

**THE KENYA NATIONAL PRIVATE SECURITY WORKERS'  
UNION**

**COMMENTS ON**

**THE PRIVATE SECURITY INDUSTRY REGULATION BILL 2010**

**By**

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**21<sup>st</sup> March 2011**

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## **1.0 Background**

The *Kenya Vision 2030* and the Medium Term Plan (2008-2012) recognizes security as the foundation of good governance, societal welfare and economic development. Kenya's vision for security sector is *a Nation of peace and stability; a society free from danger and fear*. This is premised on the understanding that freedom from danger, which entails protection from physical or direct violence, and freedom from fear in terms of a sense of safety and overall well-being provide an enabling environment for individuals, investments and businesses to thrive. Indeed, the economic, social and political pillars of the *Kenya Vision 2030* are grounded on existence of security, peace and tranquillity. Thus, the role of security in promoting global competitiveness and improvement in the standards of living of the population cannot be gainsaid.

The traditional understanding is that the state should be the sole and legitimate provider of security. However, private security industry has grown in both size and importance in Kenya, particularly over the last three decades. Private security companies have increasingly cut a niche in providing a wide range of security services to property owners, banks, embassies, businesses, neighbourhood associations and individual households. The private security companies, thus, considerably augment state functions in providing security.

There have been various attempts to reform the security industry in Kenya. While the reform initiatives tend to focus mainly on the public security institutions, it is imperative that the reforms should also include private security providers since they have become important players in the industry. It is for this reason that some analysts note that the public and private security sectors should be seen as closely connected through increasingly networked security structures. In other words, the security sector should be better approached as a complex network of security actors. Today, challenges facing security providers in both public and private sectors of the economy are similar in many aspects. This emphasizes the need to undertake security reforms that encompass both security providers.

The private security industry in Kenya is not without challenges. The key challenges are poor working conditions for the security personnel, inadequate training and tools, and low morale.

Due to phenomenal growth of private security companies in Kenya, there have been various attempts to enact a law that will regulate the operation of these security providers. In 2010, the Government Published The Private

Security Industry Regulation Bill (2010). It is important that this Bill is scrutinized before its enactment so that various stakeholders offer suggestions and recommendations that could contribute positively to the law. The sections that follow contain an assessment of the Bill.

## **2.0 Positive highlights of the Bill**

### **2.1 *Institutional framework***

The Bill has The Private Security Industry Regulatory Authority that is supposed to regulate the private security industry and exercise control over the provision of private security services in the interest of the populace. This institution is quite critical in the sense that it will take charge over the private security industry in terms of management and governance.

The Bill has also exhaustively enumerated the functions of The Private Security Industry Regulatory Authority. Some of the functions of the Authority include ensuring that the private security providers act in the public and national interest when rendering their services. Most of the times, the private guards act in the interests of the rich people and powerful institutions with little regards to the interests of the ordinary citizens. It is even obscure whether private security firms ever work in national security interest. Even though many citizens get employed in the private security sector, their impact on the national security is rarely felt.

The Authority will also promote professionalism, transparency, accountability, equity and accessibility in the private security industry. This is significant since many a time, there have been allegations that private security firms and their guards lack professionalism when discharging their duties. Moreover, there have also been claims that private security companies are not transparent and accountable especially to the public. It has also been observed that private security firms are mainly accessible to the rich people who have adequate financial resources unlike the poor people who turn to vigilante groups or militias since they are unable to afford the services of the private security firms. It is, therefore, critical that the Authority is established and given powers to ensure that private security companies strive to promote professionalism, transparency, accountability, equity and accessibility.

The Authority will also ensure that private security providers attain high standards in training as this will enable the private guards to be more efficient and responsible when discharging their duties. On the other hand, the Authority will promote equal employment opportunities in the security industry.

The Authority will also promote the protection and enforcement of the rights of private security officers. A number of times, private guards have complained that their rights are compromised by the owners of private security firms and the people they service since they are viewed as illiterate and unqualified persons. They complain of exploitation and mistreatment by their bosses. This leads to low morale, inefficiency and some cases, they engage in criminal activities to get extra money to supplement their meagre remuneration. The Authority is, therefore, expected to ensure that the rights of those who work in private security sector are upheld.

## **2.2 *The Board of the Authority***

The Bill has established the Board that shall consist of the Chairman, four members from the Office of the President, the Principal Secretary (Finance), the Principal Secretary (Labour), the National Police Service, a representative of employers' organization, representative of the insurance industry, two representatives from workers' organizations, two representatives from private security associations and a representative nominated by registered residents' associations. The Board is envisaged to include as many stakeholders as possible so that views expressed across board can easily be incorporated in the management of private security industry. The Board is quite imperative in that it will offer a link between the Cabinet Secretary in-charge of internal security and the Authority. Thus the government will fully be aware of what actually happens within the private security sector.

