms have been implemented and/or had any efficacy in security provisioning.

[10] Mkutu K. and Sabala K. (2007), *Private Security Companies in Kenya and Dilemmas for Security*. Journal for Contemporary African Studies, vol. 25(3), pp. 391-416, p. 391

[11] Kenya Gazette Special Issue, Legal Notice No. 10 dated 5/7/2019

1.3 Statement of the Research Problem

The essence of a contemporary State follows the operationalization of the 17th Century Hobbesian social contract. Here citizens gave up their rights to arms and force in return for protection.[12] This was affirmed by the Westphalian (1648) settlement of State system conceived to consist of territorial control of a population by a government that expresses sovereignty.[13] The State manifestation here is apparent monopoly over violence, ability to provide security and values to the population.[14]

Article 238(1) of the Constitution of Kenya 2010 sums up this function as national security, conceived as the protection against internal and external threats to Kenya's territory and sovereignty, its people, their rights, freedoms, property, peace, stability and prosperity and other national interests. This national security duty is discharged by the national security organs; Kenya Defence Forces (KDF), National Intelligence Service (NIS) and National Police Service (NPS).[15]

The foregoing notwithstanding, national security provisioning roles of the State in homeland security continue to be constrained.[16] This is manifest in the proliferation of small arms,[17] criminality and lawlessness,[18] and terror attacks.[19] The net effect of this is the general feeling of insecurity by the citizenry. In this situation, the State's response has included additional recruitment and deployment of police, security sector reforms and the deployment of the military to counter terrorism and some other internal security threats.

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[12] Krahmann, E. (2003), *Conceptualizing Security Governance*. SAGE Journals

[13] Zartman, W. (ed.) (1995), *Introduction: Posing the Problem of State Collapse*. In Collapsed States: Disintegration and Restoration of Legitimate Authority. Boulder, CO: Lynne Rienner

[14] Weber, M. (1964), *The Theory of Social and Economic Organization*. New York: The Free Press, p. 154

[15] Article 239(1) of the Constitution of Kenya, 2010

[16] Wairagu *et al* (2004), *Private Security in Kenya*. Security, Research and Information Centre (SRIC), Nairobi

[17] Mkutu K. and Sabala K. (2007), *Private Security Companies in Kenya and Dilemmas for Security*. Journal for Contemporary African Studies, vol. 25(3), pp. 391-416

[18] Kenya National Commission on Human Rights, 2014; National Police Service, Crime Statistics 2011-2018.

[19] Kenya: Extremism and Counter-Extremism. Counter-Extremism Project. Available at www.counterextremism.com/countries/kenya accessed on 17.11.2020.

In response, citizens have resorted to alternative self-securitization efforts in a bid to secure themselves.[20] These alternative arrangements have seen people coalesce around various groupings including formation of neighbourhood watches, ethnic militia, gangs and the use of vigilantes.[21]

Key to this alternative security arrangement are the formal private security providers that have emerged to provide security to paying clientele. These private security providers comprise of both firms and individuals. It is estimated that in Kenya there are more than 3,000 private security companies that are employing over 400,000 security personnel.[22]

The private security companies were until 2016 regulated under the Companies Act, Cap 486 Laws of Kenya and organized along self-regulatory mechanisms including; Kenya Security Industry Alliance (KSIA) and the Protective Security Industry Association (PSIA). However, the Companies Act neither formalized the relationship between the public and private security providers nor was applicable to individual private security providers.

The relationship between public and private security providers was on an *ad hoc* and informal basis. However, in 2016, the Government enacted the Private Security Regulation Act 13 of 2016 to respond to the apparent proliferation and to regulate the sector. The Act established the duty to cooperate with national security organs. Since then over 2,000 private security firms that have been registered, out of which 500 are actively involved in offering guard duties.[23] Further, the Private Security (General) Regulations 2019[24] had been gazetted to operationalize the Act, but was contested and subsequently the gazettement was annulled by the Parliamentary Committee on Delegated Legislation in December 2019. The Regulations

[20] Mayah, E. O. (2003), *Walking the Narrow Road*. Industrial Security in Nigeria

[21] Abrahamsen, R. and Williams, M. C. (2005), *The Globalisation of Private Security. Country Report: Kenya*. Aberystwyth: Department of International Politics, University of Wales at Aberystwyth

[22] Colona, F. and Diphoorn, T. (2017), *Eyes, Ears and Wheels: Policing Partnerships in Nairobi, Kenya*. Conflict and Society: Advances in Research, vol. 3, pp. 8-23 at p. 16

[23] This is according to Private Security Regulatory Authority (PSRA)

[24] Kenya Gazette Special Issue, Legal Notice No. 10 dated 5/7/2019

had also made provisions for cooperation with the national security organs.[25] By these legislative efforts, the Government seeks to formalize the relationship and as such maintain command and control of the private security sector in security provisioning in the country.

Notwithstanding the proliferation and the Act prohibiting arming of private security providers,[26] there is still a felt sense of insecurity and calls have been made to arm private security providers.[27] This is despite there being an estimated 750,000 firearms in private hands, with a paltry 8,136 registered.[28] It is these consequent proliferation and relational dynamics between the two security providers and the impact on force to space ratios that intrigues us. We are then interested in responding to three pertinent questions; how does this proliferation of private security entities and consequent force to space relational dynamics affect homeland security provisioning in Kenya? What are the legal implications consequent to this increase? And how should the regulatory design and framework of private security provisioning fit into the realm of homeland security?

1.4 Research Questions

The study sought to answer the following research questions:

i. How does the proliferation and consequent private/public security entities' relational dynamics affect homeland security provisioning in Kenya?

ii. What are the legal implications inherent in this rise of private security entities?

iii. How should the regulatory design and framework of private security provisioning fit into the realm of homeland security architecture?

[25] Regulations 25 and 26 of The Private Security (General) Regulations, 2019 required the private security service providers to cooperate with the national security organs in maintenance of law and order, preventing or mitigating national disasters, sharing security information, sharing expertise and training; and cooperation on information sharing to prevent commission of a crime and mitigate or eliminate any form of security threat.

[26] Section 53 of the Act prohibits use of firearms by private security providers in rendering a private security provisioning service

[27] Kagwanja, P. (January 2019), *Who Will Guard the Guards: Challenges and Options of Regulating the Private Security Industry in Countering Violent Extremism in Kenya*. Africa Policy Institute

[28] Kenya National Focal Point on Small Arms and Light Weapons

1.5 Objectives of the Study

The main objective is to examine how the proliferation of private security providers and the legal implications arising therefrom affect homeland security provisioning. The specific objectives of the study are:

i. To examine and analyse the impact of proliferation of private security entities on the relational security provisioning dynamics in Kenya.
ii. To examine and analyse the policy and legal frameworks and its implications in private security provisioning in Kenya.
iii. To proffer research-based legal and regulatory framework for private security entities in homeland security architecture.

1.6 Scope of the Study

The study assesses the dynamics of private security provisioning in Kenya for the period 2009 – 2019. In 2009, the Country was emerging from the aftermath of the 2007/8 post-election violence (PEV) where criminal groups had formed and continued to operate. It is during the post-election violence period that it became apparent that State policing agencies were overstretched. Further, in the immediate aftermath of the post-election violence, the Commission of Inquiry on Post-Election Violence (The Waki Commission) was set up, whose report *inter alia* proposed security sector reforms. There was also formation of the National Task Force on Police Reforms (The Philip Ransley Task Force) whose findings noted that private security is a significant player in Kenya's security sector. However, other aspects of the pre-2009 period have been captured under Chapter 2, which examines the dynamics in the evolution of private security provisioning in Kenya since 1963.

On the other hand, 2019 is critical in the sense that the debate on arming of private security providers reemerged. The debate had gained momentum after the September 2013 Westgate mall attack, but seemed to have been settled by the 2016 Act. However, it resurrected

following the January 2019 Dusit D2 terror attack, raged on and continued into 2020. 2019 also saw the attempted gazettement of Private Security (General) Regulations, which was later annulled because it lacked public participation, forcing the government back to the drawing board.

However, the fact of anchoring the study in 2019 does not mean the issues have been settled. In fact the dynamics and issues flow into 2020 since they are still evolving, thus some of the recommendations in Chapter 5 of this research.

1.7 Definition of Concepts

National Security

National security is described as "the freedom from foreign dictation"[29] and as "the ability of a nation not to sacrifice its core values to avoid war, and is able to, if challenged to maintain them by war."[30] These perspectives of national security present the State as the referent object requiring protection from other States, assume that threats emanate from outside the State and as such are externally oriented. However, the people within the State and their property also need protection against threats emanating from within. Thus national security include aspects of human security,[31] which entails a whole range of issues like economic, environmental, human rights and personal security. As such, national security also entails the promotion of socio-economic welfare as well as personal security. Therefore, there are two entities that need survival; the State and the citizenry.

[29] Lasswell, H. D. (1950), *National Security and Individual Freedom*. McGraw-Hill, 1st Ed.
[30] Lippmann, W. (1943), *US Foreign Policy: Shield of the Republic*. Little Brown and Co., Boston
[31] Duffield, M. (2001); *Global Governance and the New Wars*. London: Zed Books

The State interacts with other States in the international environment, which is the province of national security; survival of the State in the international environment.[32] However, due to internal dynamics within the State that threaten the legitimacy, sovereignty and thus territorial integrity, coupled with the very internationalization of these domestic threats (intermesticity), what happens in the internal environment affects the external environment and vice versa. As such what affects the internal survival of the State (domestic security) in the internal environment affects how the State projects itself, promotes and protects national interests in the international environment (national security). The two environments cannot be separated as they are inextricably linked.[33] The net result of this intermesticity is that domestic security affects the national security of a country. This understanding is based on, for instance, that foreign policy should be based on domestic policy and defense policy be aligned with internal security policy.

Further, it is in the domestic operating environment that a State has control over and can determine what happens, while in the external operating environment, the State can only influence the happenings through persuasion, diplomacy and soft power.[34] Domestic environment therefore becomes key in the survival of the State in the international operating environment. Consequently, a State's internal security provisioning becomes of paramount interest in national security arrangements.

Consequently, this study adopts the broadened conceptualization as provided for in the Constitution of Kenya, which views national security as the "protection against internal and external threats to Kenya's territorial integrity and sovereignty, its people, their rights,

[32] Makumi Mwagiru, "Dyads, Triads and Grand Strategy: The Colour of Kenya's Operating Environment." In Njoroge, H. and Mwagiru, M. (eds) (2019), *Grand Strategy in Kenya: Concepts, Context, Process and Ethics.* Three Legs Consortium, vol. 1, 1st edn, pp. 67-86
[33] Ibid, p. 76
[34] Ibid, p.74

freedoms, property, peace, stability and prosperity and other national interests."[35] In light of this operationalization, protection of the person and property is an aspect of national security.

Homeland Security

The United States of America (USA) Department of Homeland Security defines homeland security as the national efforts geared towards ensuring a safe, secure and resilient homeland against the threat of terrorism and other hazards within the United States. Whereas national security is about ensuring survival of the State in a highly dynamic external environment,[36] homeland security is about securing the State internally against internal and external threats. The concept is relevant to the study because the operational environment of private security providers is in Kenya and regulated by the Kenyan law.

The weakness with the USA definition is that the focus is on terrorism threat. Homeland security is about the sum total of comprehensive national efforts that are geared towards the safety, security and resilience of the homeland against all threats, including pandemics.

This study adopts Kiltz and Ramsay's definition of homeland security which entails concerted and collaborative national efforts to ensure a country is safe, secure and resilient against threats and other catastrophes.[37] This is achieved through such comprehensive efforts as detecting, deterring, protecting and responding to various threats and emergencies. In Kenya, it would require collaborative efforts of among others national security organs, other government security agencies and the private security sector to ensure homeland security.

Private Security

Private security connotes all other security arrangements that are not directly provided by the State. These arrangements are provided by either companies, groups or individuals. Schreier

[35] Article 238(1) of the Constitution of Kenya 2010
[36] Mwagiru, M. (2019), *Policy and Strategy in National Security: Contexts, Perspectives and Challenges in East Africa*. Three Legs Consortium, p. 20
[37] Kiltz, L. and Ramsay, J. D. (2012), *Perceptual Framing of Homeland Security*. Homeland Security Affairs, vol. 8(15)

and Caparini define private security to include both private military companies (PMCs) and private security companies (PSCs). They argue that the military outsources and contracts out part of the military operations to PMCs to boost the military capacity.[38] As such PMCs comprise of ex-military personnel who have prior military training, doctrine and sophisticated systems who provide military-related training and operations for a pay. Further, they argue that PSCs are companies that specialize in providing security and protection of personnel and property including humanitarian and industrial assets for paying clientele.[39] PSCs personnel therefore are not necessarily ex-military with prior military training, doctrine nor sophisticated systems. The difference between PMCs and PSCs lies in the modus operandi where there is a differentiation in the intensity of the training, doctrine and systems.

The strength in Schreier and Caparini's definition is that it is wide enough to encompass both the military-related security provisioning (mercenarism) and all manner of private security services, offered to clients for a pay. However, the aspect of paying clientele limits provision of private security services to paid companies and thus excludes individuals and groups of individuals who provide security services without direct payment.

The Private Security Regulation Act 2016 defines private security service provider as a person or body of persons, other than a state agency, registered under the Act to provide private security services. The definition encompasses private companies, groups and individuals registered under the Act. The weakness of this definition is that it excludes militia, vigilantes and other unregistered providers, which also have an impact in homeland security provisioning. For purposes of this study, we consider both registered and unregistered providers.

[38] Shreier, F. and Caparinini, M. (2005), *Privatising Security: Law, Practice and Governance of Private Military and Security Companies*. Geneva Center for the Democratic Control of Armed Forces, Occasional Paper No.6, p.17

[39] Ibid, p.18

2.0 Literature Review

Proliferation of Private Security Providers

Wairagu *et al* and Shaw in their study on the private security note that there is a growing disconnect between the police and the public which has led to the rising number of private security companies due to the demand of security by individuals, companies and institutions.[40] This is exacerbated by dwindling public trust on the police ability to guarantee protection and sometimes the police becoming rogue and perpetuate criminal activities. Due to the increasing insecurity, people who can access and willing to pay for security services turn to the private security to ensure security of their person, families, businesses and properties. This is because it is easy to hold accountable the private security providers by terminating the contract between them rather than going the onerous way to hold the government accountable for insufficient protection. However, the private security providers only come in to fill the gap left by the police who are unable to offer adequate security to all thus complement the State's security resources[41] and does not rival the mainstream security agencies.[42]

Seen from this lens of government inability to provide security, private security providers try to provide solutions to the problem by commodifying and commercializing security. This commercialization is to be attained through capital accrual, on the one hand, while on the other hand there is securitization of capital where capital accrual is conducted in the name of security.[43] Private security providers are out to make profits from their capital investments and will therefore, for instance, choose and employ technologies that are cheapest in order to

[40] Wairagu, F., Kamenju, J. A. and Singo, M. (2004), *Private Security in Kenya*. Security, Research and Information Centre (SRIC), Nairobi; Shaw, M. (2002), *Crime and Policing in Post-Apartheid South Africa: Transforming Under Fire*. Bloomington, Ind.: Indiana University Press

[41] Mkutu, K. and Sabala, K. (2007), *Private Security Companies in Kenya and Dilemmas for Security*. Journal for Contemporary African Studies, vol. 25(3), pp. 391-416

[42] De Waard, J. (1999), *The Private Security Industry in International Perspective*. European Journal on Criminal Policy and Research, vol. 7(2), pp. 143-174

[43] Abrahamsen R. and Williams M. C. (2005), *The Globalisation of Private Security. Country Report: Kenya*. Aberystwyth: Department of International Politics, University of Wales at Aberystwyth

maximize profits. The private security providers are in business and answerable to the paying clients as per the terms of the contract.[44] If the demand continues and more clientele seek the services, the weakness in the commodification then arises as to how the government needs to regulate this marketplace to ensure protection of those who can't afford, which their study does not address. This study therefore seeks to consider how the government should regulate the proliferated marketplace to maintain command and control of private security entities.

Increased crime and perceived inability of the public policing agencies to guarantee security of the citizenry has seen many citizens take up arms for self-protection, including formation of groupings like gangs and vigilantes.[45] This therefore means that protection of the individual and property has been devolved to ordinary citizens. However, this devolution does not mean the State has surrendered the responsibility of providing security.[46] However, this perspective does not address the questions; what is the impact, architecture and mechanisms of this devolution so that the State maintains command and control of the private security provisioning?

Holmqvist argues that the global war on terrorism has led to an increase in the use of private security companies.[47] Because of the threat of terrorism, states are increasingly incorporating private security companies in their efforts to counter terrorism. The United States' approach to the global war on terrorism can be understood from this perspective especially in its

[44] Shaw, M. (2002), *Crime and Policing in Post-Apartheid South Africa: Transforming Under Fire*. Bloomington, Ind.: Indiana University Press

[45] Mkutu, K. and Sabala, K. (2007), *Private Security Companies in Kenya and Dilemmas for Security*. Journal for Contemporary African Studies, vol. 25(3), pp. 391-416

[46] Ibid, p. 393. Also Abrahamsen and Williams (2005), *The Globalization of Private Security: Kenya Country Report,* Aberystwyth: Department of International Politics, University of Wales at Aberystwyth at p. 5 note that increased crime rate, fear of international terrorism and the inability of public security services to provide adequate protection are the factors driving expansion of private security in Kenya

[47] Holmqvist, C. (2005), *Private security companies: The case for regulation*. Policy Paper No. 9: 124-156. Stockholm International Peace Research Institute (SIPRI). Stockholm: SIPRI

counter-terrorism strategies in Afghanistan and Iraq.[48] The US has made use of private military companies incorporating them into the military operations.

She finds out that private military companies' activities in the cases of Afghanistan and Iraq takes place in tandem with presence of a large international military force. The US Government's relationship with the private security sector is premised on the guiding principle that as much as possible should be outsourced, except the 'core government' or 'mission-critical' functions. Further, the private security companies were increasingly used in the realm of human intelligence. This involved primarily smaller companies supplying former intelligence agents as actual 'bodies on the ground' in sensitive locations, especially in Pakistan.

However, her main focus is on the role of private security firms in the US's global war on terrorism in Afghanistan and Iraq, which is an overt and high-profile venture undertaken outside the United States of America soil. Further, this focus is on the military intervention and occupation ("outsourcing") and therefore leaves out the elusive low profile and critical aspects of countering terrorism that targets the so-called soft targets; including unarmed civilian mass gatherings in the USA homeland. Also, her focus does not delve into issues of cooperation and legislative regulation and control.

In Kenya the problem is within; there have been various terrorist related attacks. Though the Kenya Defence Forces are in Somalia to deal with the menace of Al-Shabaab, there is no evidence that they have specifically contracted the services of private security (military) companies in their operations. However, within the country, mainstream security agencies are increasing partnering with private security companies to provide security services like directing traffic at social places, providing access checks especially to malls and other institutions, alarm response, guarding services among other duties. The question we ask is,

[48] US Quadrennial Defense Review of 30th September, 2001

what is the legal implications of relational dynamics between private and public security providers in the war against terrorism?

Further, her analysis emphasizes on the new threat perception that has opened up and highlighted numerous roles for the private sector i.e. private security provision of intelligence in counter terrorism. Though intelligence gathering and collection is one of the means to counter terrorism and other crimes, the Kenyan private security companies have not yet fully embraced this emerging trend as this role has been left to government intelligence agencies. It is until the enactment of the Private Security Regulation Act, 2016 that the private security providers have been mandated to share information with the national security organs. But this raises a further question of how should this sharing model be like and what are the legal implications especially on the right to privacy?

Similarly, Howie on his part focuses on the role of security guards in countering terrorism in the tourism sector. He argues that in the tourism sector, the concern of tourism safety involves a complex array of security systems and practices including security technologies that are manned by properly trained and effective security guards.[49] He agrees that the role of private security guards in countering terrorism is an issue that has not been widely studied or well understood. The guards are the first line of defense and responders against terrorists as they stand guard at entrances to buildings, sporting events, hotel lobbies or other public places. However, his focus on the role of security guards is from the social perspectives; pay, working conditions and security risks involved. Whereas Howie's study focuses on the social role of security guards as one of the counter-terrorism responses that involve hiring of security guards, it does not provide the linkage to the impacts of these counter terrorism efforts with public policing in homeland security provisioning. The analysis also does not

[49] Howie, L. (2014), *Security Guards and Counter-terrorism: Tourism and Gaps in Terrorism Prevention*. International Journal of Religious Tourism and Pilgrimage, vol. 2(1), Article 7

delve into how the design and architecture of the cooperation between private security and public policing should be.

Impact of the Proliferation on Relational Dynamics

The relationship between the public and private security and the roles played by both characterize their relational dynamics of security provisioning. The public security providers would want to maintain command and control which can either be functional, social or political. On the other hand, the private security providers would like to have a free hand in their operations devoid of government intervention because they are in a market of providing a service to the clientele.

The relationship between public and private security providers is characterized by suspicion and antagonism.[50] There is inadequate sharing of information and thus no efficient collaboration between them. However, this does not delve into the issue of how this characteristic relationship impacts the relational dynamics and hence security provisioning. They also do not consider the legal implications of these relational dynamics.

Further, Sarre and Prenzler advance various models to guide the relationship arguing that there is no one single model that can entirely explain the relationship. However, the models they present have not been tried and tested in the Kenyan environment. The question then becomes, how should the models fit within the Kenyan security provisioning dynamics and regulatory framework?

Cooperation and partnership between private and public security providers is the highest level of the relationship in policing.[51] Because of this cooperation, pluralized policing has emerged in an effort to enhance crime prevention strategies where the State policing agencies work

[50] Sarre, R. and Prenzler, T. (2000), *The Relationship Between Police and Private Security: Models and Future Directions*. International Journal of Comparative and Applied Criminal Justice, vol. 24, No. 1, pp. 91-113
[51] Gumedze, S. (ed.) (2007), *Private Security in Africa: Manifestation, Challenges and Regulation*. Institute for Security Studies series, 139, p. 28

together with non-State actors including private security providers.[52] However, in this pluralized model, he neither examines how the relational dynamics affect security provisioning nor the legal implications of such an arrangement, which aspects our study seeks to consider.

On their part, Thuranira and Munanye use the perspective of collective good theory to argue that the police and private security sector in Kenya function in a mutually exclusive manner in respect to security provisioning.[53] Of course the private security entities are not in the business to serve the general public good, they only serve the needs of paying customers. If there is any contribution to prevention of crime, they argue, it is minimal. However, the main focus of their study is collaboration between the public and private security companies in fighting crime generally. But even within this collaboration they do not delve into the impacts of the relational dynamics and the legal implications of the collaboration.

Further, their study establishes that collaboration exists mostly in areas of common protection of public gatherings, transport and security of money, information exchange, and private security handing over suspected criminals to the police. Additionally, they argue that partnership policing exist in information sharing leading to establishment of information sharing protocols.[54] These dynamics are present in Kenya. What they do not consider are the legal implications of the information protocols and how the design of the regulatory framework in the collaborative relationship should be.

The impact of relational dynamics has been considered by Krahmann from the perspective of how the security services are provided. To him, there is a shift from security being a common good to being a commodity. When security is a common good, the State maintains or should maintain the monopoly on the legitimate use of violence in provision of security since private

[52] Ibid, p.28
[53] Thuranira, N. and Munanye, F. J. (2013), *Collaboration Between Public and Private Security in Kenya*. International Journal of Arts and Entrepreneurship, vol. 1(3), pp. 1-16 at p. 12
[54] Ibid, p.12

security providers are in the market, driven by a profit motive.[55] However, the very proliferation of private security providers due to growing demand for security services undermines this very monopoly of States. His focus is on the shift from States to markets in the provision of security and the implications arising therefrom in the Trans-Atlantic region. He however does not consider the legal implications of this shift and how the regulatory architecture should be designed to take care of private security entities who are in the market and the only motivation is maximizing on profits.[56]

Krahmann then suggests that security is a public good and the private security market focuses more on some threats than others so that they can offer excludable services and hence the increased focus on terrorism, transnational crime, among other threats. In this focus on the commodification of security in the Trans-Atlantic region, private security entities will only 'sell' their services to paying clients on demand-driven basis and not offer them freely as a common good. Then we ask, what happens to the citizenry who cannot afford to pay directly for the service and what is the impact the resultant relationship between private and public security providers? This arrangement also has legal consequences, what are these legal implications?

Legal Implications of the Proliferation and Relational Dynamics

State monopoly in security provisioning has waned especially during the past 30 years due to the creation of a host of private and community-based agencies that deal with crime.[57] As such private security providers have joined the fray in providing security services, which essentially means the public policing agencies, who are legally mandated to provide security, are no longer the sole providers of security in contemporary society. However, the critical

[55] Krahmann, E. (2008), *Security: Collective Good or Commodity?* European Journal of International Relations, vol. 14(3), pp. 379-404

[56] Berg, J. (2004), *Private Policing in South Africa: The Cape Town City Improvement District – Pluralization in Practice*. Society in Transition, vol. 35(2), pp. 224-250

[57] Jones, T. and Newburn, T. (2002), *The Transformation of Policing? Understanding Current Trends in Policing Systems*. The British Journal of Criminology, vol. 42(1), pp. 129-146

question to be addressed is that of the socio-political and legal implications of private security entities coming in to perform hitherto public policing functions.

Mkutu and Sabala make a case for regulation of the private security sector in Kenya. They note that, then, the private security companies were registered as business enterprises under the Companies Act, Cap. 486 Laws of Kenya, thus making them businesses. They were to be governed by the general law relating to registered companies and this was problematic in terms of their relations with existing security apparatus. By then there were no standards set to define and control the operations of the private security providers. However, their arguments are mainly focused on the lack of policies and laws to guide the registration and operations of the private security companies as being in itself a threat to security. They generally put forward a case for regulation of the private security companies in order to tackle the problem of criminality but did not delve into what the legal framework should look like in the security provisioning architecture.

