



PROPOSED AMENDMENTS TO SECURITY RELATED LEGISLATION

OFFICE OF THE ATTORNEY GENERAL & DEPARTMENT OF JUSTICE

LEGISLATION

- Prevention of Terrorism Act
- National Police Service Act
- National Intelligence Service Act
- Immigration related laws
- Refugee Act
- Criminal Procedure Code
- Evidence Act
- Penal Code
- Investment Promotion Act
- Privileges and Immunities Act
- Labour Institutions Act

....Legislation

- Public Order Act
- Cyber Security
- Merchant Shipping Act
- Traffic Act
- Protected Areas Act
- Radiation Protection Act
- Firearms Act
- Explosives Act
- Prisons Act
- Hotels and Restaurants Act
- The Proceeds of Crime and Anti-Money Laundering Act

PREVENTION OF TERRORISM ACT, 2012

- ✓ Create new offences
 - Facilitation of terrorist acts,
 - Radicalization,
 - Publishing offending material,
 - Attending training or instruction for purposes of terrorism,
 - Illegal possession of weapons (AK-47, G3, RPGs, IEDs)
 - Possession of weapons in public places and places of worship
- ✓ Stiff penalty for officers who fail to act or are corrupted to compromise national security
- ✓ Increase detention period of suspects from 90 days to 360 days - s.33

....Prevention of Terrorism (I)

- ✓ Allow security agencies to have powers to intercept communication without warrant for intelligence in order to detect and prevent terrorism related offences
- ✓ Remove technicalities in admission of relevant evidence - s.39
- ✓ Designate the National Counter Terrorism Centre (constituted as an inter-agency KDF, NIS, NPS and other relevant agencies).

....Prevention of Terrorism (2)

NCTC to;

- Coordinate national counterterrorism efforts and operations
- Be mandated to provide Security Compliance certification upon receipt of vetting and reports from national security organs
- Certify aviation schools and companies involved in aviation and security industry in consultation with the Office of the Attorney General

NATIONAL POLICE SERVICE ACT

- Amend the National Police Service Act to reflect the power of the President to appoint and remove IGP as per Art.245 of the Constitution;
- Clearly outline the core mandate of each of the Police services;
- Remove security of tenure for the Deputy Inspector Generals of Police and Director CID;
- Clearly outline the role of police reserves;
- Restructure system of training police officers i.e. National Police Cadet officers.

....National Police Service Act

- Empower the IGP to appoint one County Police Commander of the highest rank in county to be National Police Service County Commander;
- Empower the County Commissioners to ensure effective representation of the national government at county level;
- Make it mandatory for the NPS Commission to delegate specified functions to the IGP –s.10(2) NPS Commission Act.

NATIONAL INTELLIGENCE SERVICE ACT

- Allow NIS officer to arrest suspects and take pre-emptive strike of suspects if required to detect, deter and disrupt serious offences.

IMMIGRATION RELATED LEGISLATION

- Harmonize all the immigration related laws to ensure unified oversight by the Director General of Immigration
- Functions of the former Immigration Department to be under one Act
- Require security clearance for persons seeking to obtain or renew work permits
- Work permits to be approved by multi-agency security team
- Require applicants for work permits to apply while out of the country

...Immigration related laws (I)

- Make the decision to deny work permit or entry visa final and not subject to judicial review
- Require security bond before grant of passport in some cases
- Require clearance certificate from the police in the applicant's country of origin.

REFUGEE ACT,2006

Amend Act to require:-

- Asylum seekers to report on arrival as opposed to the current 30 days grace period to report;
- Asylum Seekers or refugees to remain in designated areas;
- Develop National Refugee Policy.

CRIMINAL PROCEDURE CODE

- ✓ Reintroduce provisions for police supervision for persons convicted of some offences (provisions removed in 2003)
- ✓ Propose the inclusion of serious offences such as terrorism, treason, rape etc. in the Judiciary Bail, Bond and Sentencing Guidelines Policy as exceptional cases that warrant denial of bail

EVIDENCE ACT

- ✓ Amend law to allow admission of digital photographs
- ✓ Ensure that evidence is not excluded on technicalities
- ✓ Dispense with procedures that may require personal presence of particular officer for admission of evidence when that would be done by other officers.
- Propose comprehensive review of entire Evidence Act to address the emerging needs and challenges such use of forensic and video-link evidence.

