



# PRIVATE SECURITY GOVERNANCE CHALLENGES

and the relevance of  
**INTERNATIONAL  
NORMS** and  
**BEST PRACTICES**



A GUIDE FOR CIVIL  
SOCIETY AND MEDIA  
**KENYA**



The **Usalama**  
Reforms Forum

Private Security  
Governance  
**Observatory**



**DCAF** Geneva Centre  
for Security Sector  
Governance

March 2022

## **About the Observatory** | [www.observatoire-securite-privee.org](http://www.observatoire-securite-privee.org)

The Private Security Governance Observatory is a network of African civil society organisations (CSOs) that seeks to share knowledge and reinforce their organisational capacity to promote good governance of the private sector.

Civil society organisations play a fundamental role in building democracies based on respect for the rule of law, meeting people's needs and demonstrating accountability and transparency to the population. As the private security industry grows in importance around the world, it is essential that engaged and capable CSOs are actively involved in ensuring good governance in this sector. However, the lack of information on the private security industry, the absence of adequate mechanisms to monitor their activities as well as weak national policy frameworks are factors that may limit the ability of CSOs to strengthen accountability of the sector. For CSOs to play a more effective role in promoting good private security governance, they need to exchange experiences, challenges, and good practices. By raising awareness among its members, the Observatory fosters the exchange of ideas, experiences, information, and good practices. It provides tailor-made tools to support the role of CSOs in improving the oversight and accountability of the private security sector.

The Observatory was initiated in 2014 and grew organically out of the interest and commitment of its members, building a network based on trust-building, local ownership, and member engagement. DCAF is a strategic partner to the Observatory providing strategic level, administrative and expert support to ensure the consolidation and further development of this initiative.

## **About Usalama** | [www.usalamaforum.org](http://www.usalamaforum.org)

Usalama Reforms Forum is a Civil Society Organization working in the areas of Policy research, security sector reforms with a bias on Police reforms; Private security governance, crime prevention and implementing community safety models. Previously, Usalama led civil society organizations in shaping security sector reform agenda in Kenya and continues to play a critical role in this endeavour.

Over the years, Usalama has built strategic partnerships with the National Police Service Commission, the National Police Service (NPS), the Independent Policing Oversight Authority (IPOA); the General based Democratic Control of Armed Forces (DCAF), Fight for Peace International and Private Security Providers in Kenya among others. In partnership with the NPS, Usalama commissioned a study in 2012 on the state of police stations and the criminal justice system in Kenya. The study was published into a report titled "Communities and their Police Station" that provided a critical insight on the capacity of police stations to provide services. As a unique approach to programming, Usalama developed and has implemented a "Community Safety Model" across the country through public participation and democratic policing centered on communities.

Currently Usalama is leading discussions on building standard private security framework for Africa and is a member of the African Private Security Governance Observatory, the African Coalition for Corporate Accountability (ACCA), Outstanding Police Service Awards Steering Committee and Police Reforms Working Group in Kenya among others.

## **About DCAF** | [www.dcaf.ch](http://www.dcaf.ch)

Since 2000, DCAF - Geneva Centre for Security Sector Governance has facilitated, driven and shaped security sector reform (SSR) policy and programming around the world. DCAF assists partner states in developing laws, institutions, policies, and practices to improve the governance of their security sector through inclusive and participatory reforms based on international norms and good practices. DCAF creates innovative knowledge products, promotes norms and good practices, and provides legal and policy advice. The Centre also supports capacity building of state, civil society, and private sector stakeholders by providing access to independent expertise and information on Security Sector Governance and Reform (SSG/R).

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# Private Security Governance Challenges

and the relevance of International Norms and Best Practices

**KENYA**

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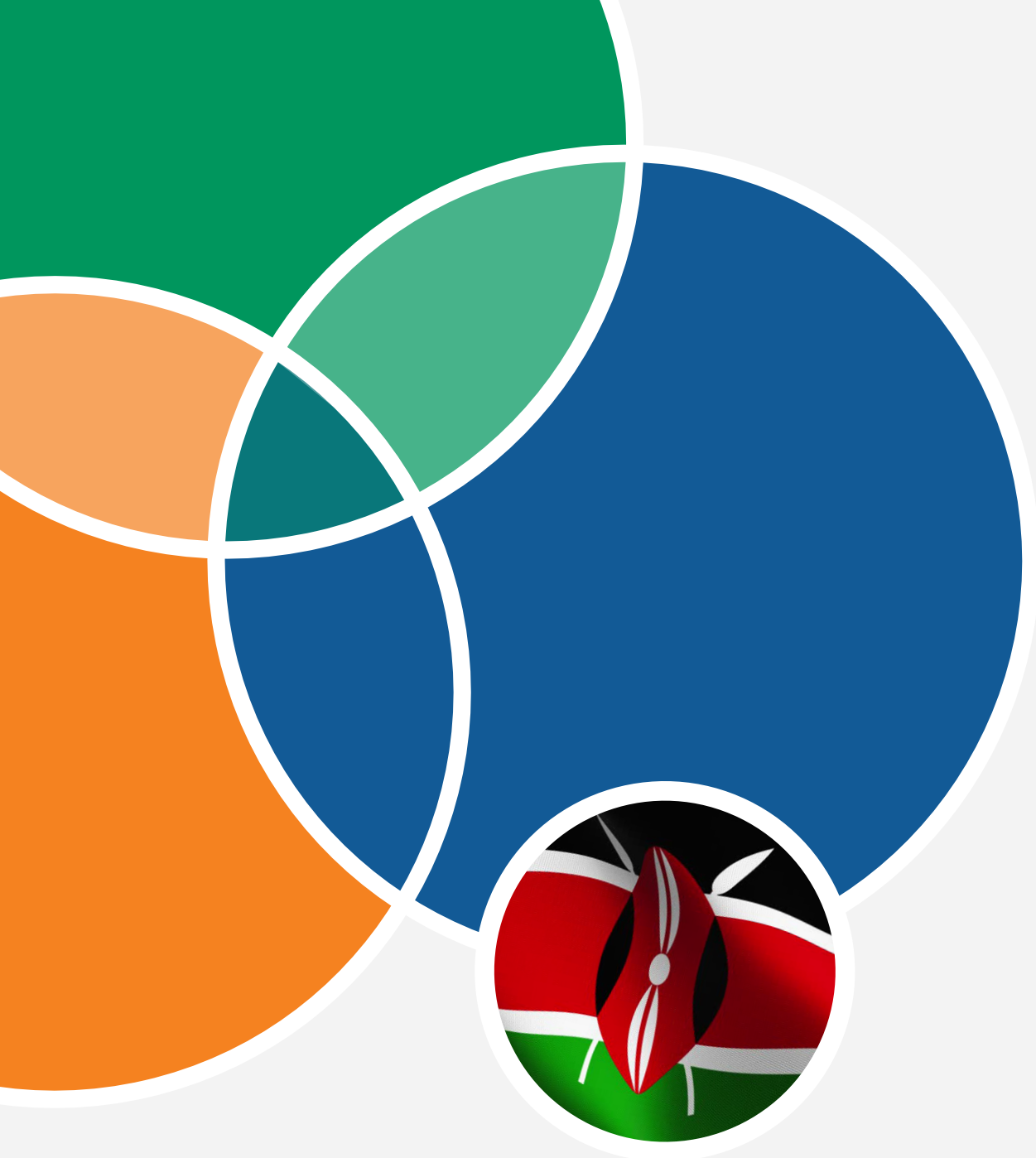
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# Introduction

## OBJECTIVE & PURPOSE

The private security industry has grown exponentially in many countries in the last quarter of century and is oftentimes larger than police, military and prison services combined. Despite its weight in the security, economic and social sectors of countries, there is a general lack of information and data on the size and numbers of private security companies (PSCs) and employees as well as on the exact nature of their operations and activities.

In many contexts, national legal frameworks and policies do not effectively regulate the industry and there is a lack of oversight. This leads to an increased risk of human rights abuses, such as sexual harassment, exploitation and abuse and excessive use of force.

Civil society plays a fundamental role in promoting a better understanding of private security, also ensuring that violations are reported, and that applicable national laws and policies address all relevant issues. CSOs and media who are conscious of their role covering such topics are important in holding governments and private security providers to account for their actions and policies and can build the necessary bridges between key stakeholders (including governments, private industry actors as well as affected individuals/communities and the public at large) to create the conditions for sustainable change to improve private security governance.

This publication was developed to empower a strong and informed civil society and media: it is made by civil society organizations and media, for civil society organizations and media, with two aims:

- 1** It provides updated information on the various challenges linked with private security companies' activities in Kenya, with detailed overview for each of the three geographical regions of the country.
- 2** It provides guidance to CSOs and media on international norms and best practices. The guide draws on the three main source of international norms and good practices for the good governance of PSCs, namely the International Code of Conduct for Private Security Service Providers (the Code), the Montreux Document on Private Military and Security Companies and the Voluntary Principles on Security and Human Rights (VPs). These documents articulate important principles for private security companies based on human rights and international humanitarian law, including the prohibition of torture, human trafficking, and rules on the use of force. It serves as a useful reference to ensure good private security governance and therefore to prevent and address human rights abuses by private security companies.

## CONTENT OF THIS GUIDE

The content and structure of this guide is greatly inspired by the Practical Guide for Civil Society - Collecting, Documenting and Reporting on Private Security” which was developed jointly by DCAF – Geneva Centre for Security Sector Governance, and the International Code of Conduct Association (ICoCA). The practical guide is available here: [bit.ly/3jyQKTK](https://bit.ly/3jyQKTK).

The guide comprises three chapters, that can be read and used individually or together, to increase civil society organisations and media representatives’ understanding of private security, the applicable international standards, and what roles they themselves could play in ensuring a more responsible private security industry. The chapters are composed as follows:

### **CHAPTER 1: Civil society, media, and private security governance**

In this first chapter, CSOs and Media representatives will find the necessary core definitions such as: what is private security? Why is good governance important? And what role can civil society and media play to improve it?

### **CHAPTER 2: International frameworks**

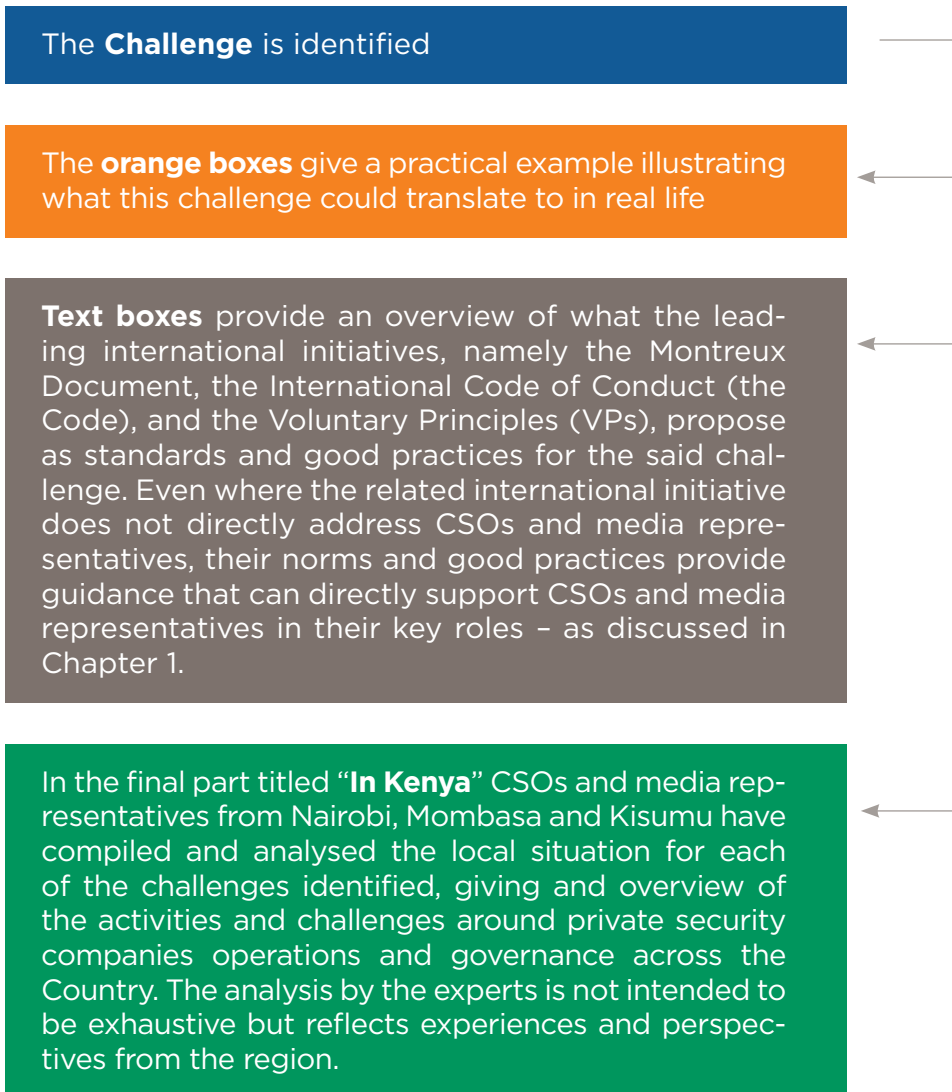
International frameworks and the good practices can help CSOs and media representatives work with governments, industry actors and other relevant actors in improving private security governance, providing them with a benchmark for comparison and serving as a guide and leverage for CSOs and media representatives activities in raising awareness and contributing to national policies.