They further consider the terms of employment for purposes of the basic wage payment. They argue that many private security companies are formed purely on the commercial basis with the motive being profits. They present the argument of linking low wages to crime, especially those employed to protect. There are weaknesses in this argument; it only considers waged employees, does not delve into the impacts of the relational dynamics in homeland security provisioning and does not consider individual private security providers and how their pay relates to crime.

Colona and Diphoorn consider policing partnerships in Nairobi. They find that the private security providers are the "eyes, ears and wheels" to the public policing agencies.[58] They note that the partnership entails the private security providing patrol vehicles and paying the police officers who accompany them in the patrols. The patrols are conducted selectively and in

[58] Colona, F. and Diphoorn, T. (2017), *Eyes, Ears and Wheels: Policing Partnerships in Nairobi, Kenya.* Conflict and Society: Advances in Research, vol. 3, pp. 8-23

areas where such private security services are hired. In terms of information sharing, the private security personnel report to specific police stations and/or officers about crime, especially when they need assistance. The police on the other hand provide armed escort. Despite this cooperation and collaboration, the question is, how should the regulatory architecture of the cooperation be? Further, the study does not delve into the impact of the relational dynamics in terms of whether the areas they patrolled were secure or not as a consequence of the joint patrols.

Colona and Diphoorn also consider aspects of the legal regulatory framework in the policing partnerships. In as much as they agree that the Private Security Regulation Act 2016 is to formalize the cooperation and collaboration, they are pessimistic on how the Act would be implemented. Notably, they raise issues on budgetary constraints for the implementation, the proposed training standards for security officers, the problem of renewing licenses and the general fear that the Authority established by the Act is more a "State affair" that will serve the State interests. They also raise concerns of the Act forbidding arming of private security personnel and criticize the generality of section 45 (Part VI) of the Act on the duty to cooperate with national security organs. In the cooperation, they note that the Act makes private security sector subordinate to the police and sometimes the police may abuse this position to call on private security providers to regularly assist whereas they don't pay for such services.[59] Despite raising these issues, they do not provide a cooperation/collaboration framework and critically consider impacts of regulatory controls on the relational dynamics in homeland security provisioning.

In terms of regulatory controls, Abrahamsen and Williams consider the question of minimum wage and security for all.[60] They note that private security is an important part of the

[59] Colona, F. and Diphoorn, T. (2017), *Eyes, Ears and Wheels: Policing Partnerships in Nairobi, Kenya*. Conflict and Society: Advances in Research, vol. 3, pp 8-23 at p. 17

[60] Abrahamsen, R. and Williams, M. C. (2005), *The Globalisation of Private Security. Country Report: Kenya*. Aberystwyth: Department of International Politics, University of Wales at Aberystwyth

economy as it creates employment opportunities and that guarding is a low paying job and the guards work for long hours. They also note that the Kenyan government tried to address the issue of welfare through the minimum wage amendments in 2003. To them low wages contribute to the cycle of poverty and crime. However, they don't indicate how much should be the minimum wage or how the design of the welfare package should be in the regulatory framework.

Existence of contractual agreements point to the issue of accountability.[61] It is on this basis of paying clientele that the private security sector has been thriving in Kenya. With the distance decay in the public policing which is as a result of the very incapacity of police to deal with insecurity, the question of accountability is key in maintaining legitimacy of the private security providers. However, Shaw does not address the critical question, how should these contractual agreements fit into the realm of regulatory controls in homeland security provisioning? What are the impacts and place of these private contracts vis-a-vis the social contract? Or how should the design of accountability be operationalized in the regulatory framework?

Oversight and monitoring of private security providers is key in regulatory controls. Anthony Minnaar notes that, in the South African case, the private security sector is regulated by the Private Security Industry Regulatory Authority Act (No. 56 of 2001).[62] However, the legislation does not specifically set up an oversight and monitoring body to deal with the working conditions and service complaints emanating from clients other than the actual private policing actions. In Kenya, the Private Security Regulatory Authority established under section 7 of the Private Security Regulation Act is charged with the responsibility of implementing the Act, monitoring operations of private security providers and licensing,

[61] Shaw, M. (2002), *Crime and Policing in Post-Apartheid South Africa: Transforming Under Fire*. Bloomington, Ind.: Indiana University Press

[62] Minnaar, A. "Oversight and Monitoring of Non-State/Private Policing: The Private Security Practitioners in South Africa" in Gumedze, S. (ed) (2007), *Private Security in Africa: Manifestations, Challenges and Regulation.* ISS Monograph Series, No. 139, p. 127

among others. This provides the oversight and monitoring. However, efforts to operationalize the Authority only began in 2019 and therefore questions are abound as to how it should go about its business. Further, there is no much literature on the exercise of powers bestowed on the Authority to oversee training and the general welfare issues of private security providers. The question then becomes, how should the regulatory framework be designed to give the Authority effective powers?

From the 'security assemblages' perspective, State power, authority and control are eroded due to inability to guarantee protection leading to State disassembly.[63] This leads to emergence and growth of other security actors including private security providers to form networks of power. With these networks of power, there is shift in the global governance resulting in formation of 'hybrid' security networks.[64] Consequently, there is a fragmentation and diversification of policing in the marketplace where a plethora of agencies and agents are involved in security provisioning i.e. global security assemblages.

The net effect of these global security assemblages is that there are important developments in the relationship between security and the sovereign State, structures of political power and authority and the operations of the global capital.[65] The strength of this argument is that it provides an explanation of the contemporary networked security governance. However, it does not delve into the legal and relational impacts of this networked security governance in homeland security provisioning. The question that arises is, how should we ensure the legal rationalization of this power in the security assemblages so that the State maintains command and control?

[63] Abrahamsen, R. and Williams, M. C. (2009), *Security Beyond the State: Global Security Assemblages in International Politics*. International Political Sociology, vol. 3, pp. 1-17
[64] Abrahamsen R. and Williams M. C. (2007), *Securing the City: Private Security Companies and Non-State Authority in Global Governance*. International Relations, vol. 21(2), pp. 237-253, at p. 241
[65] Supra n. 63 at p. 3

As such there is a growing trend internationally towards the privatization of security and the outsourcing of State functions which typifies this steady erosion of State monopoly over all forms of organized violence. With the advent of the private security sector, the State is ceding some of its sovereignty on matters of maintaining law and order and averting conflicts.[66] However, private security responsibilities are mostly undertaken on the instigation of private individuals or corporations, who in turn pay for the services directly to the relevant service provider.[67] One makes a choice about what one wants to pay for to enhance one's security, then one determines who, among the many security entities, should provide that service, when to provide it, where to provide it, how to provide it and at what cost, and then payment is made for the service.

Therefore, the State does not cede the power over control of instruments of violence, it only adopts a strategic relation to other forces of social control in order to deal with the threats.[68] One of the mechanisms in the shift is cooperation and collaboration with the private security providers. Since the State does not cede the power, the question that arises is, does the State know of all private security providers and what legal mechanisms exist for the State to know? How should such mechanisms be designed for the State to maintain effective command and control of private security providers?

From the foregoing literature, it is clear that private security providers have emerged to provide security services because of increased demand for the services. This is due to high rates of insecurity exacerbated by crime, terrorism and the inability of the public policing agencies to guarantee the citizenry of their protection. However, despite the various studies being conducted on the issue of private security provisioning, there is little literature on the

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[66] Wairagu *et al* (2004), *Private Security in Kenya*. Security, Research and Information Centre (SRIC), Nairobi, p.7

[67] Gumedze, S. (2007), *The Private Security Sector in Africa: The 21st Century's Major Cause for Concern.* ISS Paper no. 122. Pretoria: Institute for Security Studies

[68] Abrahamsen R. and Williams M. C. (2009), *Security Beyond the State: Global Security Assemblages in International Politics*. International Political Sociology, vol. 3, pp. 1-17 at p. 4

impact of the proliferation on homeland security provisioning and the regulatory framework. The present study therefore seeks to critically examine the impact of this proliferation on homeland security provisioning as underpinned by the legal framework.

2.1 Justification of the Study

This study is justified on both policy and academic fronts.

2.1.1 Academic Justification

From a collective good perspective, security provisioning is non-excludable and in Kenya, there is collaboration between public and private security.[69] Focus is on how the cooperation and collaboration in security provisioning should be realized and made mutually beneficial to all the players. In this cooperation, there is proposed the need for formal regulation of private security providers. This would create accountability, enhance cooperation and establish information sharing protocols.[70]

However, the public police dominate security provisioning arrangements in policing partnerships.[71] This domination amongst the other actors including private security companies and residents' associations makes the police the coagulating agent while the other actors become the 'ears, eyes and wheels' of the police. The private security providers are therefore junior to the police in the relational dynamics.

Because private security providers are unarmed in Kenya by law, there is a direct exchange of firearms for mobility; vehicles and other financial resources.[72] The central argument is that the firearm, which the police possess, is the symbol of power and thus re-accentuates the relationship. Without the firearm, the role of police in the partnership significantly

[69] Thuranira, N. and Munanye, F. J. (2013), *Collaboration Between Public and Private Security in Kenya.* International Journal of Arts and Entrepreneurship, vol. 1(3), pp. 1-16
[70] Ibid
[71] Colona, F. and Diphoorn, T. (2017), *Eyes, Ears and Wheels: Policing Partnerships in Nairobi, Kenya.* Conflict and Society: Advances in Research, vol. 3, pp. 8-23
[72] Diphoorn, T. (2019), *'Arms for Mobility': Policing Partnerships and Material Exchanges in Nairobi, Kenya.* Policing and Society: An International Journal of Research and Policy

diminishes.[73] Thus it is in exchange of the firearm that private security providers collaborate with the police by availing patrol vehicles and other financial resources.

The foregoing dynamics in the policing partnership are apparent in Kenya. What the literature does not tell us is; how do the relational dynamics affect homeland security provisioning? What are the legal implications of such partnerships? How should the regulatory framework be designed to effectively anchor the partnership? This is what our study is interested in.

2.1.2 Policy Justification

In the aftermath of the post-election violence in 2007/8, the Waki Commission Report *inter alia* proposed security sector reforms. Later, the Task Force on Police Reforms (The Ransley Task Force) noted that private security is a significant player in Kenya's security sector and proposed; fast tracking the draft Private Security Regulation Bill 2004 to define roles and responsibilities of private security providers, recognition of the private security in the National Security Policy and the National Policing Policy.

Consequently, there have been various attempts aimed at reforming security provisioning in the Kenya. However, as pertains private security provisioning, only the Private Security Regulation Act 2016 has been enacted since then. There is neither a comprehensive National Security Policy nor a National Policing Policy that recognizes and anchors private security provisioning in Kenya. Additionally, there were attempts by the Cabinet Secretary for Interior and Coordination of National Government to gazette the Private Security (General) Regulations 2019[74] to operationalize the Act. However, the gazettement was annulled by Parliamentary Committee on Delegated Legislation in December 2019 because it lacked public participation.

[73] Diphoorn, T. (2019), *'Arms for Mobility': Policing Partnerships and Material Exchanges in Nairobi, Kenya*. Policing and Society: An International Journal of Research and Policy

[74] Kenya Gazette Special Issue, Legal Notice No. 10 dated 5/7/2019

This research will therefore seek to propose how private security provisioning should fit into the legal and policy frameworks on homeland security and thus national security architecture.

2.2 Conceptual Framework

The dynamics of private security provisioning in homeland security can be explained from the Social Contract conceptualization. In the Hobbesian perspective, citizens willingly consent to State authority for limiting of their freedoms in exchange of the State's protection and adequate provision of public goods and services. The strength of this perspective is that the State is able to maintain law, security and order within society.[75] However, this is dependent on the equilibrium between society's expectations and the obligations of the State. On the flip side, the contemporary State lacks the exclusive power of control of the instruments of violence as various challenges overstretch its capacity to meet its obligations thus breakdown of law and order. This results in activation of the inherent right to security by the citizens who form different groups to provide security.

In order to address the weaknesses of the Social Contract perspective, the 'Political Economy of Security' perspective can be used.[76] In this perspective, shifts in supply and demand (economic context) and state-centric conceptions of legitimacy (political context) shape security provisioning. The economic context witnesses State policing resources being increased in response to every outbreak of disorder.[77] In the 1970s there were fiscal constraints that put pressure on public service provisioning.[78] This forced reduction in government policing supply side, effectively fostering a demand for private security provisioning which, the executives of private security companies were quick to exploit. The strength of this perspective is that it offers a prudent supply side explanation for the rise of

[75] Thomas Hobbes, *The Leviathan,* edited by R. Tuck, Cambridge, Cambridge University Press, 1991
[76] White, A. (2012), *The New Political Economy of Private Security*. Theoretical Criminology, vol. 16(1), pp. 85-101
[77] Braithwaite, J. (2000), *The New Regulatory State and the Transformation of Policing*. British Journal of Criminology, vol. 40(2), p. 49
[78] Jones, T. and Newburn, T. (1998), *Private Security and Public Policing*. Oxford: Clarendon Press, pp. 98-104

private security. However, it offers a weak empirical explanation since between 1970 and 1990, the number of public security officers, for instance, in Britain and USA actually increased by 35% and 64% respectively.[79]

The current notion of private security provisioning can be explained from a Pluralistic perspective. In the contemporary security provisioning environment, there is a shift from State-centric to a more pluralistic form of governance due to social differentiation that disperses power to multiple actors.[80] As such various forms of social and economic life are being governed beyond the State and the State only monitors this life through regulation.[81] As such non-State security providers operate within a plural security provisioning environment where there are multiple security providers.

In these circumstances, the traditional view that the maintenance of public order and security is the sole responsibility of the police is clearly no longer tenable.[82] But since the State is the overall actor, it needs to maintain command and control of the other actors in this security provisioning through regulation. This study will therefore adopt the Pluralistic approach to explain the proliferation, consequent relational dynamics of private and public security providers and the resultant legal implications in homeland security provisioning in Kenya. The strength of this approach is that it appreciates that in matters security, there are multiple security provisioning actors; both State and non-State, and that the State's role is to coordinate and regulate the non-State actors. The role played by non-State actors is not to supplant but rather to supplement State efforts. However, this assumes that both actors aim to achieve the same objective despite the appreciation that non-State actors are profit driven.

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[79] Braithwaite, J. (2000), *The New Regulatory State and the Transformation of Policing*. British Journal of Criminology, vol. 40(2), p. 53

[80] Dahl, Robert A. (1956), *A Preface to Democratic Theory: Expanded Edition*. Chicago, University of Chicago Press. Pluralists believe that social heterogeneity prevents any single group from gaining dominance.

[81] Rose, N. and Miller, P (1992), *Political Power Beyond the State: Problematics of the Government*. The British Journal of Sociology, vol. 43(2), pp. 173-205

[82] Sarre, R. and Prenzler, T. (2000), *The Relationship Between Police and Private Security: Models and Future Directions*. International Journal of Comparative and Applied Criminal Justice, vol. 24(1), pp. 91-113

2.3 Operationalization of the Variables

A written or visual tool that either narratively or graphically illustrates the key (independent and dependent) variables to be studied and their presumed relationship helps to operationalize variable.[83] The relationship between the independent and dependent variables of this study is as shown in the figure below.

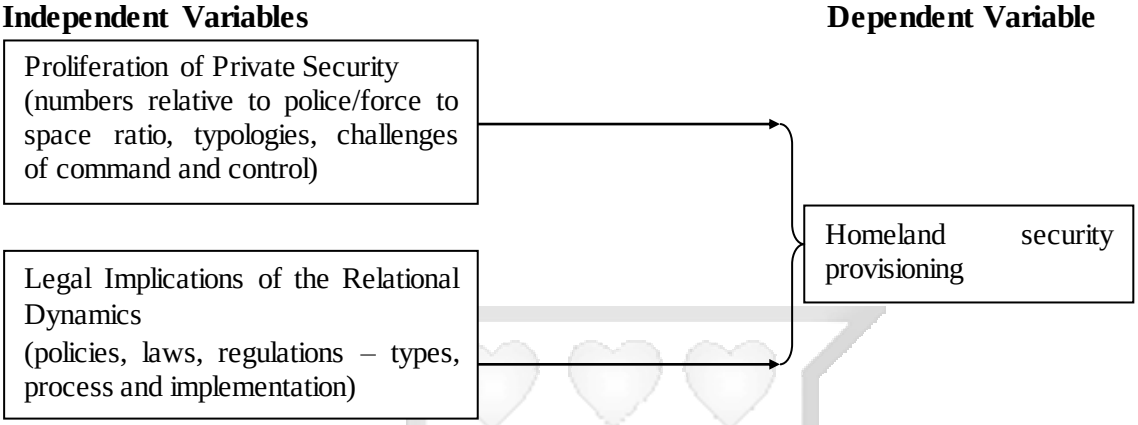

Figure 1.1: Relationship Between Variables (Source: Author, 2021)

In the above relationship, each of the two independent variables, and which form the research questions of the study, either independently or collectively have an impact in homeland security provisioning.

The above concepts have further been operationalized as follows:

Table 1.1: Operationalization of Study Variables

Concept	**Indicators**	**Observable/Measurable Variables**
Proliferation and Impact on Relational Dynamics	➢ Numbers relative to police ➢ Force to space ratio issues ➢ Typologies of private security provisioning entities ➢ Challenges of command and control	Crisis in security provisioning; • Uncoordinated approach to emergency responses • Attacks on public police • Organic and Organized groups • Breakdown of law and order.
Regulatory framework	▪ Policies ▪ Laws ▪ Regulations ▪ Internal regulatory mechanisms and procedures	Crisis in Command and Control; • Uncoordinated Policy • Uncoordinated Laws

[83] Miles, M. B., Huberman, A. M. and Saldana, J. (2014), *Qualitative Data Analysis: A Methods Sourcebook*. SAGE Publishing, 4th edn

2.4 Research Hypotheses

H I: The crisis in security provisioning is a function of proliferation of private security providers with unresolved legal gaps underpinning legal framework

H II: Establishing command and control of private security provisioning is a function of effective regulatory framework.

3.0 Research Design and Methodology

This section presents the methodology that was used to collect and analyze data. A methodology is a plan of action that links methods to outcomes.[84] The section also presents the research design, the area where the study was conducted, the study sample and sampling techniques and methods adopted. The research adopts largely a qualitative methodology because the variables can best be described rather than being measured.

3.1 Research Design

A research design constitutes the blueprint for the collection, measurement and analysis of data.[85] This research adopted a qualitative approach to collect and analyze data where information about people's attitudes, opinions or habits was described.[86] The emphasis of this study was to describe rather than judge. This design was used because the study sought to analyze the proliferation, its impact on relational dynamics and the legal implications of such proliferation.

3.2 The Area of Study

This study relates to Kenya. However, primary data collection was undertaken in Nairobi County, the capital city of Kenya, focusing on the formal uniformed private security companies. The choice of the companies within Nairobi is relevant because most of the established and mainstream companies have their headquarters in Nairobi, with branches

[84] Creswell, J. W. (2003), *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches.* 2nd ed., Thousand Oaks, CA: Sage

[85] Kothari, C. R. (2004), Research Methodology: Methods and Techniques. 2nd ed., New Age International Publishers, New Delhi

[86] Mugenda, O. M. and Mugenda, A. G. (2003), *Research Methods, Quantitative and Qualitative Approaches.* ACT, Nairobi

across the country. Further, most of the key interviewees for the interview schedules were based in Nairobi. The area of primary data collection is shown in the map extract below.

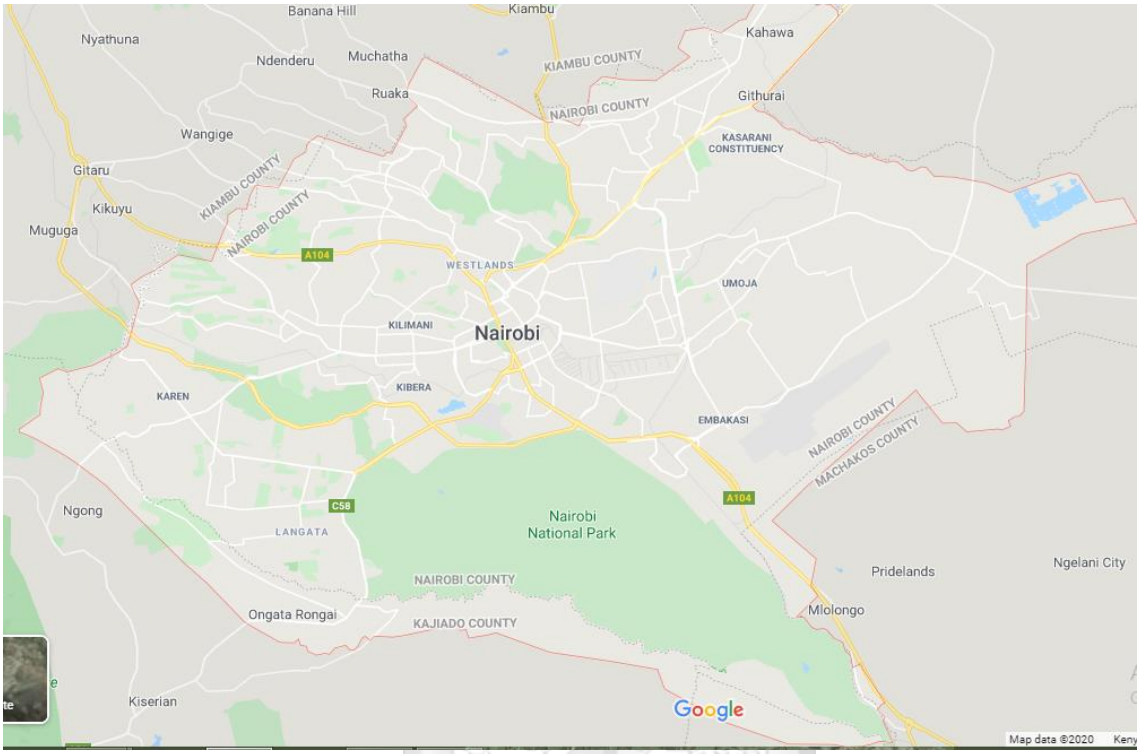

Figure 1.2: Map Extract of Nairobi County (Source**:** Google Maps Kenya, 2020)

3.3 Target Population

Population refers to the entire group of people, things, events or objects of interests that the researcher is interested to investigate.[87] Target Population on the other hand refers to the specific population from which information is being sought.[88] The target population for primary data in this study was formal uniformed private security companies within Nairobi who are registered with the Private Security Regulatory Authority. Further, other respondents were drawn from; the two main private security Associations, the private security workers union, office of the Inspector General of National Police Service and the Private Security Regulatory Authority.

[87] Bless, C., Higson-Smith, C. and Kagee, A. (2006), *Fundamentals of Social Research Methods: An African Perspective*. Juta & Co. Ltd

[88] Touliatos, J. and Compton, N. (1988), *Research Methods in Human Ecology - Home Economics*. Iowa State Press

3.4 Sampling Techniques and Sample Size

The study utilized simple random, stratified and judgemental sampling techniques in primary data collection. Simple random was used to identify companies and their security guards to who the questionnaires were administered. Stratified sampling was used to categorize the employees as managers, security supervisors or guards. Judgemental sampling was used to deliberately identify and schedule interviews with private security industry players believed to have crucial information being sought by the researcher. The strength of the sampling techniques is that specific and relevant information was obtained while its weakness is that other respondents with critical information were likely left out since they were outside Nairobi.

A sample size is the smaller size of the larger population.[89] The approximate population, according to the Private Security Regulatory Authority (PSRA), is 2,000 registered private security firms out of which 500 actively offer guard duties. In this case, the study utilized Yamane's formula of sample size determination using a confidence level of ninety percent (90%), with a margin of error of ten percent (10%). This is because the population is finite.

$$n = N/\{1+N (e)^{2}\}$$

Where n is the size of the sample, N is the size of the population and e is the margin of error (Yamane, 1967)

Using the above formula, the study used a sample size of ninety five (95) private security firms, arrived at as follows:-

$$n = 2{,}000/\{1+2{,}000(0.1)^{2}\} = 95.238 \sim 95 \text{ firms}$$

The distribution of the respondents, questionnaires and responses from these firms was as follows:

Number of questionnaires sent out – 40x3 = 120

Number of questionnaires successfully returned = 98

[89] Cooper, D. and Schindler, P. (2008), *Business Research Methods*. 10th ed., New York, McGraw-Hill/Irwin

Table 1.2: Distribution of Questionnaire Respondents by Age and Gender

Gender/Age	11-20	21-30	31-40	41-50	Over 51	Total
Male	3	28	24	17	8	80
Female	0	9	5	3	1	18
Total	3	37	29	20	9	98

Source: Field data, 2020

3.5 Description of Data Collection Instruments

The main instruments of primary data collection involved use of questionnaires and scheduled interviews. To obtain the required data, the study used structured questionnaires with both open and closed ended questions. The questionnaires were administered to Managing Directors or Heads of Security and some security guards in the selected companies to get their responses on various variables. The self-administered questionnaires were issued using drop and pick method for data collection and distributed to the identified private security firms.

On the other hand, scheduled interviews were set up to collect data from senior private security company officials, private security employee Union, the Authority, selected senior police officers and the chairpersons of the two private security Associations. An interview is a set of questions that the interviewer or researcher asks the interviewee in order to gather relevant information. It can be structured or unstructured.

In structured interview, the researcher asks predetermined questions that he/she has prepared to be asked. In this study structured interview questions were used to collect data. Interviews were crucial in the study because some of the questions were open-ended and as a result needed a narrative response. The open-ended questions allowed the respondents to state their views and provide a wealth of information about the various issues on private security provisioning. Therefore, the scheduled interviews gave flexibilities in responses that the

interviewees provided. The interviews were personally conducted at the offices of the respondents or at agreed upon locations.