The Board will facilitate the training of security service providers to ensure that private guards receive high quality of training. This will enable them to be more effective and efficient in their duties. The Board will also ensure that only private security providers who comply with the requirements for registration or renewals will be the ones to be granted registration certificates. This is an important development as it will ensure that only credible private security firms are registered. The process will also ensure that private security companies that do not obey the laws and regulations are deregistered.

## **2.3 *Private security providers to respect labour laws***

In article 7(i) the Board will ensure that the private security providers will have to comply with the labour laws in the interests of employees. This is a great development since the owners of private security companies are obliged under the law to ensure that working conditions of their employees, their remuneration and the like are favourable. The private security providers are also expected to operate more professionally in accordance with labour laws. In Article 8(d), the Board has powers to take steps to

protect and assist security guards and other employees against or with regard to acts, practices and consequences of exploitation/abuse. It is hoped that this law will cushion private guards from employers who notoriously exploit their employees.

#### ***2.4 No conflicts of interest in The Private Security Industry Regulatory Authority***

The Bill is categorical that Director of the Authority should not be somebody who has any direct or indirect interest in the private security industry. This is important in the sense that the Director will not have conflict of interest when he/she is discharging his/her duties. As a result there are expectations that he/she will be objective, impartial, and independent and therefore will not be driven by partisan interests.

#### ***2.5 Services that can be offered by private security companies***

The Bill has stated clearly the services that private security firms can offer namely installation of burglar alarms and other protective equipment; private investigations and consultancy; car tracking or surveillance; close-circuit television; provision of guard dog services; security for cash in transit; access control installation and any other service authorized by the Board through a notice in the Gazette. It is critical that the Bill states categorically the services that private security companies can offer. This will enable the Government to notice when these firms go overboard. The private security firms can also identify areas where they can collaborate with the public security agencies.

#### ***2.6 Conditions for registration***

The Bill, in Article 17, has stated the eligibility for registration namely a private security provider must be a citizen of Kenya or a person who is ordinarily resident in the country; the person must be over 18 years of age; he/she must submit a certificate of good conduct issued by the Criminal Investigation Department; the person must produce a certificate of discharge if they had previously worked in the disciplined forces and must be a person of sound mind. This is another milestone in the Bill since the government will be looking at the integrity of people who want to start private security firms. The government will also be in a position to deregister any private security firm that might have been started by a non-citizen who lives in Kenya illegally. Since mercenaries and private military companies are still a problem in developing countries, it is critical that such a law is established to scrutinize the persons interested in private security industry.

## ***2.7 Barring officers from disciplined forces from engaging in Private Security Business***

Another positive feature in the Bill is that it bars officers who are serving in the National Security Intelligence Service, the disciplined forces, the prisons department and persons serving in the Authority from starting private security company. Over the years, it has been claimed that some of the serving officers in the disciplined forces own private security companies. It has been observed that such scenario leads to conflict of interests.

## ***2.8 Keeping the register of private security employees***

A registered security service provider is supposed to keep a register of all employees in their private security company. This will enable the security firm to monitor their employees and in situations where somebody is involved in criminal activities he/she can easily be traced. This is important in the sense that the government will also be able to know the exact number of people in each private security firm. Such records are critical for planning purposes.

## ***2.9 Opportunity for appeal***

In case the Board refuses to register a private security provider, he/she can refer the matter to an arbitral tribunal in accordance with the Arbitration Act. Through this appeal mechanism, the aggrieved party has an opportunity to present his/her case to a tribunal.

## ***2.10 Observance of the Code of Conduct***

Registered private security providers are expected to subscribe to and observe the Private Security Providers Code of Conduct as stipulated in the Second Schedule of the Act. This is an important development as it will help in the promotion of integrity in the provision of security services. Many a time, the public have complained that private security companies do not live up to expectations of the people.

## ***2.11 Inquiry into conduct of private security service providers***

The Bill allows the Board of the Authority to institute an inquiry in a scenario where employees of private security firms are suspected to be involved in illegal activities. Such development is critical in the sense that the government will be in a position to monitor private security firms' employees who might be tempted to engage in criminal/illegal activities.