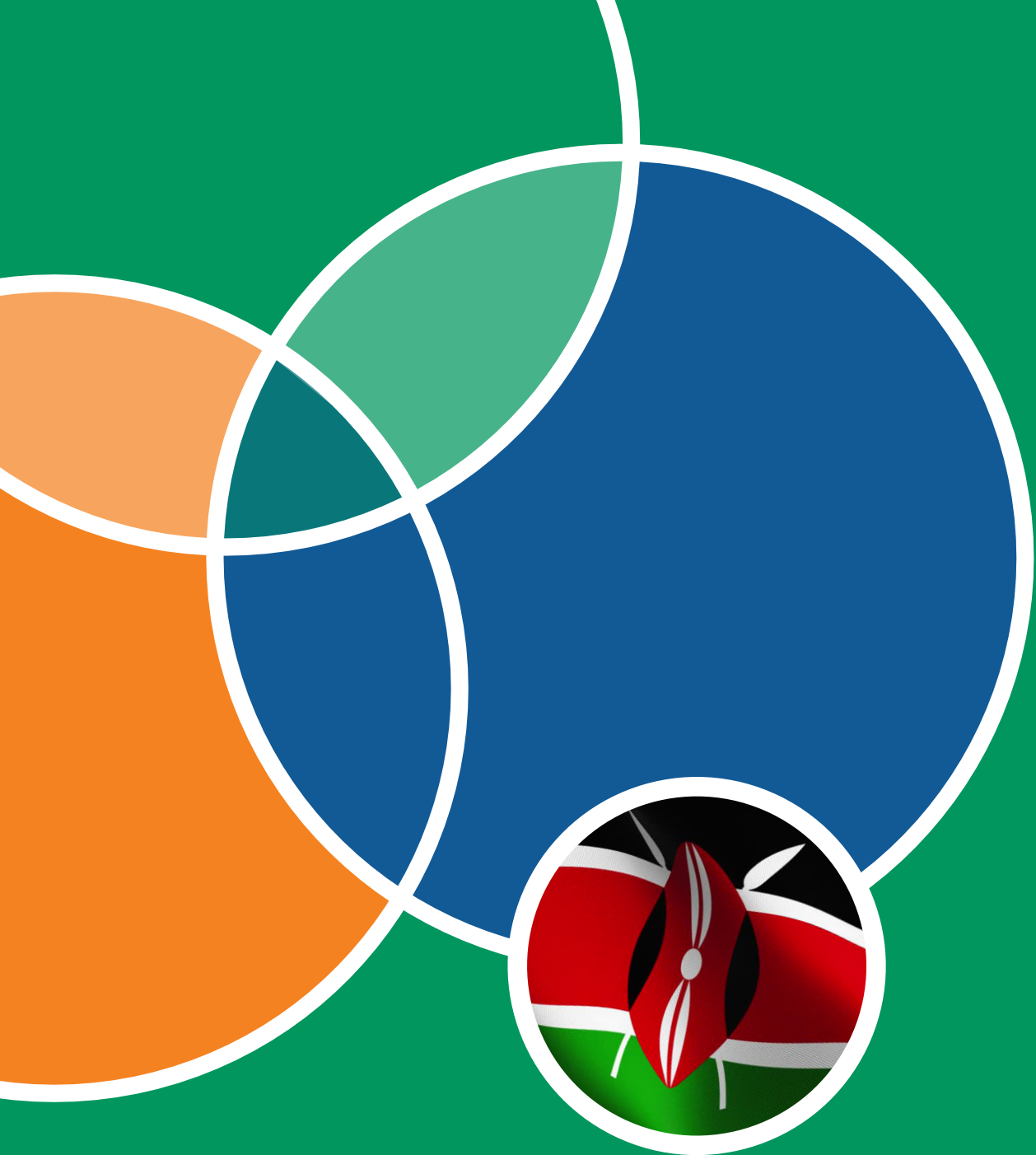
Therefore, this second chapter introduces the main international frameworks providing norms and good practices applicable to private security, namely the Guiding Principles on Business and Human Rights (UNGPs), the Montreux Document on Private Military and Security Companies (MD), the International Code of Conduct (ICoC), and the Voluntary Principles on Security and Human Rights (VPs).

### **CHAPTER 3: Private security governance challenges and the relevance of international norms and practices in Kenya**

Based on the above-mentioned international frameworks, the third chapter has identified the fifteen most common private security challenges. For each of these challenges, the guide provides CSOs and media representatives with an analysis conveying Kenya’s specific private security governance challenges and experiences and articulates the relevance of international norms and good practices to address such challenges.

Each challenge is presented with the following structure:







# 1

# Civil Society, Media and Private Security Governance

## 1.1 WHAT IS PRIVATE SECURITY?

Defining private security is both simple, and complex. An inclusive definition has been adopted, with small nuances, by international initiatives<sup>1</sup>: a private security company (PSC) is any Company whose business activities include the provision of Security Services, irrespective of how such Company describes itself. The definition of “Security Services” is much more complex and needs to be carefully evaluated against the specific context – for example the national framework in which PSCs operate.

In the last 20 years, there has been a world-wide increase in the number of private security companies. The role of PSCs is especially visible where there is insufficient provision of security services by the State, or when natural disasters or armed violence make it necessary to strengthen security measures.

**\$244**  
BILLION

Market value of the private security industry per year

**20+**  
MILLION

Number of private security workers worldwide

**50%**

Of the world's population live in countries where private security workers outnumber public police officers

1 Such as the ICoC and the Montreux Document

## **WHAT TYPE OF SERVICES DO PRIVATE SECURITY COMPANIES PROVIDE?**

Private security companies offer a wide range of services and have become an important component of national and international security landscapes. If their classical mandate typically included activities such as the guarding of facilities (such as malls, airports, or banks), the guarding of private properties, body-guarding services or cash transport, PSCs are increasingly taking over more complex tasks, often complementing insufficient capacities of public security forces. This includes for example the provision of security to extractive companies, training services, support in prevention and counter-terrorism efforts, intelligence services, risk analysis or cyber security.

## **WHAT TYPE OF CLIENTS DO THEY HAVE?**

Private security companies have a wide range of clients. The main categories of PSCs clients are:

- Individuals
- States
- Corporations, in particular multinational corporations such as extractive industries, agricultural companies, shipping companies, banks, or airports.
- Non-governmental and international organisations such as the United Nations.

# MOST COMMON CHALLENGES

The sensitive nature of the private security industry, together with its rapid evolution accounts for many challenges. Hereafter are the most common ones:



## LACK OF AVAILABLE DATA & INFORMATION

A lack of capacity to monitor the industry, its evolving and diverse nature, untransparent practices and exponential growth may be reasons for a lack of official data on the private security sector in many states, i.e. numbers, size, services, activities, etc.

The lack of data results in low levels of awareness in many societies about the nature of private security services, how these are regulated and how they differ from public security. Also, there is often no effective democratic oversight of private security. This makes it challenging to know about the prevalence of human rights abuses and formulate strategies to prevent them.

A low level of awareness within domestic human rights constituencies, the increased privatisation of security, along with the withdrawal of the state in a number of areas, lead to the fact that human rights abuses or other misconduct go unreported.



## MIX BETWEEN PUBLIC AND PRIVATE SECURITY

In many contexts, private security guards seem to execute the same services as public security officers. They could be performing a summary search of individuals, conducting investigations on specific criminal and/or civil cases, ask for individuals' identity papers etc. In addition, public and private security often work together in mixed teams. For example, armed police cooperate with private security teams- this is especially the case in countries where private security companies are prohibited from carrying firearms. "Rapid intervention teams" are manned by both private security guards and police and stand ready in case of emergency. Corporate transports can be escorted by units manned by both police and private security. In some countries, private security companies provide training to police units. Additionally, they can switch between public and private: often public security personnel are hired for private security shifts in their free time to augment their salary. As a result, citizens may struggle in distinguishing between the type of actor they are encountering and the competences they have. For public and private security there are different rules regarding use of force, searching or arresting people, etc. Mixed public-private teams make it also challenging to determine who controls and commands and ultimately who is responsible and accountable for misconduct.



## LACK OF OVERSIGHT

With the constant evolution of the private security industry, the need for effective regulation has increased. Many states lack adequate national legal frameworks and resources to regulate and oversee the private security industry and thus to prevent/address human rights abuses or other misconduct by companies or their personnel. Often states do not have laws in place regulating private security services specifically, including on the use of firearms, storage of ammunition, working conditions and training. Authorities in charge of the licensing of private security companies are in many cases located in the Ministries of Interior and have often limited expertise and resources to monitor the industry.



## COMPLEX BUSINESS RELATIONSHIPS

The private security industry operates both at the international and national levels. The sector is constituted by both multinationals operating in multiple sites all over the world and small local businesses. For example, some private security companies have over 100'000 employees serving clients across countries. Sometimes, these international PSCs work through subsidiaries, companies which have a distinct legal entity for the purpose of taxation, regulation, or liability but they are owned/controlled by the parent company. Often international PSCs rely on subcontractors, local PSCs in-country, to deliver the service. Local PSCs may just operate in that specific area or have offices across the country. For international clients, a combination of international and local PSCs could be considered as the optimum solution. This in principle ensures respect for international standards as well as local embeddedness. However, these setups can make it difficult to establish accountability and responsibility as there is often a lack of transparency in the relationships between private security companies and their subcontractors. The difficult question to address for civil society is to establish accountability and responsibility when private security companies' headquarters are abroad or when a company subcontracts the services to another company.

# PRIVATE SECURITY AND HUMAN RIGHTS

Due to the challenges and complexity outlined above, the private security industry poses specific risks for the protection of human rights. Where there is limited oversight and weak legal frameworks, it is not always clear how PSCs can be held accountable for human rights abuses.



## EXAMPLES OF IMPACT ON HUMAN RIGHTS

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### Right to Life

A security guard on a property shot and killed a young man who was picking mangos from a tree. While the guard stated he believed the young man was trying to enter the property, the use of force must only be used for self-defence and in cases of threat to life to others.

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### Freedom of Movement and Unlawful Detention

A security guard forbids a person to access their home.

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### Freedom from Torture or Other Cruel, Inhuman and Degrading Punishment

A security company holds an apprehended person for two days without providing food or water.

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### Right to an Effective Remedy

A security guard protecting a residential neighbourhood fired his weapon at alleged thieves. A stray bullet hit a three-year old boy nearby, leaving him paralyzed. His parents complained to the company but have not received any response.

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### Right to Health

A security company does not provide its staff protective clothing and material to protect them from being infected by COVID-19.

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### Right to Privacy

A security company reads and monitors all correspondence of its employees.

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## PRIVATE SECURITY IN KENYA

Private security is one of the fastest growing service industries in Kenya. It is spread across the country, covering both the urban and the rural settings and encompassing a wide range of services. The Task Force on Police reforms led by Retired Justice Philip Ransley, GOK (2009) noted that private security is a significant player in Kenya's security sector and that it contributes to policing broadly defined, specializing mainly in alarm response, cash carrying, guarding, investigation work, executive protection and security consulting. PSCs in Kenya provide a range of security services, which complement that of the State, notably the provision of security and patrol of private residential and institutional buildings (such as banks, hospitals, schools, markets/shopping outlets, transport terminals, etc.).

## MOST COMMON CHALLENGES IN KENYA

The sensitive nature of the private security industry, together with its rapid evolution accounts for many challenges. Hereafters are the most common ones encountered in Kenya:

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### 1 Legal and regulatory framework

Private Security is regulated by the Private Security Regulation Act of 2016 (the 2016 Act). In 2019, the Private Security (General) Regulation were adopted to operationalize the 2016 Act. Nevertheless, the draft Regulations were rejected by the parliament of Kenya, on the account of "inadequate public participatory". The annulment of the 2019 Regulation, together with the COVID19 Pandemic, considerably impacted on the implementation of the 2016 Act leaving the sector without adequate regulatory mechanisms. Private security providers and associations, such as KSIA and PSIA, are actively seeking to develop self-regulation standard withing the industry, including with the adoption of Code of Conduct for their members. Nevertheless, their capacity to monitor and hold their members accountable is limited.