3.6 Data Collection Methods and Procedures

In this study both primary and secondary data collection methods were used. Primary data collection methods included use of questionnaires and scheduled interviews. Questionnaires are the most essential tools because of their capability to gather a great amount of data in a reasonably fast timespan.[90] They also assure secrecy and privacy while at the same time ensuring standardization.[91] The questionnaires had both closed-ended and open-ended questions.

For the closed-ended questions, data triangulation using both methodological and data as types of triangulation, was done. In methodological triangulation, more than one data collection technique was used while in data triangulation, multiple data sources were used. The quantitative data was then analyzed and tabulated in the final report.

Secondary data collection methods included a comprehensive document analysis of various existing subject-related books, publications, legal instruments, private security sector journals, periodicals and annual reports. Further information was gathered from articles and commentaries in the local daily newspapers on private security provisioning in Kenya.

In order to facilitate primary data collection, an introductory letter and necessary research licenses were obtained from the University and National Commission for Science, Technology and Innovation.

[90] Kothari, C. R. (2004), Research Methodology: Methods and Techniques. 2nd ed., New Age International Publishers, New Delhi, p. 59

[91] Cresswell, J. W. (1991), *Research Design: Qualitative, Quantitative and Mixed Methods Approach*. 2nd ed., SAGE Publications, p. 39

3.7 Pretest

The data collection instruments need to be pretested as a way of fine tuning them. This is critical as it will ensure both reliability and validity of the instrument to be determined. A pilot study of one of the private security firms, which was not to be included in the final study, was therefore undertaken to pretest the instruments. The pretesting was done one week before the actual data collection to allow improvements to the instruments.

3.8 Data Validity and Reliability

Validity in qualitative research entails the truthfulness and accuracy of the research findings.[92] It is concerned with the appropriateness of the data, processes and tools. A valid research, therefore, should establish what exists and valid research instrument should test what they are supposed to test. Reliability in qualitative research, on the other hand, describes repeatability, replicability and consistency of the respondents' accounts as well as the researchers' ability to gather and record data accurately.[93] It is the aptitude of the research method to produce persistently the same findings over repeated investigation periods. Put differently, it means that a researcher is required to get same or comparable findings after using the same or comparable methods on the same or comparable objects.

To guarantee validity and reliability in this study, the researcher ensured that appropriate research method, sampling techniques and instruments/tools were used and applied consistently. Further, the collected data was grouped into logical thematic areas and compared against each other for consistency and against the theoretical framework and the documentations quoted in the literature review to facilitate interpretations in line with the study objectives.

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[92] Le Compte, M. and Goetz, J. P. (1982), *Problems of Reliability and Validity in Ethnographic Research.* Review of Educational Research, vol. 52(1), pp. 31-60

[93] Selltiz, C., Wrightsman, L. S. and Cook, S. W. (1976), *Research Methods in Social Relations.* 3rd ed., New York: Holt, Rinehart and Winston

3.9 Ethical Considerations

Ethical considerations in research entail the principles that guide responsible conduct of research. Key among the most significant ethical consideration principles in research include; prioritizing and respecting dignity of research participants, not subjecting the participants to harm in any way, obtaining full consent from the participants before the study, ensuring adequate protection of the privacy of the participants, upholding anonymity of research participants, maintaining sufficient level of confidentiality of the research data, practicing honesty and transparency communication in regards to the research, declaration of any form of affiliation and sources of funding, being honest about the aims and objectives of the research and remaining impartial in collection and representation of primary data results.[94]

In upholding ethical considerations in this study, the research was guided by the Bryman and Bell principles. Firstly, the research ensured participation by respondents was purely voluntarily and the respondents were informed of their rights to withdraw from the research at any stage if they wished to. Secondly, the research ensured that the respondents' participation is based on informed consent by being given sufficient assurances and information regarding the study to allow them make informed decision on whether to participate or not. Thirdly, the research avoided use of discriminatory, offensive or other improper language in the drafting of questionnaire and scheduled interview guide questions.

Fourthly, the researcher consistently acknowledged works of other scholars and authors using the Chicago referencing system. Fifthly, the research maintained the highest level of objectivity in collection, discussions and analysis of data throughout the period of study. Lastly, the research will comply with Strathmore University research guidelines and observe anonymity and privacy of participants in the strictest terms.

[94] Bryman, A. and Bell, E. (2007), *Business Research Method*. 2nd edition, Oxford University Press

3.10 Data Analysis and Presentation

The data collected was analysed using a combination of Statistical Package for the Social Sciences (SPSS) software and content analysis in accordance with the research objectives. The information from the questionnaires was grouped into logical thematic areas, collated, processed and analysed to show the responses and compared against the theoretical framework and documentation quoted in the literature review to facilitate interpretation. The results of the analysis were also tabulated to produce descriptive data for discussion, presented in a descriptive form, sometimes quoting verbatim the responses by the respondents.

3.11 Chapter Outline

The study is organized into five chapters structured as follows:

Chapter One: Introduction

The chapter provides a background to the study, statement of the research problem, research questions and objectives as well as justification of the study, the literature review, conceptual framework to guide the research, the supposed hypotheses of the study and a description of the research design and the methodology adopted in collecting, analysing and presenting data. These components give the background that shapes the subsequent chapters.

Chapter Two: Historical Background

The chapter presents a historical analysis of the security provisioning dynamics in Kenya between 1963 and 2008 that led to the growth and development of private security entities in Kenya. It also analyzes the impacts of the growth on the relational dynamics between private and public security providers. The chapter is presented under the themes of the political regimes between 1963 and 2008.

Chapter Three: Proliferation of Private Security and Its Impact on Security Provisioning

The chapter responds to the first question of the study. Specifically, it examines and analyzes the impacts of the proliferation of private security entities, the consequent relational dynamics and its impact on homeland security provisioning. It considers aspects of the impacts of the force to space ratio dynamics and the different typologies of private security in homeland security provisioning.

Chapter Four: Legal Implications of the Private Security Proliferation in Kenya

This chapter responds to the second question of the study. Specifically, it examines and analyses the Policy anchorages of security provisioning within the homeland security architecture. It also provides a critical appreciation of the existing differentiated regulatory frameworks as pertains private security provisioning and their operationalization in homeland security in Kenya in terms of the types, process and implementation of such frameworks.

Chapter Five: Recapitulation, Conclusions and Recommendations

This chapter provides a summary of the findings, conclusions and recommendations. The findings are derived from the data collected, analyzed and presented in Chapters Three and Four. Conclusions and recommendations then follow from the summary of the findings.

Chapter Two

Historical Background

2.1 Introduction

This chapter provides a recapitulation of the history of security provisioning dynamics in Kenya in the period 1963 – 2008. It essentially examines the legal, socio-political and economic dynamics that engendered emergence and growth of the private security provisioning. The chapter grapples with the question, how did the legal and socio-political and economic dynamics inform the nature of private security provisioning and the consequent proliferation? Notably, the chapter analyzes security provisioning in the different political regimes in a bid to draw a link between legal socio-political dynamics and the growth of private security provisioning. The contention here is that the crisis of proliferation has its roots in the appropriation of the colonial State security provisioning logic under which State security provisioning tended to favor white settlers leaving natives to fend for themselves. In the contemporary security, elite benefactors of security provisioning maximize on a raft of self-protective measures, which the chapter notes, has spawned the growth of private security provisioning.

To this end, the chapter is organized around three sections that accord with Kenyatta, Moi and Kibaki Administrations. We note that these regime dispensations have over time in space evolved three spaces of security provisioning. First are spaces that emerged consequent to construction of outlying districts which structured security provisioning dynamics in the Northern Frontier District (NFD),[95] North Rift and other peripheral areas. Second are the subject/rural spaces which examine dynamics in rural areas such as rural central Kenya, Kisii, the Coastal and south Rift regions, among others. The third are the urban/peri-urban spaces which discusses provisioning in urban and semi-urban centers like Nairobi, Mombasa,

[95] Northern Frontier District comprised of Mandera, Wajir and Garissa, Isiolo, Marsabit and Moyale districts. See Whittaker, H. (2015) *Legacies of Empire: State Violence and Collective Punishment in Kenya's North Eastern Province, c. 1963–Present,* p.643

Kisumu, among others. We anticipate that examining these dynamics over time in space provides us with the necessary base to anchor our Chapters 3 and 4, which analyzes the effects of the proliferation on the resultant relational dynamics and the legal consequences inherent in the proliferation.

2.2 The Jomo Kenyatta Regime and Dynamics of Security Provisioning (1963–1978)

Upon independence on the 12th December 1963, the Kenyatta government adopted and retained most of the colonial legal frameworks, structures and security provisioning doctrine. The inherited frameworks and structures enabled the post-independent government to control the population, on behalf of the regime, through the administration police force and the provincial administration officers.[96] Essentially the Kenyatta regime can be characterized to have consolidated two forms of security provisioning; exclusionary, where public policing was consolidated around the capital with police absence in outlying spaces and oppressive, where security provisioning was aimed at power consolidation and regime protection. These were mediated by a raft of legal frameworks, suitably applied to each of the three spaces.

For the outlying districts space, Outlying District Ordinance 1902, Collective Punishment 1909, Stock Theft and Produce Ordinance 1933, the Special Districts (Administration) Ordinance 1934, among other legal instruments were used. By dint of the Outlying District Ordinance, the Northern Frontier District (NFD) became a "closed district" whereby non-resident travels to and from the district was prohibited except with permission from the Provincial Commissioner (PC). The Special Districts (Administration) Ordinance, on the other hand, gave the PC powers to demarcate 'tribal' grazing boundaries.[97] In case of violations, the provincial administration could impose communal and collective punishment,

[96] Otiso, W. N. and Kaguta, R. J. (2016), *Kenya at Fifty: State Policing Reforms, Politics and Law, 1963-2013*. Palgrave Macmillan, New York, pp. 221-244

[97] Whittaker, H. (2015), *Legacies of Empire: State Violence and Collective Punishment in Kenya's North Eastern Province, c. 1963–Present*. The Journal of Imperial and Commonwealth History, vol. 43(4), pp. 641-657, p.645

including confiscation of property, for defying authority under the Collective Punishment Ordinance.[98] Further, the Stock Theft and Produce Ordinance also provided for collective punishment for a community that failed to assist the security agents in pursuing livestock thieves. These Ordinances were meant help the government control the population and reduce conflict over grazing areas.

The Ordinances were also applied during the Shifta irredentist campaigns in the NFD that began on 24th December 1963, barely two weeks after independence, when a state of emergency was declared on the North Eastern Region.[99] Curfew orders and movement restrictions were imposed, communal punishment meted out, residents required to live within designated government villages and security forces conducted screening exercises.[100] Further, operation orders were issued to the 1st, 3rd and 5th battalion of the Kenya Rifles to crash the insurgency.[101] The net effect was that repression by government security forces created distance decay as 'hostile NFD' became militarized and isolated. The isolationalism led to local communities adopting self-securitization mechanisms, including formation of community militia, the Northern Frontier District Liberation Army (NFDLA).[102]

In the native/rural spaces, there were two elements of policing; absence of public policing hence deployment of police reservists and use of chiefs to control population. In the far flung areas where State policing was minimal or even completely absent, policing handicap led to rural communities losing faith in the institution of police, their legitimacy and adopting self-

[98] Whittaker, H. (2015), *Legacies of Empire: State Violence and Collective Punishment in Kenya's North Eastern Province, c. 1963–Present*. The Journal of Imperial and Commonwealth History, vol. 43(4), pp. 641-657, p.645
[99] Ibid, p.645
[100] Ibid, p.647
[101] Truth, Justice and Reconciliation Commission Report, 2013. Government of Kenya
[102] Hornsby, C. (2012), *Kenya: A History Since Independence*. I.B. Taurus & Co., p. 96

protection mechanisms.[103] This resulted in formation of community militia like the morans in pastoral areas, Chinkororo in Gusii, Mungiki in central Kenya, among others.

Additionally, the Kenyatta regime had retained the Kenya Police Reserve Ordinance 1948 which saw armed Kenya Police Reservists (KPRs) continue to recruited to operate alongside police in these native spaces. The KPRs were voluntarily recruited from their localities, armed by the State and deployed in the rural areas where they came from. However, the Ordinance lacked accountability mechanisms for the reservists and issuance/usage of firearms. This led to the privatization of public violence, by creating an unaccountable pastoralist State-armed civilian militia, which is problematic in homeland security provisioning as we shall see in Chapter 3.

Further, the Chiefs Authority Act Cap 128 Laws of Kenya, mandated chiefs and assistant chiefs to maintain order and prevent crimes in their areas of jurisdiction.[104] To do this, they were allowed to employ certain persons (*village headmen*) to help them.[105] Under the Act, the Chiefs had powers to arrest and carry out arrests where arrest warrants had been issued by appropriate judicial officers. However, because the Chiefs were not well equipped to arrest crime suspects, they had under them the tribal police (Administration Police) who helped in search, arrest and transportation of arrested persons to either police station or law courts.[106] Essentially, in this arrangement, there were administration police officers as enforcement personnel under the command of civilian chiefs who were part of the provincial administration to maintain law and order, protect lives and property.

[103] Mkutu, K. and Wandera, G. (2013), *Policing the Periphery: Opportunities and Challenges for Kenya Police Reserves*. Small Arms Survey, Graduate Institute of International and Development Studies, Geneva, pp. 41-42
[104] Sections 6 and 8 of the Chiefs Authority Act
[105] Section 7 of the Chiefs Authority Act
[106] Mbuba, J. M. and Mugambi, F. N. (2011), *Approaches to Crime Control and Order Maintenance in Transitional Societies: The Role of Village Headmen, Chiefs, Sub-Chiefs and Administration Police in Rural Kenya*. African Journal of Criminology and Justice Studies, vol 4(2), pp.4-8

Additionally, the *Ngoroko* squad,[107] a special unit organized along paramilitary lines was formed within the police force in the guise of an anti-stock theft operation to eradicate cattle rustling in the Rift Valley Province. However, the squad was actually meant to be an instrument of seizing power, if necessary, through assassinations to prevent non-Kikuyu from taking over leadership.[108] The effect of this was that the State had a militia of an armed paramilitary squad that was ready to be used for consolidation of political power.

In and around the urban/peri-urban spaces, the Kenyatta regime was characterized by attempts to quell a possible land uprising and use of the police to consolidate power. In the socio-economic context, the land question, which had been an issue during the Mau Mau uprising, continued being a thorn in the flesh. There were the landless Mau Mau fighters who needed to be settled while at the same time there emerged a landed gentry who bought back the White Highlands from where people had been displaced during the colonial period. This created the squatter versus private accumulation problem, set in the inequalities of which contributed to insecurity as the squatters struggled to eke a living.

The armed Mau Mau fighters had been given an amnesty period to surrender and register themselves and their guns. The period expired in January 1964. Whereas those who did not comply started being treated as common criminals, those who surrendered were neither compensated nor given special privileges.[109] Essentially the government did not fulfill its promises and the discontentment created the distance decay resulting in the government's inability to mop up the Mau Mau firearms.

[107] *Ngorokos* were dreaded members of a secretive section of the Anti-Stock Theft Unit, comprised mostly of Kikuyu officers, known as the Rift Valley Operation Team whose core mandate was unknown except to a few at the Police Department. After three months of the death of President Jomo Kenyatta, details of the plot, by Mount Kiambu Mafia, to assassinate the then Vice President Daniel Moi using the *Ngoroko* squad were confirmed in Parliament by Charles Njonjo, the then Minister for Constitutional Affairs, on 26 October 1978.

[108] Kariuki, G. G. (2001) *Illusion of Power: Reflections on Fifty Years in Kenya Politics.* Kenway Publishers, p. 74

[109] Hornsby, C. (2012), *Kenya: A History Since Independence.* I.B. Taurus & Co., pp. 114-115

On the issue of purchasing back the White Highlands by Africans, those who had money bought some of the land while those who were working on such lands but lacked money demanded that they be given the land freely.[110] Land inequalities characterized by few landed gentry and millions of landless people evolved. The former sought protection from the landless who were deemed potential criminals, which led to the deployment of administration officers and police to repress land-based uprising and the clamour for private security guards.

Notably, State policing became concentrated in and around the capital, mainly the propertied class,[111] to provide protection to those who were close to power. Those who were distanced from the State sought self-protection by employing "watchmen" and/or contracted private security companies. The net result was the emergence of State security abstinence and absence,[112] where police were either present, present but overwhelmed or completely absent. In the upmarket spaces, the police were present and worked alongside formal private security providers hence collaboration while in slums the police were either overwhelmed or absent which led to emergence of organic and organized groups as discussed in Chapter 3.

It is at this time that the demand for formal private security services arose. About eight private security companies (PSCs), including Kenya Kazi (KK) Security, Factory Guards (now Security Group) and Securicor, emerged to provide private security services in the country.[113] However, these companies were foreign-owned and there was no comprehensive data of all PSCs since they were registered as businesses under the Companies Act, Cap 486 Laws of Kenya. The Companies Act made PSCs only accountable to the shareholders. Further, the "watchmen" could not be registered as companies under the Act. The net result was that there was an incomprehensive poorly regulated private security provisioning sector,

[110] Hornsby, C. (2012), *Kenya: A History Since Independence*. I.B. Taurus & Co., pp. 117-119
[111] Mkutu, K. and Wandera, G. (2013), *Policing the Periphery: Opportunities and Challenges for Kenya Police Reserves*. Small Arms Survey, Graduate Institute of International and Development Studies, Geneva, pp. 20
[112] Ngunyi, M. and Katumanga, M. (2014), *From Monopoly to Olygopoly of Violence: Exploration of a Four Point Hypothesis Regarding Organized and Organic Militia in Kenya*. Nairobi: The Consulting House
[113] Abrahamsen R. and Williams M. C. (2005), *The Globalisation of Private Security: Country Report: Kenya*. Aberystwyth: Department of International Politics, University of Wales at Aberystwyth, p. 6

due to exclusion, lack of accountability to the government, coordination, command and control, which would in itself be a source of insecurity[114] as discussed in Chapters 3 and 4.

The net effect of the foregoing dynamics is that the inherited colonial socio-political and legal frameworks enabled the post-independent government to control the population through the police force[115] and the provincial administration for purposes of regime protection and consolidation. Security provisioning was meant to protect the regime at the expense of the citizens and their property. This embedded a resultant State-policing culture of protecting the regime in power at the expense of the citizenry.[116] The excluded people adopted various self-protection mechanisms as discussed in Chapter 3 under the typologies of private security provisioning.

2.3 The Nyayo Regime and Dynamics of Security Provisioning (1978–2002)

The Nyayo era was characterized by six dynamics in security provisioning; continuity in the application of colonial-Kenyatta frameworks, influx of firearms following regional instabilities, metamorphosis of the *Ngoroko* logic and emergence of State militia, increased crime in urban spaces, political repression and politico-ethnic clashes.

In the Outlying districts space, the colonial Ordinances, which had closed the Northern Frontier District (NFD), controlled movement, designated tribal grazing areas and imposed communal punishment continued being applied. This was an effort to operationalize the policy of communal punishment by the Kenya Army in February 1984 that resulted in the Wagalla massacre at the Wagalla airstrip.[117] Somali men of the Degodia clan were rounded-

[114] Abrahamsen, R. and Williams, M. (2006), *Security Sector Reform: Bringing the Private In*. Conflict, Security and Development, vol. 6, pp. 1-23
[115] Otiso, W. N. and Kaguta, R. J. (2016), *Kenya at Fifty: State Policing Reforms, Politics and Law, 1963-2013*. Palgrave Macmillan, New York, pp. 221-244
[116] Mkutu, K. and Wandera, G. (2013), *Policing the Periphery: Opportunities and Challenges for Kenya Police Reserves*. Small Arms Survey, Graduate Institute of International and Development Studies, Geneva, pp. 41-42
[117] Anderson, D. (2014), *Remembering Wagalla: State Violence in Northern Kenya, 1962 – 1991*. Journal of Eastern African Studies, vol 8(4), pp. 658-676

up and taken to Wagalla airstrip for interrogation. Subsequent to four days of interrogations, several hundred Degodia lay dead.

Regional instabilities due to collapse of Uganda's Iddi Amin (1979), Milton Obote (1986) and Somalia's Siad Barre (1991) regimes animated influx of illegal firearms into the North West-North Eastern pastoral spaces. The Iddi Amin regime had adopted the policy of ethnic persecution that saw the Acholi and Lango ethnic soldiers massacred in July 1971 in Jinja and Mbarara barracks and subsequent arming of the Karamoja.[118] Further, after the fall of the regime, the Karamoja accessed firearms at the Moroto barracks. Firearms became readily available amongst the Karamoja youth and since communities straddled across the Kenya-Uganda border, kinship allowed the pastoral communities of North West Kenya to easily acquire the illegal firearms.[119] The net effect of this was that the North Rift spaces became awash with illegal firearms in civilian hands.

From the collapsed Somalia side, refugees thronged the country which also attracted inflow of illicit actors and weaponry. The vastness of the Northern Frontier District, which had created sanctuaries following the inability of post-colonial State to extend its legitimate institutions of governance to marginalized areas in the 1960s provided a favourable ground for heavily militarized individuals.[120] The net result of this is that the police were overwhelmed by the heavily militarized individuals in these spaces.

In the urban spaces, the fight for political consolidation continued. Moi had been sworn in as President against the Constitutional provision for the Vice President to act as President for ninety days within which period elections were to be held. He was also aware of the Kiambu Mafia that had plotted to assassinate any non-Kikuyu who wanted to assume the country's

[118] Sue, L. (2007), *Research on Violent Institutions in Unstable Environments: The Livelihood Systems of Ugandan Army Soldiers and their Families in a War Zone.* (Thesis). Hertford College, Oxford University
[119] Gomes, N. and Mkutu, K. (2003), *Breaking the Spiral of Violence: Building Local Capacity for Peace and Development in Karamoja, Uganda*. SNV-Uganda and Paxi Christi
[120] Mkutu, K. and Sabala, K. (2007), *Private Security Firms in Kenya and Dilemmas for Security*. Journal for Contemporary African Studies, vol. 25(3), pp. 391-416

leadership.[121] This made him politically insecure but needed to maintain grip on the leadership. To do this, the colonial laws, re-adopted during the Kenyatta regime were applied, so that the police and provincial administration were deployed to protect regime interests.[122]

The *Ngoroko* squad logic became embedded in the policing culture as it metamorphosized and took various forms. Despite the details that emerged in 1978 about the squad, it was never disbanded. Consequently, the Nyayo era saw emergence of state-indulged criminal wing of the police force for regime protection.[123] This *Ngorokonisation* logic was actuated during the 1992 Moi succession election politics, for instance, as *Jeshi la Mzee* where the Original FORD was set to succeed Moi and as KANU Youth Wing to covertly fight emerging civic expression.[124] The net result is that the State became the incubator of State militia in addition to use of public policing for regime protection.

In the 1980s period, political repression was rife as resistance grew within the civil society. Several underground resistance movements such as December 12th Revolutionary Movement, Mwakenya and Pambana emerged.[125] The police became the enforcement wing of the political repression as they sought to protect the regime. Regime security and survival superseded all other security priorities including protection of life, property and liberties of citizens. Consequently, there was redeployment of more police to crack down on dissidents which led to police absence and abstinence in other spaces of security provisioning.

[121] Details of the plot by Mount Kiambu Mafia to assassinate the then Vice President Daniel Moi using the *Ngoroko* squad were confirmed in Parliament by Charles Njonjo, the then Minister for Constitutional Affairs, on 26 October 1978.
[122] Ochieng, P. and Karimi, J. (1980), *The Kenyatta Succession*. Transafrica. Nairobi, Kenya
[123] Ngunyi, M. and Katumanga, M. (2014), *From Monopoly to Olygopoly of Violence: Exploration of a Four Point Hypothesis Regarding Organized and Organic Militia in Kenya*. Nairobi: The Consulting House, pp. 29-33
[124] Ibid, pp. 26 & 30
[125] Ibid, p. 31

At the same time, the Special Branch was transformed in 1986 into the Directorate of Security Intelligence (DSI) through a Presidential Charter.[126] However, in reality this was merely a name change as the structure and organization of the Special Branch were maintained. President Moi continued to maintain closer ties with the intelligence service to intimidate political rivals and secure power. The result was that intelligence work was highly politicized and used by the regime against political opponents instead of being professionalized.

Implementation of the Structural Adjustment Programmes (SAPs) proposed by the World Bank and International Monetary Fund (IMF) in the 1980s also has a bearing on Kenya's security provisioning. SAPs imposed conditionalities which included liberalization of markets and reduced public expenditure.[127] This led to privatization of public enterprises, jeopardized government ability to provide services including maintenance of law and order and created unprecedented socio-economic dislocation in the country.[128]

In security provisioning, SAPs conditionalities resulted in reduced public policing expenditure and downsizing of security personnel resulting in crime and insecurity.[129] Unemployment also set in as a result of economic stagnation which contributed to a surging violent crime wave.[130] The total number of criminal offences reported to the police increased from 89,533 in 1989 to 101,966 in 1992.[131] This is augmented by the 1997 Police Commissioner's Report which provides crime statistics for a period of ten years as shown in table 2.1 below.