### ***2.12 Bill not explicit about arming private security guards***

While article 22 of The Private Security Industry Regulations Bill 2004 had permitted the arming of private security guards, The Private Security Industry Regulations Bill 2010 does not permit weapons (firearms) to private guards. The debate whether private security guards should be armed or not have often generated a lot of heat among ordinary citizens, security experts, government officials and other stakeholders. Those who support arming of the private guards claim that well-armed private guards will deter armed criminals as is the case in Uganda. Those against arming the private security guards submit that if the terms and conditions of employment and level of professionalism of the guards are not improved then they might use their guns for committing crimes. Since The Private Security Industry Regulation Bill 2010 has not categorically permitted arming private guards, there is ample time to look at the issue more critically now and in the future.

## **3.0 Shortcomings of the Bill**

### ***3.1 Gender insensitive language***

The Bill should be written in a gender neutral language. Article 6(1) states that: “The Authority shall be governed by a Board consisting of a chairman appointed by the President...” The word ‘chairman’ could be replaced with ‘chairperson’ which is gender neutral. This will ensure that who is appointed will be comfortable with what is in the law whether the person is a man or woman. If left in its current form, then some might assume that the only men will occupy that position. In the First Schedule, there is a need to rephrase Article 4 so that it is gender neutral.

### ***3.2 Conditions of registration***

In article 17(2a), the Bill states that a person eligible for registration as a security provider should be a citizen of Kenya or a person who is ordinarily resident in Kenya. Won’t the phrase “... a person who is ordinarily resident in Kenya” be exploited by some foreigners with dubious characters to engage in the private security industry? The framers of the Bill need to rethink this phrase to avoid foreigners forming private military companies that could easily be used as mercenaries or hired to work in conflict-ridden areas.

At the same time, with the coming into force of the East African Community Common Market Protocol in July 2010, the phrase “... a citizen of Kenya or a person who is ordinarily resident in Kenya” is not in keeping with the EAC Common Market Protocol. Reference should be made to East Africa/East Africans.



### **3.3 *Composition of the Authority and the Board confusing***

When one reads closely The Private Security Industry Regulatory Authority and the Board of the Authority, it is a bit confusing. The Bill establishes the Authority in Article 3 but it is not clear the composition of the Authority. In article 6 of the Bill, it is noted that the Authority will be governed by the Board. While the composition of the Board is well articulated in Article 6, the composition of the Authority is left hanging.

At the same time, Clause 6 of the Bill gives the President power to appoint the Chairman of the Board. It does not, however, specify the minimum qualification requirements for the person to be appointed. The Clause does not also talk about the life of the Board nor its Chairman and its members. There is need to have a capping on this area in terms of the minimum qualifications, the tenure of office and the gender balance within the Board.

Further, Clause 8(d) gives the Board powers “to take steps to protect and assist security guards and other employees against or with regard to acts, practices and consequences of exploitation or abuse”. It is not, however, clear how the Board will carry out such a mandate without being in conflict with the work of the trade unions, employers’ organizations and other state agencies responsible for enforcement of labour laws and worker rights.

### **3.4 *Certificate of good conduct***

The Bill states that a person is eligible for registration as a private security provider if the person “submits a certificate of good conduct issued by the Criminal Investigation Department” (Article 17). How does the Criminal Investigation Department know the integrity of an individual? Aren’t there institutions that could give a better certificate of good conduct that truly reflects the character of the person in question? If the CID were to issue certificate of good conduct, are there other institutions that could also issue such certificates to supplement that from the CID?

### **3.5 *Collaboration between the Kenya Police Service and private security firms***

The Bill is not very clear how the Kenya Police Service and private security companies will collaborate in providing security. Even though there shall be a representative from the Kenya Police Service in the Board, it is not explicitly shown how the public security agencies and the private security guards will interact. It is important that that missing link be looked into during the review of the Bill. The collaboration is not only important when the two groups are discharging their duties but also when their personnel are being trained. While the training may not be exactly the same, there are

areas where they could have joint programmes in capacity building. If such collaboration is not in the law, then it should be considered in practice.

At the same time, the linkage between state security service provision, private security service provision and community policing should be clearly spelt out. In the circumstance, it would suffice if the Bill situates, in a Preamble, the role of the state and the role of private security industry in providing security services in the country besides clearly specifying what constitutes community policing

### ***3.6 Refusal of registration***

The Bill states that when the Board declines to approve application for registration the applicant will be informed within a period of fifteen days from the date of such decision. Since the whole Board should only meet at least four times per year who will be making decision and communicating to the applicant? The law should state clearly whether the decision will be made by the Director or other person(s) in the Board.