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### 2 Private security providers and emerging security challenges

To cope with emerging security challenges and increased insecurity, PSCs are making use of modern technology, acquiring more and new devices such as devices for enhanced screening, vehicle searches, search mirrors or metal detectors. Stronger partnerships and collaboration between private guards and the police are also developing, for example in the domain of information sharing, use of sniffer dogs or protection of specific public places such as schools or airports. Besides, some institutions such as schools have established informal information system i.e.- through good rapport with neighbors - who then act as informers to their security officers.

However, the regulation of Kenya's private security sector does not take this evolution sufficiently into account. The training of PSC employees is also insufficient when it comes to new security threats (including PVE/CVE or organized crime) and the use of new technologies.

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### 3 Firearms Act and PSCs

The 2016 Act strictly prohibits the use of firearms in any PSC service or operation. However, in practice, PSCs are bypassing the prohibition through various means (see chapter 3, challenge 11). Debate on amending the regulatory framework to allow PSC to carry firearms has been initiated at the national level. However, there are capacity and administrative challenges facing the process of allowing PSCs to carry weapons and allowing PSCs to carry firearms would require creating systems to ensure adequate training, proper chain of custody and accountability.

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### 4 Training and capacity building

Training in the private security industry has been disorganized, leading to a general lack of professionalism and accountability in the sector. Despite the authority's function to define standards and to accredit institutions offering training, no official training institution has been accredited so far.

Most PSCs view training as a cost and not as an investment in their human resources, and PSCs rarely consider more than very basic training for their staff. This also has as a consequence that employment in the industry is often viewed as a last resort, when other opportunities have run out, or as a temporary solution awaiting a better opportunity.

## 1.2 WHAT IS THE ROLE OF CIVIL SOCIETY AND THE MEDIA IN GOOD PRIVATE SECURITY GOVERNANCE?

Civil society organisations and the media have a key role to play in addressing challenges linked to private security and to mitigate related human rights risks, and in ensuring a democratic oversight of the work of the security sector. CSOs and media can for example act as a partner of state oversight actors, by challenging information and analysis, providing support in ensuring accountability by assisting alleged victims of private security, working with private security to support human rights compliance through capacity-building etc. Reporting on the private security sector can create public and political pressure to halt bad behavior and trigger reforms that protect the system and the public from future abuses. CSOs and media who are conscious of their role covering such thematic are important in holding governments and private security providers to account for their actions and policies.



# Examples of

## CSO AND MEDIA ACTIVITIES IN PRIVATE SECURITY SECTOR GOVERNANCE

1

### CSO & MEDIA ROLE

#### PROMOTE A BETTER UNDERSTANDING OF THE PRIVATE SECURITY INDUSTRY



**COLLECT** information about the size, services, regulation, human rights violations, and other relevant data by developing in-depth contextual analyses.

**REPORT** on the delivery, management, and oversight of security services, determining how to promote good private security governance effectively and sustainably.

Reporting on the private security sector that is accurate, fair, and independent can reinforce democratic accountability and contributes to better security provision. Timely and reliable information to the public on the roles, responsibilities and mandates of private security sector actors help the public to better understand their own rights and responsibilities. Mutual understanding based on a free flow of information can foster dialogue between private security providers, authorities, and the public, which may also translate into broader confidence building.<sup>2</sup>

<sup>2</sup> See more information about security sector reporting in the *Toolkit for Security Sector Reporting, Media, Journalism and Security Sector Reform*, by Fairlie Chappuis, 2021

# 2

## CSO & MEDIA ROLE

### SUPPORTING PRIVATE SECURITY GOVERNANCE NATIONALLY



**RAISE AWARENESS** among clients about their responsibilities and duty to contract responsible private security services.

**RAISE AWARENESS** about the regulatory framework and international standards, expected behavior of private security companies and challenges among communities and other stakeholders.

**PROMOTE** dialogue between different stakeholders such as CSOs, PSCs and their clients, and government actors.

**ADVOCATE/LOBBY** at the local and national level to strengthen private security regulation and ensure accountability of private security.



### 3

#### CSO & MEDIA ROLE

#### **SUPPORTING PRIVATE SECURITY GOVERNANCE GLOBALLY**

**PARTICIPATE IN INITIATIVES** aiming to strengthen private security governance at national, continental (such as the Private Security Governance Observatory at [www.observatoire-securete-privee.org/en](http://www.observatoire-securete-privee.org/en)) or global level (such as the International Code of Conduct Association at [www.icoca.ch](http://www.icoca.ch)).

### 4

#### CSO & MEDIA ROLE

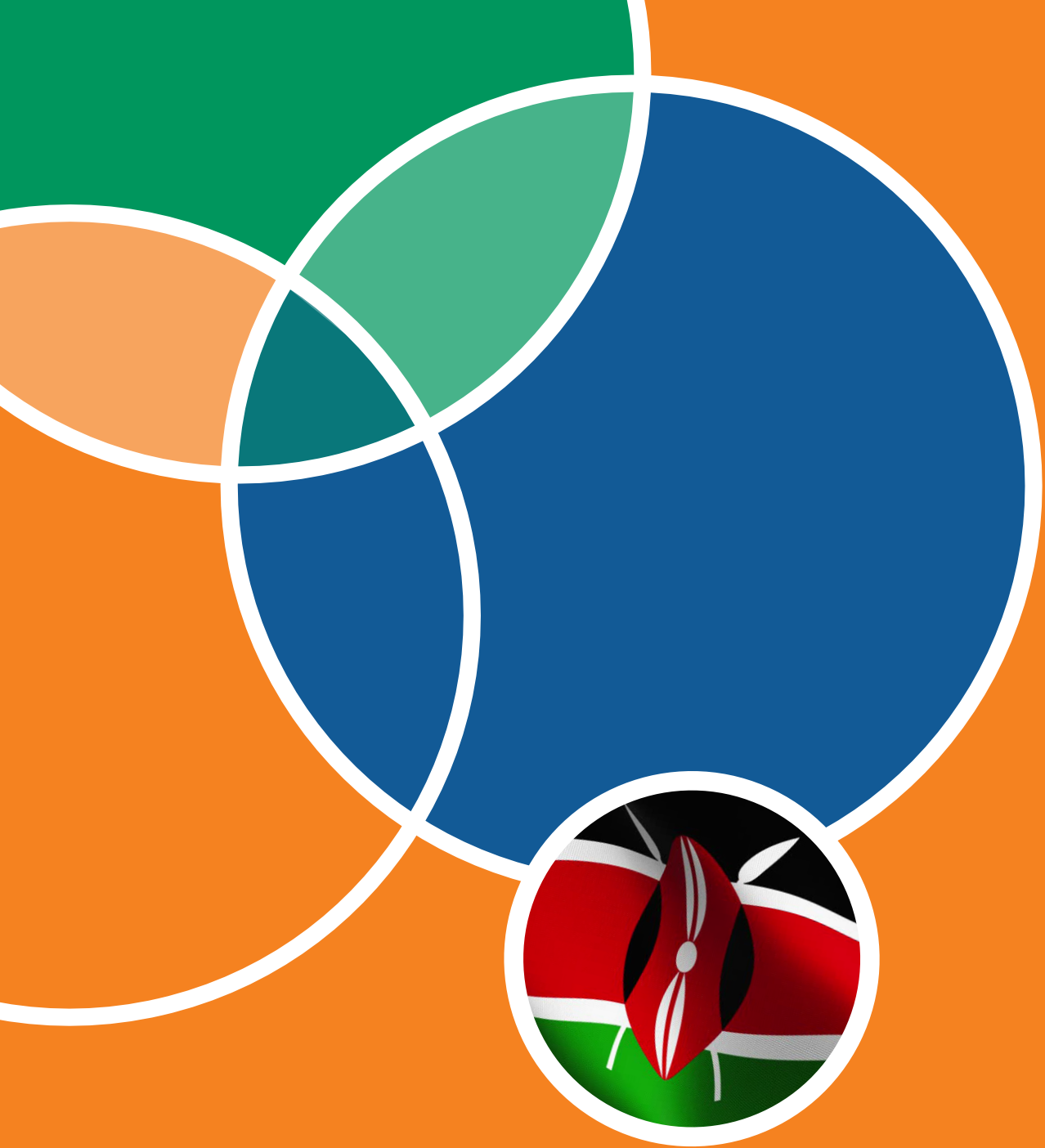
#### **BUILDING CAPACITY AND SHARING EXPERTISE**

Provide **CAPACITY-BUILDING** on human rights to PSCs.

**SUPPORT PSCs** in vetting personnel.

**SUPPORT PSCs** in carrying out human rights risk and impact assessments.

**SUPPORT THE REGULATOR** through expertise and/or provision of information gathered in monitoring.



## 2

# International frameworks

## WHAT ARE THE NORMS AND GOOD PRACTICES APPLICABLE TO PRIVATE SECURITY?

There are a multiplicity of laws, rules, principles, and standards private security companies are expected to respect. Private security accountability as well as remedies/redress in case of alleged violations will notably depend on the:

1. Country in which the PSC operates (“territorial state”)
2. The country of the PSC’s headquarters (“home state”)
3. The country contracting the private security company (“contracting state”)

There are a range of voluntary international norms and good practices which apply to private security companies. The most relevant ones are described in this chapter.

## WHAT IS THEIR RELEVANCE FOR CSOS AND MEDIA?

International frameworks and the good practices they propose can help CSOs work with governments, industry actors and other relevant actors in improving private security governance. These international frameworks provide CSOs with a benchmark for comparison to identify potential gaps in national PSCs legislation and can serve as a guide for CSO activities in raising awareness and contributing to national policies. The principles entailed in these international frameworks can help CSOs in their interactions with businesses, to encourage them to provide security services in a responsible manner that respects the rule of law and the human rights of all individuals and at the same time protects the interests of their clients.

## 2.1 UNITED NATIONS GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS (UNGPs)

As the enforcement of human rights is primarily a state duty, their enforceability with the corporate sector has been subject to debate in the international arena for many years. As a response, in 2011 the UN Human Rights Council adopted the UN Guiding Principles on Business and Human Rights (UNGPs).<sup>3</sup> These Guiding Principles provide the first global standard for preventing and addressing the risk of adverse impacts on human rights linked to business activity. They clearly state that while states are the main subject of human rights' law, the corporate sector has a duty to respect human rights.

“Quite simply, because of the types of services that private security companies provide, they are in a position to violate human rights in numerous different ways. For example, PSC personnel may carry weapons which impacts on the right to life or they may be involved in detaining individuals which impacts on the right to liberty as well as the right to be free from torture and inhuman and degrading treatment. They may also be linked to negative human rights impacts through their government clients as well as their business relationships. In addition, the increasing privatisation and outsourcing of security by states means that the security industry is expanding rapidly into new spheres of operation, this in turn means that the risk of human rights violations increases. The difficulty is that there is limited oversight of PSCs in relation to human rights.”<sup>4</sup>

<sup>3</sup> [www.ohchr.org/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](http://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf)

<sup>4</sup> Mcleod Sorcha in *Whose responsibility? Reflections on accountability of private security in Southeast Europe*, Franziska Klopfer and Nelleke van Amstel (Eds.), DCAF, 2017.

## The United Nations Guiding Principles (UNGPs) Include **THREE PILLARS** Outlining How States and Businesses Should Implement the Framework:

1

### **STATE DUTY TO PROTECT HUMAN RIGHTS**

States have the responsibility to respect, protect and fulfil international human rights law obligations within their jurisdiction. This includes the duty to protect against human rights abuse by third parties, including business enterprises.

2

### **THE CORPORATE RESPONSIBILITY TO RESPECT HUMAN RIGHTS**

Businesses must act with due diligence to avoid infringing on the rights of others and to address any negative impacts for individuals and communities. This includes for example conducting human rights impact assessments.

3

### **ACCESS TO REMEDY FOR VICTIMS OF BUSINESS-RELATED ABUSE**

Access to remedy for victims of business-related abuses: This includes both the state and corporate responsibility to provide access to remedy. As part of their duty to protect individuals within their jurisdiction from business-related human rights abuse, states must ensure that when such abuses occur under their jurisdiction those affected have access to an effective remedy through judicial, administrative, and legislative means.

When a private security company has infringed the human rights of an individual, this individual should have access to a mechanism provided by the state in order to access an effective remedy for the violation incurred. The corporate responsibility includes preventing and remediating any infringement of rights linked to their actions through for example a company grievance mechanism or a mechanism developed jointly with communities. Having effective grievance mechanisms in place is crucial in upholding the state's duty to protect and the corporate responsibility to respect. The UNGPs dictate that such mechanisms should be legitimate, accessible, predictable, rights-compatible, equitable, and transparent.