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[126] National Security Intelligence Service (2006), *NSIS Historical Background*. Available at www.nsis.go.ke/about.php on 22 December 2007

[127] World Bank (1981), *Sustainable Development in Sub-Sahara Africa*. Oxford: Oxford, p. 34

[128] Katumanga, M. (2005), *A City Under Siege: Banditry and Modes of Accumulation in Nairobi, 1991-2004*. Review of African Political Economy, vol. 32(106), pp. 505-520

[129] Gimode, E. (2001), *An Anatomy of Violent Crime and Insecurity in Kenya: The Case of Nairobi, 1985-1999*. Africa Development, vol. 26(1/2), pp. 295-335, p. 328

[130] Rono, J. K. (2002), *The Impact of Structural Adjustment Programmes on Kenyan Society*. Journal of Social Development in Africa, vol 17(1), pp. 90-91

[131] Ibid, p. 90

Table 2.1: Crime Statistics Figures Between January 1987 and December 1997

Year	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997
Murder	1,001	981	902	999	1,071	1,536	1,517	1,603	1,565	1,167	1,642
Rape	420	465	500	515	543	590	589	650	758	1,224	1,050
Offences A/Person	1,502	1,407	1,493	1,468	400	274	1,363	326	357	2,213	2,601
Robberies	5,751	5,833	5,697	6,842	7,406	10,197	9,242	8,804	8,571	5,904	7,465
Breaking	14,415	15,539	14,920	15,231	15,421	18,445	16,867	16,067	12,952	11,204	12,619
Other Penal Code offences	10,051	9,230	14,632	16,909	20,055	20,400	16,651	17,540	15,893	10,510	958

Source: Police Commissioner's Report, 1997 p. 100

The net result of this wave of violent crime was that self-help securitization mechanisms became necessary as the Kenya Police Force seemed overwhelmed in containing it. For the economically well-to-do estates, including those that housed diplomatic staff and senior businesspeople, high walls with electric fences, powerful lights and dogs became a norm. This was also the case for banks and business premises where burglar proof shutters were installed. Further, they sought the services of either watchmen or private security companies to offer guarding and electronic surveillance services for a pay. In slum areas, there was formation of vigilante groups to provide protection by residents themselves.[132] The net result was the emergence and operationalization of multiple security provisioning entities which are problematic in an unregulated security provisioning environment.

In the native/rural spaces, politico-ethnic dynamics engendered emergence of politico-ethnic militia, acquisition of weapons, including illegal firearms, for individual and community protection. The Nyayo regime perpetuated State-sponsored politico-ethnic clashes in the Rift Valley and Coast.[133] This was meant to generate a narrative that Kenya was not ripe for

[132] Gimode, E (2001), *An Anatomy of Violent Crime and Insecurity in Kenya: The Case of Nairobi, 1985-1999*. Africa Development, vol. 26(1/2), pp. 311-313

[133] Report of the Judicial Commission of Inquiry into the Tribal Clashes in Kenya (The Akiwumi Report)

political pluralism.[134] In the 1991 Rift Valley clashes, there was the State indulged Kalenjin Warriors. In response Mungiki was incubated to counter the Kalenjin Warriors' aggression during the clashes.[135] The net result of this was that both State-sponsored and organic militia emerged to fight each other and provide 'protection' for specific groups of people and interests. These unregulated militia groups are problematic in homeland security provisioning, as we shall see in Chapters 3 and 4.

In the Coast, KANU politicians manipulated the bitterness of local ethnic groups' grievances to rally them against non-locals (up-country people). This led to an armed politically motivated ethnic violence that erupted on 13th August 1997.[136] Using the cover of automatic guns wielded by outsiders, local raiders carrying traditional weapons attacked a police station and police post in Likoni, stole more than forty guns and proceeded to carry out the rampage against 'up-country' people.[137] The leaders, led by ex-military Juma Bempa, were ex-forces while others were serving officers, also established a clear chain of command.[138] The net result of this was that a well organized and armed organic militia had been established that could be used for political purposes.

Additionally, towards the end of the Nyayo regime, new types of security threats emerged; the threat of terrorism. Two incidences confirmed this new form of criminality; the August 1998 twin bombing of American embassy in Nairobi and Dar es Salaam and the 2002 Kikambala hotel bombing at the Kenyan Coast and a failed missile attack on an Israeli airliner in Mombasa. These terrorist attacks targeted both locals and foreigners and their interests in the country. This further worsened security, the consequence of which was to

[134] Report of the Judicial Commission of Inquiry into the Tribal Clashes in Kenya (The Akiwumi Report), p. 324

[135] Ngunyi, M. and Katumanga, M. (2014), *From Monopoly to Olygopoly of Violence: Exploration of a Four Point Hypothesis Regarding Organized and Organic Militia in Kenya*. Nairobi: The Consulting House, p. 32

[136] Misol, L., Hiltermann, J. R. and Hogendoorn, E. J. (2002), *Playing With Fire: Weapons Proliferation, Political Violence and Human Rights in Kenya*. Human Rights Watch Report

[137] Ibid, p. 24

[138] Ibid pp. 32-33

engender an atmosphere of heightened fear and feeling of insecurity. With the decreased State policing capacities, increased demand for private security to protect life and property became inevitable.

The net effect of this became a proliferation of private security companies to provide security services to paying clientele. However, just like in the Kenyatta era, there were neither comprehensive government records as to the exact number of private security companies nor a regulatory regime to guide their operations.

2.4 The Kibaki Regime and Dynamics of Security Provisioning

Upon accession to power, the Kibaki regime presented great optimism and high expectations for Kenyans. However, the regime immediately became characterized by four elements in security provisioning; prominence of organic groups perpetuating criminality, corruption within law enforcement, terrorism and debates on regulation.

With time, there was also increasing dissatisfaction and diminishing confidence by Kenyans on the law enforcement agencies, a situation that was worsened by corruption in the security sector and the judiciary.[139]

In both urban and rural spaces, the wave of criminality persisted as vigilantes and criminal gangs embedded themselves in society. For instance, in Nairobi, Mungiki, Kamjeshi and Taliban gangs consolidated themselves in national politics[140] while at the same time offered security in 'insecure estates' in exchange for protection money, took part in carjacking, armed robberies, etc.[141] The gangs were engaged in extortionist rings as they could levy illegal taxes on property, illegally take over land and provide other services like water and

[139] Mkutu K and Sabala K (2007), *Private Security Companies in Kenya and Dilemmas for Security*. Journal for Contemporary African Studies, vol. 25(3), pp. 391-416, p. 394

[140] Ngunyi, M. and Katumanga, M. (2014), *From Monopoly to Olygopoly of Violence: Exploration of a Four Point Hypothesis Regarding Organized and Organic Militia in Kenya*. Nairobi: The Consulting House, p. 33

[141] Kagwanja, P. (2005), *Power to Uhuru: Youth Identity and Generational Politics in Kenya's 2002 Elections.* African Affairs, vol. 105(418), pp. 51-75 at p. 65

electricity connections to the public for a pay.[142] Further, collapse of the National Rainbow Coalition (NARC) saw re-ethnicization of national politics, reactivation of political gangs and formation of new gangs.[143] The political fallout and subsequent political competition saw political survival take center stage at the expense of national security issues.[144] The net result was that the State allowed these alternate 'security' providers to thrive and embed themselves in society.

Corruption crippled the police force while the judiciary was riddled with corruption allegations.[145] The police were accused of corruption and hiring out guns to criminals thus allowing them to prowl. Such gangs had even the audacity to engage and resist the police as was the case in the fight between Taliban, Mungiki and police in Mathare, Nairobi in November 2006.[146] The government was losing out to these organic groups on the urban spaces!

To try and address this, the Kibaki regime undertook major police reforms under the rubric of Governance, Justice, Law and Order Sector (GJLOS) Reform Programme, whose success is debatable. Several police officers who had been accused of corruption were either dismissed or retired, there was pay increment for police officers, community policing attempts and even bringing in a new police commissioner with military background.[147] At the judiciary, there was a crackdown on corruption in the famous radical surgery.

However, the purge on corruption did not solve the problem of insecurity and criminality. This is because inequality gap widened despite the economy having grown from 1.5% in

[142] Misol L., Hiltermann, J. R. and Hogendoorn, E. J. (2002), *Playing With Fire: Weapons Proliferation, Political Violence and Human Rights in Kenya*. Human Rights Watch Report, p. 395
[143] Ibid, n.110, p. 34
[144] Nzau, M. and Guyo, M. (2018), *The Challenge of Securing Kenya: Past Experience, Present Challenges and Future Prospects*. Journal of Social Encounters, vol 2(1), pp. 47-48
[145] *Daily Nation*, September 3, 2002 and November 9, 2006
[146] Anderson, D. M. (2002), *Vigilantes, Violence and the Politics of Public Order in Kenya*. African Affairs, vol. 101(405)
[147] Mkutu K and Sabala K (2007), *Private Security Companies in Kenya and Dilemmas for Security*. Journal for Contemporary African Studies, vol. 25(3), pp. 391-416, p. 396

2001 to 5.8% in 2005 and urban population grown from 9.9 million in 1999 to around 16 million in 2005. The urban population explosion coupled with the widened inequality gap led to proliferation of slums, armed violence and massive unemployment. The net effect of this was that the police could not tackle criminality due to corruption, the police because became sources of criminality as criminality persisted. Consequently, individuals and corporations resorted to self-securitization mechanisms by hiring private security services to protect them and their properties which created increased demand for private security services.

By 2005, private security companies had also exponentially grown and a large segment of Kenyans were increasingly depending on them for their daily security.[148] There were over 2,000 private security companies operating in Kenya and virtually all commercial premises and tens of thousands of domestic properties, including embassies, small and large businesses, non-governmental organizations and humanitarian agencies were having 24-hour guards and some had alarm systems.[149] However, exact numbers of private security providers were unknown since the companies were being registered in the same manner as other businesses while others remained unregistered at all.[150] The net result of this was that different typologies of private security entities as discussed in Chapter 3 were operationalized in Kenya depending on demand, supply and the operational space.

Regulation of these proliferated private security companies became necessary. In 2003 the government unsuccessfully attempted to implement the new minimum wages, vide Legal Notice 53 of 2003,[151] for private security officers working in private security companies. This regulation had inherent weaknesses; individual watchmen were excluded, applied to

[148] Wairagu, F., Kamenju, J. A. and Singo, M. (2004), *Private Security in Kenya*. Security, Research and Information Centre (SRIC), Nairobi

[149] Mkutu, K. and Sabala, K. (2007), *Private Security Firms in Kenya and Dilemmas for Security*. Journal for Contemporary African Studies, vol. 25(3), pp. 391-416

[150] Abrahamsen, R. and Williams, M. C. (2005), *The Globalisation of Private Security. Country Report: Sierra Leone*. Aberystwyth: Department of International Politics, University of Wales at Aberystwyth, p.6

[151] Legal Notice No. 53 'The Regulation of Wages (Protective Security Services) (Amendment) Order, 2003. Ministry for Labour and Human Resource Development, Kenya Subsidiary Legislation, Government Printer, Nairobi, May 2003.

minimum wages without a formal regulatory framework to guide the operations of PSCs. Further, implementation of the minimum wage, which had been increased by 12.5%, sharply divided membership of the Kenya Security Industry Association (KSIA), which led to the formation of Protective Industry Association (PSIA). The KSIA endorsed the minimum wage and made it conditional for membership whereby some companies protested and left to form the PSIA arguing that it will make private security services available only for the rich and force out of business the smaller companies. Effectively, the differences became a challenge to self-regulation efforts as there was disharmony and lack of coordination at the industry level.

Scholarly debates on arming and regulation emerged. Private security provisioning arose to provide services to paying clientele due a security vacuum created by the inability of the public policing agencies' inability to provide adequate security.[152] The scholarly debates focused on reasons for the emergence, roles and need for regulation of PSCs in security provisioning. However, the debates did not consider legal consequences inherent in the proliferation and how such regulation should fit into the legal architecture of homeland security provisioning.

Further, the contested December 2007 general elections set in the 2007/8 post-election violence. The violence was perpetuated by activated moribund militia and gangs across the country.[153] These organized and organic groups were mobilized to protect specific interests including political and community interests. For instance Mungiki were mobilized to protect the Kikuyu interests, Sungu Sungu and Chinkoro to defend the Kisii, Taliban to protect the Luo in Mathare North, among other groups. Essentially the groups operated in both urban and

[152] Mkutu, K. and Sabala, K. (2007), *Private Security Firms in Kenya and Dilemmas for Security*. Journal for Contemporary African Studies, vol. 25(3), pp. 391-416. Also Abrahamsen, R. and Williams, M. C. (2005), *The Globalisation of Private Security. Country Report: Sierra Leone*. Aberystwyth: Department of International Politics, University of Wales at Aberystwyth

[153] Ngunyi, M. and Katumanga, M. (2014), *From Monopoly to Olygopoly of Violence: Exploration of a Four Point Hypothesis Regarding Organized and Organic Militia in Kenya*. Nairobi: The Consulting House, p. 35

rural spaces in Nairobi, Rift Valley, Nyanza and Central Kenya. The effect of the operationalization of these groups was that security provisioning was being embedded in gangs and vigilantes, which is problematic in homeland security provisioning as we shall see in Chapter 3.

In the aftermath of the post-election violence, the Waki Commission investigated the violence and tabled a Report which *inter alia* proposed security sector reforms. Later, the Task Force on Police Reforms (The Ransley Task Force) noted that private security is a significant player in Kenya's security sector and proposed, among others, that; the draft Private Security Regulation Bill 2004 be fast-tracked to define roles and responsibilities of private security providers, private security providers be recognized in the National Security Policy and National Policing Policy. The effect of this recognition would be that private security providers would be integrated into homeland security. But the question to be asked is, how should this integration be undertaken and regulated? This is because a poorly regulated private security sector would in itself be a source of insecurity[154] as will be discussed in Chapters 3 and 4.

This is the debate that the current research grapples with in the period beyond 2009 besides debates on the country's security sector reforms. These debates inform the current research.

[154] Abrahamsen, R. and Williams, M. (2006), *Security Sector Reform: Bringing the Private In*. Conflict, Security and Development, vol. 6, pp. 1-23

Chapter Three

Proliferation of Private Security Entities and its Impacts on Security

3.1 Introduction

Thomas Hobbes in the *Leviathan* contends that core in people's accession to a social contract is their desire for security. This process is preceded by generalized disarmament and the converse accumulation of deterrent power by the Leviathan. Notably, proliferation of self-securitization mechanisms not only challenges the Hobbesian social contract but that it also leads to a pluralized security provisioning environment. A crisis of security provisioning emerges when the State fails to properly coordinate the multiple security provisioning entities. This foregoing perspective underscores the broad thrust of this Chapter. It essentially responds to the first question of our study; how does private security proliferation impact security provisioning in Kenya?

The Chapter examines proliferation of multiple private security providers, both formal and informal. Its contention is that multiple private security entities, in addition to State security, without a requisite effective coordination mechanism engenders a crisis of security provisioning. The crisis is animated by force to space ratio dynamics, occasioned by variables such as force numbers relative to spatial and institutional vulnerabilities, and population characteristics.

To this end, the chapter is organized into two parts. The first part analyzes the referent objects of security and delves into the elements of the security economy of proliferation and its impacts on homeland security. The second part analyzes the differentiated typologies of private security provisioning operationalized within the homeland security. The second part further considers critical elements of uniformed private security entities; proliferation and its impacts, relationship amongst the entities and with the police and its impacts, training, arming and the general welfare. We seek to delve into these elements because formal entities

are being prominently regulated by the Private Security Regulation Act 2016. It is anticipated that, by so doing, we lay the ground for analyzing the legal implications inherent in the proliferation and consequent relational dynamics in Chapter 4.

3.2 Referent Objects of Security and the Crisis of Proliferation in Kenya

Security is an ambiguous concept[155] as there is no standardized uniform definition. Because of this ambiguity, security is relatively interpreted either in an objective sense as absence of threats to acquired values, or in a subjective sense as absence of fear that such values will be attacked.[156] In this relativity, the question that arises is, security for who? The answer to this question gives rise to multiple referent objects. Kenneth Waltz's conceptualization of security into three levels of analysis; individual, state and systemic[157] allows us to locate referent objects across the same. Of interest, however, is the question, security of what object and at what level?

At the State level, Buzan identifies three objects of security that revolves around ideas, institutions and the physical base (Buzan's triage).[158] Ideas undergird the premise of State institutional and physical base organization. This includes the philosophy underpinning security organization. Appropriate ideas relative to the nature of security influence emergence of strong institutions, and the converse is a given.[159]

In this sense the State's conception of objects of security to imply security of private property, in this case that of dominant elite, implies that the main concentration of efforts of security is in spaces where they are located. This is in contrast to individuals in spaces of marginalization. Consequently, absence or abstinence of State to provide security engender

[155] Wolfers, A., 'National Security as an Ambiguous Symbol', in Wolfers, A. (1962), *Discord and Collaboration. Essays on International Politics*. Baltimore: John Hopkins University Press, pp. 147-165
[156] Ibid, p.150
[157] Waltz, K. N. (1979), *Theory of International Politics*. Reading, Mass., Addison-Wesley
[158] Buzan, B. (1991), *People, States and Fear: An Agenda for International Security Studies in the Post-Cold War Era*. ECPR Press, pp. 36-65
[159] Ibid, p.53

the perception of (in)security felt by Kenyans. This creates the differentiated spaces they occupy. For instance, security in the outlying district animates people walking around with firearms to protect their object of security, conceived here as property (livestock). Elsewhere this is interpreted as insecurity. In urban spaces, groups like Mungiki youth seeing their activities as a form of employment is conceived elsewhere as extortion. This differentiated orientation impacts the extent of cooperation security entities receive from the public.

Of interest are forms and modes of responses. Here responses are differentiated by multiple institutions, both public and private, that seek security provisioning. This includes mediation of State violence complemented by private entities and individuals. The net results are opposing ideas that erode legitimacy while weakening support.[160] The problem of private security proliferation is that it subverts the idea of security provisioning which in turn erodes the legitimacy and support for the institution of public policing. Further, application of security provisioning laws becomes problematic as each individual relatively interprets the meaning of security.

The relative interpretation of the idea of security also affects the other two referent objects. Institutions comprise the entire machinery of the government including arms of government and the operationalization of legal frameworks, procedures and norms.[161] Public policing agencies are part of this machinery. The physical base comprises of the population and territory, including the natural and man-made wealth within the territory.[162] The State can lose territory to internal private security actors through absence and abstinence by creating distance decay hence emergence of a symbiotic relationship between the community and criminal activities.[163] Consequently, legitimacy of various self-help mechanisms to protect

[160] Buzan, B. (1991), *People, States and Fear: An Agenda for International Security Studies in the Post-Cold War Era*. ECPR Press, p. 57
[161] Ibid, p. 53
[162] Ibid, p. 62
[163] Ngunyi, M. and Katumanga, M. (2014), *From Monopoly to Olygopoly of Violence: Exploration of a Four Point Hypothesis Regarding Organized and Organic Militia in Kenya*. Nairobi: The Consulting House, p. 2

life and property start to emerge and embed in the spaces where the State is outadministered. The State starts to lose out on the monopoly of securing the objects of security in these spaces.

This erodes 'stateness' conceived to entail legitimacy and support from the population. When this 'stateness' is lost, challenges of administering a space emerges.[164] Compounding this challenge are private security entities that attempt to self provision aspects of security. Here, issues of how security should be provided and by who emerges. Of concern too are the resultant processes, core in these are retreating State entities and their replacement with private entities. This runs counter to what Michel Foucault calls governmentality where the State should establish presence and be felt on the ground.[165] Not only does institutional penetration helps maintain this governmentality but also frameworks that help to construct particular objects (or subjects) of governance.[166] Its operationalization allows stateness to be felt.

In the operationalization, policy formulation and legal frameworks that enable effective coordination, command and control are critical. A uniform policy and legal framework is made necessary by multiple actors present at different levels of the State and engaged in security provisioning. In Kenya, besides the State, non-State actors have emerged, take various forms and individual roles may be difficult to define.[167] Some operate under State mandate, may be established to serve either regime interests, private and/or self interests and loyalties may change with circumstances.[168]

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[164] Weber, M. (1919), *Politics as a Vocation*. Lecture Essays. Retrieved on 30 August 2020 from https://www.sscnet.ucla.edu/polisci/ethos/Weber-vocation.pdf

[165] Foucault, M. (2009), *Security, Territory, Population*. Lectures at the College de France, 1977-1978. New York. Picador/Palgrave Macmillan. ISBN 9780312203603

[166] Ibid

[167] Abrahams, R. (1998), *Vigilante Citizens: Vigilantism and the State*. New York: Polity Press

[168] Mkutu K. and Wandera G. (2013), *Policing the Periphery: Opportunities and Challenges for Kenya Police Reserves*. Small Arms Survey, Graduate Institute of International and Development Studies, Geneva, p. 16

3.3 Levels of Private Security and Impacts on Security Provisioning

In Kenya, Moller (2006) uses two typologies; armaments and objectives to categorize private security entities. This classification is limited as it only considers two aspects leaving out core elements such as whether the armament is private or facilitated by the government and the organizational structures of the entities. Consequently, we typify the entities into four categories; informal organic and organized groups, single actor/individual, State-indulged and formal uniformed private security companies, as discussed below.

3.3.1 Informal Organic and Organized Groups

Organized groups are formations that tend to instrumentalize ethnicity for group gains, convene around a charismatic leader/group of leaders and are supply-driven as they supply violence for political or market related reasons.[169] Their behavior and orientation is dependent notably on operational spaces, *modus operandi* and level of entrenchment in society, which differs.[170] For instance, the groups in central Kenya have a lower propensity for violence than groups in northern Kenya, those around urban spaces and agricultural lands closer to the capital rely on intimidation than actual violence while those in southern parts of the country are organized along shifting political and commercial interests.[171] As such they are spread throughout the country, including in urban slum environment,[172] exist for a period of time and act in concert, whose aim can either be security, political or economic.

The foregoing is explained using the crime opportunity theory where the growth of crime is directly proportional to increasing number of opportunities and targets for crime.[173] Crime occurs because there is a motivated offender and the environment enables the commission of

[169] Ngunyi, M. and Katumanga, M. (2014), *From Monopoly to Olygopoly of Violence: Exploration of a Four Point Hypothesis Regarding Organized and Organic Militia in Kenya*. Nairobi: The Consulting House, p. 37
[170] Ibid, p. 37
[171] Ibid
[172] National Crime Research Centre (2012) *A Study of Organized Criminal Gangs in Kenya*. Unpublished Research Report, Nairobi, p. 16
[173] Hindelang, M. (1978) *Victims of Personal Crime; an Empirical Foundation for a Theory of Personal Victimization*. Cambridge, MA: Ballinger Publishing Co.

the crime. The current socio-political economic environment in Kenya provides the opportunity where the unemployed youth can be recruited as political gangs for hire and/or form organized criminal groups.

In the pretext of providing security to their victims, organized groups commit murder, use extortion, constant threats of violence and even actual violence to keep themselves afloat, powerful and profitable.[174] Their security provisioning is thus predatory in nature where they turn against the very communities they were originally meant to protect. Because of the constant threat of violence, the victims and potential witnesses choose to remain and suffer in silence. The net effect is that there is lack of sufficient evidence to prosecute the perpetrators and put them behind bars.

Organic groups on the other hand are demand-driven formations built around the 'Law of Gang Polarity;' for every organized group, an equal counter force is constituted.[175] Essentially these are vigilantes formed to counter the organized groups. For instance, when Mungiki turned rogue and started predating on the Kikuyu community that formed it for protection, the Hague and Kenda Kenda organic groups emerged in Kirinyaga and Muranga, respectively, as a counter force. The net result of emergence of a counterforce is that the different groups start to wage war against each other over control of a space, service or people leading to killings and escalation of insecurity. For instance, in 2009 face-off between Mungiki and Taliban saw Mathare slums being divided into Mathare Kiambu, controlled by Mungiki and Mathare Nyanza controlled by the Taliban while between 2010 and 2013 in Muranga, attacks and counterattacks between Mungiki and Kenda Kenda witnessed about 75 deaths.[176]

[174] National Crime Research Centre (2012) *A Study of Organized Criminal Gangs in Kenya*. Nairobi, p. 14
[175] Mkutu K. and Wandera G. (2013), *Policing the Periphery: Opportunities and Challenges for Kenya Police Reserves*. Small Arms Survey, Graduate Institute of International and Development Studies, Geneva, p. 38
[176] Kenya National Commission on Human Rights (2014) *Are We Under Siege? The State of Security in Kenya: An Occasional Report (2010-2014)*. Nairobi

In terms of proliferation, because of the shifting nature of identities over time due to interests they need to protect and emergence of counter forces, the exact number may not be ascertained. For instance, in 2010 there were 33 groups that the government outlawed[177] but a study commissioned by the Panel of Eminent Persons in the same year and conducted in Nairobi, Central and Nyanza regions identified 32 groups of which 27 were not listed in the 33 banned groups. By 2017 there were 326 groups, a growth of 897% within a period of 7 years or 128% growth per year.[178] In the same period, 28 of the groups were noted to be spreading fast and wide in the country.[179]

The organic groups like Taliban (Dandora), Sungu Sungu and Chinkororo (Kisii), Mombasa Republican Council (Coast), Kenda Kenda (Muranga) among others enjoy ethnic support because they provide protection for their communities.[180] This makes them gain legitimacy and support from their communities. However, they later turn rogue as they are co-opted for economic gain or instrumentalized for political patronage leading to a bifurcation of the legitimacy along ethnic lines.[181] As such the groups which start as vigilantes to provide

[177] On 18th October 2010, the Minister of State for Provincial Administration and Internal Security issued a *Gazette Notice* banning 33 criminal groups following the enactment of the Prevention of Organized Crimes Act in August, 2010. These banned groups included Al Shabaab, Amachuma, Angola Msumbiji, Banyamulenge, Baghdad Boys, Charo Shutu, Chinkororo, Coast Housing Land Network, Congo By Force, Dallas Muslim Youth, Forty Brothers, Forty Two Brothers, Jeshi La Embakasi, Jeshi La Mzee, Jeshi La King'ole, Japo Group, Kamjesh, Kamukunji Youth Group, Kaya Bombo Youth , Kenya Youth Alliance, Kosovo Boys, Kuzacha, Makande Army, Mombasa Republican Council, Mungiki Movement, Mungiki Organization, Mungiki Sect, Republican Revolutionary Council, Sabout Land Defence Force (SLDF), Sakina Youth, Siafu, Sungu Sungu and Taliban.

[178] National Crime Research Centre (2018), *Issue Brief on State of Organized Criminal Gangs in Kenya*. Nairobi

[179] Ibid. The 28 include; Sokoni Youth, Shymbo 12, Alshabab, Mungiki, criminal groups of *Boda boda* transport operators, Chinkororo, Gaza, Young Turks, Wakali Kwanza, Wakali Wao, Wakali Kabisa, Sungusungu, 40 brothers/thieves, 7 Brothers, Kaya Bombo, 42 Brothers, Mombasa Republican Council, South Gang, Syria and Manambas/Touts which are in at least 1 out of 5 counties.