### ***3.7 Trade unions for private security industry employees***

While the Bill tries to raise some issues that have been facing employees of the private security companies, it does not specifically mention the existence of trade union in the industry. The trade union body organizing workers in the private security industry, for purposes of collective bargaining and negotiations, namely the Kenya National Private Security Workers Union (KNPSWU) deserves a specific mention in the Bill. There is need for Clause 6(1) b of the Bill to recognize only the most representative employers' body while in 6(1)d the union representing the workers in the industry (KNPSWU) and the most representative workers' body should be the representatives.

It warrants emphasis that one of the key challenges facing the private security industry in Kenya is poor terms and conditions of employment of the guards. A union is one of the avenues through which these terms and conditions of employment can be improved. It is also an important institution of social dialogue in the industry. It would even have more weight if the Bill categorically enlists the representation of the guards union in the Private Security Industry Regulatory Authority and the Board.

Clause 6(1)e of the Bill appears not to recognize existence of more than one umbrella private security associations, namely Kenya Security Industry Association (KSIA) and Kenya Private Security Industry Association (PSIA). Representation to the Board should thus be by the most representative body.

### ***3.8 Inadequate empowerment of private guards***

Though the Bill intends to address numerous issues that have been raised in the private security sector, the Bill tends to use top-down approach to the restructuring of the private security industry. It does not give substantial legal framework to private security guards and the private security providers. While it is true that the government needs to be on top of security matters, the involvement of other stakeholders in enhancing security could have been more critical. Nowhere in the Bill is community policing mentioned in connection to private security firms. The private security companies could play a big role in community policing if their partnership with the public and police service is explicitly stated in this Bill. In addition, the Bill has failed to provide adequate empowerment to the private security industry employees. It in away, attempts to strengthen private security firms at the expense of their employees.

### ***3.9 Addressing Negative Perceptions and Attitudes***

Effective professionalization and paradigm shift in the security industry in Kenya as envisaged in the Bill cannot be achieved if the current negative attitude towards the industry employees is not worked on. While the sector is critical in ensuring achievement of Vision 2030 goals, there is negative perception about its players, particularly its employees. This situation is attributed to the fact that the jobs offered in the sector are vulnerable and precarious in nature, offering very low wages and self esteem. Also, security industry jobs/work is mostly viewed as a last resort or an employment for failures in the society. This perception, if not changed through strategic interventions, will continue to impact negatively on the industry. The Bill appears, however, not to recognize this important aspect.

It is important to note that negative perceptions and attitudes about employment in private security industry can be dealt with gradually by professionalizing the sector and by improving the terms and conditions of employment therein. Besides training and introducing meritocracy in the industry, other measures such as renaming of the sector employees from “watchmen or guards” to “private security officers” could positively work towards correcting the negative perception. In addition, while improvement in the terms and conditions of employment can be addressed via trade union representation and effective national incomes and wages policy, the government procurement procedures, which favours the lowest bidder is also an impediment to improvement in such terms. This policy needs to be reviewed as lowest bidding promotes the race to the bottom with negative implications to workers.

### ***3.10 Tools of Trade for Private Security Officers***

As much as the Bill does not explicitly talk about arming of private security guards, it is also not clear on the tools of trade of such guards. It is important that the tools of trade and protective gears of the protective security officers/guards be clearly spelt out so as to remove any ambiguities.

### ***3.11 Penalties and Sanctions***

The penalties/sanctions proposed under Clause 26(9) of the Bill for proven misconduct are discretionary and too lenient to deter any wrongdoing. The relevant sub-clause of the Bill does not state the circumstance under which any of the actions enumerated in 26(9)a-d can be netted on the culprit. It does not also envisage a situation where a service provider may commit the offence more than once and thus warrant a stiffer penalty. Furthermore, with the current low value of money, a fine of at most Ksh. 200,000 as indicated in Clause 26(9)b is too small to act as a deterrent to any private security service provider.

### ***3.12 Service Standards for the Industry***

Security is a key foundation and enabler of national growth and development. For this to be realized there is need for development and implementation of requisite service standards for the industry. This should be developed through a participatory and consultative process and put as benchmarks for evaluation of the performance of the service providers.

### ***3.13 Training of Private Security Officers***

Training and relevant capacity building is critical to efficient service delivery. While the Bill envisages training of private security officers, it does not indicate how such training will be acquired and the need to develop a training curriculum for the purpose. At the same time, the Bill does not seem to recognize the need for harmonization of such training even with that of the state agents.

### ***3.14 Making of Regulations to Govern Private Security Fidelity Fund***

Clause 28(4) gives wide ranging powers to the Cabinet Secretary to make regulations on qualifications of Board of Trustees to the Fund, the manner of payment of the levy, making of claims and any other thing that may be deemed fit. This mandate cannot be left to the Cabinet Secretary alone. It must be consultative.