## 2.2 Montreux Document on Private Military and Security Companies (MD)

Adopted in 2008, the Montreux Document is the first document of international significance to reaffirm the existing obligations of states under international law, in particular international humanitarian law (IHL) and human rights law, relating to the activities of private military and security companies (PMSCs). It also lists good practices designed to help states take national measures to implement these obligations. The Montreux Document seeks to provide guidance based on existing international law; it is therefore not a legally binding treaty and does not create new legal obligations.

The result of an international process launched by the Government of Switzerland and the International Committee of the Red Cross (ICRC), the Montreux Document provides a blueprint for governments to regulate PMSCs more effectively and strengthens security sector governance. While the Document is addressed primarily to states, the good practices may be useful for other actors such as international organisations, civil society, companies that contract PMSCs, and PMSCs themselves. It contains two parts:

1. Part one of the Document recalls the pertinent legal obligations of states regarding PMSCs.
2. Part two contains a description of good practices which aim to provide guidance and assistance to states in regulating PMSCs.

The Montreux Document highlights the responsibilities of three principal types of states: Contracting states (countries that hire PMSCs), Territorial states (countries on whose territory PMSCs operate), and Home states (countries in which PMSCs are headquartered or based). Its content is structured around 7 distinct key challenges for regulating PMSCs.







## 2.3 The International Code of Conduct for Private Security Service Providers (The Code)

The Code is the only international instrument drafted with the participation of private security companies and addressing private security companies directly.

It was negotiated among private security companies (PSCs), governments, civil society organisations and other experts in 2010 with a view to bring together in one document existing minimum standards applying to PSCs operating in complex environments and based on human rights and international humanitarian law. Over 700 PSCs subscribed voluntarily to this Code in 2010.

Today, the signatory status does not exist anymore, and PSCs can apply for membership on a voluntary basis with the International Code of Conduct Association (ICoCA). The ICoCA is the body overseeing the implementation of the Code and based in Geneva, Switzerland. The Association is governed by three groups of Members, namely private security companies, civil society organisations and governments.

The Code sets forth international principles specifically for PSCs operating in complex environments. These principles are based on human rights and international humanitarian law.

The Code contains two sets of principles that address:

- 1. How private security personnel should behave;**
- 2. How private security companies should be managed and governed.**

Conduct of Personnel		
Use of Force	Prohibition of Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment	Slavery
Detention	Sexual Exploitation and Abuse or Gender-based Violence	Child Labour
Apprehending Persons	Human Trafficking	
Management and Governance		
Identification and Registering	Selection and Vetting of Subcontractors	Incident Reporting
Selection and Vetting of Personnel	Management of Weapons and Material of War	Company Grievance Mechanisms
Training of Personnel	Safe and Healthy Working Environment	Meeting Liabilities

## THE INTERNATIONAL CODE OF CONDUCT ASSOCIATION'S GRIEVANCE MECHANISM

The Association receives and processes complaints of alleged violations of the International Code of Conduct by its Member & Affiliate Companies. Where a complainant seeks support, the ICoCA facilitates access to fair and accessible grievance procedures that may offer an effective remedy, including through providing the complainant with access to ICoCA's own good offices. For Member & Affiliate Companies, the Association provides guidance on establishing and maintaining fair and accessible grievance procedures in compliance with the Code.



# Grievance Mechanism

- 1 ICoCA Secretariat to review complaint received and check if a violation by an ICoCA member/affiliate company of the Code is alleged.
- 2 Request more information from submitter if needed.
- 3 If conditions are met and with consent of submitter and alleged victim, ICoCA will contact the member company.
- 4 Based on information collected will make recommendations to ICoCA member/affiliate.
- 5 Different options will be offered for resolution of case: mediation, good offices, referral, etc.
- 6 ICoCA will monitor implementation of corrective measures by member companies and affiliates.
- 7 If company does not cooperate in good faith, possibility for ICoCA to suspend/terminate membership/affiliation.

## WHO CAN SUBMIT COMPLAINT?

Anyone

## CONCERN WHO/WHAT?

Complaint concerning private security company which is either **ICoCA member or affiliate**.

Alleging a **violation of the International Code of Conduct** for Private Security Service Providers that has occurred or is about to occur.

## HOW?

Through complaint form on the ICoCA website: [www.icoca.ch](http://www.icoca.ch)

**E-mail** to [secretariat@icoca.ch](mailto:secretariat@icoca.ch)

**Call** or send an **instant message** by Viber, WhatsApp (+41 79 440 34 14) or Skype (ICoCA Secretariat)

## 2.4 Voluntary Principles on Security and Human Rights (VPs)

The Voluntary Principles on Security and Human Rights (VPs) are a set of good practices specifically designed to guide companies - clients of security providers - in ensuring respect for human rights. The VPs support companies in maintaining the safety and security of their operations in a way that ensures respect for human rights and fundamental freedoms. More specifically, the VPs provide 3 sets of good practices:

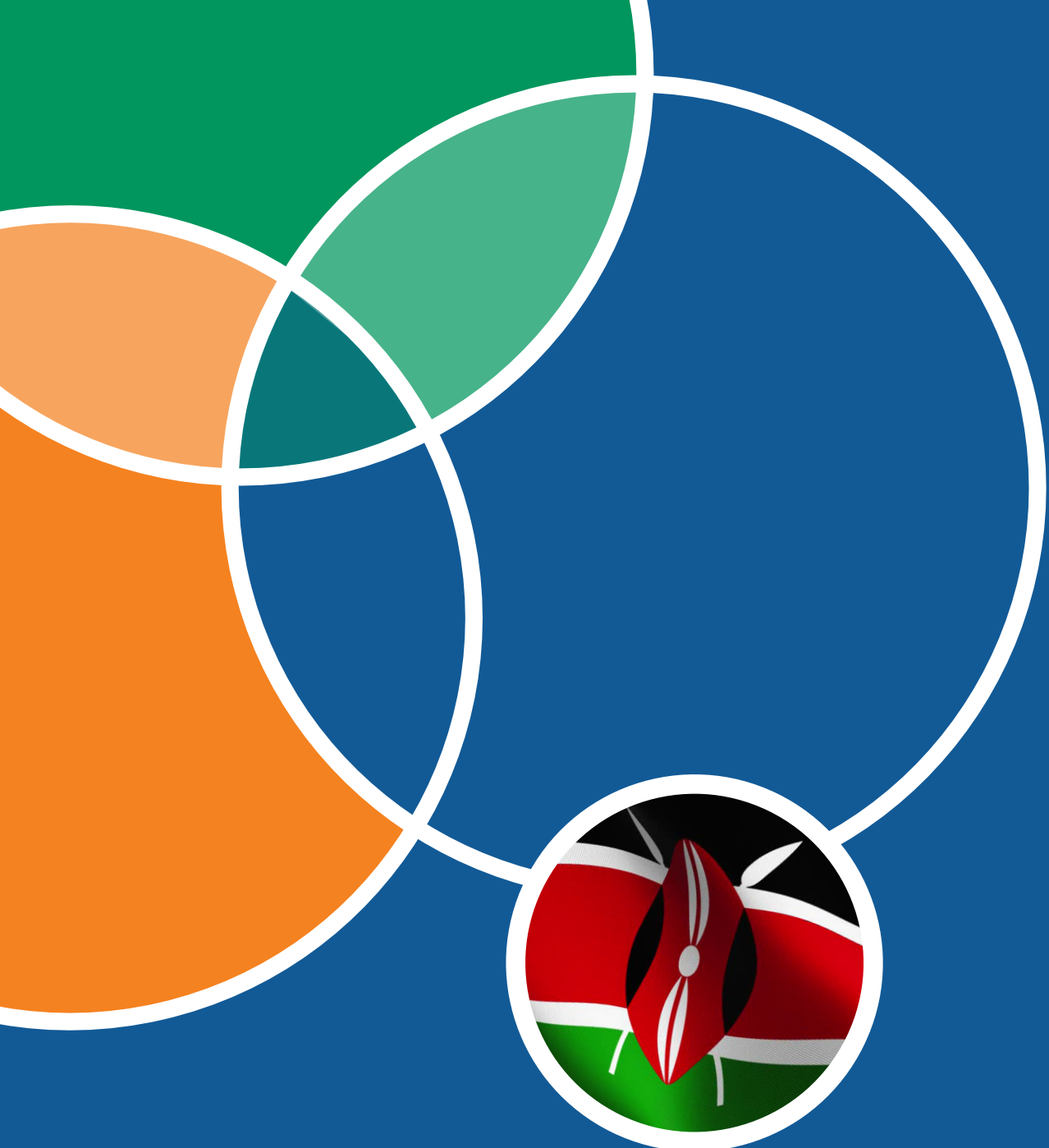
- The VPs provide guidance on carrying out a **human rights risk assessment** to ensure that human rights are respected whenever security providers are active on company facilities and premises.
- The VPs support companies in structuring human rights-compliant arrangements with **public security providers**, when these are assigned to work on company operations.
- The VPs help companies put in place processes and policies to ensure that any contracted **private security providers** respect human rights.

The VPs are intended to support companies, especially those involved in natural resources extraction in complex environments to effectively manage the risks associated with their projects. In addressing PSCs, the VPs recommend that the contracted private security providers have a high level of technical and professional competence, particularly with regard to the use of force and firearms. In addition, the VPs recommend that companies using private security providers include these principles in the contractual arrangements contained in agreements with private security providers and ensure that private security personnel are adequately trained.

[The Voluntarily Principles Initiative \(VPI\)](#) is the multistakeholder initiative that supports implementation of the VPs; it is composed of governments, civil society and companies.

The VPI provides a platform for mutual learning, joint problem solving and a framework for building the capacity of local multistakeholder working groups to support more effective VPs implementation. The VPI currently counts 10 government members, 33 companies, 16 CSOs and 9 observers.





# 3

## Private security governance challenges and the relevance of international norms and practices in Kenya

This chapter is structured around the main private security governance challenges identified as follows:

1. Use of Force
2. Detention and Arrest
3. Prohibition of Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment
4. Human Trafficking, Slavery, child Labour
5. Sexual Exploitation and Abuse and Gender-Based Violence
6. Authority responsible for the PSCs Industry
7. Identification, Authorization, Licensing, and registrations
8. Selection and Vetting of Personnel
9. Training of Personnel
10. Selection and Vetting of (Sub)-Contractors
11. Management of Weapons and Material of War
12. Safe and healthy working environment
13. Incident reporting
14. Accountability and Effective Remedy
15. Meeting liabilities

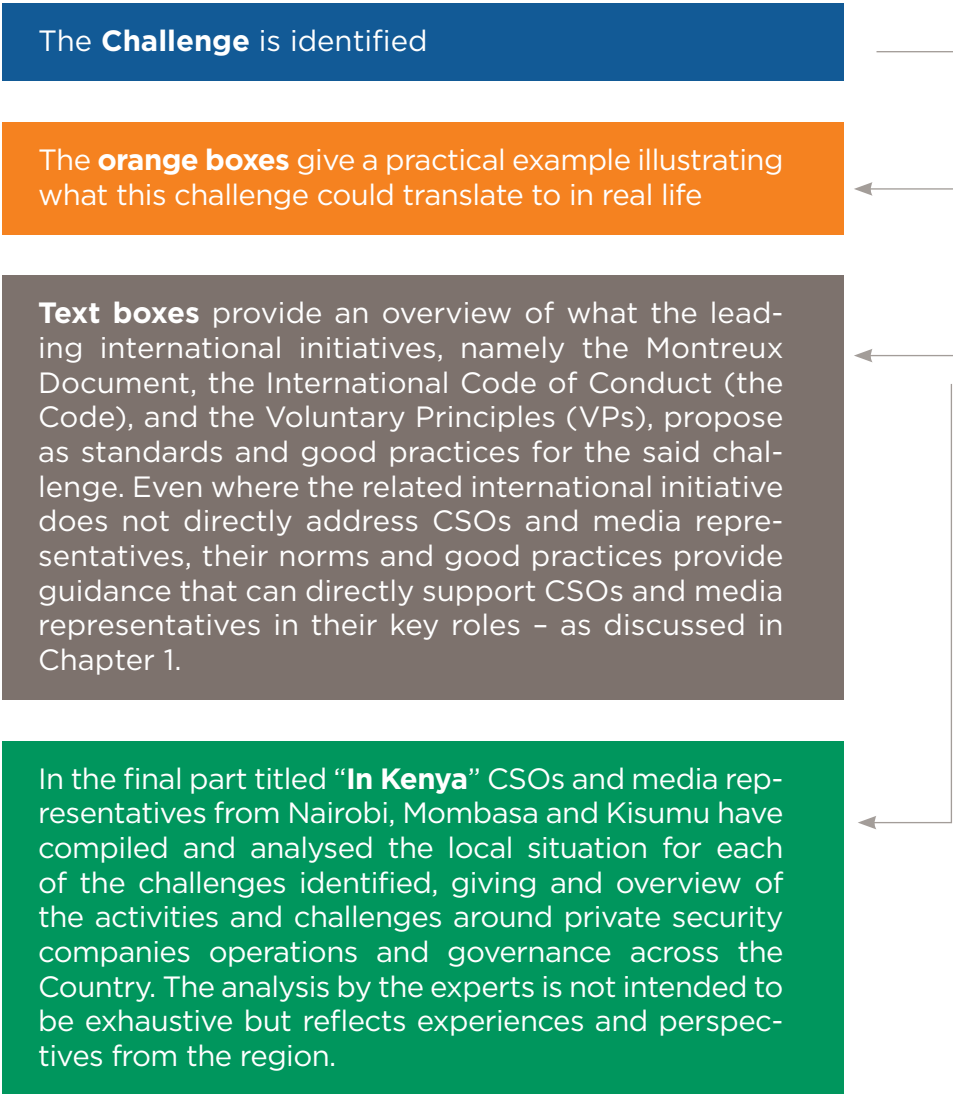
For each of these challenges, this chapter first gives a brief overview of the standards and good practices proposed by the leading international initiatives, namely the Montreux Document, the International Code of Conduct (the Code), and the Voluntary Principles (VPs). Following this overview of the international norms and good practices, experts from Kenya have compiled and analysed each of the challenges identified, giving an overview of the issues around private security companies operations and governance across the country.