[180] National Crime Research Centre (2012), *A Study of Organized Criminal Gangs in Kenya*. Unpublished Research Report, Nairobi, pp. 40-41

[181] Schuberth, M. (2018), *Hybrid Security Governance, Post-Election Violence and the Legitimacy of Community-Based Armed Groups in Urban Kenya*. Journal of Eastern African Studies, Vol. 12(2), pp.1-19

protection later turn into criminal gangs terrorizing the very communities they were formed to protect.[182]

Operationalization of organic groups can be explained from the social systems theory of self organization. Society is a social system that is defined by a boundary between itself and its environment through communication to provide meaning, which provides the criteria upon which information is selected and processed.[183] Whenever identity of the system fails, the system ceases to exist and dissolves back to the environment it came from.[184] Insecurity is such a system failure on the part of state security machinery, with the net result being emergence of both the organic and organized groups to embed themselves in society with the consequence of seriously challenging State monopoly of violence.

In terms of relational dynamics with the police, in rural spaces, organic groups like Sungu Sungu, work alongside police to effect arrests and obtain evidence for criminal cases and resolve disputes through torture.[185] Police condone these activities because they are perceived to help in maintaining law and order. Whenever this relation exists, there are neither arrests nor prosecution, but when the relation turns antagonistic, arrests and prosecutions are evident.[186] The net result is that organic groups start to embed themselves in security provisioning resulting in a crisis.

In urban setting, the groups have an ambiguous relationship with the police where at times they cooperate as informers while in others they are brutalized through mass arrests and

[182] Abuga, E. (2018), Sungusungu mystery and new look face of Kisii security officers. The Standard. https://www.standardmedia.co.ke/article/2001287041/sungu-sungu-mystery-and-new-look-face-of-kisii-security-officers Accessed on 20th September, 2018.
[183] Luhmann, N. (1984), *Sozide Systeme: Grundriss einer Allgemeinen Theorie*. Frankfurt; Suhrkamp. English translation: Social Systems,Stanford: Stanford University Press, 1995.
[184] Ibid
[185] Masese, E. R. and Mwenzwa, E. (2012), *The Genesis and Evolution of Sungusungu Vigilante Group Among the Abagusii Ethnic Group of Kenya*. Journal of Elixir Social Sciences, vol. 42
[186] National Crime Research Centre (2012). *A Study of Organized Criminal Gangs in Kenya*. Unpublished Research Report, Nairobi, p.49

extra-judicial executions.[187] Because of entrenchment in the community, the groups take over the criminal justice system services. The net result is establishment of a 'parallel government' which challenges the legitimacy of State institutions, the consequence of which is to tilt force to space ratio dynamics to disfavor State institutions, including the police.

The net effect of these organic/organized groups is that they compromise the legitimacy of institutional penetration in society, thus affecting governmentality, while exacerbating insecurity in areas of operation. They also compromise legitimacy of monopoly of violence by the State. All these dynamics have an impact on force to space ratio dynamics in security provisioning and if not properly coordinated, can greatly disfavor state security machinery leading to a crisis of security provisioning.

3.3.2 Single Actor (Individual) Private Security Providers

These are individuals who are employed to provide guarding services in private homes/business premises (watchmen). They also provide investigative services for paying clientele. Until 2016, this group of providers was unregulated and operated under individual private contracts with their clients. A comprehensive data on their numbers is thus scanty as they are singularly hired by individuals across the country.

However, with the enactment of the Private Security Regulation Act 2016, individual providers have been included in the definition of a private security service provider. The Act defines a private security service provider as a person or body of persons, other than a state agency, registered under the Act to provide private security services to any person.[188] This means that single/individual private security providers are to be regulated by the Act.

The watchmen are neither trained, armed with firearms nor uniformed and are poorly paid. This raises the issues of identification, cooperation with public policing and welfare. There

[187] Mutahi, P. (2011), *Between Illegality and Legality: (In) Security, Crime and Gangs in Nairobi Informal Settlements.* South African Crime Quarterly, vol. 37, pp. 11-14

[188] Section 2 of the Private Security Regulation Act 2016

have also been cases where the watchmen are attacked and killed by criminals. For instance, in the Mpeketoni Al Shabaab attacks in June 2014 some of the over 60 casualties were watchmen, in Kakamega between May 2017 and November 2019 over 14 watchmen were killed,[189] in Mandera 1 watchman was killed in a petrol station attack on 8th December 2018 while another was killed in Embu on 24th August 2020.[190] This raises the issue of vulnerability as they are exposed to criminal attacks. Curiously, the Kilingili (Kakamega) killings were blamed on rivalry between youthful and older watchmen as those attacked were over 60 years of old.[191] Further, on the night of the attack, reportedly, one of the watchmen had gone to report at Kilingili Police Station but was turned away.[192]

The foregoing raises dynamics that have a bearing on security provisioning in the country. Firstly, the watchmen are only armed with crude weapons including a *rungu* (club), whistle, panga and a whip but not firearms. In fact following the Kakamega killings, Kakamega Members of Parliament during Parliamentary proceedings called on the government to issue them with firearms! But then the issue is they are not trained to handle firearms, poorly paid and there is no comprehensive record for purposes of accountability of the firearms.

Secondly, rivalry amongst the watchmen threatens security provisioning. This is because of competition since an individual watchman is paid as per the services he offers. Thirdly, the turning away of the Kilingili watchman from a police station points to suspicion and lack of coordination in the security information sharing.

Hostility arising from perceived competition has also witnessed a clash between individual private security investigators and public policing agencies. The case of Jane Wawira Mugo, a private investigator and chief executive officer (CEO) Trim security services, who had a run

[189] Parliamentary Hansard Report of 7th May 2019, Daily Nation (24/5/2017, 23/9/2017, 3/3/2019) and Standard Newspaper (22/3/2019, 3/3/2019)
[190] Kenya News Agency, *Robbery With Violence Leaves Watchman Dead*. 24/8/2020
[191] Youthful Watchmen Suspected to have Planned Killing of Elderly Watchies in Vihiga. Available at www.kenyanreport.com
[192] Youthful Watchmen Suspected to have Planned Killing of Elderly Watchies in Vihiga. Available at www.kenyanreport.com

in with the Directorate of Criminal Investigations (DCI) officers over alleged corruption by senior DCI officers, is an example. Ms. Mugo revealed that the DCI had branded her a wanted criminal because of a case she was working on that unearthed corruption among top security officials.[193]

The rivalry and hostility can be explained from the Marxist Conflict theory of class struggle (competition).[194] The small group of elite investigators (DCI) dictates the terms and conditions of investigations to the larger society because hitherto, they possess control over investigative resources and power. When individual investigators, like Jane Mugo enter the fray, class struggle emerges due to perceived competition and thus conflict. The conflict has multiple layers, be it social, class, power, religion, employment status etc.

The net effect of proliferation of this cadre is that despite being recognized by the Act, the State has no command and control over them, they are exposed to criminals and vulnerable to exploitation by their employers through contractual agreements. In a pluralized security provisioning environment, coordination and accountability are key but when these elements lack, competition and hostility would lead to a crisis is security provisioning.

3.3.3 State-Indulged Private Security Providers

These are groups that the State mandates either directly through collaboration with State security agencies or indirectly through patronage by powerful political figures in government.[195] Mostly they operate as police reservists under or alongside public police in the outlying district and arid and semi-arid (ASAL) rural spaces where they are meant to act as first line of defense against low level incursions, cattle raiders and bandits. [196] These spaces

[193] Citizen TV interview report on 12.09.2019
[194] Marxists Internet Archive, "Manifesto of Communist Party". Accessed on August 10, 2020
[195] Ngunyi, M. and Katumanga, M. (2014), *From Monopoly to Olygopoly of Violence: Exploration of a Four Point Hypothesis Regarding Organized and Organic Militia in Kenya*. Nairobi: The Consulting House, p. 38
[196] Ibid.

account for 80% of Kenya's total area and the group is more visible than the public security agencies.[197]

Police Reservists operate under the logic of the colonial Kenya Police Reservists (KPRs) which has since been entrenched by section 110(3) of the National Police Service Act Cap 84 Laws of Kenya.[198] In this logic, local community members volunteer to be recruited, armed and deployed by the State to operate within areas where they live. However, the recruitment process is not standardized[199] and depends on availability of funds. The process starts with a recommendation letter from the local area chief while the Officer Commanding Police Division (OCPD) undertakes recruitment. The training period also varies from a few weeks to longer according to region. In terms of uniform, the KPRs are not always provided with uniforms which force some of them to borrow from friends in the army or the police.[200] Importantly, this category is not remunerated despite being provided with firearms and ammunition by the State.

In 2013 there were an estimated 16,500 KPRs [201] while in 2017 police data indicated that there were 9,348 KPRs.[202] This contradiction is attributed to the fact that there is no proper comprehensive record on the KPRs across the country and indicate that determining the

[197] Mkutu, K. (2015), *Changes and Challenges of the Kenya Police Reserve: The Case of Turkana County.* African Studies Review, vol 58(1), pp. 199-222, at p.199

[198] Section 110 (3) provides that the Reserve may be deployed in Kenya to assist the Kenya Police Service or the Administration Police Service in their respective mandates including in the (a) maintenance of law and order; (b) preservation of peace; (c) protection of life and property; (d) prevention and detection of crime; (e) apprehension of offenders; and (f) enforcement of all laws and regulations with which the Service is charged.

[199] For instance, in 2011 while KPRs were being disarmed, the then Rift Valley Provincial Commissioner announced plans to increase police posts and number of KPRs to restore security (K24 TV, 2011). The same was the case when, in May 2012, Ethiopian Merille militia attacked Turkanas where the District Commissioner for Turkana North announced recruitment and arming of 150 KPRs to intensify security along the border.

[200] Supra n. 168, at pp. 205-210

[201] Mkutu K. and Wandera G. (2013), *Policing the Periphery: Opportunities and Challenges for Kenya Police Reserves.* Small Arms Survey, Graduate Institute of International and Development Studies, Geneva, p. 23

[202] National Police Service, "Recruitment and Deployment of National Police Reservists". March 1, 2017

number of KPRs is a challenge because of the incomplete records and frequent reshuffling of senior police officers.[203]

From the Marxist conflict theory of class struggle, the State creates two classes of security providers; national police service for the urban and bourgeoisie class and KPRs for marginalized outlying class. This creates class struggle hence the problem of institutional penetration in the outlying district areas. As such the State does not have control over KPRs and regulation of the issued firearms.[204] This results in creating false positives in security provisioning where public policing agencies are outnumbered, outmaneuvered, outpowered and outadministered in these peripheral spaces. In this case, the force to space ratio dynamics disfavor the public policing agencies hence difficult to establish command and control.

Secondly, KPRs are issued with State firearms, which they use as a justification to possess other more powerful illicit firearms.[205] With the uncoordinated recruitment and unaccountable issuance of firearms, there are reported cases of misuse of the firearms and human rights abuses. For instance, in 2012 55 KPRs were disarmed in Marsabit Central after two of them were arrested in connection with the murder of three primary school pupils while another 170 KPRs were disarmed in Moyale after concerns of renting out their weapons to criminals.[206] Misuse of firearms and commission of crime by KPRs can be explained by the broken window theory. Visible signs of crime, anti-social behavior and civil disorder create an environment that encourages further crime and disorder, including serious crime.[207] The isolated cases of misuse and crime would entrench and become a problem amongst the KPRs with time thereby exacerbating the crisis of security provisioning.

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[203] Mkutu, K. (2015), *Changes and Challenges of the Kenya Police Reserve: The Case of Turkana County*. African Studies Review, vol 58(1), pp. 199-222, at pp. 204

[204] Mkutu K. and Wandera G. (2013), *Policing the Periphery: Opportunities and Challenges for Kenya Police Reserves*. Small Arms Survey, Graduate Institute of International and Development Studies, Geneva, p. 17

[205] Ibid, p. 18

[206] Ombati, Cyrus (2012) 'Moyale Police Reservists Disarmed.' *The Standard* (Nairobi). 1 February, 2012, p. 32

[207] Wilson, J. Q. and Kelling, G. L. (1982), *Broken Windows Effect*. The Police and Neighborhood Safety, Manhattan Institute

The net result would be that the State has created and armed an unaccountable militia in these peripheral areas that account for 80% of Kenya that it has no control over. Without proper coordination, command and control, this armed group can easily become subvertive and an insurrection can arise.

Thirdly, there are economic dynamics to the State-indulged private security providers. For instance, KPRs are taking up new paid roles as guards and with the discovery of oil in Turkana county, they have been deployed to guard oil exploration and drilling sites.[208] Further they are also paid to guard schools, churches, businesses, private organizations such as NGOs and private homes.[209] This raises the fundamental issue of possible conflict of interest with the original purpose as more KPRs turn to economic aspects of security provisioning. From Weber *et al*'s theory of social and economic organization, the rise of organizations, including KPRs, is attributed to; expansion of markets, developments in law and changes in nature of authority.[210] Economic livelihood factors are likely to become a determinant of KPR security provisioning making it difficult to differentiate a KPR acting in a private capacity from acting to protect the community. As the economic aspects embed, Selznick's argument about organizational institutionalism that organizations have the tendency to infuse structures and processes with value beyond the technical requirements at hand,[211] will come into play. The economic aspects of KPRs security provisioning will be embedded and institutionalized in a space that is highly militarized. The net result being that it is likely to fuel rather than address insecurity in the outlying district spaces as KPRs security provisioning will be exclusive.

[208] Mkutu, K. (2015), *Changes and Challenges of the Kenya Police Reserve: The Case of Turkana County.* African Studies Review, vol. 58(1), pp. 199-222, at p. 200
[209] Ibid, p. 209
[210] Weber, M., Henderson, A. M. and Parsons, T. (1947), *The Theory of Social and Economic Organization.* New York, Oxford University Press
[211] Selznick, P. (1949), *TVA and the Grassroots: A Study in the Sociology of Formal Organizations.* Berkeley and Los Angeles: University of California

3.3.4 Formal Uniformed Private Security Entities

We conceive uniformed and formally registered entities as private security companies (PSCs), whose personnel provide security services at a fee. They are widely spread in urban spaces especially the upmarket bourgeoisie areas.[212] Their services include; guarding, providing access checks to malls and key premises, and alarm response to paying clientele.

Before 2016, PSCs operated under the Companies Act Cap 486 Laws of Kenya which had inherent weaknesses; there was no public accountability as they were only accountable to the shareholders, individual "watchmen" who provided the services were left out of the definition of private security service provider and there was no duty to collaborate and cooperate with public security agencies. Clearly there was no oversight on their security provisioning role, a fact that made the PSCs operate as business enterprises only concerned about profit margins. The lack of clear oversight may result in the sector being a source of insecurity as the companies competed for clients by adopting dubious business strategies to leverage on competition.

However, in 2016 Parliament enacted the Private Security Regulation Act to regulate the private security industry and provide for a framework for cooperation with national security organs. The Act provides for the mandatory registration requirements for private security service providers who include both individual actors and PSCs,[213] in addition to establishing the Private Security Regulatory Authority[214] to oversee implementation of the Act. By so doing, a regulatory mechanism to oversight PSCs security provisioning role has been established.

[212] Ngunyi, M. and Katumanga, M. (2014), *From Monopoly to Oligopoly of Violence: Exploration of a Four Point Hypothesis Regarding Organized and Organic Militia in Kenya*. Nairobi: The Consulting House, p. 105 argue that the group forms a *de jure* militia.
[213] See sections 4, 6, Parts III and IV of the Private Security Regulation Act 2016
[214] Sections 7 and 9 of the Private Security Regulation Act 2016

In private security provisioning and in the context of the Private Security Regulation Act, there is now more focus and debate on PSCs and their security provisioning role. Consequently, we endeavor to critically analyze five key elements inherent in the dynamics of security provisioning by the PSCs; proliferation and impacts on security provisioning, consequent relational dynamics, training, arming, and general welfare.

3.3.4(a) Proliferation and Impacts on Homeland Security Provisioning

By 2015 there were an estimated 2,000 of these companies employing over 400,000 personnel.[215] Their current number is estimated at over 3,000 private security companies employing about 700,000 personnel.[216] This amounts to a growth rate of 50% entity and 133% personnel, respectively, between 2015 and 2019. This exponential growth has been attributed to the fear of terror attacks consequent to the September 2013 Westgate mall and April 2015 Garissa University attacks.

Whereas private security companies feel they have a high impact in security provisioning (as shown in table 3.1 below), the Private Security Regulatory Authority (PSRA) and other respondents are of a different opinion. This is because despite an increased proliferation of private security companies, criminality and general feeling of insecurity in areas where these companies operate prevails. This is affirmed by the National Police Service Crime Reports of 2017 and 2018 which recorded 59,029 and 65,820 cases, respectively, representing a 12% increment. The Reports note that street crime is a serious problem particularly in Nairobi, Mombasa, Kiambu among other large urban centres while terrorism remains a considerable risk and high priority concerns. This adds credence to the perception of insecurity in the major towns that has seen a proliferation of PSCs to provide security.

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[215] Diphoorn, T. (2016), *Surveillance of the Surveillers: Regulation of the Private Security Industry in South Africa and Kenya*. African Studies Review, vol. 59(2), pp. 161-182, p.166

[216] Private Security Regulatory Authority, Nairobi, August 2020. Also interview with the Chairperson of PSIA, Nairobi, 20.07.2020.

Table 3.1: Impact of Security Provisioning by PSCs in Homeland Security

Gender	Very high (1)	High (2)	Moderate (3)	Low (4)	Not sure (5)	Total
Male	2	40	20	16	0	78
Female	1	5	6	2	1	15
Total	**3**	**45**	**26**	**18**	**1**	**93**

Source: Questionnaire Field data, 2020

From the results of the questionnaires, 48.39% of the respondents perceived the impact level of private security companies to be high, 27.96% perceived it to be moderate while 19.35% perceived it to be low. The differences in perception arise from the type of crime in question. PSCs personnel act as deterrence against very specific crimes like simple robberies and burglaries but in serious crimes like armed robberies and terrorism, the personnel cannot prevent the commission of crime.[217] This is attributable to two factors.

Firstly, PSCs personnel provide access controls, conduct searches, man CCTVs, provide alarm response, report suspicious activities and help in investigations.[218] While the personnel may prevent commission of 'petty' crimes by their physical presence, they lack capacity and equipment to deter commission of sophisticated crimes and terrorism.[219]

Secondly, private security companies are in the marketplace to sell their services, under contract, to paying clientele. As such they are demand and profit driven. The contracts bind them to provide security services to specific persons and premises. They are concerned about meeting contractual obligations with their clients. Notably, homeland security provisioning is not their desired end-state. The net effect of this is that proliferation of formal uniformed private security entities to provide security does not lead to improved homeland security.

[217] Interview with a senior private security official, Nairobi, 29.08.2020
[218] Ibid
[219] For instance, in the Westgate mall and Dusit D2 terror attacks, uniformed private security personnel had been stationed at entrances. However, this did not prevent the terrorists from attacking.

3.3.4(b) Relational Dynamics and Impacts on Homeland Security

Proliferation of PSCs raises the issue of how they relate with each other and between them and public policing agencies. The question that arises is; how do these resultant relational dynamics impact on homeland security provisioning in a pluralized security environment?

There are two main private security Associations in Kenya; Kenya Security Industry Association (KSIA) and Protective Security Industry Association (PSIA). Membership to the Associations determines how PSCs interact with each other. First, there is rivalry between the KSIA, who consider themselves legal and legitimate, and the PSIA, who are perceived as "jua kali" companies.[220] This engenders an environment of competition and bad blood between perceived 'elite' and 'briefcase' companies. One of the elements of the Marxist conflict theory is competition, which is rife between the two Associations. The net result is that the Associations do not sit down to talk to each other and set standardized industry regulations. Consequently, industry standards differ between the two Associations and as such there is no effective industry-level regulation.

Secondly, like in any other market, competition for clientele is rife. Companies design products that capture market demand trends to leverage on competitors. Whereas some PSCs offer basic guarding and physical protective services, others provide sophisticated alarm installation and response services, executive training in VIP protection and investigative services. The net result of this is that, without proper state-level regulation, competition leads to undercutting and other illegal practices to leverage on rivals and retain clients. In this environment, rogue private security entities emerge and perpetuate criminal activities which may lead to insecurity.

[220] Diphoorn, T. (2016), *Surveillance of the Surveillers: Regulation of the Private Security Industry in South Africa and Kenya*. African Studies Review, vol. 59(2), pp. 161-182

PSCs and their personnel also relate and interact with public policing agencies. There are 101,288 police officers in Kenya[221] against PSCs personnel of about 700,000. This is a combined 801,288 personnel providing security against a population of 47.5 million,[222] representing 1 personnel for every 592 Kenyans. This is against the United Nations recommended ratio of 1:450. Firstly, the numbers represent a false positive force to space ratio dynamics where in reality they have no positive impact on security provisioning. Secondly, police officers are deployed to units such as Anti-Terrorism Police Unit (ATPU), Directorate of Criminal Investigations (DCI), Rapid Deployment Unit (RDU), among others, thereby further reducing 'regular' police available to provide everyday security. Thirdly, PSCs personnel provide 'elite' security services on contract to the bourgeoisie class leaving poor spaces without security provisioning. The net result is that security provisioning becomes elitist and poorer spaces are left at the mercy of organized and organic groups.

Interactions between PSCs personnel and public policing agencies raise material exchange dynamics that create a symbiotic relationship between the two formations. Private security guards are not armed, by law, and they depend on armed police officers while the police officers depend on the private security vehicles and some financial allowance for escort and patrols, respectively.[223] As such the collaboration is hinged on 'arms for mobility' partnership.[224] This is confirmed a PSIA representative who argued;

> Mchovya asali hachovi mara moja (he who tastes honey tastes more than once). These people [police] are used to the extra cash they are given for providing security to banks and the cash in transit. So you can't stop them and you have to pay them. For the patrols, you find that they don't have enough police patrol cars and since some of our members have very good cars, they usually allow the police to accompany them in the vehicles during the patrols. But we need the police, because they are armed and we usually operate under their guidance as they are the State security agency.[225]

[221] Government of Kenya (GoK, 2019) police records
[222] This is according to the 2019 Kenya Population and Housing Census Report
[223] Diphoorn, T. (2019), *Arms for Mobility. Policing Partnerships and Material Exchanges in Nairobi*. Policing and Society: An International Journal of Research and Policy, p. 2
[224] Ibid, p. 2
[225] Interview with the Chairperson of PSIA, Nairobi, 20.07.2020

The net effect is this 'arms for mobility' relationship is that it draws police officers from mainstream security provisioning into the more lucrative venture of providing security to the bourgeoisie. This reduces police numbers in other security provisioning spaces, thereby occasioning a provisioning crisis.

However, the partnership is not always effective. This is because whenever there is no mutual benefit, suspicion, hostility and competition sets in. This reduces the effectiveness of the collaboration as confirmed from respondent data, as shown in the table 3.2 below.

Table 3.2: Collaboration Between Police and Private Security Personnel

Gender	Very effective (1)	Effective (2)	Moderately effective (3)	Low effect (4)	No effect (5)	Total
Male	6	18	52	3	1	80
Female	2	8	6	1	1	18
Total	8	26	58	4	2	98

Source: Questionnaire Field data, 2020

This can be explained from the Marxist conflict theory of class struggle, where the conflict has multiple layers, with the police being the coagulating agent of security in the pluralized security provisioning thus dominating security setting.[226] As such, a senior-junior model partnership is established where PSCs and personnel become the ears, eyes and wheels in the policing partnerships.[227] This model of partnership breeds suspicion and hostility.

The Chairperson of PSIA argued;

> Police officers are not everywhere to protect, deter, observe and record all the happenings. There are currently a total of about 700,000 private security personnel working in about 3,000 private security firms around the country. Sometimes when our personnel observe something and since they are not armed, they would want to report to the police for action. However, sometimes the procedures for reporting are tedious and at times the police ignore such reports.

[226] Colona, F. and Diphoorn, T. (2017), *Eyes, Ears and Wheels: Policing Partnerships in Nairobi, Kenya*. Conflict and Society: Advances in Research, vol. 3, pp. 8-23
[227] Ibid

> This is because the relationship is not always good as the police think we are taking over their job.[228]

The result is that suspicion breeds competition and hostilities where the police see PSCs personnel as trying to take up their job while the personnel feel they are up to the task to provide security services because of their numbers and thus presence. This points to a hitch in the cooperation aspect. The two security providers have varied interests leading to a clash. In the process insecurity arises from within the providers as they fight each other instead of collaborating to end crime and criminality.

The firearm allows police to dominate security provisioning equation by (re)centralizing State police and reaffirming their dominant role in Kenyan policing landscape.[229] Essentially this would mean that once PSCs personnel are, by law, armed, public policing agencies would cede the dominant position, through the firearm, which is a symbol of power, control and domination, thus losing command and control. Without proper coordination, command and control, a crisis of security provisioning would emerge.

This is confirmed by KSIA thus;

> Not that our officers are not trained on handling firearms. In fact some of them are ex-forces; from the police and even the army. What the government fears is that once they arm the private security personnel, there will be consequences. The personnel would do a better job of protection, we will not need them in the patrols and even during the cash in transit. We will be independent and operate independently.[230]

From the Marxist conflict theory, if private security providers, by law, officially get firearms, they would detach from the police and operate independently, thereby forming another group of elites that dictate terms and conditions in society, through the firearm. There will be no need to collaborate with police since they will have the object of domination thus deepening the crisis of security provisioning as each formation will compete for control of the object of domination.