PENAL CODE

- The Penal Code should be revised with a view to bringing its provision in tandem with the present day circumstances

EXTRADITION LAWS

- Review extradition laws to simplify extradition within East African Community i.e. outline procedure for Reciprocal Backing of Warrants within EAC;
- Consider in the long term giving Kenyan courts primary jurisdiction to try Kenyan Citizens as opposed to extraditing them;
- Review legislation on Transfer of Prisoners.

INVESTMENT PROMOTION ACT

- Limit the number of workers/expatriates that an investor can bring from outside Kenya and give preference to locally available skills.
- Develop regulations under the Act to determine categories of workers to be issued with work permits.
- Introduce vetting of investors
- Require investors to be sponsored by Kenyan citizens
- Investors should be required to declare amount of capital to be invested and benefit to the country

LABOUR INSTITUTIONS ACT

- **Constitute an inter-ministerial agency consisting of labour, immigration, NIS, Police, Attorney General to oversee registration and operation of employment bureaus and agencies.**
- **Require employment agencies to get government approval prior to sending Kenyan citizens abroad.**

PUBLIC ORDER ACT

- Review the Public Order Act with a view of limiting the right to picket and ensure that it complies with Article 24 of the Constitution;
- Amend the Act to give the relevant Cabinet Secretary the power to set aside special areas and time where all demonstrations and picketing would take place;
- Make organizers of demonstrations accountable and take responsibility for damage or losses occasioned by the demonstrators.

CYBER SECURITY

- Fast track Cyber Crimes Bill

MERCHANT SHIPPING ACT

- Review the law with a view to including all maritime security threats;
- Put in place legal framework for licensing of privately contracted armed personnel on board ships and maritime companies.

TRAFFIC ACT

- Require motor vehicle dealers to maintain a database of vehicle sales/ transactions in stock and sold on a monthly basis.
- Create a database of all foreigners with diplomatic number plates and require number plates to be surrendered upon end of tour of duty, retirement or upon sale of the vehicle.
- Reconsider X number plates

PROTECTED AREAS ACT

- Revise and update the Schedule of Protected areas to include all sensitive government installations and facilities;
- Current list is outdated and penalties are very low.

RADIATION PROTECTION ACT

- There is need for legal framework for regulating the use of nuclear and radioactive material including protection from accidental and intentional diversion;
- Include national security organs, MFA, KRA in the Radiation Protection Board.

FIREARMS ACT

- Fast track the Small Arms and Light Weapons Bill which addresses the concerns regarding the licensing regime and lenient penalties;
- Expand the meaning of a firearm to include such accessories like telescopes, mufflers, bullet proof gear, night vision devices etc.
- Require government approval to import or possess bullet-proof cars;
- Introduce multi-agency board to certify suitability of applicant and periodic proficiency of firearms holders.
- Develop mechanism for marking, tracing and ballistic finger printing of all firearms in the country

EXPLOSIVES ACT

- Fast track the proposed Bill;
- Enhance penalties under the Act
- Need to regulate use and trade in some common user products capable of being used as explosives as explosives boosters;
- Issue of LPG and petroleum products.

PRISONS ACT

- Maintain an integrated biometric system to enable sharing of information within the criminal justice system and monitor prisoners;
- Address some inadequacies of the Prisons Act to:-
 - allow separation of terror suspects from other prisoners;
 - prohibit prison officers from undertaking industrial action.

HOTELS AND RESTAURANTS ACT

- Make it compulsory for hotels & guest houses to record details of visitors;
- Require hotels to allow police access to premises;
- Allow hotels to file annual or earlier returns to the police.

THE PROCEEDS OF CRIME AND ANTI-MONEY LAUNDERING ACT

- Operationalize the Financial Reporting Centre and Asset Recovery Agency

BETTING, LOTTARIES AND GAMING ACT

- Develop mechanism through policy to prevent infiltration of betting activities by the organized criminal gangs (betting and gaming activities fall under the mandate of the County Governments).

OTHER MEASURES

- Continue engaging judiciary to ensure support for terrorism prosecutions;
- Develop Patriotic Bill that will rein in on individuals and especially government officials whose actions compromise national security;
- Implement Westgate Parliamentary Report.