To gather this expertise, consultative meetings with CSOs and Media representatives were first organized by the Usalama Reforms Forum

and the Kenya Correspondent Association (KCA) in Nairobi, Mombasa, and Kisumu. Following these meetings, attended by a total of 50 CSOs and media representatives, selected experts from each three regions were mandated to compile and crystallize the local discussion through a questionnaire. The analysis of these answers, together with the discussion during consultative meetings, are reflected into this publication.

This analysis conveys Kenya’s specific private security governance challenges and articulates the relevance of international norms and good practices to address such challenges. The analysis by experts is not exhaustive but reflects experiences and perspectives from the country.

Each challenge is presented with the following structure:





# 1 USE OF FORCE

## Practical example

Community members have organized a protest in front of a mining site; they carry tree branches and seem very angry. A small group of protestants try to force entry into the site. Private security guards assigned to the mining site pushed them back using sticks.

**What do international norms and good practices say about Use of Force?**



## The Code

The use of force by private security guards is strictly restricted to defend themselves and to defend others and the property they protect against an imminent threat.

A guard must always try to de-escalate the situation and use force proportionate to the threat. Security guards have to respect the following principles:

- Use force only when strictly necessary;
- Use of force needs to be proportionate to the threat;
- Use of force needs to be appropriate to the situation.

## Montreux Document

The Montreux Document emphasizes that States need to define precisely what equipment, weapons and firearms (if any) PMSCs may use. In addition, States shall have in place appropriate rules on the use of force and firearms by PMSCs and their personnel, such as:

- using force and firearms only when necessary in self-defence or defence of third persons.
- immediately reporting to and cooperation with competent authorities in the case of use of force and firearms. This shall also be included in contracts with PMSCs.

The PMSC's internal organisation and regulations on the use of force and firearms must be taken into account by Governments when granting an authorisation.

## The VPs

The VPs stress that private security should act consistently with the law and international guidelines. They should have policies regarding appropriate conduct and the use of force and should maintain high levels of technical and professional proficiency, particularly with regard to the local use of force and firearms.

The VPs also refer to the UN Principles on the Use of Force and Firearms by Law Enforcement Officials and the UN Code of Conduct for Law Enforcement Officials, as well as emerging best practices developed by Companies, civil society, and governments. These represent international minimum standards. More specific guidance can be found in the Use of Force Guidance Tool developed by DCAF (see reference on page 70).

## IN KENYA

### **Is there any evidence of private security companies using force while discharging their duties?**

Most respondents claimed that PSCs are using force or have been reported to use force in the course of their duties. It was mentioned that case of excessive use of force had been reported, including instances where PSC personnel are armed with *rungus*, one of the most common weapons carried by PSCs employees. It was mentioned that security guards working in gated communities and industry premises, such as the flower firms of Naivasha or agribusinesses in Thika, had notably been reported to use force against vulnerable groups such as women and children. A high number of use of force abuses were linked to employees of large multinational PSCs. The international character of these companies, often not having headquarters in Kenya itself, renders accountability more complicated and PSC employees would feel entitled because of the high interests and investments they are protecting.

Media representatives reported receiving cases of violations by PSCs employees, with an increase of complaints during difficult security situations, such as COVID19. Nevertheless, PSCs guards or their company's representatives are reluctant to speak to media in relation to the instances of use of force. The private security sector was described as operating as a closed environment where information sharing is controlled.

It was also noted that private security guards are themselves exposed to insecurity due to the nature of their work but have insufficient means and training to protect themselves and to respond adequately to threats, increasing the level of tension around the industry. Under the Kenyan regulations, PSCs are not allowed to use firearms, but PSCs do hire licensed firearms holders in order to handle sensitive

contracts (see more information under challenge 11). It was mentioned that there is little awareness around the issue of use of force and weapons by PSCs, both by communities and by PSCs employees themselves: although it is a highly sensitive topic, increased awareness is needed.

**In your opinion, do private security companies follow best practices (in terms of regulations) when it comes to use of force? Are there other instances, where private security companies are abusing their authority by using force?**

If most CSOs and Media representatives expressed the general opinion that PSCs do not follow best practices when it comes to the use of force, it was also noted that there is insufficient knowledge on what these good practices are. Most media representatives had little awareness of the Kenyan legal framework regulating PSCs activities, namely the 2016 Act. While CSOs seemed better informed, they stressed the need for public sensitization and strong advocacy around the ongoing regulatory process, to foster a stronger involvement of communities, CSOs and Medias.

## 2 DETENTION AND APPREHENSION OF PERSONS

### Practical example

A private security guard discovers an intruder on the mine site he is assigned to. The intruder is in the process of stealing equipment. The guard locks the person into an office until the police arrives to transfer the person to the police station. Because of the mine's remote location, the police will only arrive in 3 to 4 days.

**What do international norms and good practices say about Detention and Apprehension of Persons?**



### The Code

#### Detention

Private security guards are only allowed to detain persons if state authorities have asked them to do so and the details are regulated in a contract. For example, they can decide to outsource the protection of prisons or the guarding, transport or questioning of prisoners to private security companies. Otherwise detention by private security guards is prohibited.

In situations, where the state has delegated the authority to detain individuals to private security companies, these are required to properly train guards detaining individuals in the applicable national and international law.

Most importantly, guards must treat all detained persons humanely at all times.

## **Apprehending persons**

Private security guards are not allowed to take or hold any persons except in self-defence or to defend others such as clients or property under their protection.

In such situations the following principles apply:

- A guard must treat the person held humanely and consistent with national and international law.
- At the earliest opportunity the guard must hand over the person to a Competent Authority such as the police.
- The PSC then needs to report this incident to the company, Embassy or other client who contracted them without delay.

## **Montreux Document**

The Montreux Document requires States to determine which services may or may not be carried out on their territory by PMSCs or their personnel; in determining which services may not be carried out, States must take into account factors such as whether a particular service could cause PMSC personnel to become involved in direct participation in hostilities.

Clarity in the definition of roles and responsibilities between public and private security providers is particularly important when it comes to the use of force, apprehension, and detention.

## **The VPs**

The VPs stress that private security should act in a lawful manner. The VPs also discuss that private security should only provide preventative and defensive services and not engage in activities exclusively the responsibility of state military or law enforcement authorities.

# IN KENYA

## **Are there any cases of private security or private military and security companies detaining and/or apprehending persons in your region?**

Are there instances where PSCs confine, detain and/or arrest people in your region? Are there any cases of abuse in apprehending and detaining individuals? Are they authorized to detain individuals?

Instances of people arrested and/or detained by PSCs are reported to happen in Kenya. It was mentioned such occurrences can be common, for example in supermarkets, on accusation of shop lifting, in buildings, construction sites and agricultural farms, for trespassing, or when entering stadiums during football matches or other events. These arrests are conducted by PSCs personnel as a way of demobilizing culprits, await re-arrest or handing over to the police.

Incidents of abuse have also been reported, where people are arrested and/or detained by PSCs guards without benefiting from adequate procedures. Most of the respondents noted that the constitution of Kenya provides for “the citizens right to arrest”, which includes the obligation to immediately hand over the person to the nearest police station or post, but have no idea how this “citizens right to arrest” applies to the operations of PSCs. It was suggested that PSCs guards might not always have clarity on the exact extend of their powers and duties when it comes to the arrest and detention of a person, and that additional training should be included as a standard curriculum. The Private Security Regulation Act 2016 does provide for the power of arrest (art. 46) as well as the power to search (art. 47) and to record and temporarily withhold identification documents (art. 48); these provisions have raised concerns for the protection of rights to privacy and data protection.<sup>5</sup>

<sup>5</sup> [www.amnestykenya.org/actualise-private-security-law-through-public-stakeholder-participation/](http://www.amnestykenya.org/actualise-private-security-law-through-public-stakeholder-participation/)

# 3 PROHIBITION OF TORTURE OR OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

## Practical example

A security guard works in a prison. A prisoner shouts and swears at the guard. To silence the prisoner, the guard beats him up. Another guard observes the beating.

What do international norms and good practices say about Prohibition of Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment?



## The Code

Private security personnel are prohibited in any circumstance to torture individuals, to punish them or treat them in any way which is degrading or inhuman.

Guards are required to report any observations or suspicions of such treatment to the company.

Companies have to report such acts to their clients and to Competent Authorities. Competent Authorities may include the following:

- in the country where the acts took place,
- the country of nationality of the victim,
- the country of nationality of the perpetrator.

For more information on the Prohibition of Torture [bit.ly/3m9l60i](https://bit.ly/3m9l60i)

## Montreux Document

The Montreux Document underlines that States are required to exercise criminal accountability for all international crimes. “International crimes” are all offences for which international law, most often on the basis of a specific treaty, demands criminalization. Examples of international crimes are war crimes in general and offences not necessarily related to armed conflicts, such as torture or genocide.

# IN KENYA

## **Are there instances where PSCs have been accused of torture or cruel, inhuman or degrading treatment or punishment?**

### **Are there any cases of PSCs being litigated and/or convicted for such behaviour?**

Cases of torture or other cruel, inhuman, or degrading treatment or punishment by PSCs have been witnessed, including against women in flower farms and against casual workers in manufacturing industries. In 2019, over 85 allegations of serious human rights abuse by security guards were claimed against a large agricultural farm based in Kenya. The legal claims were brought by the Kenya Human Rights Commission, the Centre for Research on Multinational Corporations (SOMO) and the Ndula Resources Centre. The case was settled in 2021: while the company did not admit liability, the settlement includes individual compensation to victims of alleged violence and rape, as well as remedial investments in the local community.<sup>6</sup>

However, there is little information available and reporting of these cases is rare because of fear, ignorance, and lack of awareness among the victims and other affected groups. Most cases of abuses are not reported to the police but are dealt with internally within the company in order to avoid negative publicity associated with such incidences. Fear of reprisal has also been reported as a deterring factor both for individual victims to seek justice and for CSOs and media to report publicly.

<sup>6</sup> [www.business-humanrights.org/fr/derni%C3%A8res-actualit%C3%A9s/kenya-camellia-settles-claims-of-abuses-including-killings-sexual-violence-at-kenya/](http://www.business-humanrights.org/fr/derni%C3%A8res-actualit%C3%A9s/kenya-camellia-settles-claims-of-abuses-including-killings-sexual-violence-at-kenya/)



## 4 HUMAN TRAFFICKING, SLAVERY, CHILD LABOUR

### Practical example

A security guard works in a prison. A prisoner shouts and swears at the guard. To silence the prisoner, the guard beats him up. Another guard observes the beating.

What do international norms and good practices say about Prohibition of Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment?



### The Code

Private security personnel are not allowed to engage in or be complicit in trafficking of persons, slavery, or child labour.

Human trafficking includes for example slavery or recruitment of a person forcing her/him to provide sexual services or work under inhuman conditions unpaid.

Guards are required to report any observations or suspicions of such acts to the company or a Competent Authority.