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[228] Interview with the Chairperson of PSIA, Nairobi, 20.07.2020
[229] Diphoorn, T. (2019), *'Arms for Mobility': Policing Partnerships and Material Exchanges in Nairobi, Kenya.* Policing and Society: An International Journal of Research and Policy
[230] Interview with senior representative of KSIA, Nairobi, 12.08.2020

3.3.4(c) Training of Uniformed Private Security Providers

Before the enactment of the Private Security Regulation Act 2016, PSCs operated under the Companies Act Cap 486 Laws of Kenya which neither set minimum qualifications for hiring of personnel nor provided for training. Training was thus *ad hoc* as each company conducted own basic training without a standardized curriculum. After companies bagged lucrative contracts, they quickly assembled and provided a one to two weeks basic training on customer care before deploying personnel. This is confirmed by PSIA Chairperson who argued;

> Our members have to source for contracts from either the government or private sector. Once they land such contracts, they have to provide the personnel. Since they don't have properly trained and retained personnel, they need to recruit and quickly train before deploying them. It is very expensive to retain personnel who are not working but are being paid. Remember we are out here doing business. The training is essentially basic physical exercises including matching, dressing and saluting.[231]

The net result of the foregoing is that professionalism was lost. Further, it was problematic to train personnel who had no minimum entry requirements and without a curriculum.

However, with the enactment of the Private Security Regulation Act, the minimum entry requirements, training and issue of curriculum is being addressed. A training curriculum for private security officers was launched in December 2019. This is meant to standardize training. The introduction of structured training would entail setting specific objectives and expected outcomes of training personnel. This wholesome approach is what is required in an industry where guards escort money, man sensitive places like banks, churches and institutions of learning, and other areas that are vulnerable to terror attacks.[232]

To this end, the government published the Private Security Training Curriculum for private security officers, level 1 to harmonize training of private security providers. The Curriculum provides for the content, minimum requirements, methodology and even the evaluation

[231] Interview with the Chairperson of PSIA, Nairobi, 20.07.2020
[232] Kenya National Private Security Workers Union (KNPSWU) argued (interview, Nairobi, 04.08.2020

criteria. However, a perusal of the Curriculum reveals that the training will not address professionalism.[233] Whereas the entry requirements for the trainees are the most basic; being an adult Kenyan citizen, able to read and write, physically and mentally fit and have valid police clearance, the trainers' qualifications should depict some professionalism. In addition to the requirements of a trainee, the trainer is expected to have 6 years proven experience in private security industry and has undergone Level 1 ToT course. For the trainers who are ex-forces, they need to possess an honorable letter of discharge from any national security organ. In these requirements for trainers, there is no specific need for certain professional backgrounds to spearhead the training. This oversight in the requirements means that anybody who meets the minimum requirements can become a trainer.

The human resource capacity requirements under the Private Security Regulation Handbook (2019) do not help to cure the malady. Specifically on private security trainers, the requirements do not include a specific professional background that is related to security provisioning. Instead the requirement is that one needs to have worked as a senior trainer in a security establishment, holds a degree with 3 years experience or a diploma with a minimum of 5 years experience.[234]

Secondly, section 8 of the Curriculum addresses the issue of report writing while section 9 provides for effective communication. Whereas the basic private security training course should focus on the two, a critical aspect imposed by section 45 of the Act on the duty to cooperate may be lost in the training. Cooperation entails sharing and exchange of information with national security organs. Section 8 only focuses on recording of occurrences in form of reports and section 9 focuses on effective communication, including radio communication and phonetics. The Curriculum does not provide for training on sharing of critical information with national security organ(s) in this cooperation.

[233] Pages xiii-xiv of the Training Curriculum, 2019
[234] Kenya's Private Security Regulation Handbook, July 2019, pp. 38-38

3.3.4(d) Arming of Uniformed Private Security Providers

Despite section 53 of the Act categorically prohibiting arming of PSCs personnel in rendering a private security service, there is still debate whether PSCs personnel should be issued with firearms. The firearm is the object of domination in security provisioning (see discussion in section 3.3.4(b)). For instance, in the aftermath of the September 2013 Westgate, April 2015 Garissa University and January 2019 Dusit D2 terror attacks, the debate re-emerged.[235]

Unlike in the United States where gun ownership is a Constitutional right, vide the Second Amendment,[236] in Kenya, one has to be licensed by the Firearms Licensing Board. The applicant must 'demonstrate the need' to own a gun. Thus the issue is whether we should categorize private security providers generally as having demonstrated the need and arm them or not.

Proponents argue the personnel are the first line of defense against armed criminals and terrorists who have sophisticated weaponry. The personnel cannot stop them with a rungu (club) and whistle or some metal detectors at points of entry. Further, they argue some of the personnel are highly trained and have experience in handling firearms. PSIA Chairman opines;

> You find that some of our staff have considerable experience in handling firearms. With the current security challenges like terrorism and armed criminality, there is serious need for us to arm our personnel. Imagine guarding important premises like banks, businesses, some private homes and escorting cash-in-transit, which are high risk and often constant targets by criminals. In these instances we have to depend on armed services of police officers who we pay thus increasing operational costs. Furthermore, our neighbours Uganda arm their private security. For the transnational companies operating both in Kenya and Uganda, it is awkward that when you cross the border from Uganda, you are reminded that you prohibited from arming your personnel. However, we don't need to arm all the 700,000 plus personnel, we only need like 5,000 or so, especially those who work in high risk areas.[237]

[235] Diphoorn, T. (2019), *'Arms for Mobility': Policing Partnerships and Material Exchanges in Nairobi, Kenya.* Policing and Society: An International Journal of Research and Policy

[236] The Second Amendment of the US Constitution provides, "A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

[237] Interview with the Chairperson of PSIA, Nairobi, 20.07.2020

Despite the proponents arguing for arming of uniformed private security personnel, there is caution that it should not be universal. Only a few selected and trained personnel, handling specific tasks deemed high risk should be armed.

Opponents of arming of private security personnel argue that without any specific data on capacity to handle firearms, coupled with possibility of misuse, the firearms would be used to perpetuate criminality and increased insecurity. Thus arming private security providers generally would be extremely militarizing society as this would witness some form of arms race in the sector.[238] This is attributable to the already existing competition for clientele where the companies are expanding their services to include things like burglar-proof doors and windows, CCTV installation, among other high end technology gadgets. Since the PSCs are in a market for clients and thus profits, they would bring in very sophisticated and powerful arms that would overwhelm public policing agencies. Controlling this form of arms race would be another nightmare without proper accountability and coordination mechanisms. The net result of arming PSCs personnel would be flooding an already flooded environment of firearms, which will deepen the crisis of security provisioning competition for control of firepower sets in.

Further, this raises the problem of securitization of the Kenyan society. The number of civilian firearms increased from 680,000 in 2016 to 750,000 in 2018 and out of these only 8,136 are registered.[239] Adding another cohort of civilian firearm holders in the name of uniformed private security providers would be increasing the number of arms in civilian hands tenfold, which already surpasses that of the military and police combined. The net result will be uncoordinated militarization of society, which will engender a security crisis.

[238] Interview with a senior security expert, Nairobi, 04.09.2020
[239] Small Arms Survey (May 2019), *Annual Report 2018*. Geneva

3.3.4(e) General Welfare of Uniformed Private Security Personnel

Minimum wage payment for PSCs personnel affects morale in security provisioning. The personnel are employed by PSCs who are profit-driven. This raises the issue of possible exploitation as the companies seek to maximize on profits at the expense of personnel vulnerabilities. The debate is therefore whether private security companies take care of employee welfare in terms of the minimum wage requirements.

The minimum wage requirements are as set out in the Schedule to the Regulation of Wages (General) (Amendment) Order, 2018. According to the Order, a day watchman is entitled to a minimum monthly wage of between ksh. 12,500 and ksh. 13,500 while a night guard is entitled to monthly wage of between ksh. 14,000 and ksh. 15,100.

Notably, Interior Permanent Secretary Dr. Karanja Kibicho indicated that whereas firms collected as high as ksh 50,000 from clients per guard per month, they paid the guards as low as ksh 5,000 a month.[240] This position was reinforced by KNPSWU Secretary General who, in the presentation to the Committee, argued that the firms were milking fortunes from their clients and paying their guards peanuts.

However, private security firms have countered this exploitation narrative. PSIA Chairperson argued;

> There is some serious misinformation being peddled around to paint our members as exploiting their employees. Our members pay between twenty thousand shillings and fifty thousand shillings a month for each guard. It cannot be true that we don't abide by the minimum wage requirements nor exploit the guards. However, the government does not want to listen to us that the cost of fees and licensing is prohibitively high and sometimes a duplication of fees. Remember we have to pay for other costs including the 9 Nairobi city county licenses charged for security provision, the Directorate of Occupational Safety and Health Services license, inspection of security vehicles/motor vehicles and their branding, communications authority of Kenya licenses, National Construction Authority license, among others. We must pay all these costs alongside the wages for the guards. Of course the costs eat into the wages for the guards.[241]

[240] This is during the National Assembly Delegated Legislation Committee proceedings on 29th October 2019
[241] Interview with the Chairperson of PSIA, Nairobi, 20.07.2020

Failure to address PSCs personnel welfare would provide an opportunity for involvement in crime. Hirshi's control theory argues that humans are neither prone to crime nor naturally virtuous. Instead they are rational and would turn to crime when the advantages outweigh the risks.[242] As such Giddens and Birdsall opine that some control theorists see growth of crime as an outcome of increasing opportunities and targets of crime.[243] Being employed in the PSCs provides such an opportunity. The net result of the exploitation would be to have de-motivated personnel who collude with criminals to perpetuate criminality because of available opportunities. For instance, there have been reported cases of private security company employees perpetuating and/or colluding with criminals to steal cash in transit or abet other crimes.[244] This would deepen the crisis of security provisioning as insecurity will emanate from PSCs personnel.

[242] Hirshi, T. (1969), *Causes of Deliquency*. Berkeley; University of California Press, 7th ed.
[243] Giddens, A. and Birdsall, K. (2001), *Sociology*. Polity, 4th ed.
[244] Dobson, N. (2018) *Private Security in Nairobi, Kenya: Securitized Landscapes, Crosscurrents and New Forms of Sociality*. African Studies Review, vol. 62(2). See also Daily Nation, "Guard Accused of Breaking into a Foreign High Commissioner's Kileleshwa Residence Arrested" (6th August 2020)

Chapter Four

Legal Implications of Private Security Proliferation in Kenya

4.1 Introduction

This chapter analyzes existing policy and legal frameworks that underpin private security provisioning in homeland security. It seeks to address the question; what are the legal implications inherent in the proliferation of private security entities? The chapter examines various regulatory frameworks from the perspective of existing policies and laws that operationalize private security provisioning in Kenya. It examines the challenges of this type of provisioning against the background of existing formal and informal providers, which underpins our concept of pluralized security provisioning. The net result of the pluralized security provisioning, coupled with lack of and/or gaps inherent in policy and legal frameworks, exacerbates the crisis of security provisioning.

To this end, the chapter is organized around two parts. The first part provides a conceptual appreciation of policy and regulatory frameworks that anchor security provisioning, and a critique of the frameworks within the Kenyan context. It also considers realities of the absence of policy and its consequences in security provisioning in Kenya. The second part analyzes the resultant differentiated laws, in the absence of Policy, that apply to the typologies and the impacts they have on private security provisioning. Examined typologies include; informal organic and organized groups, single actor/individual, State-indulged and formal uniformed private security providers. Additionally, under the formal uniformed providers, we examine; minimum wage payments, industry and agency level regulations to ascertain how these elements affect and/or link with policy frameworks. By critically examining and analyzing these variables, we expect to prepare the ground for making necessary recommendations that affect existing regulatory framework in Chapter 5.

4.2 Homeland Security Management: Policy and Regulatory Framework

Multiple security providers include non-state actors, that comprise of subterranean network of uncivil and dysfunctional groups like militia and vigilantes, provide menacing alternative security.[245] Existence of these multiple security providers make the Hobbesian perspective of the social contract that bestows exclusive monopoly of the use of force required to maintain law and order as well as guarantee sovereignty untenable. Regulation of these non-State actors is therefore necessary for proper coordination, maintaining command and control over them as they evolve and assume lives of their own.[246] This is augmented by Giddens who argues that all social systems are power systems involved in institutional mediation of power and that the institutions attempt to control lives of people through rules.[247]

The State then becomes like a power container that has a high concentration of both allocative (physical) and authoritative (control activities) resources bestowed in institutions by rules.[248] Based on Selznick's theory of organizational institutionalism, all organizations have a crucial need to gain support from key constituencies in the larger social system.[249] The State gains support through legitimate authority established by these laws and regulations, to govern its constituents. Therefore, compromising this authority in the multiple security provisioning environment leads to a crisis of security provisioning.

Policies, laws and regulations form part of a legal regime in the larger social system. The legal regime is meant to address four basic problems; existence, membership/identity, structure and content.[250] Central to this is certainty which is achieved when laws compel the

[245] Omeje, K. and Githigaro, J. M. (2012), *The Challenges of State Policing in Kenya*. Peace and Conflict Review, vol. 7(1), p.3
[246] Mueller, D. S. (2008), *The Political Economy of Kenya's Crisis.* Journal of Eastern African Studies, vol. 2(2), p. 187
[247] Giddens, A. (1985), *The Nation State and Violence: Volume Two of a Contemporary Critique of Historical Materialism*. Cambridge. Polity
[248] Ibid
[249] Selznick, P. (1949), *TVA and the Grassroots: A Study in the Sociology of Formal Organization*. Berkeley: University of California Press
[250] Raz, J. (1970), *The Concept of a Legal System: An Introduction to the Theory of Legal System.* 2nd ed., Oxford: Clarendon

subjects to regulate their conduct and protect them from arbitrary use of State power so that decisions are made according to set laws. This is based on Roscoe Pound's theory of social engineering which sees law as a tool to shape society and regulate people's behavior.[251] This basic value allows for legitimacy of both the legislative and administrative measures taken by public authorities[252] to either prohibit or prescribe conduct. It is on the basis of this regulation that, for instance, in Kenya gangs and vigilantes are prohibited from providing security services while formal uniformed private security providers are regulated.

In grand strategy, which is conceptualized as a three-legged stool, both policy and strategy are key. The three legs; economic, foreign and military comprise of the sources on national power. A National Security Policy is perceived as the slab resting on three legged Policy pillars; foreign, defense/internal security and economic policies[253] to provide a coordinating mechanism for the three instruments of power in pursuit of national security objectives.

It is on this basis that the National Task Force on Police Reforms (The Ransley Task Force) Report, 2009 noted that private security is a significant player in Kenya's security sector. Subsequently, it recommended *inter alia*; first, recognition of private security in the National Security and National Policing Policies so that private security should have clearly defined roles, responsibilities and the extent to which private security personnel should have powers that approximate police powers.[254] Secondly, that the National Security Policy would acknowledge and harness different State and non-State capabilities in contributing towards

[251] Pound, R. (1911), *The Scope and Purpose of Sociological Jurisprudence.* Harvard Law Review, vol. 25, pp. 140-168

[252] Eric, E., Wouter, D. and Bert, K. (2009), *Facing the Limits of the Law*. Springer, pp.92-93

[253] Katumanga, M. "Leadership and the National Security Policy Process in Kenya" in Njoroge, H. & Mwagiru, M. eds (2019), *Grand Strategy in Kenya: Concepts, context, Processes and Ethics.* Three Legs Consortium, Nairobi, vol. 1, pp.102-103

[254] The Ransley Report made more than 200 recommendations to improve police performance. Some of the key recommendations include: establishment of Independent Policing Oversight Authority; decentralising police command, developing a code of ethics for the police; formation of a National Policing Council to address rivalry between and overlapping functions of the Administration Police and the Kenya Police; improving conditions and terms of service for the police; changing the police from a ''force' to a 'service'; ***formulation of a National Security Policy and a National Policing Policy with community policing as one of their central pillars*** and establishment of Police Reform Implementation Committee to coordinate, monitor and supervise the implementation of police reforms.

national security. This would recognize the role of private security providers and consequently bring them under a national security policy framework.

However, in Kenya, a written National Security Policy lacks. The absence of the National Security Policy means that, first, there is no coordinating mechanism for the three pillars of Policies; economic, political and military, which form the traditional three legs of the three-legged stool of the grand strategy in national security. This lack of coordination results in proliferation of uncoordinated sectoral Policies, which creates the crisis of Policy formulation as each pillar develops separate policies towards attainment and protection of national interests.

Secondly, because of the absence of the National Security Policy, there is no resultant Policy anchorage to guide security provisioning in Kenya. A National Security Policy contains five key elements; describes the national vision and goals, provides for national values and principles, clearly defines national interests and the strategic environment, identifies objects of security and threats to the interests.[255] Without a National Security Policy, there is lack of national consensus on national interests, objects of security and threats to the two. As such there is no comprehensive national debate on how to secure the country. This results in proliferation of multiple disjointed security provisioning arrangements as each actor defines the interests, objects and threats differently.

Thirdly, the National Security Policy would provide anchorage for development of security-related provisioning policies within the military pillar including a Domestic Policy to anchor an Internal Security Policy. The Internal Security Policy would then provide policy anchorage for National Policing Policy, which in turn would anchor national private security provisioning policy to coordinate and embed the operationalization of private security

[255] SSR Backgrounder series (2015), *National Security Policies: Formulating National Security Policies for Good Security Sector Governance*. Geneva Centre for Security, Development and the Rule of Law, Geneva, pp. 2-3

provisioning in Kenya. These security-related provisioning policies would also help in enactment of laws to coordinate security provisioning by the multiple providers while ensuring command and control over private security providers.

However, absence of the National Security Policy and subsequent absence of Internal Security and National Policing Policies means there is no coordinating mechanism within the military pillar for security provisioning. At the same time, the absence negatively affects development of effective and well coordinated laws to guide internal security provisioning. The net result of this absence is that regulation of the multiple security providers, including private security sector, in Kenya is left to be done haphazardly under various laws, with the effect of the laws operating at cross purposes. Additionally, tying down the different private security typologies using the differentiated laws is a challenge which produces the crisis in security provisioning.

4.3 Regulatory Frameworks on Differentiated Private Security Typologies

The laws mainly regulating the different types of private security providers are five; Prevention of Organized Crimes Act (POCA) 2010, Firearms Act Cap 114 Laws of Kenya, Private Security Regulation Act 2016, National Police Service Act and National Police Service Commission Act. POCA criminalizes activities of informal organic and organized groups, Firearms Act regulates single actor/individual providers, Private Security Regulation Act regulates both the individual and formal uniformed providers while the National Police Service Act and the National Police Service Commission Act applies to the State-indulged providers.

A critique of the different laws that apply to the differentiated typologies of private security providers and how gaps and weaknesses inherent in the laws is as provided herein below:

4.3.1 Regulation of Informal Organic and Organized Groups

The Prevention of Organized Crime Act (POCA) No. 6 of 2010 outlaws these groups and their type of security provisioning. Section 2 of POCA defines an organized criminal group as a structured group of three or more people, existing for a period of time and acting in concert to commit a serious crime or committing the serious crime to obtain benefits. It details activities that constitute organized criminal activities, including membership, support and actual commission of the crime.[256] It is an offense to engage in the stated organized criminal activities, punishable by a maximum fine of five million shillings or fifteen years imprisonment, or both, and in case the victim of the criminal activity dies, to imprisonment for life. Further, section 22(1) mandates the Cabinet Secretary in charge of Internal Security, with the advice of Inspector General of Police, to declare by notice that a specified group is an organized criminal group.

Despite the foregoing tough measures and harsh penalties for anyone who is a member, fundraises, organizes or directs members of a criminal gang to commit criminal acts, there has been an annual 128% average growth of the groups since 2010.[257] This is attributable to corruption in the law enforcement, lack of evidence to successfully secure convictions, political patronage and acceptance of some of the groups within society. Groups like Mungiki, Sabaot Land Defense Forces (SLDF) mete so much violence on the citizens and vandalize their property that they cannot dare freely testify and provide evidence against the group members.[258] The net result is that the population suffers in silence and cannot provide information to the police nor testify against the perpetrators in court.

[256] Section 3 of the Act details 15 instances when a person will be deemed to be engaged in organized criminal activities, including; being a member or professing to be a member, supporting and recruiting for, acting in concert for purposes of obtaining material/financial benefit, threatening/retaliating against a criminal activity, possessing or transmitting material for purposes of a criminal group/activity, among others

[257] See statistics in Chapter 3 under Informal Organic and Organized groups

[258] Kenya National Commission on Human Rights (2014) *Are We Under Siege? The State of Security in Kenya: An Occasional Report (2010-2014)*. Nairobi

Based on Turner and Killian's collective behavior of social systems theory, where the actors in a social system actively create an interpretation of surrounding actions and acts on the basis of this interpretation to create new meanings,[259] new meaning of security provisioning arise. The groups become security providers and when State security move in weed out the groups, the efforts are not supported. Hence these social processes and events, which do not necessarily reflect existing social structures like laws, conventions and institutions but rather emerge in a spontaneous way. They lead to emergence of organic and organized groups and movements, that generally violate societal norms and thus are destructive.

Ability of the groups to morph and change identities pose a challenge for law enforcement. For instance, Wakali Wao in Mombasa have severally changed identities to Wakali Kwanza, Wakali Sisi, Wakali wa Babu, Wakali Wale while Mungiki rebranded into Quails in Kiambu, Siafu and Gaza in Nairobi and Kwekwe in Muranga, among others.[260] A police crackdown forces the targeted groups to 'go underground,' buy time and resurface again. It is a challenge in law enforcement to draw a connection between previous identity and the resurfaced identity, despite the group being the same. This also becomes a challenge in adducing evidence linking the two entities. For instance, in the Mombasa Republican Council (MRC) High Court Case, the Court held that there was no evidence that linked the MRC to be an active arm of the Republican Revolutionary Council (RRC), an armed outfit whose aim was to disenfranchise upcountry people and later reclaim their land.[261]

Secondly, the groups start claiming for recognition of their constitutional rights and freedoms. In the MRC Case, the petitioners sought a High Court declaration that the Government's action of proscribing it vide Gazette Notice No. 12585 dated 18th October

[259] Turner, R. H. and Killian, L. M. (1993), *Collective Behavior*. Englewood Cliffs, New Jersey, Prentice Hall, 4th ed.
[260] See National Cohesion and Integration Commission (NCIC) Policy Brief (March 2018), *The Impact of Organized Gangs on Social Cohesion in Kenya: Policy Options*. Government of Kenya, Nairobi
[261] Judgement in Randu Nzai Ruwa & 2 Others v. Internal Security Minister & Another (2012) eKLR at par. 57 – 58

2010 under section 22 of POCA is unconstitutional. The High Court in Mombasa declared, which on appeal was upheld,[262] the proscription unconstitutional and recognized the petitioners' constitutional rights of assembly and association, but advised that such rights be exercised in a formal and orderly manner permitted by law.

This raises another issue of the groups morphing into political outfits. Because there is no evidence to link them to organized criminal activities, it is difficult for law enforcement to deal with them. The net result is that a group, which starts as an entity to provide community protection, transforms into an organized criminal group before morphing into a political outfit. As such, however stringent laws are put in place to deal with informal organic and organized groups, without effective enforcement, coupled with weaknesses inherent in the law, such groups would continue to proliferate.

4.3.2 Regulatory Framework on Single Actor/Individual Private Security

The Firearms Act Cap 114 Laws of Kenya regulates the licensing, certification, acquisition and possession of firearms for this category. Section 4(1) makes it an offense to purchase, acquire or possess any firearm or ammunition unless one has a valid firearm certificate. Additionally, it is an offense to hire out or unlawfully permit another person to take possession of or use a firearm or ammunition to commit a criminal activity.[263] The Act also specifies the types of firearms that can be possessed by civilian firearm holders to include; AK-47, G3, MP5 and any other as may be specified by the Minister in a gazette notice.[264]

The conditions to be met for anyone seeking to be issued with the firearm certificate are spelt out under section 5 of the Firearms Act. Most importantly the applicant must demonstrate a

[262] See Appellate judgement in Attorney General & Another v. Randu Nzai Ruwa & 2 Others (2016) eKLR
[263] Section 4A(1)(b) of the Firearms Act
[264] Section 4A(2) of the Firearms Act

good reason for purchasing, acquiring or possessing a firearm or ammunition and that the applicant is not a danger to the public safety and peace.[265]

The net result of these provisions is to treat equally any civilian person intending to own a firearm by requiring them to abide by the licensing requirements and conditions. There is no requirement for mental assessment, training on handling and usage. These gaps leave it open for mentally unstable persons to possess lethal weapons.

The parameters to ascertain 'good reason' are not provided. This is left to the discretion of the licensing officer. The procedure for issuance of firearm certificates is key and the discretionary provision is open to abuse, where the licensing officer, without any criteria, dishes out certificates to applicants as he/she deems fit. This encourages corruption and unaccountability in the issuance of the certificates.

A firearm certificate once granted specifies conditions, if any, to which the firearm is to be held, nature and number of firearms to which it relates and the authorized ammunition quantities to be purchased and held.[266] Although the section specifies the number of firearms and quantities of ammunition to be held, the discretionary nature of issuing the certificate allows the licensing officer to allow certain civilian firearm holders to own unnecessary number of specified firearms. The effect of this is that a licensing officer can indirectly allow an individual to establish an 'armoury' without regard to the severity of the good reason for owning a firearm. This would lead to militarization of the civilian population who can demonstrate 'good reasons' for owning firearms.

The Firearms Act is also generally silent on the safe custody and public handling of civilian-held firearms as it does not specifically prohibit public display of firearms by valid license holders. The net effect is to allow firearms public show-off by licensed individuals. For

[265] Section 5(2) of the Firearms Act
[266] Section 5(3) of the Firearms Act

instance, during the Dusit D2 terror attack in January 2019, city politician Steve Mbogo, a firearm license holder was captured on video wielding a firearm and donning a bulletproof vest. After public furore, the politician presented his firearm license to Nairobi Area Police Station.[267] This gap in the Act demonstrates that validly licensed civilian firearm holders can actually parade their arsenal anywhere in Kenya. Based on Wilson and Kelling's broken window theory, if visible signs of anti-norm behavior are not addressed, the behavior becomes the new norm. Exploitation of this existing gap in law would encourage civilian militarization as the urge to apply for firearm licenses increase because everybody is having a firearm and publicly displaying it. This proliferated arming of civilians would pose security challenges in terms of accountability and usage.