### Montreux Document

The Montreux Document underlines that States are required to exercise criminal accountability for all international crimes. “International crimes” are all offences for which international law, most often based on a specific treaty, demands criminalization. Examples of international crimes are war crimes in general and offences not necessarily related to armed conflicts, such as torture or genocide, human trafficking, slavery, or child labour.

## IN KENYA

### **Are there allegations or confirmed incidents of PSCs accused of Human Trafficking, Slavery, Child Labour in Kenya?**

Media and CSOs representatives mentioned they have only basic knowledge on human trafficking, slavery, and labour laws, but that they are not fully aware of the specific laws and standards applicable in the region. Kenya's labour laws do not refer directly to labour exploitation and insufficiently protects migrant workers. It was reported that both public security and PSCs, mostly those operating in border areas, have been involved with aiding human trafficking from the horn of Africa (i.e. Djibouti, Ethiopia, Eritrea and Somalia). PSCs managing projects along the Eastern frontiers, or those working in refugee camps, have witnessed human trafficking with limited capacity to respond, according to media representatives.

While no direct link was reported between the private security industry and child labour, it was mentioned that some local PSC would hire very young personnel as guards, with inadequate to no training, placing them in position where they can be exposed to danger with insufficient experience and capacities to defend themselves. Due to insufficient legislations, modern day slavery is a rampant trade in Kenya, operating underground. The media does its best to report on Human Trafficking, Slavery and Child Labour in Kenya, however, most cases go unreported because of a number of factors including fear, corruption and intimidation.

## 5 SEXUAL EXPLOITATION AND ABUSE OR GENDER-BASED VIOLENCE

### Practical example

A private security guard and his five colleagues (all male) guard a company compound. People know that there are jobs at the company, but it is hard to get inside to meet the right people. The guard is approached by a woman to let her in so she can approach the manager. The guard suggests that he will let her pass if she offers him a sexual favour in return. He organizes where to meet with her.

**What do international norms and good practices say about Sexual Exploitation and Abuse or Gender-Based Violence?**



### The Code

Private security personnel are not allowed to:

- engage in sexual exploitation or gender-based violence.
- benefit from sexual exploitation or gender-based violence.

Such behaviour includes for example sexual harassment of a colleague, using prostitution, or rape.

Guards are required to report any observations or suspicions of such behaviour to the company.

Where such behaviour took place, the company is required to offer assistance to the harmed individual such as medical aid, psychological support, or other help they might need.

### Montreux Document

When granting authorisation to a PMSC and/or when selecting a PMSC for a security service, States shall consider, within available means, the past conduct of the PMSC and its personnel, which includes ensuring that the PMSC has: a) no reliably attested record of involvement sexual offences.

## IN KENYA

**Is sexual exploitation, abuse, and gender-based violence a challenge in the private security sector in Kenya? What is the gender balance like in the sector? Have there been any reported incidences of private security companies/firms accused of gender and other related human rights violations you are aware of?**

A majority of the CSOs and Media representatives noted the existence of gender-based violence, including sexual harassment, by PSCs in the recent past. Yet, such cases are rarely reported to the relevant authorities as required by law. It was also noted that police gender desks were established in the police stations of Kenya, meant as a safe space within police stations for victims to report gender-based violence. While these desks are welcomed as a step in the right direction, they were reported as not being very efficient. As mentioned under challenge 1 and 3, women suffer more as victims of gender abuse from the reported cases.

While the private security sector is predominantly hiring male employees, gender-based violence, abuse and sexual exploitation have been mentioned as a big challenge affecting female security guards and lower cadre employees working for PSCs in Kenya. It was also reported that female employees would suffer from worse working conditions than male colleagues with the same position, in particular obtaining lower salaries. For this type of violation again, there are little to no reported cases.

## 6 AUTHORITY RESPONSIBLE FOR THE PRIVATE SECURITY INDUSTRY

### Montreux Document

State shall create a designated PMSC Authority, specifically tasked with and designed for the regulation, oversight and monitoring of the PMSC sector and establish systematic, diligent, and institutionalised monitoring mechanisms within the PMSC Authority. The legislation needs to contain an obligation that companies report regularly to the Authority on personnel data, equipment, weapons and firearms and on incidents. The Authority should further have the power and capacity to carry out inspections, including access to the company's premises and inspection of documents.

In addition, States need to ensure adequate independence is attributed to the regulatory authority to prevent risks of political interference and corruption and that the authority is provided with sufficient funding and qualified personnel.

## IN KENYA

### **How do the authorities monitor private security companies in your region? Do CSOs and media have access to the Authority, and what are the relationship?**

The 2016 Act establishes the Private Security Regulatory Authority (PSRA) (art. 8) as the one in charge of, amongst other, the effective administration, supervision, regulation and control of the private security services industry in Kenya (art. 9).

The Authority nevertheless was reporting as lacking capacity and the political goodwill to enforce its duties, including ensuring compliance with the regulation and its monitoring. In addition, the poor working relationship between the Authority and the Industry has significantly slowed down implementation of various recommendations thus negatively affecting reforms within the sector. Lack of a common approach to implementing harmonized training curriculum has been sighted as an example.

CSOs and media also noted that there is poor communication between PSRA and the industry as well as with CSOs and Media. Media mentioned that press reports are based on secondary sources of information as access to direct information from PSRA is complicated. The situation has been worsened by the absences of regulations to guide the working relationship between the Authority and other stakeholders leaving the process at the discretion of leadership of PSRA.

While the engagement with the civil society and media was qualified as good around the public security reforms processes, including a good management of information flow, constructive engagement and open dialogues amongst the stakeholders, the PSRA communication system was qualified as very poor thus negatively affecting the overall outlook of the industry in Kenya. It was recommended that a proper, well-structured and all-inclusive dialogue process should be initiated between the Authority and other stakeholders to address the current situation and restore proper working relationship.

## 7 AUTHORISATION, LICENSING AND REGISTRATIONS

### Practical example

A security guard driving a company car in the line of duty is involved in a traffic accident. While a third person is injured, the security guard is unharmed and drives on. The injured persons in the other car see how a white car continues driving with a driver in uniform and a logo on his arm.

What do international norms and good practices say about Authorisation, Licensing and Registrations?



### The Code

All private security personnel should be identifiable with their name and the company they are working for, for example through the company logo on their uniform.

The following should be registered and licensed with the relevant national authorities:

- Vehicles
- Hazardous materials such as ammunition, chemicals, etc.

### Montreux Document

#### Identification

States should require, if consistent with force protection requirements and safety of the assigned mission, that the personnel of the PMSC be personally identifiable whenever they are carrying out activities in discharge of their responsibilities under a contract. Identification should:

- a be visible from a distance where mission and context allow, or consist of a non-transferable identification card that is shown upon demand;
- b allow for a clear distinction between a PMSC's personnel and the public authorities in the State where the PMSC operates.

## Authorization, Licensing and Registration of PMSCs

States should develop an authorisation system, requiring each PMSC to obtain a specific authorisation/license in order to operate.

States need to consider whether licenses should be granted for specific limited and renewable periods and/or for specific services, require membership in good standing with the ICoCA as a prerequisite for obtaining an authorisation or license (or other similar globally recognised multi-stakeholder association), ensure transparency with regards to the granting of authorisations or licenses.

This may include public disclosure of authorisation regulation and procedures, publication of overviews of incident reports or complaints, and granting oversight to parliamentary bodies/committees including by providing annual reports.

States shall further create clear criteria for a PMSC to obtain an authorisation. At a minimum, companies should provide the following when applying for a authorisation/license:

- Records of past conduct – for the company, its management and its personnel; Personnel and property records;
- Mandatory training – in particular in IHL and IHRL, and generally in human rights; Records of financial and economic reliability;
- Records documenting lawful acquisition and use of equipment – including weapons and firearms;
- Evidence of safe and healthy working conditions and provisions for the welfare of personnel.

States should set out conditions and administrative processes for the denial, suspension or revocation of authorisation/ license, require membership in good standing with the ICoCA as a prerequisite for renewing an authorisation or license (or other similar globally recognised multi-stakeholder association), provide a fair and transparent appeals process in case of denial, suspension of an authorisation/license. And stipulate the limited period of the authorisation/license and define the terms and conditions for renewal.

Finally, States should establish mandatory registration of PMSC and personnel records and maintain a national register, compiling updated relevant information about PMSCs operating in the country or exporting their services. The information should include at a minimum:

- All PMSCs that have been authorised or licensed;
- Records of past conduct, trainings, and firearms licenses of managers and personnel;
- Durations and details of contracts;
- Registered equipment, including firearms, ammunition and vehicles.



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- Records documenting lawful acquisition and use of equipment – including weapons and firearms;
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- All PMSCs that have been authorised or licensed;
- Records of past conduct, trainings, and firearms licenses of managers and personnel;
- Durations and details of contracts;
- Registered equipment, including firearms, ammunition and vehicles.

## The VPs

Private security should observe the policies of the contracting Company regarding ethical conduct and human rights; the law and professional standards of the country in which they operate; emerging best practices developed by industry, civil society, and governments; and promote the observance of international humanitarian law.

# IN KENYA

## **Does the Private Security Regulation Act 13 of 2016 adequately account for Identification, Authorization, Licensing, and registrations of PSCs in Kenya?**

PSCs are regulated by the Private Security Regulations Act 2016 (the 2016 Act). Nevertheless, it was mentioned that this applies to companies which have met basic requirements in terms of compliance; many companies are unable to comply and continue to operate illegally.

It was also mentioned that the national vetting and compliance exercise commissioned by the 2016 Act has not been completed, partly because of the COVID19, and partly because of opposition from the different stakeholders. In 2019, the Private Security (General) Regulation were proposed for adoption to operationalize the 2016 Act. However, It was reported that the new measures proposed including new standards for the licensing and registration of PSCs, lacked sufficient consultations especially with the industry, resulting into adversarial process in nature, creating tension and misunderstanding between the Private Security Regulatory Authority and the Industry. The industry notably considered the deadlines set for the implementation of the new regulation unrealistic.<sup>7</sup> The Private Security (General) Regulation 2019 were annulled by the parliament of Kenya, on the account of “inadequate public participatory”.<sup>8</sup>

## **How does one differentiate between private security guards and public security officials?**

Public security agencies have official uniforms that are well known to the public; the 2016 Act (art. 51) does not allow PSCs to “use or allow the use of uniforms similar to any of the uniforms worn by any disciplined forces or any national security organ in Kenya.” While some respondents felt that the differentiation between public and private security was clear enough, respondents from Kisumu region did feel that a “majority of Kenyans are not in a position to differentiate clearly between these entities”.

7 [www.the-star.co.ke/news/2019-11-03-it-is-impossible-to-comply-with-new-security-laws--private-firms/](http://www.the-star.co.ke/news/2019-11-03-it-is-impossible-to-comply-with-new-security-laws--private-firms/)

8 [www.parliament.go.ke/sites/default/files/2019-11/CDL%20Report%20on%20Private%20Security%20Regulations%2C%202019%20TABLED%206.11.2019.pdf](http://www.parliament.go.ke/sites/default/files/2019-11/CDL%20Report%20on%20Private%20Security%20Regulations%2C%202019%20TABLED%206.11.2019.pdf)

## 8 SELECTION AND VETTING OF PERSONNEL

### Practical example

A private security company operates in an area where different tribes are fighting each other. The company would like to hire a local to provide guarding services. The company would like to check that the person it hires has not committed any crimes.

**What do international norms and good practices say about Selection and Vetting of Personnel?**



### The Code

Private security companies should select their personnel carefully. When hiring personnel, companies must check the following:

- The candidate's identity;
- That the candidate providing security services is not under 18 years of age;
- The candidate's education history;
- The employment history of a candidate;
- That the candidate has no crime history;
- That the candidate has no history of abusing human rights;
- That the candidate has sufficient physical fitness to perform the assigned duties;
- That the candidate has sufficient mental fitness to perform the assigned duties;
- In case of previous military experience, that the candidate has not been dishonourably discharged;
- That the candidate has the requisite qualifications as defined by the contract.

Companies must ask candidates applying for a position with a private security company to authorise access to prior employment and government records.

Companies should keep passports, or other identification documents of their personnel for the shortest period of time reasonable.

Once the person is hired, a company is required to assess her/his performance on a regular basis for example through tests and training.

No tolerance for discrimination! When PSCs hire and assess their personnel they should not discriminate on grounds of race, colour, sex, religion, social origin, social status, indigenous status, disability, or sexual orientation.

All policies, employment material such as the Code, contract terms and conditions need to be clearly communicated to personnel and be available in written form and in a language they can understand.

PSCs need to keep employment records and reports on past and present personnel for a period of 7 years.

## Montreux Document

When granting authorisation to PMSCs, States shall take into account, within available means, the past conduct of the PMSC and its personnel, which includes ensuring that the PMSC has conducted comprehensive inquiries within applicable law regarding the extent to which any of its personnel, particularly those who are required to carry weapons as part of their duties, have a reliably attested record of not having been involved in serious crime or have not been dishonourably discharged from armed or security forces; and PMSC personal has not previously had an operating license revoked for misconduct.

## The VPs

Private security should (a) not employ individuals credibly implicated in human rights abuses to provide security services [...].

To the extent practicable, agreements between Companies and private security should require investigation of unlawful or abusive behaviour and appropriate disciplinary action. Agreements should also permit termination of the relationship by Companies where there is credible evidence of unlawful or abusive behaviour by private security personnel.

Where appropriate, Companies should seek to employ private security providers that are representative of the local population.

Companies should review the background of private security personnel they intend to employ, particularly with regard to the use of excessive force.

Such reviews should include an assessment of previous service.

Companies should consult with other Companies, home country officials, host country officials, and civil society regarding experiences with private security. Where appropriate and lawful, Companies should facilitate the exchange of information about unlawful activity and abuses committed by private security providers.

## IN KENYA

### **How are employees of private security companies recruited? What type of background check is performed in your region?**

Respondent mentioned that the 2016 Act offers guidelines for the recruitment of personnel, stating (art. 33.2) that “every person who is employed in a private security service firm, including a person offering security services training shall apply to the Authority to be registered under this Act.” Art. 23 of the 2016 Act imposes a list of requirements for registration, including the attendance to a training in security matters in an institution accredited by the Authority, a certificate of good conduct and no criminal record. The 2016 Act’s Code of Conduct also mandates PSCs to “develop internal systems of governance including a code of conduct, and policies on the recruitment, training, financial and contractual policies and registration of employees, amongst other things, and these systems will be open to public scrutiny at all times”.

It is nevertheless reported that PSCs generally do not observe these standards. Most PSCs do not have capacity to train their staff to the recommended standards. The recruitment process remains in most cases very rudimentary, with no established standards or procedures adhered to. PSCs would for example only advertise for senior positions within the company – then including a formal recruitment process and background checks of shortlisted candidates. Other positions would use local and/or informal channels, including referrals, to employ the rest of the staff of the company.

## 9 TRAINING OF PERSONNEL

### Practical example

A private security company hires new staff to escort an NGO providing humanitarian aid to villages in the area. The guards hired have no previous experience and are armed with sticks.

**What do international norms and good practices say about Training of Personnel?**



### The Code

PSCs are required to train their personnel when they start their job and then on a regular basis.

The training should include the following:

- An explanation of company commitment to comply with the highest standards of conduct and professionalism;
- An explanation of the principles of the Code;
- How to assess risks and prevent and mitigate harm to personnel and the local population;
- Hostile environment training;
- An overview of the national and international law applicable to the conduct of personnel;
- Training on the Rules for the Use of Force;
- An explanation of how to report incidents that occurred while guards were operating;
- Training on how to use the company grievance mechanism;
- Communication of the disciplinary measures for violations of the company procedures.

For those who carry weapons, PSCs need to provide training which is specific to the weapons they carry. Personnel are only authorised to carry weapons if the company has verified their skills specific to the type and model of weapon they carry and provided training.

## Montreux Document

States shall ensure that legislation includes requirements for mandatory human rights and IHL training tailored for both managers and personnel, as a prerequisite for PMSCs gaining authorisations to operate. A national entity shall be tasked with the design and oversight of mandatory training for PMSC managers and personnel.

States need to ensure requirements of regular refresher training in legislation and define mandatory additional training for specific activities carried out by PMSCs, in particular those taking place in complex environments and those bringing actors of different cultural backgrounds together. This could include sensitivity or gender training.

States shall set minimum training requirements for PMSC personnel who are allowed to carry weapons and firearms in the course of their duties. The minimum requirement should at least entail training in regard to technical use of equipment, weapons or firearms; situations in which it is permissible to use weapons or firearms; specific weapons management training.

## The VPs

Private security should (a) not employ individuals credibly implicated in human rights abuses to provide security services [...].

To the extent practicable, agreements between Companies and private security should require investigation of unlawful or abusive behaviour and appropriate disciplinary action. Agreements should also permit termination of the relationship by Companies where there is credible evidence of unlawful or abusive behaviour by private security personnel.

Where appropriate, Companies should seek to employ private security providers that are representative of the local population.

Companies should review the background of private security personnel they intend to employ, particularly with regard to the use of excessive force. Such reviews should include an assessment of previous service.

Companies should consult with other Companies, home country officials, host country officials, and civil society regarding experiences with private security. Where appropriate and lawful, Companies should facilitate the exchange of information about unlawful activity and abuses committed by private security providers.

# IN KENYA

## **How are PSCs employees trained? Is there a standard training for PSCs employees in Kenya? Are employees trained in human rights law?**

The 2016 Act imposes (art. 23.2) “to have attended training in security matters in an institution accredited by the authority” as a requirement to obtain a private security services provider registration. The definition of standards and the accreditation of institutions offering training for security service providers and prospective security service providers is one of the functions of the authority, as defined by the 2016 Act (art. 9.j). A training curriculum for private security officers has been launched in December 2019 by the Private Security Regulatory Authority, claiming that “industry players and experts were brought together by the Private Security Regulatory Authority in a consultative forum to develop this document and address issues to do with standardization of a national curriculum that is recognized internationally. This document therefore addresses various skills and knowledge gaps that exist in the industry and allows accreditation and certification after approved training and assessment in line with international standards.” The standards curriculum does include module on the legal and regulatory framework of the Private Security Industry in Kenya, including on the fundamentals of human rights as well as on ethics and integrity.

Despite the clarity of the new regulations, the implementation has not been effectively carried out so far. CSOs and media representatives noted that there are challenges relating to the quality and cost of training. It was mentioned that not all stakeholders, including industry stakeholders, are aware of the existence of the standard training curriculum and related legal obligations. The costs of training are incurred by PSCs themselves. These training are delivered by different institutions, required to be accredited by the regulatory authority (art. 9.j.ii). Not all PSCs can afford the high cost of training for their employees, raising issues of either noncompliance or poaching of qualified staff within the industry. Respondents mentioned that young PSCs do not have the capacity to comply with training requirements and are operating outside the legal framework. PSCs often time offer some drill training to their employees, focusing on general physical fitness. Most of respondents concurred that PSC employees do not in most cases get adequate training on respect and implementation of human rights.



# 10 SELECTION AND VETTING OF (SUB)-CONTRACTORS

## Practical example

A client asks an international private security company to put security measures in place at short notice. The company does not have enough personnel to execute the contract in the required timeframe. It decides to contract a local security company to help them out.

What do international norms and good practices say about the Selection and Vetting of (Sub)-Contractors?



## The Code

If private security companies decide to subcontract services, they have to do so carefully and assess how they respect the Code on a regular basis.

A company needs to make sure that a subcontractor carrying out security services operates in accordance with the principles of the Code. If a subcontractor is not operating up to standard, a PSC needs to take measures to remedy that.

## Montreux Document

Prior to awarding any PMSC contract, States shall identify the needs and analyse the risks linked to the requested services (such as the need to carry weapons or particular knowledge or training requirements).

States need to adopt a specific and systematic vetting process for the selection and contracting of PMSCs. Criteria and standards of the vetting process for the selection and contracting of PMSCs should mirror those for the authorisation of a PMSC. At a minimum, the process should include requirements for the following:

- Records of past conduct – for the company, its management and its personnel;
- Personnel and property records;
- Required training – in particular on IHL and human rights;

- Records of financial / economic stability;
- Documentation of the lawful acquisition and use of equipment – including weapons and firearms;
- Requirement that companies develop internal company policies that implement international standards;
- Requirement of safe and healthy working conditions for personnel (See, e.g., ICoC Art 64).

## IN KENYA

**Are there any examples of sub-contracting in your region? What does the typical private security contract include? Are there any references to human rights and IHL in such contracts?**

Little information is known about sub-contracting and related selection and vetting processes; sub-contracting does not seem to be a common practice for PSCs in Kenya.

# 11 MANAGEMENT OF WEAPONS

## Practical example

A private security company has a warehouse next to a market place in a village. In this warehouse the company stores various ammunitions, weapons and other explosive material, piled up and mixed with each other. The warehouse guard smokes a cigarette.

**What do international norms and good practices say about the Management of Weapons?**



## The Code

Private security guards can carry a range of different weapons, for example a baton, or be accompanied by dogs. In some countries they are allowed to carry firearms. This is regulated by national law.

PSCs are required to obtain and maintain authorisations for the possession and use of weapons, ammunitions and other hazardous materials.

Companies are prohibited from possessing illegal weapons, ammunitions or other hazardous materials or to engage in illegal transfers.

Companies are required to put in place measures which ensure that:

- Weapons and ammunitions are stored securely;
- Weapons and ammunitions are controlled regularly;
- It is recorded to whom and when weapons are issued;
- Ammunition is identified and accounted for;
- Weapons and ammunitions are disposed verifiably and properly.

## Montreux Document

- States must define precisely what equipment, weapons and firearms (if any) PMSCs may use.
- States need to require companies to obtain specific licenses and permits for the use of weapons and firearms. Each PMSC must keep a register listing all weapons and firearms as well as their status (including acquisition, storage and transfer). PMSC personnel needs to store weapons and firearms when not being used.

- States shall set clear requirements for the acquisition of weapons and firearms and prohibit the illegal acquisition, possession and trafficking in firearms and ammunitions and require mandatory reports of any weapons-related incidents to the national authority. Although designed for public security providers, the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials can provide guidance on management of weapons which may also be useful for PMSCs.

## IN KENYA

### Are PSCs allowed to use weapons? Are there challenges around the use of weapons and in Kenya?

The 2016 Act (art. 53) strictly prohibits the use of firearms in any PSC service or operation. It was nevertheless noted that, in practice, some PSCs employees use firearms in their operations, with a firearm license issued in their individual private capacity. Clients requesting private security armed services as well as emerging challenges, such as terrorist threats, have increased the demands for armed services. This practice remains strictly prohibited in law and is a major challenge for the authority. Generally, gun control in Kenya is regulated by the Firearms Act of 1954 and the Security Amendment Act of 2014. Private person can acquire firearms, subject to a licence. License to be a gun owner includes, among other, to establish a genuine reason to possess a firearm and to pass a background check which considers criminal, mental health, and domestic violence records.

It is also reported that PSCs commonly hire active police officers for specific mandate to benefit from their firearms, in most cases for sensitive assignments, such as cash in transit. Police are also known to be underfunded: arrangements with PSCs, may they be formal or informal, provide them with financial and material support.<sup>9</sup> This relationship, while widely accepted, is insufficiently regulated, and creates an obvious confusion of roles: police officers hired by PSCs still act in their private mandate as police officers, keeping their uniform as well as their service weapons to carry-out the specific private security mandate. It has also been reported as an opportunity for bribes and corruption.

Sparked by the January 2019 attacks on hotel complex in Nairobi, during which at least two security guards were amongst the victims, the Kenyan Private Security Regulatory Authority has announced that private security guards “could” be armed. The debate, about whether to allow PSCs to carry firearms, was initiated by the national security committee and stakeholders as a possible solution to ease the pressure on police. However, there are capacity and administrative challenges facing the process of allowing PSCs to carry weapons and allowing PSCs to carry firearms would require creating systems to ensure adequate training, proper chain of custody and accountability.<sup>10</sup>

9 [inkstickmedia.com/police-and-private-security-in-kenya/#:~:text=Private%20security%20officers%20aren't,security%20companies%20and%20police%20units](http://inkstickmedia.com/police-and-private-security-in-kenya/#:~:text=Private%20security%20officers%20aren't,security%20companies%20and%20police%20units).

10 [www.standardmedia.co.ke/opinion/article/2001437810/actualise-private-security-law-through-public-stakeholder-participation](http://www.standardmedia.co.ke/opinion/article/2001437810/actualise-private-security-law-through-public-stakeholder-participation)

## 12 SAFE AND HEALTHY WORKING ENVIRONMENT

### Practical example

A private security company protects a refugee camp close to a border. The nearest village from the camps is several hours of driving away; the climate is hot. The area along the border is known to have landmines.

What do international norms and good practices say about Safe and Healthy Working Environment?



### The Code

PSCs are required to ensure that reasonable precautions are taken to protect relevant staff in high-risk or life-threatening operations.