Further, the Firearms Act does not require the applicants for a firearm license to undergo any form of theoretical and practical training course or test on firearm safety and the law. This is left to the individual holders to voluntarily organize for training, if the person so wishes.[268] Training then becomes uncoordinated which exposes civilians to the risks appurtenant to irresponsible civilian firearm use. This also affects standard operating procedures to be followed in case of emergencies including identification by State security leading to friendly casualties.

Single actor/individual private security actors are also regulated by the Private Security Regulation Act (PSRA) 2016. Section 2 defines a private security service provider to include a person or body of persons, other than a state agency, registered under the Act to provide a private security service to any person. Section 22 specifies individual service provider to include a security guard, an employee of a private security company and a private security provider. The individual actor that provides private security services is mandatorily required to be registered under section 6 of the Act.

[267] https://nairobinews.nation.co.ke/news/steve-mbogo-deadly-firearms-terror-attack
[268] Interview with a representative of National Gun Owners Association – Kenya on 23.11.2020, Nairobi

The import of this mandatory requirement for registration is that any unregistered private security service provider is deemed to illegally provide such services and is subject to prosecution. This locks out individual providers in rural and outlying districts spaces as they are far removed from the capital creating two classes of firearm holders; legal and illegal. In the Marxist conflict theory, this creates class struggle with resultant distance decay in the enactment and enforcement of the law leading to skewed implementation. This leads to the perception that the Act does not apply to the spaces and that individual security providers do not fall under the Act.

4.3.3 Regulatory Framework on State-Indulged Providers

The State-indulged private security providers (also known as Police Reservists) draw their mandate from Part XV of the National Police Service Act. Section 110 provides that the National Police Reserve (NPR) shall consist of voluntary Kenyan residents. Section 110(3) provides that the NPR may be deployed to assist the National Police Service or Administration Police Service in their respective mandates, including; maintenance of law and order, preservation of peace, protection of life and property, prevention and detection of crime, apprehension of offenders, and the enforcement of all laws and regulations. As security personnel, NPRs are authorized to be issued with proper uniform, service identity cards and hold firearms. The issuance of firearms is to be managed by police officers in charge of the localities. The NPRs are also required to be vetted and undergo training before deployment.[269]

However, so far, the exact number of NPRs is unknown. After the 2010 Constitutional dispensation and subsequent amendments to the National Police Service Act, keeping record of NPR personnel and firearms issued to them was transferred from senior police officers in

[269] Section 3A of the NPS Act

their locality to the National Police Service Commission.[270] The Commission is also mandated under section 110C of the Act to conduct recruitment of NPRs upon recommendation and in consultation with the Inspector General of Police. The net result of these provisions on recruitment and general administration of NPRs is that the IG indirectly retains the powers to recruit. However, after recruitment, the IG lacks the capacity to maintain proper personnel records, which is a function of the Commission.

With the lack of comprehensive records of the NPRs, there is lack of accountability in the firearms and their usage which presents an opportunity for the personnel to commit crime.[271] This is based on Hirshi's control theory, which argues that human beings are neither prone to crime nor naturally virtuous and would turn to crime if the advantages are more appealing.[272] The State arming of NPRs without proper accountability mechanism presents an opportunity for the personnel to consider the economic opportunities to misuse the firearm.

The law on recruitment and deployment of NPRs also has inherent weaknesses that can be exploited to create a crisis in security provisioning. Firstly, recruitment of NPRs is to be undertaken by the Commission, which derives its mandate from article 246(3) of the Constitution to; recruit, appoint, promote and transfer NPS officers, and perform any other functions prescribed by national legislation. The functions of the Commission are specifically stated under section 10 of the NPSC Act. Neither section 10 nor the entire NPSC Act recognizes the role of the Commission in the recruitment and management of NPRs. However, section 112 of the NPS Act provides that the period of service for the NPR officers is limited to two years renewable only once unless there is declared war or a state of emergency where the officers will serve in the duration of the war or state of emergency.

[270] Section 110(5) of the NPS Act
[271] See previous discussions under Section 3.2.3 of this research
[272] Hirshi, T. (1969), *Causes of Deliquency*. Berkeley, Canada; University of California Press

The foregoing two Acts contradict each other. Whereas the role of NPRs is explicitly provided for under the NPS Act,[273] which also provides that recruitment and general management of the personnel is a preserve of the NPSC Act,[274] the NPSC Act does not recognize NPRs. This inconsistency in the two Acts leaves room for mismanagement of NPRs, who are already armed, and subject to court litigation. These legal contradictions thereby aid in embedding the crisis of security provisioning by the category of providers as there is no accountability due to the existing legal contradictions.

Further, section 115 of the NPS Act provides that the NPSC in consultation with the Salaries and Remuneration Commission shall determine NPRs pay. It also provides that during war and/or state of emergency, the officers would be paid an equivalent of police officer of the same rank. However, there is no equivalent provision in the NPSC Act. This contradiction leaves a loophole for misuse where NPRs are recruited voluntarily, payment made but the officers don't actually receive the pay.

Essentially, the 2014 amendments to the NPS Act (Part XV) that provided for NPRs were not followed up with subsequent amendments to the NPSC Act. This leaves room for contradictions between Acts of Parliament due to inconsistencies, thereby creating security provisioning crisis.

4.3.4 Regulatory Framework on Formal Uniformed Private Security

Since 2016 the formal uniformed private security sector in Kenya has been formally brought under regulation vide the Private Security Regulation Act No. 13 of 2016. The Act defines a private security provider to include both an individual person and a body corporate.[275] This definition caters for the individual actors (watchmen) and private investigators (as discussed in section 4.2.2) and the formal private security companies that are involved in security

[273] Section 110(3) of NPS Act
[274] Section 110(5) of NPS Act
[275] Section 2 of the Private Security Regulation Act 13 of 2016

provisioning. The Act further clarifies under section 4 that it applies to private security officers, security guards, private security service providers, private security companies and individual private investigators.

For one to qualify to offer private security services, the person must be registered under the Act, which is mandatory.[276] In fact sections 21 and 28 are categorical on the registration requirement for both individual and corporate persons;

> *A person shall not engage in the provision of private security services or offer private security services in Kenya at a fee unless that person is registered by the Authority in accordance with this Act.*

The definition and mandatory registration requirements exclude unregistered providers including informal organic/organized and State-indulged groups. This exclusion generally criminalizes all persons offering private security but not registered under the Act. This generalization creates a fog of private security provisioning; whereas the State recognizes NPRs as a form of private security provisioning, the Act does not. As a result there is no coordination of these providers to create an effective private security provisioning mechanism. Further, the mandatory requirements result in proliferation of another tier of private security providers, who are unaccountable, uncoordinated and outside the command and control of public police. This exacerbates the crisis of security provisioning.

Section 7 establishes the Private Security Regulatory Authority whose functions, as detailed under section 9 of the Act, are meant to ensure effective coordination, administration, supervision, regulation and control of the private security provisioning in Kenya. The Authority is mandated to *inter alia* establish, formulate and enforce standards, license the providers; maintain profile of all providers; ensure that the providers act in public and national interests; set standards for training; ensure observance of the rights of the guards, private security officers and other employees within the sector, among others. However, the

[276] Section 6 of the Private Security Regulation Act 2016. The registration requirements are provided for under Parts III and IV of the Act.

Authority has not been fully operationalized. For instance, the Authority is in the process of accrediting training institutions. This leaves room for private security companies to continue with the uncoordinated training of their personnel, resulting in disharmonized standard operating procedures.

The Act prohibits users or intended users of private security services from engaging unqualified persons. The only way to know qualified providers is through the Authority's database. However, the Authority lacks an up-to-date official website and database where a comprehensive register of private security service providers can be accessed as per section 42 and for purposes of section 9(o) of the Act.[277] The effect of this is that there is a disconnect between the enactment and its enforcement which makes compliance unachievable.

Individual persons qualify for registration inter alia if they don't have criminal records[278] while a licence to corporate persons is issued upon a positive security vetting.[279] Criminal records are held and kept by the Directorate of Criminal Investigations (DCI) while record of companies is held by Registrar of Companies. There is no evidence of joint database for purposes of registration and licensing. Instead it is left to the Authority to keep record of such clearances. The lack of a central comprehensive information centre for purposes of getting data on both individuals and companies involved in provision of private security services results in piecemeal and disjointed information during the registration process. As a result 'unsuitable' individuals and companies are registered and cleared respectively to provide security services.

Section 45 establishes the duty to cooperate with national security organs, thus:

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[277] Section 9(o) provides that the functions of the Authority shall be to … *provide information to the users, prospective users or representatives of users of security services regarding the compliance of private security service providers with the provisions of this Act;*
Section 42(1) provides that the Authority shall maintain an up-to-date official website where the register and any other information as may be necessary shall be availed.
[278] Section 23(2)(g) of the Act
[279] Section 29(2)(d) of the Act

(1) Whenever called upon by the national security organ, the Inspector General of the National Police Service or the Cabinet Secretary, a private security service provider shall cooperate in the maintenance of law and order or in any other manner as may be provided for in the instrument of request.

(2) The Cabinet Secretary in consultation with the Inspector-General and the Authority shall make regulations generally to provide for any matter relating to the cooperation, scope, mechanism and command in the case of cooperation with the private security service provider.

From the foregoing provision, the duty to cooperate is limited to national security organs; Kenya Defense Forces (KDF), National Intelligence Service (NIS) and the National Police Service (NPS). However, in homeland security architecture, there are more policing agencies involved including the Kenya Forest Service, the Prisons Department, Kenya Wildlife Service, County Enforcement Officials, among others. The provision on cooperation thus limits uniformed private security providers in a pluralized security provisioning environment.

A critical element of this cooperation entails information sharing. However, in the wording of section 45(1) of the Act, a private security service provider must be formally requested to collaborate. Firstly, this means there is no voluntary information sharing. This affects information sharing as such providers can ride on the provision so as not to provide information for purposes of maintenance of law and order.

Secondly, due to the Kenyan policing architecture and the established junior-senior model (as discussed under section 3.3.4(b)), information on law enforcement is given to the police, who are the law enforcers. The police rarely share information with the private security providers. Based on Marxist conflict theory of class struggle, the police form a small group of elites that dictate informational control while formal uniformed private security providers voluntarily provide the information. This class conflict can negatively affect information sharing in security provisioning.

Section 53 prohibits the use of firearms in rendering of a private security service. Despite this prohibition, the debate is still raging on about the possibility of arming the private security

providers. There are two schools on the issue; proponents who feel the providers should be armed and those opposed to the arming.

For the proponents, the firearm is a sign of authority, control and security. The job of providing the services is very risky and requires one to be armed, as extra protection, to respond better because without the firearm the private security officers are helpless in the fight against crime and terrorism. Therefore, to them, since the guards are defenseless against highly armed criminals and terrorists, they should also be armed to protect themselves.

For those who are opposed to arming, they cite risks appurtenant to such arming including; risks in providing a poorly trained person with a lethal weapon, increased firearms circulation and lack of proper accountability mechanisms.

PSCs have not armed their guards because of the provision. However, the industry Associations argue that the provision needs to be reconsidered so that a small group that offers critical services can be armed. Further, private investigators and some PSCs personnel have private firearm licences. Essentially they are armed. The issue is the point at which a line is drawn between being armed for private ventures and for rendering a security service.[280] There is no clear line to demarcate between when one is rendering security services and not. The net effect of this blurred distinction is that the prohibition can be circumvented by personnel who acquire individual firearm licences and use their firearms even when discharging security duties.

In addition to the foregoing Private Security Regulation Act 2016, there are also Regulations meant to guide minimum wage payments and also give effect to the Act. They provide a critical aspect of regulation of the formal uniformed private security providers as discussed herein below:

[280] Section 53(1) of the Act provides; *a private security service provider shall not use or allow the use of firearms in the rendering of a security service.*

4.3.4(a) Minimum Wage Regulation of Uniformed Providers

Regulation of minimum wage payment is necessary as it affects morale of uniformed personnel. The Protective Security Services Order 1998 and the General Regulation of Wages Order 2018 provide for the basic minimum wages for PSCs employees. They categorize the protective security service employees into two; region and time of day. The regions are categorized into cities (Nairobi, Mombasa and Kisumu), other Municipalities and all other areas while time of day is divided into either night or day.

The Orders also extend to issues of overtime allowances. There are also other mandatory statutory costs as imposed by the Employment Act 2007 and the Industrial Training Act Cap 237 Laws of Kenya that are incurred by the companies. A summary of these costs per guard are as presented in table 4.1 below.

Table 4.1: Combined Summary of Monthly Costs Per Guard

Description	Cities		Other Municipalities		All Other Areas		Enabling Legislation
	Night	Day	Night	Day	Night	Day	
Basic salary	15,142	14,038	14,023	12,521	8,634	7,240	Regulation of Wages (General)(Amendment) Order 2018
House allowance at 15% of basic salary	2,271	2,036	2,102	1,877	1,295	1,086	Employment of Act 2007, Regulation of Wages (Protective Security Services) Order 1998
Overtime per month (excess of weekly 52 hours)	8,736	7,831	8,090	7,223	4,982	4,178	Employment Act 2007
Public holidays prorated (11% p.a)	1,481	1,373	1,327	1,224	845	708	Employment Act 2007
Cleaning allowance (1/2 kg of good quality soap)	80	80	80	80	80	80	Employment Act 2007
Leave travel allowance	83	83	83	83	83	83	Employment Act 2007
NSSF	200	200	200	200	200	200	NSSF Act 2013
Training levy	50	50	50	50	50	50	Industrial Training Act
Gratuity	757	702	679	626	448	377	PSSW

Uniform	1,000	1,000	1,000	1,000	1,000	1,000	PSSW
WIBA	700	650	628	580	413	348	WIBA 2007
Weekly annual reliever	8,332	7,759	7,518	6,793	4,840	4,076	PSSW/ Employment Act 2007
Training & assessment cost	1,000	1,000	1,000	1,000	1,000	1,000	Private Security Regulation Act 2016
PSRA fees	30	30	30	30	30	30	Private Security Regulation Act 2016
TOTAL COSTS	**39,862**	**36,832**	**36,810**	**33,287**	**23,900**	**20,456**	

Source: Kenya's Private Security Regulation Handbook, July 2019

From the foregoing, geographical area and time of day determines how much a guard earns. This categorization does not consider risk profiles of private security services in particular job assignments. The net effect is that the personnel would avoid too risky assignments, in the absence of an additional incentive. Further, as discussed under section 3.3.4(e), there are apparent pay inequalities whereby companies pay the personnel as low as ksh. 5,000 a month.[281] The pay inequalities affect morale of the personnel.

Based on psychologist Stacey Adams' compensating differential model, when individuals perceive inequity, the perception induces a change in behaviour, including retaliatory effort reductions, that seeks to reduce the tension between compensating differential (absolute pay level) and morale.[282] This lifestyle variation affects opportunities for crime as the employees are likely to engage in criminal activities to compensate for the pay inequalities. Hence payment of minimum wages becomes a factor that pushes the personnel to engage in crime.

4.3.4(b) The Annulled Private Security (General) Regulations, 2019

In July 2019, the Cabinet Secretary for Interior and Coordination of National Government gazetted the Private Security (General) Regulations, 2019 to operationalize the Private Security Regulation Act.[283] However, the gazettement was later annulled by Parliamentary

[281] PS Karanja Kibicho during the National Assembly Delegated Legislation Committee proceedings on 29th October 2019

[282] Adams, J. S. (1963), *Towards an Understanding of Inequity*. The Journal of Abnormal and Social Psychology, vol. 67, pp. 422 – 436, p. 422

[283] Kenya Gazette Special Issue, Legal Notice No. 10 dated 5/7/2019

Committee on Delegated Legislation in December 2019 for; among others, lacking public participation.

The first issue here is about the process of enacting Statutory Instruments.[284] The manner, procedure and criteria for considering Statutory Instruments is set out in the Statutory Instruments Act 2013 and the Standing Orders. Most importantly is that such instruments must conform to the Constitution of Kenya, Interpretation and General Provisions Act Cap 2, the Parent Act and the Statutory Instruments Act 2013. The requirements under the Statutory Instruments Act include; consultation with stakeholders, preparation of a regulatory impact statement, preparation of explanatory memorandum and tabling of the Instrument in Parliament.[285] The failure to observe these threshold requirements renders nugatory subsidiary legislations enacted by any person or body.

Secondly, an interrogation of the annulled Regulations is necessary since they were meant to give full effect to the Act. Part IV of the Regulations addresses employment and training aspects of private security provisioning. Most importantly is the aspect of PSCs vetting prospective employees.[286] The Regulations do not provide for modalities of such vetting. For instance at whose cost, what happens when there is a negative vetting result? Private security companies are in business and once they sign contracts for security provisioning, time is of the essence and efficient vetting of prospective employees may not be achieved.

In this kind of vetting, companies require a prospective employee to be referred and accompanied by a higher ranked company employee.[287] However, at times prospective employees corrupt their way into obtaining the 'clean' criminal record.[288] The net result is

[284] Statutory Instruments refer to all Subsidiary legislation made by persons or bodies other than Parliament, but with the authority of Parliament
[285] National Assembly Kenya (2017), *FactSheet 21: Statutory Instruments*. Clerk of National Assembly, Nairobi, pp. 2-3
[286] Regulation 18(1) of the Private Security (General) Regulations
[287] Interview with a senior Private Security Company, Nairobi, 15.08.2020
[288] Ibid

that companies don't have an effective way of vetting and they rely on 'clean' criminal records from the police.

Regulation 18(4) makes it an offence for users of private security services to engage unqualified service providers. Whereas this is a requirement, the Authority has not publicly provided an up-to-date comprehensive register of the service providers. This would result in users looking for ways to evade the Regulation and without the records, enforceability of the provision is a challenge.

Regulation 25(1) attempts to specify the scope of cooperation with national security organs as provided for under section 45(1) of the Act. The cooperation is for purposes of; maintenance of law and order, preventing or mitigating a national disaster, incident planning, sharing security information and sharing expertise and training. Curiously, Regulation 25(6) provides that whenever a private security service provider is deployed pursuant to the regulation, the provider may be facilitated with transport and shall be paid daily allowances as may be determined by the Cabinet Secretary. However this Regulation does not specify who pays the daily allowance.

Regulation 26(1) clarifies on information sharing as an aspect of the duty to cooperate. The Regulation makes it mandatory for sharing of information for purposes of maintaining law and order, elimination of security threats and promotion of national security. However, contradicts section 45(1) of the parent Act which entails voluntary cooperation unless in writing. This conflict provides an opportunity for successful litigation against the Regulations and the loophole would allow private security service providers to avoid sharing information.

The Regulations are silent on the use of firearms. They however clarify on the 'Armed Private Security Services' and 'Armed Escort Services' as service based category. Any provider intending to use armed police in provision of these services has to apply for this

category of licence.[289] The effect of this is that private security providers remain per se unarmed and as such must use armed police escort in the discharge of their duties.

The Second Schedule to the Regulations makes provisions for the annual fees payable by corporate private security providers. The Schedule has categorized the fees into either service or size based. The private security Associations contend that these fees are in the form of double taxation. PSCs are required to pay the fees specified in the Schedule to the national government while there are also other annual licence fees payable to the county governments in areas where they operate. This increases the cost of providing private security services, which in turn 'eats into' the personnel pay.

Further, the wording of the Second Schedule applies only to 'corporate private security providers'. Sections 23(1) and 29(1) of the Act and Regulations 14(2) and 15(2) anticipate situations where both individual and corporate private security providers seek registration and licences respectively. However, the Schedule excludes annual fees for individual persons.

4.3.4(c) Industry and Agency Level Regulation

Apart from the State level regulation, there are Industry and Agency level regulations as pertains formal uniformed private security providers. At the industry level, the self regulation is through mechanisms established by voluntary employer associations from within the industry that set standards. In Kenya, the industry level regulation is provided by the Kenya Security Industry Association (KSIA), Protective Security Industry Association (PSIA) and the Protective and Safety Association of Kenya (PROSAK).

The KSIA comprises the 'elitist' group of large and foreign-owned companies while the PSIA comprises of smaller Kenyan-owned companies.[290] Members of the KSIA consider themselves as 'legitimate and legal' companies while those comprising of the PSIA as 'jua

[289] Private Security Regulatory Authority
[290] Colona, F. and Diphoorn, T. (2017), *Eyes, Ears and Wheels: Policing Partnerships in Nairobi, Kenya.* Conflict and Society: Advances in Research, vol. 3, pp. 8-23, p. 16

kali' or briefcase companies.[291] The rivalry is also rife in minimum wage and training discussions. Whereas PSIA decry prohibitively high fees and costs levied on the membership that threatens continued operations of the membership, KSIA does not feel that the membership strains to meet the costs despite commenting on the high costs.[292] KSIA members consider themselves an 'elite club' in private security provisioning. Further, KSIA also bragged on how some of its members provide overseas training where the personnel jointly train with other foreign private security providers.

Based on the Marxist conflict theory, the net effect of these Associations' rivalry is that there would be no coordinated amalgamation of association self regulation efforts to develop a standardized comprehensive and effective industry level regulation. The Associations will continue competing without effective industry level regulation.

Additionally, there is Agency level regulation where individual companies regulate their employees through set standards in training, recruitment and disciplinary measures. Until 2019 there was no training curriculum and individual companies were left to train their employees as they deemed fit. The companies thus could provide basic training with no advanced or refresher training at all. However, in December 2019, a training curriculum was launched for private security officers as part of the cooperation framework. The curriculum is yet to be tried and tested but it could help standardize training of personnel.

The companies have internal training, recruitment and disciplinary mechanisms. These mechanisms are derived from the national legislations, policies and best practices within the private security sector. The net effect is that the Agency level regulation in Kenya relies on the 2016 Act, other laws and industry best practices elsewhere. This leads to uncoordinated private security provisioning in Kenya.

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[291] Diphoorn, T. (2016), *"Surveillance of the Surveillers": Regulation of the Private Security Industry in South Africa and Kenya*. African Studies Review, vol. 59(2), pp. 161-182

[292] Interviews with representatives of the two Associations on diverse dates; 20.07.2020 and 12.08.2020, Nairobi

Chapter Five

Recapitulation, Conclusions and Recommendations

5.1 Introduction

This chapter provides a summary, conclusions and recommendations of our study. It specifically anchors four tasks; firstly, it provides a recapitulation of the core objectives of the study. It evaluates the extent to which tasks in the objective have been met. Secondly, it provides a recapitulation of the hypothesis of the study with a view to demonstrating their validation. Thirdly, it anchors the conclusions and the thesis of the study. Fourthly, it anchors the task of our third objective by outlining the policy recommendations for a better coordination, establishment of command and control of private security provisioning in Kenya.

5.2 (a) Proliferation of Private Entities and Impact on Security Provisioning

In this section we recapitulate on our first objective; examining and analyzing impact of proliferation of private security entities and the consequent relational dynamics on homeland security provisioning. We seek to demonstrate the extent to which the tasks of the objective have been met. There are assumptions that underly this objective: there are various factors underlying the proliferation of private security including police absence and abstinence; there are different typologies of private security entities including informal organic and organized groups, single actor/individual providers, State-indulged and formal uniformed private security entities; these entities interact amongst themselves and between them and public security providers. In these interactions, there are relational dynamics that arise such as competition and collaborative partnerships. These elements constitute the multiple dynamics in security provisioning, which, without a requisite effective coordination mechanism, results in a crisis of security provisioning. Consequently, uncoordinated proliferation of private

security entities in the multiple security provisioning environment in Kenya engenders the crisis.

To arrive at the foregoing conclusion, the objective was structured around two core parts. The first part analysed the theoretical anchorage of security and referent objects of security in the context of homeland security provisioning. Our study notes that security being an ambiguous concept,[293] results in relative interpretations of what security is, for who and at what level. This relative interpretation also gives rise to multiple referent objects. Adopting Kenneth Waltz's three levels of security analysis; individual, state and systemic,[294] the study locates the referent objects using Buzan's triage[295] as; ideas, institutions and the physical base. The ambiguity and multiple referent objects results in multiple interpretations of security. At the individual and State levels, the relative interpretation by actors, who also define the objects of security differently, lead to proliferation of numerous security providers, both formal and informal, involved in security provisioning.

The second part analysed the effect of the relative interpretations of security and objects of security. The study found out that this gives rise to multiple security provisioning mechanisms, including differentiated typologies of private security providers. The different private security typologies that arise to operate alongside public security providers were grouped into four; informal organic and organized groups, single actor/individual providers, State-indulged and formal uniformed private security entities. Our study also found out that intra-relational and inter-relational dynamics arise that affect security provisioning. For instance, there is competition between the two prominent industry Associations for uniformed private providers; Kenya Security Industry Association (KSIA) and Protective Security Industry Association (PSIA). This is due to perceived 'elite' versus 'jua kali' mentality,

[293] Wolfers, A., 'National Security as an Ambiguous Symbol', in Wolfers, A. (1962), *Discord and Collaboration. Essays on International Politics*. Baltimore: John Hopkins University Press, pp. 147-165
[294] Kenneth N. Waltz (1979), *Theory of International Politics*. Reading, Mass., Addison-Wesley
[295] Buzan, B. (1991), *People, States and Fear: An Agenda for International Security Studies in the Post-Cold War Era*. ECPR Press, pp. 36-65

which affects development of standardized industry level regulation.[296] Competition is also rife in the inter-relational dynamics resulting in hostilities and non-cooperation between the two formations.[297] Our study concluded that based on Marx's conflict theory, without an effective coordination mechanism that establishes command and control, the resultant conflict due to the competition amongst private security providers and between the two formations of security providers leads to a crisis of security provisioning.