This includes:

- Assessing the risks of injury to personnel and the local population;
- Provide adequate training to personnel;
- Provide adequate protective equipment, weapons and ammunition;
- Provide medical support;
- Other measures addressing psychological health, deters work-place violence, misconduct, alcohol and drug abuse, sexual harassment and other improper behaviour.
- Companies should not tolerate harassment and abuse of co-workers

### Montreux Document

To receive authorisation, PMSCs must provide evidence of safe and healthy working conditions and provisions for the welfare of personnel.

# IN KENYA

## **In Kenya, how are the working conditions for PSCs personnel?**

The working conditions of PSC personnel was listed as a major challenge. The industry exposes its employees to stressful and dangerous environments, the working conditions do not support adequate mitigation of risks, rather in most cases expose the workers to unsafe and insecure working arrangements. Most private security employees are paid low wages, sometimes even falling below the minimum wage. Employment in the sector rarely offers any help or advantages, such as for example transport to and from workstation. Salaries might also be unequal amongst employees and often do not reflect adequately number of years of service, qualification or experiences, and the adequate protective gear or health insurance are often not provided.

It was highlighted that some PSCs, especially the younger, smaller PSCs, do not always issue contracts to their employees, accounting for an extremely insecure and unpredictable work environment. This situation has resulted into unfair and summary dismissal of staff without following due process. The poor working conditions also result in a lack of motivation and loyalty of employees, leading to high turnover in the sector, and creating in its turn additional risks: tired and insufficiently trained personnel are more likely to commit errors in their line of duty while frustrated employees may be more likely to commit abuse. Attention was also raised to the difference of working conditions between large multinational PSCs – often linked with the extractive sector and foreign investors – and smaller, local PSCs. The working conditions, in particular the salaries are much more attractive with large multinational companies.

The 2016 Act (art. 9.q) also provides for improved working conditions, imposing licensed PSCs to pay their employees at least the minimum wage, and entrusts the authority with the promotion of “the protection and enforcement of the rights of security guards, private security officers and other employees in the private security services industry” (art. 9.l). The Kenya National Private Security Workers’ Union (KNPSWU) is widely represented in Kenya, with a mandate to secure, promote and protect the rights of private security guards in Kenya. It was nevertheless mentioned that the Union should be strengthened and empowered to create better working conditions for PSCs employees.

In March 2021, a wide Media awareness raising campaign was carried by the Usalama Reforms Forum in partnership with DCAF to provide local audience (local communities where private security companies operate, private security agents, community group leaders) from Nairobi, Mombasa and Kisumu regions with the capacity to understand the regulation related to private security activities, and to know what their rights and the recourses in case of a violation are. It is interesting to note that most feedbacks received to the various radio talk shows came from PSCs employees, having follow up questions about the implication of the legal framework on their working conditions and related rights.

## 13 INCIDENT REPORTING

### Practical example

Private security company personnel are involved in a fight at an event where they were mandated to provide crowd control.

What do international norms and good practices say about Incident Reporting?



### The Code

PSCs need to document and investigate any incident involving the use of weapons, escalation of force, damage to equipment, injury to persons, attacks criminal acts, traffic accidents or incidents involving other security forces.

The information to be investigated and documented needs to include the following:

- Time and location of the incident;
- Identity and nationality of any persons involved including their addresses and other contact details;
- Injuries/damage sustained;
- Circumstances leading up to the incident; and
- Any measures taken by the Signatory Company in response to it.

Companies are then required to write a report and share it with their clients and if required by law also with Competent Authorities.

### Montreux Document

States must require PMSCs to immediately report serious incidents to the regulatory authority.

## The VPs

In case where physical force is used, private security should properly investigate and report the incident to the Company. Private security should refer the matter to local authorities and/or take disciplinary action where appropriate. Where force is used, medical aid should be provided to injured persons, including to offenders.

## IN KENYA

### **Are private security companies required to report incidents to the authority/client in your region? Do they?**

The 2016 Act's Code of Conduct includes a requirement for PSCs to "cooperate with national law enforcement authorities, providing any information necessary for law enforcement or crime prevention while respecting client confidentiality and without contravening the law" as well as to "promptly and thoroughly investigate complaints of inappropriate or illegal behavior by staff, and shall inform the police of these actions when appropriate."

The 2016 Act itself imposes (art. 49.1) an obligation to report any violation of a written law to the relevant state authority and provides for liability to penalty (art. 49.2) of "any person subject to this Act who aids or abets the commission of an offence under any written law".

CSOs and media respondents reported that some PSCs have an internal basic reporting mechanism used to report crime to the relevant authorities, mainly the police. However, it was mentioned that most incidents are either reported late or not reported at all mainly due to fear or reprisal or lack of response by the relevant authorities.



# 14 ACCOUNTABILITY AND EFFECTIVE REMEDY

## The Code

Every company should be able to receive complaints from its own employees as well as the public. For people to know about it, what they need to do and how it works, a company needs to make it known.

As a minimum, companies are required to have a description on their website on how people can submit any concerns or complaints they may have. They should have the following on their websites:

- Company contact details;
- Who can submit a complaint;
- How complaints can be submitted and in which languages;
- An indicative timeline for processing the complaint;
- That the Company intends to protect complainants from any retaliation for making such reports in good faith.

Complainants should also have a choice of different communication options through which they can submit a complaint. Some companies have feedback boxes, posters or a phone number on their car through which people can reach them. Sometimes companies or their clients have dedicated staff members who are in touch with community elders and listen to any concerns people may have.

When companies receive complaints, they are required to acknowledge receipt of the complaint, investigate the complaint properly and inform the complainant about next steps and all necessary information.

When complainants meet with company staff in charge of the complaint, they should be allowed to bring a friend, colleague or family member with them for their support.

A company also needs to make sure that complainants are protected from any further harm.

Companies are required to find a solution for the complaint which is fair and compensates the complainant adequately for the damage received.

## Montreux Document

States shall define appropriate sanctions for violations of national and international law; ensure that PMSCs respect applicable national and international laws and standards as specifically related to labour law, immigration law, and tax law; design an enforcement mechanism with enough power to provide for effective and systematic sanctions. This mechanism is linked closely to the development of an effective monitoring mechanism and could include linkages with existing corporate and individual sanction regimes to address criminal and civil accountability mechanisms.

States should develop provisions defining clearly and comprehensively the liability of PMSCs and their personnel for any misconduct; require companies to have civil liability insurance for risks related to the activities of the PMSC; and put in place a fair appeal system for the company to be able to be heard or to contest the alleged violations and imposed sanctions.

States shall establish mechanisms for remedies to victims that provide at a minimum:

- Equal and effective access to justice;
- Adequate, effective and prompt reparation for harm suffered;
- Access to relevant information concerning violations and remedial mechanisms.

In addition, States shall ensure the procedure is accessible to victims and not hindered by external factors such as high cost, time or unwillingness of prosecutors and that there is a clear separation between the State armed forces and private contractors and actively avoid jurisdictional gaps.

## The VPs

Companies should consult and monitor private security providers to ensure they fulfil their obligation to provide security in a manner consistent with the principles outlined in the VPs.

## IN KENYA

### **Are you aware of any accountability mechanisms applicable in Kenya in the event of abuse by private security firms?**

There are no specific accountability mechanisms for abuses by PSCs or their personnel, and the majority of CSOs and media representatives had very limited knowledge of the available solutions to victims in the event of an abuse by a PSCs. It was also reported that the public globally has very poor knowledge of what are the available complaints mechanisms. It was noted that all complaints can be reported to the relevant authorities, in most cases the nearest police station.

It was also mentioned that formal complaints are very rare, partly due to the lack of awareness from victims of the available mechanisms for complaint, and partly due to lack of trust for law enforcement agencies as well as fear of reprisal.

### **Do you believe civil society and/or media have a role to play in improving incident reporting as well as accountability of the private security sector?**

All respondents felt that civil society organizations and media have a key role to play in terms of promoting public participation, reporting, and monitoring of activities of PSCs in Kenya. CSOs and media have a wealth of experience in promoting the culture of responsible business conduct. While their experience with the private security industry limited, the current reforms and new dynamics are a great opportunity to improve the discussion between stakeholder and create mutually benefiting relationships.

CSOs and media representatives expressed their interest in increasing collaboration with the industry and authority stakeholders, in particular for public sensitization to regulations and good practices as well as adequate monitoring and reporting. This would be an opportunity for PSCs, authorities, CSOs, the media and other stakeholders to engage openly and to address human rights violations and challenges around the industry.

## 15 MEETING LIABILITIES

### Practical example

A private security company operates without any insurance in place. If the company causes any damage to property or people it might need to pay a large sum of money to remedy the damage. The company is worried that it might not be able to cover potential damage. It therefore decides to create its own fund into which it regularly pays a certain amount of money.

**What do international norms and good practices say about Meeting Liabilities?**



### The Code

Companies need to ensure that they have sufficient financial capacity in place to at all times be able to meet commercial liabilities for damages to any person or property. This might be insurance coverage, customer commitments, self-insurance or any other alternative arrangements.

### Montreux Document

When granting authorisations, States shall take into account the financial and economic capacity of the PMSC, including for liabilities that it may incur.

## IN KENYA

**Based on the legal requirements, do private security and private and military companies have the capacity to meet liabilities in your region and to fulfil their obligations?**

While responses are divers depending on the region, it globally seemed that PSCs are not capable of meeting liabilities. It was pointed out that often PSCs do not always have the necessary financial capacities to be able to meet commercial liabilities for damages to any person or property. A general lack of information and records regarding past cases of compensation or damages paid by PSCs has also been noted.

It was also mentioned that the COVID19 pandemic has had a negative and far-reaching socio-economic impact, also affecting the private security industry.

# Conclusion

This practical guide's primary focus is to support Kenya's civil society organisations and media representatives seeking to work on private security governance and oversight. This guide specifically addresses CSOs and media that seek to increase their understanding of private security, the applicable international standards, and what roles they themselves could play in ensuring a more responsible private security industry.

The private security industry is not well-known, despite the industry's growing importance across the globe. The development of this guide responds to a call by key stakeholders such as regulators, clients, civil society organisations themselves to support civil society and media in better understanding and monitoring the private security industry as well as in reporting misconduct. However, governments need to step up and support civil society in this important work, as they themselves increasingly use private security services while regulation and oversight remains often insufficient. Private security companies and their clients also need to engage constructively with civil society to ensure their activities contribute to state and human security and respect human rights.

The in-depth analysis from civil society and media representatives across Kenya in the chapter 3 shows that the experiences with private security governance are not always harmonious throughout the country. Globally, there are still wide discrepancies between the applicable legal framework, norms and good practices and their implementation on the ground the low level of public awareness and sensitization on private security and human rights issues in Kenya remains a key challenge. Similarly, if the distinction between public and private security seemed globally clear, there was confusion to differentiate private security actors from other hybrid form of security provision, such as community watches or vigilante groups. The analysis underlines the crucial role CSOs, and media representatives can play to improve the situation on the ground, in particular in promoting a better understanding of the private security industry, in supporting private security governance nationally and globally and in building capacity and sharing expertise.

This guide seeks to encourage new discussions and initiatives to improve private security governance – within civil society and media community, but also in innovative multi-stakeholder platforms bringing together key stakeholders, including civil society and media, regulatory authorities, private security actors, clients as well as communities together. It should be approached as a living document, that would need to be updated regularly to reflect the latest developments both on the ground and on the national regulatory framework.



# OTHER USEFUL TOOLS

Complementary to this publication, we recommend having a look at the following thematic tools and other useful content:

- Baseline Study Baseline Study on the Private Security Industry in Kenya: Challenges and Implementation of the New Regulatory Framework, Usalama Reforms Forum, DCAF, 2019: [bit.ly/3tV9zo7](https://bit.ly/3tV9zo7)
- The role of civil society organisations in promoting good governance of the private security sector, DCAF, 2018. [bit.ly/3b9cMrO](https://bit.ly/3b9cMrO)
- Toolkit for security sector reporting – Media, Journalism and Security Sector Reform, Fairlie Chappuis, 2021 [bit.ly/2ZfDIYS](https://bit.ly/2ZfDIYS)
- Gender and Private Security Regulation, Anna Marie Burdzy & Lorraine Serrano, 2019. [bit.ly/3Ef1xK5](https://bit.ly/3Ef1xK5)
- Regulating the use of force by private security providers: Basic principles and requirement for state regulatory frameworks on the use of force by private security providers, DCAF, 2019. [bit.ly/3Ein84v](https://bit.ly/3Ein84v)
- And the related interactive e-learning module: [bit.ly/3b9DGyU](https://bit.ly/3b9DGyU)
- Reporting Business and Human Rights: A Handbook for Journalists, Communicators and Campaigners, UNDP, 2021, [bit.ly/3GjAz5M](https://bit.ly/3GjAz5M)





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