The proliferation also creates false positives in terms of force to space ratio dynamics. There are 101,288 police officers in Kenya[298] against PSCs personnel of about 700,000, and an estimated over 16,500 KPRs.[299] In terms of relative numbers, PSCs personnel and police reservists outnumber the police but in reality the numbers have no positive impact on security provisioning. In effect, the capacity of the State security agents to dominate the space and control security provisioning therein is reduced. The study concluded that these relative numbers and control of a space (force to space ratio) dynamics challenge establishment of command and control thereby animating the crisis of security provisioning.

5.2 (b) Legal Implications Inherent in the Proliferation of Private Security Entities

In this section, we recapitulate on our second objective; to analyze and examine operationalization of existing policy and legal frameworks that underpin private security provisioning in homeland security. We sought to demonstrate the extent to which the tasks have been met. Two core assumptions underly this objective; that an anchor Policy has to coordinate development of subsequent Policies and laws in a regulatory regime, and absence of the anchor Policy affects the subsequent Policies and related laws. The major argument

[296] Diphoorn, T. (2016), *Surveillance of the Surveillers: Regulation of the Private Security Industry in South Africa and Kenya*. African Studies Review, vol. 59(2), pp. 161-182
[297] See discussions under section 3.2.4(b)
[298] Government of Kenya (GoK, 2019) police records
[299] Mkutu K. and Wandera G. (2013), *Policing the Periphery: Opportunities and Challenges for Kenya Police Reserves*. Small Arms Survey, Graduate Institute of International and Development Studies, Geneva, p. 23

advanced here is that, in a pluralized security provisioning environment, weaknesses in policy and legal frameworks to operationalize private security provisioning exacerbates the crisis of security provisioning.

In this second objective, we looked at two components; absence of an anchor Policy framework, and its impact on subsequent policy and legal frameworks. In the first component, we analyzed the importance of a National Security Policy as a coordinating mechanism for the three legged Policy pillars; economic, political/foreign and military in a grand strategy.[300] We noted that a National Security Policy clearly identifies and defines national interests of the State, objects of security, security threats and provide a synchronized approach towards protecting the interests and addressing the threats. Further, under the military pillar, which is concerned with security provisioning, the National Security Policy guides a coordinated development of Defense Policy and Internal Security Policy, from where National Policing Policy would emanate. Operationalization of these Policies would lead to development of effective security-related laws to coordinate relations between and amongst security provisioning entities.

However, in Kenya, our study found out that there is no written National Security Policy. The also found out that there lacks Economic and Internal Security Policies. The Defense and Internal Security Policies, if they were both present, would mirror each other in terms of homeland security provisioning. We concluded that the lack of a written National Security Policy negatively affects coordination and anchorage of the three-pillar Policies, which would subsequently coordinate and anchor derivative Policies including Internal Security and National Policing Policies. In turn the Internal Security Policy would coordinate development of Defense and National Policing Policies which would anchor development of a National

[300] Katumanga, M. "Leadership and the National Security Policy Process in Kenya" in Njoroge, H. & Mwagiru, M. eds (2019), *Grand Strategy in Kenya: Concepts, context, Processes and Ethics.* Three Legs Consortium, Nairobi, vol. 1, pp.96-103

Private Security Provisioning Policy to operationalize private security provisioning. The net result of the absence of an anchor Policy and the subsequent derivative Policies is the development of disjointed and uncoordinated sectoral Policies and subsequent plethora of haphard security-related laws. This makes establishment of effective coordination, command and control of private security providers untenable, which exacerbates the security provisioning crisis.

In the second component, we analyzed the effect of the absence of the Policy frameworks on development of an effective legal framework to operationalize homeland security provisioning. We found out that there are various uncoordinated and disjointed laws relating to the various typologies of private security provisioning arising from the lack of Policy coordination and anchorage. The laws include; Prevention of Organized Crime Act (POCA) No. 6 of 2010, Firearms Act Cap 114, Private Security Regulation Act 13 of 2016, National Police Service Act and National Police Service Commission Act. There are also regulations on uniformed private security provisioning that include the minimum wages Orders and the annulled Private Security (General) Regulations 2019. All these security provisioning related laws are supposed to be coordinated by a National Policing Policy, which does not exist. Our study concluded that the absence affects development of effectively coordinated legal framework, creates challenges in formulation of security provisioning strategy and as such affects the tactics in security provisioning.

Further, these uncoordinated laws and Regulations have inherent weaknesses. For instance, there are evidentially challenges under POCA, abuse of the discretionary powers and lack of requirement for theoretical and practical assessment before issuance of the license under the Firearms Act. For the Private Security Regulation Act, the weaknesses include the exclusionary nature in the mandatory requirements for registration and licensing, voluntary nature of the duty to cooperate unless formally requested and limiting this duty to only

national security organs, while there are contradictions on the issue of police reservists between the NPS and NPSC Acts which results in lack of accountability mechanisms for the issued firearms.

We concluded that the net result of these legislative gaps and weaknesses is that there is uncoordinated and unaccountable operationalization of private security provisioning. In essence, there is no effective regulation. This exacerbates the crisis of security provisioning in a multiple security provisioning environment.

Further, the Private Security Regulation Act requires operationalization through enactment and implementation of Regulations. The Private Security (General) Regulations 2019 were gazetted but later annulled for lack of public participation. However, these 2019 Regulations also have inherent weaknesses and gaps. These include; do not address the dilemma in vetting of prospective employees, create offences for users of security services who engage unqualified service providers whereas there is no comprehensive data by the Authority, and the Second Schedule excludes annual fees payable by individual private security providers whereas the Act and the Regulations anticipate payment of registration fees by the providers. These weaknesses further exacerbate the security provisioning crisis.

5.3 Recapitulation of the Hypothesis

5.3(a) Uncoordinated Proliferation and Crisis of Security Provisioning

Our first hypothesis is that the crisis of security provisioning is a function of proliferation of private security entities with unresolved legal frameworks underpinning the regulatory framework. It is based on the uncoordinated nature of the proliferation of different types and ineffectively regulated private security providers that have emerged to create a multiple security provisioning environment.

To advance the hypothesis, private security provisioning in the Kenya was divided into four typologies; organic and organized groups, single actor/individual, State-indulged and uniformed private security providers. Facts collected indicate that the more private security entities emerge, there is distortion in the force numbers for security provisioning thereby creating false positives, increased competition thus hostilities and subsequent reduction in effectiveness of security provisioning. Based on Marx's conflict theory, the hostilities result in lack of coordination and conflict that affect security provisioning. The lack of coordination, command and control spawns the crisis of security provisioning within the homeland security provisioning architecture.

5.3(b) Absence of Regulatory Framework and Crisis of Security Provisioning

Our second hypothesis is that establishment of an effective command and control over private security provisioning is a function of a strong Policy and Legal Frameworks that operationalizes homeland security provisioning. It is predicated on the assumption that existence of a written National Security Policy and subsequent security-related Policies provide an anchorage for and coordination of effective regulatory regime on security provisioning in a pluralized security provisioning environment. The Policies also provide a coordinating mechanism for sectoral Policy development and anchorage to synchronize effective law-making processes.

To ascertain the hypothesis, an inquiry into the process of grand strategizing was conducted and the importance of a National Security Policy analyzed. The study concluded that both the National Security Policy and National Security Strategy are important in grand strategy. The National Security Policy forms the slab that rests on the three Policies appurtenant to the three sources of national power; economy, political (foreign) and military. Further, an inquiry into sectoral Policy development was conducted with the conclusion that the National

Security Policy provides the anchor and coordinating mechanism. The sectoral Policies in turn provide the anchor and coordinating mechanism for subsequent Policies and legislations.

However, in Kenya there is neither a written National Security Policy, Internal Security Policy nor National Policing Policy. The result is that coordination in the development of Policies within the three pillars of the sources of national power is impeded leading to inappropriate deployment of instruments of national power to address threats, disjointed and uncoordinated development of security-related Policies and laws. In the absence of these Policies, national debate around homeland security provisioning is greatly jeopardized. Further, the resultant legislation on security provisioning is disjointed and flawed leading to various laws with inherent weaknesses and gaps. This embeds the crisis of security provisioning within the homeland security architecture.

5.4 Conclusion

Our study sought to answer the question of how proliferation of private security entities coupled with absence/weaknesses in a regulatory framework affect homeland security provisioning. There are several challenges that underpin homeland security provisioning. An examination of these challenges leads us to the conclusion that uncoordinated proliferation of private security entities, coupled with absence of an anchoring Policy framework and consequent security-related laws to operationalize homeland security provisioning results in the crisis of security provisioning.

Underlying this crisis is the relative definition of security and objects of security that require protection. This leads to various actors relatively defining security,[301] objects of security and adopting multiple securitization mechanisms, including self-securitization mechanisms. In this pluralized security provisioning environment, different typologies of self-securitization

[301] Wolfers, A., 'National Security as an Ambiguous Symbol', in Wolfers, A. (1962), *Discord and Collaboration. Essays on International Politics*. Baltimore: John Hopkins University Press, pp. 147-165

mechanisms arise and tying them together is a challenge in the absence of Policy and Legal Framework.

We concluded that a strong regulatory framework is necessary to coordinate the proliferation, and establish command and control over private security provisioning in Kenya. The framework will also coordinate operationalization of private security provisioning in the country. Further, to the extent that the Policies remain absent, homeland security provisioning will continue being unsynchronized, uncoordinated and the various security formations ineffectively deployed.

5.5 Recommendations

Our study also sought to answer the third question; how should private security regulatory design and framework fit into the realm of homeland security architecture? To this extent, our study recommends the following:

5.5.1 Development of Policy and Legal Frameworks

Article 240(6)(a) of the Constitution of Kenya 2010 anchors the philosophy of national security by embedding the importance of harmonizing all policies relating to security. Specifically, the policies to be harmonized are domestic, foreign and military policies.[302] The role of integrating these policies is specifically given to the National Security Council.[303] It is the domestic policy that would anchor internal security provisioning.

It is recommended that the National Security Council develops and puts in place a written National Security Policy to clearly define national interests, objects of security, threats to the interests and objects, and ways to promote and protect them. The National Security Policy would also integrate, coordinate and anchor the three pillar Policies; Domestic, Foreign and

[302] Article 240(6)(a) of the Constitution of Kenya 2010 provides, "*The Council shall… (a) integrate the domestic, foreign and military policies relating to national security in order to enable the national security organs to co-operate and function effectively"*

[303] Article 240 of the Constitution of Kenya 2010 establishes the National Security Council.

Military Policies. The Domestic Policy will in turn coordinate development and anchorage of other Policies including Internal Security which will guide the development of National Policing Policy. The National Policing Policy would then embed aspects of private security provisioning in the country to enhance coordination, command and control in security provisioning.

After the development of the Policies, there is recommended the development of effective security provisioning laws, at each level of Policy, to enhance the legal regime that operationalizes the Policy frameworks. For instance, the National Security Policy would lead to enactment of National Security Act, Internal Security Policy to guide enactment of Internal Security Act and National Policing Policy to anchor the National Police Service Act. Both the Policy and Legal frameworks would then properly anchor security provisioning, including private security, in Kenya within the homeland security provisioning architecture, as illustrated in Figure 5.1 below.

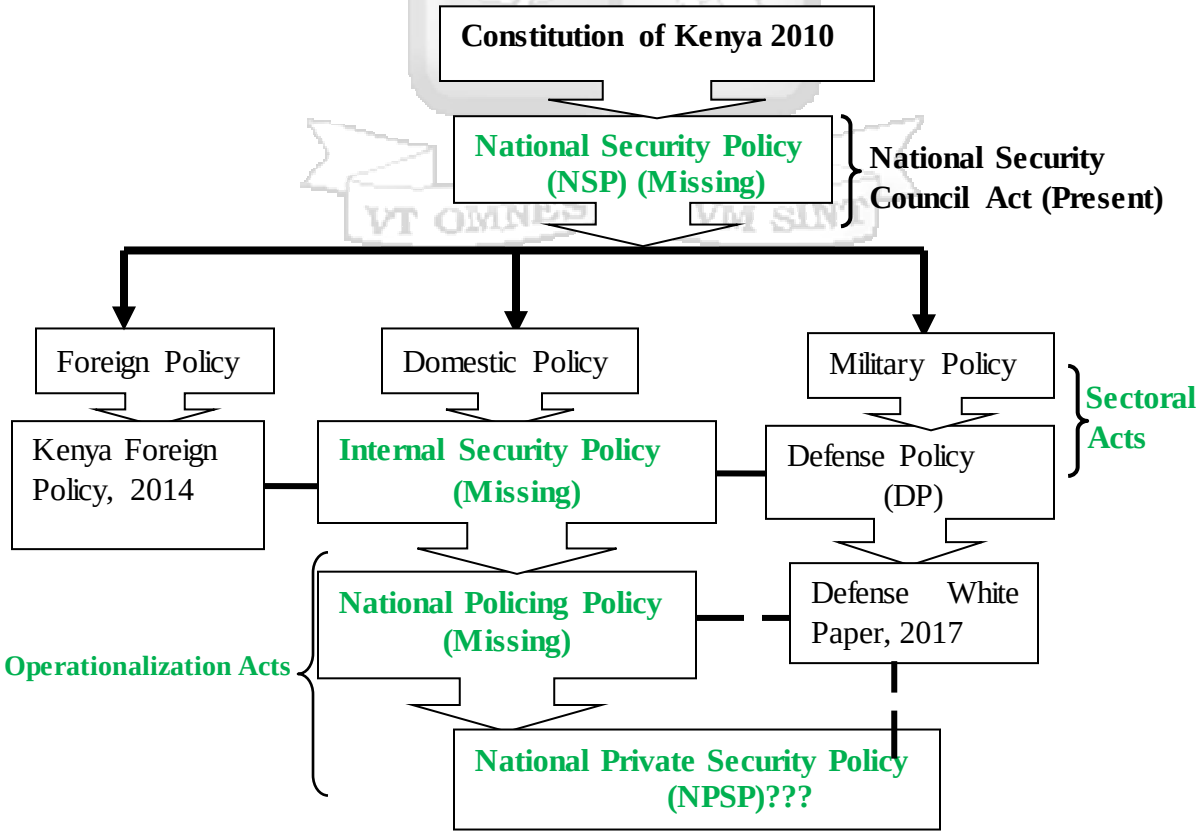

Figure 5.1: Proposed Policy and Legal Framework (Source: Author, 2021)

5.5.2 Review and Realign Existing Legal Framework

The current legal framework requires to be reviewed and realigned to address the identified weaknesses, gaps and inconsistencies in line with the Policy Frameworks. Firstly, Private Security Regulation Act 2016 needs to be reviewed to address the identified weaknesses and gaps, including; definition of a private security service provider to recognize the different typologies, mandatory registration and licensing requirements and duty to cooperate with other security provisioning entities. The Act also needs to be fully implemented by the Authority by establishing comprehensive data on private security providers, accreditation of training facilities and establishing comprehensive training Curricula.

It would also entail enactment of the Private Security (General) Regulations after reconsidering the process and identified gaps and weaknesses, to operationalize the Private Security Regulation Act. The Regulations would clarify on various issues including; meeting the registration and licensing requirements, deepening the collaborative and cooperative security provisioning, payment of annual compliance fees, among others.

Secondly, the review and realignment would harmonize the Private Security Regulation Act with the Labour Laws and the Regulations on minimum wage payments. This would eliminate cases of duplicate compliance costs, inconsistencies that arise due to lack of clarity in the different laws and regulations and address the double taxation dilemma created by national and devolved taxation laws on payment of fees and licences. Uniform compliance costs and other fees are necessary in maintaining faith in the taxation regime of private security provisioning.

Thirdly, realignment is necessary to address the inconsistencies created by the 2014 amendments (Part XV) to the NPS Act which are against NPSC Act with regard to national police reservists. This would properly embed police reservists in security provisioning, establish accountability mechanisms for purposes of coordination, command and control.

5.5.3 Strengthening Collaborative Efforts in Security Provisioning

There is need for continued deepening and strengthening collaborative and cooperative efforts between the public and private security providers. This would eliminate mutual suspicion and help strengthen the formalized relationships.

To this end, it is recommended the deepening of the 'junior partner' model in hybrid security provisioning. The model assumes the State security agencies as being senior partners and private security partners as junior partners whose role is to complement the State security agencies. The junior partner becomes the ears, eyes and wheels of the senior partner.

The strengthening would also entail joint training of personnel for both public security and private security, which would help in formalizing data of the private security providers. The training would standardize the training requirements of private security personnel thereby professionalizing private security provisioning. However, the Curriculum needs to be revised and periodically reviewed in order to embed the professionalism culture, adjust minimum requirements for both the trainer and trainee and address evolving industry training needs.

5.5.4 Establishment of a Joint Private Security Information Center

With clearance and vetting information being held by different formations, there exist uncoordinated databases. There is need for a coordinated and centralized database that would provide information for purposes of registration, vetting and licensing of private security entities. The data will also help in establishing accountability mechanism when it comes to arming of some select private security providers. The joint information centre would draw personnel from the Authority, civil registration, DCI, NIS, Firearms Licensing Board and the Judiciary. The information from these formations would provide a comprehensive one-stop-shop for anybody seeking information on a private security service provider or a prospective provider.

5.5.5 Further Categorization for Purposes of Minimum Wages

Currently, the categorization for purposes of payment of the minimum wages is based on geographical areas (city, municipality and others) and time of day (day and night). However, this does not fully cater for private security personnel working on high-risk areas, including banks, cash-in-transit, among others. It is thus recommended that a third categorization based on the risk factor involved in rendering a private security service be considered for purposes of minimum wage payment.

Alternatively, the categorization can be considered at four clusters; A, B, C and D. Cluster A would entail banks, embassies, government buildings, high risk events, churches, high income residential areas among others. Cluster B will comprise of construction areas, low income residential areas, high schools, manufacturing industries and commercial buildings. Cluster C will comprise of primary schools and low income residential areas while cluster D to cover very low income rural areas.

5.5.6 Further Research

Private security provisioning in Kenya is still growing and evolving. There is literature but is not sufficient in addressing the various emerging issues as the sector evolves. Further, the operational environment is dynamic and changing. Therefore, it is recommended that continued further research be done on private security provisioning in the country to look into the emerging issues.

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Firearms Act, Cap 114 Laws of Kenya;

Prevention of Organized Crime Act No. 6 of 2010;

National Police Service Act, Cap 84 Laws of Kenya;

National Police Service Commission Act No. 30 of 2011

Appendices

Appendix A: Letter of Introduction

LETTER OF INTRODUCTION

Dear Respondent,

My name is Jared Nyakambi Mauti, a Master of Arts Student at Strathmore University, School of Humanities and Social Sciences (SHSS). As part of the requirements for the award of the Master of Arts Degree in Diplomacy, Intelligence and Security, I am conducting a study on "The Dynamics of Private Security Provisioning in Homeland Security in Kenya."

I am humbly requesting you to respond to the following questions as honestly and accurately as possible. The information collected will be strictly used for academic purposes and will therefore be treated with utmost confidentiality. Your name will not be mentioned in the report.

Thank you in advance for your attention, assistance and willingness to contribute to this study.

Yours Sincerely,

Jared Nyakambi Mauti

Appendix B: Questionnaire

RESEARCH QUESTIONNAIRE

(***The information provided in this questionnaire will be treated with utmost confidentiality. Please provide as honest and accurate answers to the questions as possible. Do not indicate your name or contact details anywhere in this form***)

SECTION A: INTRODUCTION

(where applicable check the box with a tick [√] mark)

1. What is your gender?

Male ☐ Female ☐

2. What is your age bracket?

11-20 ☐ 21-30 ☐ 31-40 ☐ 41-50 ☐ Over 51 ☐

3. What is your current job designation in the company?

Manager ☐ Supervisor ☐ Security Guard ☐

4. What is your level of education?

Lower primary ☐ Primary school ☐

Secondary school ☐ Tertiary/college and above ☐

5. What are some of the reasons that led to the emergence and growth of private security providers in Kenya?

i.....

ii.....

iii.....

iv.....

v.....

vi.....

SECTION B: TRAINING, OPERATIONS, ARMING AND IMPACT

6. Does the company provide you with necessary training in performance of duties?

Yes ☐ No ☐

If yes, please specify which type of training and how often it is availed

……
……
……..
.....

7. Please rate the impact of the company's work in protecting lives and property

Very High ☐ High ☐ Average ☐ Low ☐ No Impact ☐

8. Does your company provide you with firearms in the discharge of your duties?

Yes ☐ No ☐

If yes, how often do you receive training on handling of the firearms in a year?

Very Often ☐ Often ☐ Rarely ☐ None ☐

9. In your opinion, what do you think will be the impact of arming all private security providers generally? Will it improve or worsen security provisioning in Kenya?

.....
.....
.....
.....

10. Do you think the government should control the operations of the private security providers?

Yes ☐ No ☐

If Yes, how and in what aspects?

.....
.....
.....
.....
.....

11. On a scale of 1-5, where 1=Very High, 2=High, 3=Moderate, 4=Low and 5=Not Sure, please assess the impact of private security provisioning in Kenya. Explain

Rate e.g. 1,2 etc	Reasons for the rating

SECTION C: COOPERATION WITH NATIONAL SECURITY ORGANS

12. In the discharge of your duties, do you cooperate with National Security Organs?

Yes ☐ No ☐

If yes, please specify which of the Organs you cooperate with

i.....

ii.....

iii.....

If Yes, please specify which areas do you cooperate on with the Organs

i.....

ii.....

iii.....

iv.....

13. Are there established mechanisms within your company to guide cooperation with the National Security Organs?

Yes ☐ No ☐

If yes, please explain them and the level they are established (national, industry or company)

.....

.....

.....

.....

Thanks for your responses

-END-

Appendix C: Schedule Interview Questions

INTERVIEW GUIDE QUESTIONS

A. Impact of proliferation of private security provisioning in homeland security

i. What factors led to the growth of private security providers in Kenya?

ii. Do you think private security providers have any impact on homeland security?

iii. On a scale of 1-5, where 1=Very High, 2=High, 3=Moderate, 4=Low and 5=Not Sure, please assess the impact of private security provisioning in Kenya. Explain

Rate e.g. 1,2 etc	Reasons for the rating

B. Impact of training and arming of private security providers in homeland security provisioning

i. Is there a standardized training manual for all private security providers?

ii. Has the manual helped to improve the effectiveness of private security provisioning?

iii. Are there areas in the manual that need improvements?

iv. In your opinion, what do you think will be the impact of arming private security providers generally? Will it improve or worsen security provisioning in Kenya?

v. If the private security providers were to be armed, what mechanisms should be put in place to ensure proper use of the arms?

C. Relational dynamics on cooperation between National Security Organs and private security providers in homeland security

i. What are the relational dynamics between public and private security providers?

ii. How has the relationship between the two been?

iii. Are there established mechanisms for cooperation between the two security providers?

iv. What areas of the cooperation do these mechanisms seek to promote?

v. What areas of this cooperation have actually been operationalized? Through what means and in what ways?

D. Legal and regulatory organizational framework guiding the cooperation

i. Is the current legal framework sufficient in guiding private security provisioning?

ii. If not, why has it not achieved the objectives?

iii. What architecture would you recommend for the efficient relationship between National Security Organs and private security providers in homeland security?

-END-

Appendix D: University Ethical Clearance

Strathmore UNIVERSITY

14th April 2020

Mr Mauti, Jared
jared.mauti@strathmore.edu

Dear Mr Mauti,

RE: The Dynamics of Private Security Provisioning in Homeland Security in Kenya

This is to inform you that SU-IERC has reviewed and **approved** your above research proposal. Your application approval number is **SU-IERC0744/20.** The approval period is **14th April 2020 to 13th April 2021.**

This approval is subject to compliance with the following requirements:

i. Only approved documents including (informed consents, study instruments, MTA) will be used
ii. All changes including (amendments, deviations, and violations) are submitted for review and approval by SU-IERC.
iii. Death and life threatening problems and serious adverse events or unexpected adverse events whether related or unrelated to the study must be reported to SU-IERC within 72 hours of notification
iv. Any changes, anticipated or otherwise that may increase the risks or affected safety or welfare of study participants and others or affect the integrity of the research must be reported to SU-IERC within 72 hours
v. Clearance for export of biological specimens must be obtained from relevant institutions.
vi. Submission of a request for renewal of approval at least 60 days prior to expiry of the approval period. Attach a comprehensive progress report to support the renewal.
vii. Submission of an executive summary report within 90 days upon completion of the study to SU-IERC.

Prior to commencing your study, you will be expected to obtain a research license from National Commission for Science, Technology and Innovation (NACOSTI) https://oris.nacosti.go.ke and also obtain other clearances needed.

Yours sincerely,

for: Dr Virginia Gichuru,
Secretary; SU-IERC

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14 APR 2020
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Cc: Prof Fred Were,
Chairperson; SU-IERC

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Appendix E: NACOSTI Research Permit

REPUBLIC OF KENYA

NATIONAL COMMISSION FOR SCIENCE,TECHNOLOGY & INNOVATION

Ref No: 617337

Date of Issue: 24/June/2020

RESEARCH LICENSE

This is to Certify that Mr.. JARED NYAKAMBI MAUTI of Strathmore University, has been licensed to conduct research in Nairobi on the topic: THE DYNAMICS OF PRIVATE SECURITY PROVISIONING IN HOMELAND SECURITY IN KENYA for the period ending : 24/June/2021.

License No: NACOSTI/P/20/5420

617337

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NATIONAL COMMISSION FOR SCIENCE,TECHNOLOGY & INNOVATION

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Appendix F: Similarity Report

Curiginal

Document Information

Analyzed document	THE LEGAL DYNAMICS OF PRIVATE SECURITY PROVISIONING IN HOMELAND SECURITY IN KENYA.docx (D112857703)
Submitted	9/18/2021 11:41:00 AM
Submitted by	
Submitter email	jared.mauti@strathmore.edu
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